

T.D. 1/93
Decision rendered on January 6, 1993

THE CANADIAN HUMAN RIGHTS ACT
R.S.C. 1985 c. H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

VIOLET PRINCE

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DEPARTMENT OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT

Respondent

DECISION OF THE TRIBUNAL

TRIBUNAL:

Lee Ongman Chairperson
Lois Rae Serwa Member
Guizar Samji Member

APPEARANCES:

Daniel Russell
Counsel for Canadian Human Rights Commission

Mary Humphries
Counsel for Department Of Justice

Perry Shawana
Counsel for Violet Prince

DATES AND July 7th to 9th inclusive
PLACE OF Prince George, British Columbia
HEARING:

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BACKGROUND

Violet Prince (also referred to as the "Complainant") filed a complaint with the Canadian Human Rights Commission (hereinafter called the "Commission") in which she alleged that the Department of Indian Affairs and Northern Development (hereinafter called the "Department of Indian Affairs") had engaged in discriminatory practices against her contrary to the (hereinafter called the "Act") on the grounds of religion. Particulars contained in the said complaint alleged that the Department of Indian Affairs discriminated against her by refusing to provide boarding costs for her daughter to attend the Catholic Private School because of her religion in violation of Section 5 of the Act. The important facts of this case were not in dispute.

Violet Prince is a Status Indian of the Carrier Nation and is a practicing Catholic. The Complainant has a daughter named Charlotte Prince and she enrolled this daughter in the Prince George College which was a Catholic High School located approximately 125 miles from the Complainant's home. The Complainant wanted her daughter to attend Prince George College rather than the non-denominational public school located in her home town of Fort St. James.

Prior to 1987 the evidence indicates that the Department of Indian Affairs had paid boarding expenses for students from Fort St. James attending the Prince George College.

The Department of Indian Affairs notified the Band Council in writing, on March 28, 1987 that the Department's policy stated that a student should attend the school nearest his or her home.

"Parents who choose to enrol their children in schools other than the ones closest to their homes must bear any additional costs such as tuition costs above the Provincial average, transportation costs, boarding home costs etc."

The Complainant sent her daughter to the Prince George College Private School in September of 1987 and continued her efforts to attempt to have the Department of Indian Affairs change the policy decision and pay for room and board for her daughter while attending the College. She completed that school year at the Prince George College. In September of 1988 the Complainant again registered her daughter in the Prince George College, where she attended for three months and then was transferred to the Fort St. James Senior

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Secondary School. She attended this public school in her home town until she eventually became dissatisfied and quit school. She did not complete the 1988/1989 school term.

During the term of her attendance at the Prince George College, neither the Complainant nor the Department of Indian Affairs paid the room and board costs to the Prince George College on behalf of Charlotte Prince and that invoice appears to remain outstanding.

To summarize, the action complained of is the decision of the Department of Indian Affairs' to refuse funds to Violet Prince for her daughter's living expenses while away from home and the policy complained of is the policy of the Department of Indian Affairs in refusing to fund room and board maintenance of Status Indians who wish to attend schools away from their home town. The complaint is that this policy has an adverse affect on Status Indians in Fort St.James, British Columbia on the basis of their religion.

The Canadian Human Rights Act also provides in Section 2 as follows:

"The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted."

In addition, a definition of discriminatory practices is provided in Section 5 of the Act and this is the subject matter of the complaint, namely:

It is a discriminatory practice in the provision of goods, services, facilities or accommodations customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

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PRELIMINARY OBJECTION TO JURISDICTION

Prior to hearing evidence with respect to the matter of religious discrimination contrary to Section 5 of the Act, the Tribunal was presented with a preliminary objection to jurisdiction by Counsel for the Respondent which is based on Section 67 of the Act.

Section 67 of the Canadian Human Rights Act provides that:

"Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act."

Ms. Humphries, on behalf of the Respondent, argued that the subject matter of this complaint concerns the education policy of the Department of Indian and Northern Affairs pursuant to Section 115 of the Indian Act and that it was not necessary to hear the substantive evidence and facts prior to determining the application of Section 67 to the case.

Mr. Russell relied on three cases, namely, Louise Courtois and Marie Jeanne Raphael vs. Department of Indian Affairs 11 C.H.R.R. D/41 and Dejarlais vs. Pi Band No. 75 NR 7 1.

Mr. Russell quoted from the Piapot decision and relied on that case for authority that only by hearing all of the substantive evidence available could the Tribunal determine whether any action by the Department of Indian Affairs were within the scope of their

authority, thus falling within the protection of Section 67 of the Canadian Human Rights Act.

In order to be fair to all parties, the Tribunal determined that all the evidence should be presented prior to deciding the issue of jurisdiction of this Tribunal in light of Section 67.

Section 67 of the Act is concise and expressed in very clear language. The intention of the Act is to ensure that the Canadian Human Rights Act does not conflict with the application of the Indian Act which itself is discriminatory; in that the Indian Act provides many privileges and affords First Nation People certain opportunities that are not available to the general public in Canada.

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Counsel for the Commission indicates that although an action on its surface may appear to be made pursuant to the Indian Act and accordingly subject to the umbrella of protection afforded by Section 67, it may lose that protection where that action is not taken pursuant to the lawful authority under the Indian Act. In the Piapot case there was no specific authority, or Policy Section of the Act, or by-law that would permit the motion that was passed by the Piapot Band namely:

"That Councillor Johnny Rock Thunder requesting a vote of non-confidence for ... Rose Desjarlais ... some complaints are about Rose's age... Motion carried."

The case citation in the Book of Authorities provided to this Tribunal indicated that such a motion was nowhere expressly or by implication provided for by the Indian Act, accordingly, it was not a "provision made under or pursuant to the Act" so as to bring it within the exempt and provisions of Section 63(2) now Section 67 of the Canadian Human Rights Act.

It is clear in the case at bar that the Department of Indian Affairs has the authority to determine policy and to make decisions with respect to education as defined in Section 114 to 122 of the Indian Act.

Section 115(c) of the Indian Act provides as follows:

"115. The Minister may:

(a) provide for and make regulations with respect to status for buildings, equipment, teaching, education, inspection and discipline in connection with school;

(b) provide for the transportation of children to and from school;

(c) to enter into agreements with religious organizations whose support and maintenance of children who are being educated in schools operated by those organizations; and

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(d) apply the whole or any part of monies that would otherwise be payable to or on behalf of the child who is attending residential schools to the maintenance of that child at that school."

Section 115 clearly contemplates the specific power of the Minister to decide matters and make policy with respect to the issue of provision of funding for the maintenance for children while attending residential school.

Notwithstanding Section 115, Mr. Russell for the Commission and Mr. Shawana on 118 of the Act, which reads for the Complainant, countered with their interpretation of Section as follows:

"118: Every Indian child who is required to attend school shall attend such school as the Minister may designate, but no child whose parent is a Protestant shall be assigned to a school conducted under Roman Catholic auspices and no child whose parent is a Roman Catholic shall be assigned to a school Protestant auspices, except by written direction of the parent.

Their contention is that Section 118 ensures that the Department of Indian Affairs is obligated to provide a Catholic education for Indian children if so desired by the parent and that any policy that conflicted with this was directly contrary to Section 118 and thus illegal. They then stated that if the policy was not lawful it could not be afforded the protection of Section 67 since it was an action or policy by the Department of Indian Affairs which was not permitted by the Indian Act.

We reject the Commission's proffered interpretation of Section 118 as a tortuous interpretation of what appears as fairly plain language to us. We are of the view that the Department of Indian Affairs did not compel Ms. Prince to attend a Protestant School and did not act unlawfully.

Accordingly, the Tribunal finds that the Department of Indian and Northern Affairs was acting within its authority under the Indian Act and that Section 67 of the Act is applicable. The complaint of Violet Prince as filed is accordingly dismissed.

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Dated this 15th day of November, 1992.

LEE ONGMAN

LOIS RAE SERWA

GULZAR SAMJI

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Dated this 15th day of November, 1992.

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