

T.D. 3/94  
Decision Rendered on January 27, 1994

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

HUMAN RIGHTS TRIBUNAL

BETWEEN:

LEONIE RIVERS

Complainant

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

SQUAMISH INDIAN BAND COUNCIL

Respondent

DECISION OF TRIBUNAL

TRIBUNAL: Donald Lee, Q.C. Chairman  
Jill Sangster Member  
Gulzar Shivji Member

APPEARANCES:

Ms. S.E. Ross Counsel for the Canadian Human Rights  
D.N. Ranson, Esq. Commission [CHRC]

J.R. Rich, Esq. Counsel for the Respondent  
M. Akey, Esq.

DATES AND LOCATION: Vancouver B.C.  
OF HEARING October 19, 1992  
November 9-10, 12-13, 1992  
December 7-9, 11, 1992  
July 12-16, 19-21, 1993  
September 16-17, 1993

MAJORITY

DECISION BY : Donald Lee, Q.C.  
(with Jill Sangster concurring)

DISSENTING

OPINION BY : Gulzar Shivji

- 1 -

(A) THE TRIBUNAL

This Tribunal consisting of myself as Chairperson, and Jill Sangster of the City of Vancouver and Gulzar Shivji of the City of Richmond, both of the Province of British Columbia, was appointed on April 1st, 1992 to inquire into the complaints of Leonie Rivers dated April 7th, 1987 as amended on May 7th and June 25th, 1987 against the Squamish Indian Band Council, and to determine whether the actions complained of constituted a discriminatory practice on the grounds of family status and national or ethnic origin in a matter related to employment under Sections 7 and 10 of the Canadian Human Rights Act (Exhibit T-1).

(B) THE COMPLAINT

The Complainant Leonie Rivers signed a Canadian Human Rights Commission Complaint Form on April 7th, 1987 subsequently amended on May 7th and on June 25th, 1987, which states that she had reasonable grounds for believing that the Squamish Indian Band Council of North Vancouver, B.C. engaged in discriminatory practices on the grounds of family status and national or ethnic origin in contravention of the Canadian Human Rights Act, the particulars of which were:

The Squamish Indian Band Council discriminated against me because of my family status, and my national or ethnic origin by refusing to employ me, and by pursuing a policy of nepotism for employment purposes, in violation of Sections 7 and 10 of the Canadian Human Rights Act.

I am a Native Indian. My mother is a member of the Gitsegukla Band, north of Terrace, B.C., where I was born. Because of my birthplace, I am known as Gitksan.

During August 1976, I married a member of the Squamish Indian Band, which is located in North Vancouver, B.C. where I now live. Consequently I became a registered member of that Band.

Between June 1986 and December 1986, I applied for five employment opportunities with the Squamish Indian Band: Education Coordinator (June 1986), Curriculum Developer (December 1986), Career Counsellor (December 1986), Youth Development Coordinator (December 1986), and Recreation Director (December 1986). The successful applicants for each of these positions were less qualified and experienced than I; however each of them was related to a specific Band Council member.

I appealed these employment decisions to the

- 2 -

Squamish Indian Band Council. During its discussion of my appeal in February 1987, one of the Band's chiefs stated that "we are not just hiring band members, we only hire blood members." My appeal was subsequently rejected because of this policy.

#### (c) LEONIE RIVERS THE COMPLAINANT

Leonie Rivers is a native Indian who was born in Kitwanga, British Columbia, into the Kitwanga Band. Her mother is a member of the Gitsegukla Band, north of Terrace, British Columbia, and because of her birthplace Leonie Rivers is known as Gitksan. In August 1976, she became a registered member of the Squamish Indian Band in North Vancouver, British Columbia, by reason of her marriage to a member of that Band, Glen Rivers. By virtue of these facts, Leonie Rivers is a "married-in" member of the Squamish Indian Band.

#### (D) LEONIE RIVERS - EDUCATIONAL BACKGROUND

Leonie Rivers obtained a Bachelor's Degree in Education Elementary from the University of British Columbia in May of 1983, and completed additional courses in native education which additionally qualified her for a Certificate in the Native Indian Teacher Education Program (Tab 38 Exhibit HR-2). Following these education studies, Ms. Rivers went to the University of Saskatchewan in

Saskatoon and completed a Legal Studies for Native People program which was a concentrated six to eight week pre-law type of course designed to assess her ability to succeed at legal studies and law school. In 1984 she was accepted into Law School at the University of British Columbia where she completed her first year.

In 1979/1980 she took basic computer word processing and programming courses at BCIT Night School.

#### (E) LEONIE RIVERS - JOB EXPERIENCE

Leonie Rivers was a teacher/counsellor at the Ustla-Hahn Alternate School teaching Grades 8 to 10 starting from 1978/1979 for two years. This school was operated by the Squamish Indian Band in conjunction with the North Vancouver School District under an Advisory Committee. The school taught an alternative program to the regular school system, because the regular public school system did not always meet the needs of Native students within the Squamish Indian Band membership. This was a term position which was renewed each year.

In the summer of 1977 Leonie Rivers was employed as a child care worker with the Social Development Office under Supervisor Steve Kosey in the Band. In this position she developed

- 3 -

a language arts pilot project kit for Grade 4 to Grade 8 students in the Squamish Band because they were having difficulties with the regular curriculum that was prescribed by the B.C. Ministry of Education.

In the summer of 1977 and 1978 Ms. Rivers was hired as a language arts tutor under the supervision of the Education and Social Development Office in the Squamish Indian Band. In this position Leonie was responsible for teaching mathematics and language arts to approximately 16 to 20 students.

In 1982 Ms. Rivers was a minutes recording secretary for the Assembly of First Nations Vice-Chief a position similar to a Premier of a Province within the aboriginal community, and was a consultant working with the B.C. Tribal Council's Draft Policy. In this position she was redoing drafts and making recommendations or suggestions as a Native or interested person.

In the summer of 1982 Ms. Rivers was an Executive Assistant to Mr. Bob Warren President of United Native Nations, a provincial Indian Organization in B.C. She updated his executive papers, correspondence and replied to day-to-day correspondence. Following this position Ms. Rivers was an Education Officer with the United Native Nations. In this position she evaluated and assisted in Special Needs Education Programmes designed for students of Native ancestry. She was also responsible for a scholarship program for non-status Indian people or students (Bill C-31 individuals).

Ms. Rivers became the Acting Executive Director of the Vancouver Indian Centre in Vancouver B.C. for five months on a full-time volunteer basis, during the time she was also volunteer President of the Vancouver Indian Centre Housing Society (November 1983 to October 1985) and the Vancouver Indian Centre (November 83 to November 1984). As Executive Director she was responsible for budget preparation in thirteen programs and for Board liaison. She prepared reports and proposals in an effort to reorganize the Vancouver Indian Centre which had to deal with a significant capital debt.

In 1981 Ms. Rivers started as a part-time instructor and Counsellor, and then became a full-time instructor at the King Edward Campus at the Vancouver Community College where she was involved with the Native Employment Skills Training Program, and adult basic education dealing with young people who had quit school and wanted to return after realizing the importance of education.

In 1985 Ms. Rivers was a Youth and Information Officer at the Canada Employment and Immigration Commission. She worked with Native Youth, special needs clients regarding job skills and how to make calls for job finding purposes.

- 4 -

From January 1986 to February 1986 Ms. Rivers worked with the Health and Welfare Canada Medical Services Branch as an Administrative Assistant. This short-term position was a personal services contract with the Federal Government in which she was responsible for course administration and day-to-day operations of the NNADAP/CHR Basic Training, a module IV training site.

In February 1986 Ms. Rivers was employed as the Home School Coordinator for six weeks by the Squamish Indian Band under the supervision of Gloria Wilson. This Home School Coordinator

position was renamed as Education Coordinator when the Education and Social Development separated into two entities. According to the Complainant's testimony, Bill Williams approached her to take on this six week contract. In this position Ms. Rivers was responsible as a consultant to the Squamish Indian Band to review and evaluate the Band's Post Secondary Education program.

Between May 1986 and January 1987, Ms. Rivers applied for five employment opportunities with the Squamish Indian Band:

Education Coordinator (June 1986)  
Curriculum Developer (December 1986)  
Career Counsellor (December 1986)  
Youth Development Coordinator (December 1986)  
Recreation Coordinator (December 1986)

(F) EDUCATION COORDINATOR JOB COMPETITION:

This Position was created in 1986 when the Education and the Social Development Department were separated into two separate entities. Gloria Wilson was the Director for Education and Social Development at that time. Leslie Harry, Chairman of the Squamish Indian Band Council, testified that Gloria Wilson did not agree with the separation (Transcript Volume 10 Page 1161 Lines 18 to 24). Gloria Wilson and Ms. Rivers testified that Gloria Wilson did not oppose the separation of the Education portfolio from the Social Development Department but that Gloria Wilson did not like the way the separation was handled.

The Education Coordinator job posting was dated May 30th, 1986 with the job description being prepared by Bill Williams, the Band Manager at that time. Bill Williams testified that he was responsible for setting up the interview panel for this position. He prepared the questions and appointed the Selection Committee which consisted of himself, Gwen Harry and Byron Joseph. Bill Williams prepared the Job Description for this position which stated under Qualifications:

- 5 -

"Valid teaching Certificate, academic qualifications, or related and relevant practical experience will be considered." (Exhibit HR-2 Tab 1)

In addition to Ms. Rivers, there were five other applicants, namely, Deborah Jacobs, Richard Band, Theresa Campbell and Karen Joseph-Darbyshire. The Band Selection Committee of Gwen Harry, Byron Joseph and Bill Williams was assisted by Kim Seward and Janice George, who were Student Representatives present at the interview. After the Selection Committee's interviews, the Selection Committee Members each had a different first choice for the Education Coordinator position. Bill Williams selected Deborah Jacobs first and Richard Band second; Gwen Harry chose Richard Band first and Deborah Jacobs second; while Byron Joseph had Ms. Rivers first and Deborah Jacobs second. A consensus was reached after a discussion and evaluation of the answers from the Applicants to the questions given in the interview, and Deborah Jacobs became the successful candidate for the Education Coordinator Position. Deborah Jacobs is Squamish-born, the niece of Band Councillor Gilbert Jacobs and cousin to Kim Seward and Janice George, the student members of the interview panel.

(i) Leonie Rivers' Testimony with respect to the Education Coordinator Position

Ms. Rivers complained that she felt uncomfortable at the interview for the Education Coordinator position. The reasons included that she was not clear at that time why Kim Seward and Janice George, cousins of Deborah Jacobs, were asking questions at the interview (Transcript Volume 2 Page 98 Lines 22-25; Page 100 Lines 10-17).

Ms. Rivers expressed the view that the selection panel was responsible for her acknowledged poor performance in her interview for Education Coordinator.

In her direct examination, Ms. Rivers testified that panelist Gwen Harry had asked certain questions:

"She had some specific questions, she asked more like scenarial questions and what I would do in certain situations and how would I interact with individual, that sort of thing" (Transcript Volume 2 Page 102 Lines 6-9).

She went on to state:

- 6 -

"Like, I had applied for a couple of jobs previous and I knew what kind of -- you know, go in, knowing and

anticipating what kind of questions you'll be asked because it is related to the job. I didn't feel that some of the questions she asked me were relevant to the position, that's all" (Transcript Volume 2 Page 102 Line 22 to Page 103 Line 1).

On cross-examination, the Complainant provided clarification:

"Q. And what sort of questions were those, that you didn't expect?

A. The ones that were related to how I deal with certain situations if they came up in the Band" (Transcript Volume 3 Page 253 Lines 9-12).

"Q. Now there were other questions then, that you hadn't expected that you think are not appropriate. What are those, please?

A. They were not -- they were specific questions that related to the job ..."

The Complainant drew the conclusion that the panel didn't do a good job:

"Q. You mean the panel didn't do a very good job?

A. In my estimation, no" (Transcript Volume 3 Page 266 Lines 7-9).

About two days before the actual cut-off date for the filing for applications for this position, Bill Williams instructed Ms. Rivers to extend her contract as Home School Coordinator for two weeks to orientate the person that they were going to hire as Education Coordinator (Transcript Volume 2 Page 99 Lines 9-14). Ms. Rivers questioned whether the Education Coordinator Selection Committee had already made a decision and were just finishing off the process with the interviews. Ms. Rivers did acknowledge however that she did not believe that Bill Williams engaged in discrimination against her (Transcript Volume 3 Page 302 Lines 19-22).

Ms. Rivers said that she was disturbed by Gwen Harry's body language, her scenarial questions and the tone in her voice



(Transcript Volume 2 Page 100 Line 25 to Page 101 Line 2; Page 102 Lines 3-25).

Ms. Rivers described how she felt at this interview:-

"It didn't really appear that they were interested in my qualifications as a potential employee in the education capacity" (Supra Page 100 Lines 15-17).

In evidence Ms. Rivers described her interpersonal skills as:

"Well, my personal feeling is I do have interpersonal skills. I think they're very strong. I'm very sensitive toward other people's interest and needs, and I think that's real important" (Transcript Volume 17 Page 2451 Lines 22-25).

In evidence Ms. Rivers described her knowledge of Squamish culture and language as about five and a half to six on a scale of one to ten citing her work at the Ustl'ahan School (Supra Page 2453 Lines 7-22).

Ms. Rivers did not receive any formal reply from the Squamish Indian Band Council with respect to this job competition until she received a letter from Bill Williams dated August 1st, 1986 (Exhibit HR-2 Tab 21), which he apparently wrote after she had spoken to him about giving her feedback as to why she was not successful in obtaining the position (Transcript Volume 2 Page 106 Lines 15-17). The Williams letter also advised that the two students Kim Seward and Janice George did not take part in the actual selection decision. Bill Williams also testified that these two students were selected by their student peers at Capilano College, and that he had cautioned them that they could not be biased towards any relatives who were being interviewed.

(ii) Band Manager Bill William's Testimony with respect to the Education Coordinator Position

Bill Williams explained that in his mind the applicant's fundraising ability, financial experience and skills, curriculum development and job experience were very important factors for this Education Coordinator position. He was impressed by Deborah Jacobs' qualification of three years of University training at the University of British Columbia, her non-credit courses in accounting, and her job experience as a Social Development Officer with the Secretary of State in Vancouver because it involved

fundraising, and demonstrated financial experience and skills. He chose Deborah Jacobs over Ms. Rivers even though Deborah Jacobs did not have a valid teaching certificate, which was part of the

- 8 -

minimum qualifications for the job.

Bill Williams explained that when he asked Ms. Rivers to extend her contract for two more weeks to train the new Education Coordinator, he had not reviewed the job applications for the Education Coordinator position. He had only reviewed the job applications after the cut-off date and so he would not know that Ms. Rivers had also applied for the job as Education Coordinator. Bill Williams had also assumed that Ms. Rivers might have more interest in classroom teaching than the administration duties required for the Education Coordinator position (Transcript Volume 12 Page 1574 Lines 7-9).

Bill Williams also testified however that Ms. Rivers did not act surprised or upset when he requested her to train the successful Education Coordinator candidate (Supra Page 1574 Lines 23-24).

Bill Williams during my examination of him (Transcript Volume 14 Page 1866 Lines 20-25) acknowledged that the minimum qualification for the Education Coordinator position changed fairly dramatically within a few weeks; and he further acknowledged at one point during this examination that not only did the Education Coordinator job applicants not know about the changing nature of the Education Coordinator job, the Squamish Indian Band also didn't know what they were looking for (Supra Page 1867 Lines 1-7).

He explained that he only realized the vastness of the job while negotiating the Master Tuition Agreement with the Federal and Provincial Government and while identifying and setting up a language and counselling program for the Squamish Indian Band, which resulted in the realization that the Education Coordinator job required more than the ability to teach in a classroom setting. According to Bill Williams all applicants for the job were interviewed and he didn't think any potential applicants were discouraged from applying because of these changes to the job description ( Transcript Volume 12 Page 1863 Line 6 to Page 1868 Line 16).

As to how Bill Williams made his selection choice for the position, he described Ms. Rivers NITEP Certificate - Native Indian Teacher Education Program Certificate as "a significant form of

accreditation," as "...it helps establish aboriginal people to get professional certification through colleges or universities" (Supra Page 1607 Lines 3 to 7). Bill Williams also praised Ms. Rivers work as Education Consultant in a Letter of Recommendation dated September 19th, 1986 (Exhibit HR-2 Tab 56). He acknowledged that Leonie Rivers stood head and shoulders above Deborah in teaching ability but that she did not stand head and shoulders when other relevant experience was considered namely fundraising, financially related job experience, program development, school

- 9 -

board and government relations (Transcript Volume 12 Page 1609 Line 7 to Page 1613 Line 24).

At the same time Bill Williams seemed unclear however whether he and the Selection Committee noted Ms. Rivers' fundraising, financial experience and skills as indicated in her resume such as the Vancouver Indian Centre retirement of \$1.9 million capital debt, upgrading and rearranging of systems and practices, supervision of 43 staff, preparation of budgets for thirteen programs, report and proposal writing, and policy responsibilities (Supra Page 1614 Line 3 to Page 1623 Line 16). The fundraising experience within the Squamish Indian Board that Ms. Rivers did have that Bill Williams did recall considering as part of the interview process was viewed in a negative light (Supra Page 1614 Line 3 to Page 1617 Line 15). Despite this alleged "failure" in fundraising, Bill Williams still hired her twice for jobs, once after she had "failed" in a fundraising effort (Supra Page 1617 Line 1 to 13).

Ms. Rivers in rebuttal evidence stated that in fact funding for the Capilano Nursery School was obtained before she left the position (Transcript Volume 17 Page 2450 Line 19 to Page 2451 Line 15). Bill Williams was also concerned about Ms. Rivers' personal suitability citing her abruptness of language and mannerism with certain individuals in the Squamish Indian Community (Transcript Volume 14 Page 1847 Lines 14-17; Page 1854 Line 11 to Page 1855 Line 10). When she worked for him as the Home School Coordinator, which was also known as the acting Education Coordinator, he described her as doing a "good job" but described the job as involving "one-on-one contact", "doing a specific duty, researching by herself, and it wasn't relating to the general public or the community" (Supra Page 1847 Lines 4-11).

While Ms. Rivers was teaching downstairs in the Squamish Indian Band Offices, Bill Williams heard complaints from Squamish Indian Band Council members responsible for the Education portfolio that she was abrupt with them when they interacted with her, or when they tried to find out how the education program was functioning (Supra Page 1855 Line 20 to Page 1857 Line 16).

When Bill Williams was asked by my colleague Ms. Shivji about his awareness of a complaint with respect to Ms. Rivers' conduct at school as a teacher, he replied:- "Not directly, no. I can't recall (Supra Page 1487 Line 20). Later in responding to my questions in this regard he acknowledged that there had been three or four negative rumours about Ms. Rivers and her activities after hours while she was teaching downstairs, but because they

- 10 -

didn't specifically affect her job he discounted the rumours; and he and the interview panel did not take the rumours into account at the Education Coordinator job interview (Supra Page 1857 Line 17 to Page 1862 Line 5).

### (iii) Interview Panel Member Byron Joseph's Testimony With Respect To The Education Coordinator Position

Byron Joseph had Ms. Rivers as his first choice for the Education Coordinator position. He acknowledged however that Ms. Rivers' "outspokenness" was a negative quality, and when questioned by the Tribunal he agreed that Ms. Rivers' attitude made her less qualified because she showed no respect for people at the Band membership meetings (Transcript Volume 15 Page 2058 Line 4 to Page 2060 Line 23). He declined however to link Ms. Rivers' "disrespectfulness" and "outspokenness" to the fact that she was a married-in person not familiar with the Squamish culture (Supra Page 2077 Lines 3-20). In addition to describing Ms. Rivers as "outspoken", he also described Ms. Rivers as a "rabble-rouser" (Supra Page 2059 Line 8 to Page 2060 Line 12).

Byron Joseph said that he did not recall taking into account Ms. Rivers' fundraising ability or experience at the Vancouver Indian Centre in the selection of the Education Coordinator (Supra Page 2068 Line 10 to Page 2069 Line 22). Byron Joseph said :

"If it was in her resume. I can't recall it sorry, because I just had a chance just to flip through

them, you know. We did base it on the ten questions, and it was pretty well that, you know, of those ten questions and how they answered and how they carried themselves" (Supra Page 2006 Lines 5-9).

Byron Joseph stated that he does not agree with Chief Norman Joseph's opinion of giving preference to Squamish born members in hiring, but he maintains that familiarity, knowledge and languages of the Squamish are important considerations for people who are going to get jobs in the Band (Supra Page 2077 Line 21 to Page 2078 Line 10). However he did not know about Ms. Rivers' knowledge of the Squamish culture (Supra Page 2080 Lines 2-8).

When cross-examined by Ms. Ross, Byron Joseph said that the Squamish Indian Band does not give priority to members on the Squamish Band membership list, over women who are not on the Squamish Band membership list and are married out, because the Squamish Indian Band makes every attempt to hire people of Squamish ancestry (Supra Page 2056 Lines 2-15)

Byron Joseph does not have any teaching experience,

- 11 -

educational background or formal training with respect to the interview process or personnel matters. He only had some Leadership Training in the Neighbourhood House when he was about seventeen years old (Supra Page 2062 Lines 18-25). He said:

"I just rely on my own experience, you know, as a ---- my own personal, you know, experience, as a---" (Supra Page 2065 Line 3-4).

#### (iv) Interview Panel Member Gwen Harry's Testimony With Respect To The Educator Coordinator Position

Gwen Harry was the third and final member of the Interview Selection panel. Gwen Harry went to an Indian residential school as far as Grade 8. She raised seven children and had a great interest in education as result of this and her own limited education. Eventually she was involved in starting a preschool program in Squamish community for three and four year olds and starting an Education Committee in the Community. At the age of 45 she went for upgrading and in two years received her equivalent of Grade 12 a diploma. She then went back to the Totem

Nursery School as a teacher for two years. From 1980 she worked for seven years as the Home School Coordinator for School District 48. In December 1985 she was elected as a Band Councillor but gave up the position after one year after finding the position too much for her. In 1983 and 1984 she took a one year full time Early Childhood Education Program offered through Douglas College via a satellite program that was held in Squamish, B.C. which trained people to teach early childhood programs. She had no specific training dealing with recruiting or hiring techniques (Transcript Volume 16 Page 2273 Line 20 to Page 2274 Line 12; Transcript Volume 17 Page 2292 Line 5 to Page 2293 Line 23).

She had Richard Band as her first choice and Deborah Jacobs as her second choice after the interviews for this Position.

She said that Richard Band was very well-spoken and very calm. He had an M.A. Degree, had completed one year of a Ph.D. Anthropology program and had worked with students at the University of California.

She found that Deborah Jacobs was very well-spoken and was very confident in herself.

With respect to Ms. Rivers she stated:

"Leonie Rivers, I found her --- she had a good education background, but I, like I say, I found her more aggressive in her --- she wasn't as calm and confident as the other two" (Transcript Volume 15 Page 2141 Lines 8-11).

- 12 -

Gwen Harry believed that Ms. Rivers' aggressiveness could be a negative quality especially for the Education Coordinator position (Transcript Volume 16 Page 2269 Lines 23-25). She stated:

"I've known Leonie at general meetings. I think I said that earlier. And I've known that she is a very aggressive person. And to me the position of the --- all three positions, the ones that we picked had to be able to communicate well with the elders, with our youth. And I found that Deborah Jacobs, when she spoke --- and she spoke, like I said earlier, she was a very confident person when she spoke --- and I found that

she would be very good for the job" (Supra Page 2269 Lines 8-15).

Gwen Harry explained that she was given the resumes of the candidates when she arrived at the interview just before asking common questions of the candidates (Transcript Volume 17 Page 2329 Line 7 to Page 2331 Line 11). The ten questions asked in this approximate fifteen minute interview were specific to the position and to the program. References were neither discussed in the selection process nor does it appear that they were checked. Gwen Harry testified that she did not know any of the candidates for the position personally mainly because she lived in Squamish B.C. and they lived in North Vancouver or Capilano, and that she did not take into account any outside information such as personal life or moral conduct of the applicants (Supra Page 2270 Line 21 to Page 2273 Line 3).

Gwen Harry also stated that she did not enter the interview with the opinion that because Ms. Rivers was aggressive in public meetings, that she might be unsuitable for this position. She just found Deborah Jacobs more confident through the interview than the others (Transcript Volume 16 Page 2270 Lines 1-6).

Gwen Harry was of the opinion that while Ms. Rivers' qualifications and resume were good, how the candidates acted and answered at the interview were more important factors for her as to who she wanted to hire. She stated:

"because they are the people that will be dealing with our Band members whether they're elders or youth"

and that is why she preferred Deborah Jacobs (Transcript Volume 16 Page 2270 Lines 16-20, Page 2273 Lines 10-13).

- 13 -

She explained that while Chief Norman Joseph's was entitled to his opinion that hiring of Squamish born members over Squamish Band members such as married-in women should occur, she did not agree with this opinion. Chief Norman Joseph's opinion bothered her because she knows and works with a lot of people that are not Squamish born members and had been with them a lot for quite a while. She did not discuss with anyone however, the fact that Chief Norman Joseph's comments bothered her (Transcript Volume 17 Page 2333 Lines 9-21).

(G) CAREER COUNSELLOR POSITION (DECEMBER 1986)

The Band Selection Committee members for this Job Competition were Gwen Harry, Byron Joseph and Bill Williams. The Applicants were Leonie Rivers, Richard Band, Randy Lewis, Carole Newman and Jackie Nahanne. Deborah Jacobs was responsible for the set up and the short-listing for this interview and she screened Ms. Rivers out of this Job Competition, which resulted in her not receiving an interview for the position. The successful applicant Richard Band is Squamish born and is an adopted son of Gilbert Jacob's uncle.

The role of the Career Counsellor position is to counsel Squamish students regarding education planning for post-secondary and vocational selection, personal and career development, and other counselling services (Exhibit HR-2 Tab 5 and 8).

(i) Leonie Rivers' Testimony with respect to the Career Counsellor Position

Ms. Rivers felt that she has adequate experience and qualifications for this term position. She worked with individuals in Adult Basic Education and gave counselling and assisted sensitive individuals to rebuild their self-esteem and self-confidence (Transcript Volume 2 Page 130 Lines 7-18). She had several years of counselling experience at the King Edward Campus and the Canada Employment Immigration Centre (Supra Page 130 Line 19 to Page 131 Line 14).

Following her application for this position Ms. Rivers received a letter from Deborah Jacobs dated December 16th, 1986 advising her that the short-listing for this position would take place on January 5th, 1987, and interview dates would be Thursday January 8th and Friday January 9th, 1987.

Ms. Rivers complained that Deborah Jacobs' letter to her dated January 8th, 1987 (Exhibit HR-2 Tab 25) with respect to this job application was confusing in its content. She stated:

- 14 -

"I am confused, it was unclear whether I was being --- . Whether the position was filled or not or whether I would be interviewed. It was like there was a paragraph missing or something" (Supra Page 132 Line 13-16).



Ms. Rivers then wrote back for clarification in her letter dated January 20th, 1987 (Exhibit HR-2 Tab 30), because she was unaware of the fact that she had failed to make the shortlist for this position.

(ii) Deborah Jacobs' Testimony With Respect To The Career Counsellor Position

When Deborah Jacobs was questioned by Mr. Rich she testified that she did send the letter dated December 16th, 1986 to Ms. Rivers and stated that she would be advised of the time for her interview and she did the short-listing for this Career Counsellor Position (Transcript Volume 13 Page 1666 Lines 1-10 and Lines 18-22). Deborah Jacobs also testified that her letter dated January 8th, 1987 was meant to advise Ms. Rivers that she was not going to be interviewed (Supra Page 1667 Lines 12-15). Both Career Counsellor and Curriculum Developer Job Competitions were to have interviews on January 12th, 1987, and Deborah Jacobs explained that was for the convenience of the interview panel (Supra Page 1669 Lines 8-16).

When Deborah Jacobs was cross-examined by Ms. Ross, she explained that Ms. Rivers was not short-listed for this Position because the short-listed Applicants were all better qualified than Ms. Rivers. She stated:

"No. The considerations were that the three people who were short-listed had extensive experience in counselling with not just First Nations students, but also -- from Squamish, but other students from -- actually from all over the United States, and in the one case, one person had worked with all First Nations people within the Lower Mainland. And the other person, with First Nations students from across Canada. So the major consideration there, of course, was their experience and background, counselling background" (Supra Page 1709 Lines 6-14)

Deborah Jacobs' handwritten statement to the Human Rights Commission investigator Mr. Pierre Threlfall on March 1st, 1988 (Exhibit HR-9) was then put to her by Ms. Ross:

"Thank you, Ms. Jacobs, I put it to you that you made a statement to the Human Rights Commission investigator

in March of 1988 where you stated that she was screened out because of -- for the Career Counsellor position because she lacked inter-personal skills, because her work as a teacher at the Alternate School was less than satisfactory and because there were parental complaints lodged against her in terms of her personal conduct with students" (Supra Page 1709 Lines 15-22).

Deborah Jacobs then testified that she stood by her statements to Mr. Pierre Threlfall dated March 1st, 1988 (Supra Page 1713 Lines 2-4).

Deborah Jacobs testified as to Ms. Rivers' "well-known extramarital affair" with an aboriginal constable, but then acknowledged that it did not come to her in an official capacity. There was never a formal complaint lodged and she admitted that the allegation could be described as "gossip" (Supra Page 1718 Line 18 to Page 1719 Line 10). However even though Deborah Jacobs testified that she was "gravely concerned" upon learning of this incident, she did not report the matter to anyone (Supra Page 1719 Line 11 to Page 1721 Line 11). Deborah Jacobs also acknowledged that she never put the allegation of sexual impropriety to Ms. Rivers (Supra Page 1716 Line 4 to Page 1718 Line 5), nor did she inquire about the sexual conduct of any of the other job applicants (Supra Page 1723 Line 10 to Page 1724 Line 3).

Ms. Rivers countered in her rebuttal evidence:

"The only relationship I had with any Native Constable is I helped work on a project with the R.C.M.P., the Native Constables that worked with the Band, doing a project orientation package for the new constables coming into the division or the area to appreciate and understand the values and traditions of the Squamish band members" (Transcript Volume 17 Page 2376 Lines 14-19).

Ms. Rivers said that she was very sexually conservative, discreet and professional with respect to her work. Ms. Rivers when questioned by myself clarified that sexuality was a difficult thing for her because she was sexually abused as a child. She was not involved with a lot of parties because her father was an alcoholic and she had problems with respect to the use of alcohol at parties. She would never use her personal life or sexuality to move herself ahead professionally (Supra Page 2447 Lines 9-24).

(iii) Interview Panel Member Byron Joseph's Testimony With Respect To The Career Counsellor Position

When cross-examined by Ms. Ross, Byron Joseph said that he was not involved in the short-listing procedure although he was a member of the Screening Committee. He testified that he did not know why Ms. Rivers was not interviewed, would have given her an interview had he known that she had applied for the Career Counsellor position, and he acknowledged that the Career Counsellor job was a lesser position than what Ms. Rivers was qualified for (Transcript Volume 15 Page 2015 Line 21 to 2017 Line 13).

(iv) Interview Panel Member Gwen Harry's Testimony With Respect To The Career Counsellor Position

Gwen Harry testified that she was only involved in the interviewing for the position of Career Counsellor, not the short-listing of applicants. Gwen Harry did not know that Ms. Rivers had applied for the Career Counsellor position and that Deborah Jacobs did not short-list her for this position. Gwen Harry did agree however that Ms. Rivers had the minimum qualifications for this job (Transcript Volume 17 Page 2297 Lines 10-14). Gwen Harry seemed to be rather evasive with respect to the question as to whether Ms. Rivers should have received an interview for the Career Counsellor position (Supra Page 2297 Line 3 to Page 2300 Line 2).

(G) RECREATION COORDINATOR POSITION (December 1986)

The Band Manager Bill Williams was responsible for the setting up of interviews for this position. He prepared the Job Description, and the Selection Committee consisted of he himself, Pauline Spence and Byron Joseph. Ms. Rivers is married to Pauline Spence's first cousin. The Applicants were Leonie Rivers, Krisandra Jacobs and Margaret Muehlfarth. The Recreation Coordinator position involved planning, development and coordination of various recreational programs for persons of all ages within the band membership.

After an interview involving ten or fifteen standard questions, the applicants were asked in an hour and a half to write up a proposed recreation program for the Squamish Nation, and have this program detail a one year period covering spring, summer, fall and winter

activities for certain age groups. The job qualifications for the Recreation Coordinator included a minimum of Grade 12 with a recreation degree or diploma program from a university or a college preferred (Transcript Volume 12 Page 1581 Line 19 to Page 1582 Line 25). The successful applicant was Krisandra Jacobs who is Squamish born and is Deborah Jacobs' sister-in-law. She had just graduated from a Leadership Recreation Program at Langara College, and apparently had no previous permanent work experience.

- 17 -

(i) Leonie Rivers' Testimony With Respect To The Recreation Coordinator Position

Ms. Rivers described how she felt after this Job Interview. She stated:

"The Recreation Director one? It was a good interview. I answered the questions that they had asked, I had good experience in that area and my involvement in the community really made an impact on some of the members on the committee because they knew I had some good knowledge and understanding of the adult programs that were running in recreation" (Transcript Volume 2 Page 146 Lines 1-6).

Ms. Rivers believed that she had a chance at this position (Supra Page 147 Lines 9-12).

At the February 4th, 1987 Band Council Meeting Ms. Rivers complained that she was not clear why her qualifications were not good enough for this job competition (Transcript 10 Page 1230 Lines 5-13).

(ii) Band Manager Bill William's Testimony With Respect To The Recreation Coordinator Position

Bill Williams was impressed by Krisandra Jacobs' qualifications and performance at the interview for this Job Position. He stated:

"The decision at the end of it was fairly clear in that Krisandra definitely had the best skills, and definitely had the best program that was identified, and she was willing to work within the

salary range that was identified. If I remember specifically, Leonie wasn't. She wanted more money than that" (Transcript Volume 12 Page 1582 Lines 12-17).

Bill Williams supported Krisandra Jacobs' qualification for this job position as he pointed out because:

"And I, myself, have gone through Langara College Leadership Recreation Program, and so I knew specifically what Krisandra had gone through, because Krisandra had just finished graduating from there" (Supra Page 1582 Line 25 to Page 1583 Line 3).

- 18 -

(iii) Interview Panel Member Pauline Spence's Testimony With Respect to the Recreation Coordinator Position

Pauline Spence said she had a negative impression of Ms. Rivers' personal life at the time she applied for the Recreation Coordinator job.

She stated Ms. Rivers, while parttime Education Director, was trying to get a raise from her boss Glen Newman "by any means", and as someone who in and out of the office would do anything to get ahead (Transcript Volume 15 Page 2085 Lines 19-22). She stated that Ms. Rivers would take out her boss Glen Newman:

"Oh, she would take him to parties and chase him out all over town, and invite him to parties to her house. And she'd always have lots of young guys there, and her husband couldn't handle his booze very well and he'd always pass out early. And she knew that, and she'd bring all these guys home, and especially Glen, and take advantage of him. I guess she figured that's the way she's going to get ahead. That's how she worked it" (Supra Page 2086 Lines 8-15).

Pauline Spence claimed that Ms. Rivers acts were "common knowledge in the community but she stated that she didn't think" her negative impression of Ms. Rivers morality and personal conduct affected her choice for the Recreation Director Position because Ms. Rivers had no qualifications at all for Recreation Director on her resume (Supra Page 2086 Line 16 to Page 2087 Line 5).

She felt that Ms. Rivers was not qualified as a Recreation Coordinator even though she had a minor concentration in Physical Education in her four year Education Degree, and had experience with Recreation in the Alternate School. Pauline Spence said:

"in my opinion it was, compared to the other resume. I know the Alternate School, my children have been going. And I think the Alternate she was talking about was probably the one we had in the basement of the Band office, and I don't recall too many recreational activities that they went on, compared to when you're talking about recreation programs for 1500, 2000 people there's a big difference in directing 10 or 12 teenagers in recreation than getting this job" (Supra Page 2091 Lines 10-18) .....

- 19 -

"Well, in my person she was not qualified to take on the whole recreation system for the Squamish Band. That's the way I felt. She may have had minor recreation programs in University but I don't think that's the same thing as having a two-year course which is solely recreation" (Supra Page 2092 Lines 6-10).

She did not think Ms. Rivers' Education background was relevant for the recreation field (Supra Page 2092 Lines 11-19).

Pauline Spence is a Grade 12 graduate. She was chosen to be on the Selection Committee because she had been a Band Councillor for four years, and it was the job of Band Councillors to sit on Selection Committees from time to time. She acknowledged that she didn't have any special qualifications to hire a Recreation Director (Supra Page 2093 Lines 8-14).

Pauline Spence also testified that Bill Williams had raised the possibility of some further funding being available and hiring Ms. Rivers to assist Krisandra Jacobs that funding came through (Supra Page 2094 Lines 8-23). Ms. Rivers interview took about fifteen minutes, and the decision as to who to hire took approximately fifteen to twenty minutes. While the witness thought that Ms. Rivers would be fine working as Krisandra Jacobs' assistant, she did not think that Ms. Rivers was suitable to be the actual Recreation Director.

She also did not regard Ms. Rivers' organization of sports tournaments on the reserve as relevant experience for Recreation Director.

She was aware of Ms. Rivers' involvement at the Vancouver Indian Centre, but was unaware of what contributions Ms. Rivers had made at the Centre.

(iv) Interview Panel Member Byron Joseph's Testimony With Respect To The Recreation Coordinator Position

Byron Joseph was impressed by Krisandra Jacobs' qualifications, being a recent graduate from a two-year Recreation Diploma Program. However he apparently neglected, or did not understand, Ms. Rivers' Physical Education Minor at the University of British Columbia. When Ms. Ross cross-examined Byron Joseph with respect to his knowledge of Ms. Rivers' Physical Education Minor, Byron Joseph replied:

"I guess I don't really - I'm not really aware of, you know, what a minor, if it is or not comparable?"  
(Transcript Volume 15 Page 2032 Lines 5-6)

- 20 -

Byron Joseph was satisfied with Krisandra Jacobs' answers to his questions at this job interview, her outlook towards what she could do for the children and the way she carried herself. (Supra Page 2034 Lines 14-17). Byron Joseph said that Ms. Rivers' attitude towards people who made her less qualified for this job position. In this respect he stated:

"Well, I made a decision on the both of them, and I guess that was part of it, you know, the attitude, the way they carried themselves" (Supra Page 2032 Lines 20-22).

(H) CURRICULUM DEVELOPER POSITION (DECEMBER 1986)

This Term Position was supported by grants from Canada Employment and Immigration. Interview arrangements and the job description were made by Deborah Jacobs. The job posting described as its purpose:

"To hire a Native person with previous experience in the field of curriculum development and ideally, literate and fluent in the Squamish language. The Process for developing for the Squamish Language Program will be done in order to meet the needs of the community, it experiences and expectations. The successful candidate will work with the language teachers, advisors and under the direction of the education administration to plan, research and develop locally based materials and learning activities to be supplementary to the Squamish Language Curriculum K-12 Guide " (Exhibit HR-2 Tab 4).

The Selection Committee was Byron Joseph and Gwen Harry. The Applicants were Leonie Rivers, Lois Guss and Carol Goodwin. The successful applicant was Lois Guss who is a Squamish born and who is Deborah Jacobs' paternal aunt.

(i) Leonie Rivers' Testimony With Respect To The Curriculum Developer Position

When questioned by Ms. Ross, Ms. Rivers explained that she had been a child care worker, had curriculum development experience in dealing with the Language Arts Pilot project under Steve Kosey in the Band's Social Development Office and, she was a teacher (Transcript Volume 2 Page 112 Line 20 to Page 113 Line 5).

Ms. Rivers was never interviewed for this position because she was not able to show up at her scheduled interview time.

- 21 -

Ms. Rivers Testimony With Respect To The Interview Time and Date For The Curriculum Developer Position

Ms. Rivers stated that she contacted Eva Jacobs, Deborah Jacobs' Secretary around December 21st, 1986, soon after she received Deborah Jacobs' letter dated December 16th, 1993, with respect to the interview days of January 8th and January 9th for this position, Ms. Rivers advised Eva Jacobs about her inability to attend an interview on January 8th or 12th, 1987 due to previous commitments, which she described in her submission before the February 4th, 1987 Band Council Meeting Appeal as two other job interviews (Transcript Volume 10 Page 1215 Lines 9-20). However she was advised by Eva Jacobs that she could not have her interview on January 9th, 1987 as



she requested because Deborah Jacobs was on holidays until January 12th, 1987 (Transcript Volume 2 Page 115 Lines 1-7). On January 8th, 1987 Ms. Rivers was told by Eva Jacobs that her interview date was scheduled for Monday January 12th, 1987 at 1:30 p.m. She was offered no other alternate time, so Ms. Rivers told Eva Jacobs that she would try to make it (Transcript Volume 2 Page 116 Line 2 to Page 117 Line 1).

On January 12th, 1987 Ms. Rivers was meeting with Terra Consulting on Granville Street near Vancouver City Hall with respect to building of new units for the Vancouver Indian Centre, which was one of Ms. Rivers' volunteer positions at that time. At one point in Ms. Rivers' testimony Ms. Ross and Ms. Rivers seemed to be discussing different interview times for this Position. Ms. Rivers stated:

"Yes, I did. On January 8th, I got a call, the first day of the proposed interview times, and I was told that my interview time would be the following Monday, on the 12th at one thirty" (Supra Page 116 Lines 12-15).

Ms. Ross in questioning Ms. Rivers:

"Okay. So you said that you would try to make it for the interview time, one o'clock?" (Supra Page 117 Lines 7-8).

Ms. Rivers advised that when she left the Terra Consulting meeting and went to get into her car she realized that she wouldn't be able to make it to the job interview, so she called Eva Jacobs about a half an hour to forty minutes before her scheduled interview time (Supra Page 117 Line 15 to Page 118 Line 19). Once again Ms. Ross assumed that the interview time was one o'clock in questioning Ms. Rivers (Transcript Volume 2 Page 118 Lines 15-18).

Ms. Rivers stated that she was put on hold for 10 minutes and eventually spoke to Eva Jacobs, who advised her that Deborah

Jacobs was in a meeting. Ms. Rivers then testified that she left the Terra Consulting phone number, and that Gwen Harry one of the Selection Committee members returned her call about 20 minutes later. Ms. Rivers stated that Gwen Harry was blunt about her being late for the interview, that she refused to interview her and advised that they had selected another individual, Lois

Guss, for the position. By the time Gwen Harry returned Ms. Rivers' call, Ms. Rivers testified that she was five or ten minutes late for her scheduled interview time (Supra Page 119 Line 23 to Page 120 Line 5).

Ms. Rivers originally testified as to the time of the Curriculum Developer interview at the Tribunal's November 9th, 1992 proceedings. At the Tribunal's December 9th, 1992 proceedings the existence of the actual tape of the February 4th, 1987 Band Council Meeting was first revealed to the Tribunal by Counsel. Eventually the Tape and Transcript were reviewed by Ms. Rivers and Ms. Ross, at which point Ms. Rivers was recalled.

On her recall, Ms. Rivers stated that to the best of her knowledge her interview was at one-thirty p.m.. She acknowledged that there was some confusion and she was not sure if it was on her part or the people that had set up the interview time. She always was under the impression that her interview time was one-thirty and that she called Eva Jacobs on January 12th, 1987 about her lateness at around one-forty p.m. (Transcript Volume 10 Page 1258 Lines 6-10; Transcript Volume 17 Page 2338 Lines 19-22). Ms. Rivers explained that she called Eva Jacobs about her lateness because she heard on the radio there was a stall at the First Narrows Bridge. This was while she was leaving the parking lot and heading for this Curriculum Developer job interview after her meeting with Terra Consulting on Granville Street, and an earlier job interview with the Vancouver School Board.

In her evidence in chief to Ms. Ross on November 9th, 1992, and in her complaint letter dated January 13th, 1987 (Exhibit HR-2 Tab 2) to Deborah Jacobs, Ms. Rivers did not mention that there was a stall on the First Narrows Bridge which would have delayed her for the job interview. However she mentioned this stall incident at the Band Council Meeting on February 4th, 1987 and explained the details when recalled by Ms. Ross (Exhibit R-4 Page 5; Transcript Volume 17 Page 2342 Line 17 to Page 2343 Line 5).

#### The Appeal Process Undertaken By Leonie Rivers

As a result of this Ms. Rivers wrote a complaint letter dated January 13th, 1987 to Deborah Jacobs. In this letter she explained to Deborah Jacobs her situation and her disappointment in the process. Ms. Rivers asked for an appeal of the decision to hire Lois Guss. She asked Deborah Jacobs three specific questions:

- (1) What administrative or managerial process was used in selecting the hiring committee?
- (2) What criteria was used in selecting the only applicant interviewed?
- (3) What is the appeal process or appeal procedure, if any, in the Squamish Indian Band Education Department for employment? (HR-2 Tab 27).

Upon receiving no reply to her letter dated January 13th, 1987, Ms. Rivers wrote to Deborah Jacobs again with respect to her three specific questions in a letter dated January 20th, 1987.

Ms. Rivers was also not satisfied with Deborah Jacobs' reply dated January 26th, 1987 and this was indicated in her letter dated January 29th, 1987 in which she stated:

"You have again refused to clarify your position in respect to the issues as follows: (1) What administrative or managerial process was used in selecting the hiring committee?

- (2) What criteria was used in selecting the only applicant interviewed?
- (3) What is the appeal process or appeal procedure, if any, in the Squamish Indian Band Education Department for employment?

I am not interested in clarification of policy procedures concerning posting of job opportunities or interviews as outlined in the Council Personnel Policy Manual" (Exhibit HR-2 Tab 34).

I was addressing what was the criteria used in making that decision at the Committee level and then the Council endorsing it (Transcript Volume 2 Page 124 Line 24 to Page 125 Line 6).

Ms. Rivers did receive letters from Deborah Jacobs acknowledging her concerns dated January 26th and February 2nd, 1987 respectively (HR-2 Tab 31 and 36), but Ms. Rivers did not accept Ms. Jacobs' answers to her questions.

She wrote a letter dated January 30th, 1987 (Exhibit HR-2 Tab 35) to Leslie Harry, Chairman of the Squamish Indian

Band Council asking for an appeal of the Curriculum Developer decision at the Band Council Meeting to be held on February 4th, 1987. In her January 30th, 1987 letter to Leslie Harry, Ms. Rivers stated:

- 24 -

"I do not know why I must address you in this educational employment opportunity, except for the fact, that Mrs. Jacobs is fairly new to her position, and does not know personnel procedures and policies as outlined by the Squamish Indian Band. Further, I can only speculate, that the newly appointed education coordinator has no immediate supervisor, so she refers matters that she can not possibly deal with to the band administrator and the chairman of council" (Exhibit HR-2 Tab 35; Transcript Volume 2 Page 126 Lines 1-12).

Ms. Rivers described how she felt at that time, stating:

"I think I felt I am not fairly dealt with, I felt the process was not quite correct and I was asking for direction or clarification in an appeal process to go through that decision-making" (Transcript Volume 2 Page 126 Lines 16-19).

When Ms. Ross questioned her:

"At that time, was it your sense that the fact that you were married-in or the fact that you are Gitksan had anything to do with what you were experiencing?" (Supra Page 126 Lines 20-22).

Ms. Rivers answered:

"Well, I could start seeing a pattern developing, so I was kind of nervous in the sense of looking at who was getting hired. I thought it was on basic qualifications, I felt that I met those basic qualifications, so I thought I had a good chance, you know, of competing. So yes, to some degree, I believe that" (Supra Page 126 Line 23 to Page 127 Line 3).

(ii) Education Coordinator Deborah Jacobs Testimony with respect to the Curriculum Developer Position

Deborah Jacobs was responsible for the setup of interviews for this job position, preparation of the Job Description, interview questions, short-listing and Selection Committee.

Deborah Jacobs pointed out that the expectations for this

- 25 -

job position were very high because a general membership resolution declared that the Squamish language was to be a priority within the Squamish Nation (Transcript Volume 13 Page 1655 Lines 14-19).

Deborah Jacobs explained that since the Curriculum Developer Position was not a Department Head position she sat on this interview panel, but that she deferred to the Selection Committee of Byron Joseph and Gwen Harry with respect to their decision to proceed to interview Lois Guss without waiting for Ms. Rivers (Supra Page 1674 Line 21 to Page 1675 Line 2).

Deborah Jacobs testified that the interview time for Ms. Rivers was January 12th, 1987 at 1:00 to 1:30 p.m. and Lois Guss was January 12th, 1987 from 1:45 to 2:15 p.m..

Deborah Jacobs testified that she and the Selection Committee waited for Ms. Rivers until approximately 1:20 p.m., and the Selection Committee made the decision to interview Lois Guss. She had no involvement in the discussion as to whether or not to go ahead with interviewing Lois Guss.

Deborah Jacobs was pleased with the Lois Guss' interview. She stated:

"The interview went very well. Her experience in working with School District 44 spoke for itself. She brought to the interview an element certainly of solidness and having good rapport with elders within the community and shared a number of various ideas that she had with respect to looking at the curriculum development program, and the Squamish language program as well.

She was very enthusiastic and very cooperative, and as well one of the panel members had had the opportunity to also work with her and knew her to be a

really good solid worker and very cooperative, as well"  
(Supra Page 1676 Lines 6-16).

Deborah Jacobs testified that when her Secretary Eva Jacobs came and said that Ms. Rivers was on the phone, the interview with Lois Guss was over. At that time she, Byron Joseph and Gwen Harry were discussing the responses of Lois Guss to the questions. When cross-examined by Ms. Ross, Deborah Jacobs clarified that their discussion was coming to a conclusion when Eva Jacobs entered the Council Room. Deborah Jacobs stated:

- 26 -

"Yes, finished. They had said, that's it, we're going to hire her. So when Gwen Harry said, and she went and told Ms. Rivers that a decision had been made, that's quite correct" (Supra Page 1725 Lines 18-21).

Deborah Jacobs testified that Gwen Harry herself decided to take Ms. Rivers' call. Both Byron Joseph and Gwen Harry were concerned over Ms. Rivers' attitude in not being at her interview at her designated time due to another job interview, and since the Selection Committee was pleased with the Lois Guss' interview and her qualifications, the Selection Committee decided to make a decision to hire Lois Guss (Supra Page 1677 Lines 1-13).

When cross-examined by Ms. Ross, Deborah Jacobs agreed that when Ms. Rivers called about her lateness at 1:40 p.m. the fifteen minute interview with Lois Guss was over and the discussion to hire Lois Guss was coming to a conclusion. Therefore she and the Selection Committee might not have waited for Ms. Rivers to show up for her interview until 1:20 p.m. but may have only waited until 1:15 p.m. (Supra Page 1730 Line 15 to Page 1732 Line 21).

Ms. Ross was concerned that:- firstly, Lois Guss was hired before her scheduled interview time which was from 1:45 to 2:15 p.m.; secondly, it was not a tremendous inconvenience for the Selection Committee to wait until even two o'clock for Ms. Rivers to arrive and have an a ten or fifteen minute interview; and thirdly, respected members of the Band like Linda George and Gloria Wilson had been on interview Committees and made exceptions for people who were late (Supra Page 1733 Lines 1-6; Page 1737 Line 20 to Page 1738 Line 18).

In response, Deborah Jacobs was of the opinion that:

"The fact of the matter is, is that it was our right to determine that an applicant had not showed up for an interview and to proceed ahead. That is just how the events occurred"

(Supra Page 1733 Lines 7-10).

She further stated:

"Yes, it would have been an inconvenience, given what I just stated, and qualifying the yes. We were prepared to begin and count on people being conscientious and viewing it as a priority, given that it's a very serious position that we were screening for" (Supra Page 1733 Lines 13-17).

When questioned by Mr. Rich, Deborah Jacobs acknowledged

- 27 -

that she understood that Ms. Rivers was very irate in not receiving an interview for this Curriculum Developer position. Deborah Jacobs testified that she received Ms. Rivers' letters dated January 13th, 20th and 29th with respect to the Curriculum Developer position. She replied to Ms. Rivers in letters dated January 26th and February 2nd, 1987 and stated that the Councillors from the interview panel had stood by their decision and the appeal was to be brought to the Chief-in-Council on February 4th, 1987 (Supra Page 1678 Line 2 to Page 1680 Line 5).

(iii) Interview Panel Member Byron Joseph's Testimony With Respect To The Curriculum Developer Position.

Byron Joseph was of the opinion that if the job was important to Ms. Rivers she would be there for her interview (Transcript Volume 15 Page 1996 Line 22 to Page 1997 Line 4; Page 2027 Lines 2-9).

When Ms. Ross asked him:

"Would it not have made a difference in your mind in terms of the sympathy with which you viewed someone like Leonie Rivers' situation to know that in fact she had asked several weeks earlier not to be interviewed on that day because she had other commitments?"

Byron Joseph answered:

" As far as I know when dates are set, you know, like, you have to, you know, make a commitment to that job"  
(Transcript Volume 15 Page 2019 Lines 21-23).

Byron Joseph did not recall many specific details surrounding Ms. Rivers lateness for this job interview. When Ms. Shivji questioned Byron Joseph as to whether Lois Guss had enough education in the curriculum field, Byron Joseph was of the opinion that Lois Guss was knowledgeable of the Squamish culture, Squamish legends, stories and can relate to the Squamish children (Supra Page 2074 Line 12 to Page 2075 Line 6).

Byron Joseph testified that he made the best choice for the position irrespective of any family connections (Supra Page 2076 Line 10-18). He said that familiarity and knowledge of Squamish culture and language are very important considerations for people who are going to get jobs in the Band. Byron Joseph acknowledged that Lois Guss had a good knowledge of the Squamish culture since she was an elder of the Squamish community but he could not comment on Ms. Rivers' knowledge in this respect (Supra Page 2077 Line 3 to Page 2078 Line 10; Page 2079 Line 15 to Page 2080 Line 8).

- 28 -

(iv) Interview Panel Member Gwen Harry's Testimony With Respect To The Curriculum Developer Position

When questioned by Mr. Rich, Gwen Harry testified that the Selection Committee waited for Ms. Rivers until ten or fifteen minutes after one o'clock and then they interviewed Lois Guss. When Eva Jacobs came in and said that Ms. Rivers was going to be late for the interview because she was at another interview after one-thirty she, Deborah Jacobs and Byron Joseph discussed the situation amongst themselves, but that only Byron Joseph and her made the decision to hire Lois Guss at that time before returning Ms. Rivers' call. Gwen Harry was of the opinion that Ms. Rivers was not interested in the position of Curriculum Developer since she was at another job interview at the same time. Gwen Harry was impressed by Lois Guss' Curriculum Development experience with the School Board in North Vancouver (Transcript Volume 15 Page 2146 Line 7 to Page 2148 Line 9).



Gwen Harry explained that she made a decision to hire Lois Guss before returning Ms. Rivers' call because she was concerned that Ms. Rivers was at another job interview.

Gwen Harry pointed out that during January and February, the Squamish B.C. highway which she had to travel home on can be very dangerous after dark and the Band always tried to make sure that she finished the interview schedule on time. This was a reason why they decided not to wait for Ms. Rivers.

When Ms. Ross pointed out that Gwen Harry was actually scheduled for interviews until 2:15 p.m., would probably not have been scheduled to finish until 2:30 p.m. on that day, and she could have waited for Ms. Rivers twenty minutes longer, Gwen Harry stated:

"Okay, in that phone call my understanding was that she was at another job interview, and if she was interested in the Curriculum Developer's position she would have been at the-- I can understand if she got a flat tire or something happened on the way, but she was at another job interview, and that's how I made my decision" (Supra Page 2157 Line 24 to Page 2158 Line 4).

#### (I) YOUTH DEVELOPMENT COORDINATOR POSITION (DECEMBER 1986)

Deborah Jacobs was responsible for the set up of this job interview, Selection Committee and short-listing. The interview date for this job competition was January 26th, 1987. The Selection Committee consisted of Byron Joseph and Gwen Harry.

The Job Description included:

- 29 -

"To hire a Native person to plan co-ordinate and direct educational after-school programs for pre-school to secondary. The successful candidate will also work with the Squamish Student's Society in developmental activities. The Youth co-ordinator will consult and collaborate with the representatives of the Squamish Indian Band Drug and Alcohol and Recreation Programs" (Exhibit HR-2 Tab 6).

The Applicants were Leonie Rivers, Carole Newman and Orene Johnson. The successful candidate was Carole Newman who was a Squamish born and was Gilbert Jacob's first cousin.

(i) Leonie Rivers Testimony With Respect To The Youth Development Coordinator Position

Ms. Rivers when questioned by Ms. Ross said she had the basic qualifications for this job position. She had experience with the Band working, over a period of ten years, off and on, dealing with different programs voluntarily.

Ms. Rivers thought that she dressed appropriately for this particular interview in designer jeans and jacket. She explained that:

"In recreation you dressed more casual than you would if you were in education or social development or finance, for example" (Transcript Volume 2 Page 138 Lines 8-10).

She further explained that actually some support staff in finance and administration dressed in jeans in the Band Manager's Office (Supra Page 138 Lines 13-16). Ms. Rivers said if the interviewers wondered why she was wearing jeans, she would have been happy to clarify why she dressed the way she did (Supra Page 139 Lines 3-7).

Ms. Rivers acknowledged that this interview was not a good one, she said:

"It wasn't one of the best interviews I've been in.

Mr. Rich: So that being the case, it's reasonable that the committee may not have seen you in a favourable light, do you agree with that?

Ms. Rivers:- "Yes, that could be"  
(Transcript Volume 3 Page 291 Line 24 to Page 292 Line 4).

The interviewers in her opinion did not ask about her qualifications and her work experience relating to the area (Transcript Volume 2 Page 139 Lines 10-12). Ms. Rivers thought that she answered all the interview questions favourably but she was

uncomfortable in the interview with Gwen Harry's tone of questioning, her abruptness and her body language. Ms. Rivers stated:

"I wasn't clear on some of the statements she made and I asked for clarification and she seemed to get upset with me about how I was asking the questions. So I didn't know if we were just off track with each other or what it was, but to her questions-- I mean, my answers weren't what she was looking for in her questions" (Transcript Volume 2 Page 140 Lines 17-23).

She further stated:

"Well, her body language indicated there was something -- may be it was what I was wearing, I don't know, but I could sense something was wrong, I was doing something wrong. I wasn't sure clearly what it was. But, it was just the tone and the body language, like we were going through this and thank you very much, and it was just abrupt in some ways, her responses" (Supra Page 141 Lines 2-8).

Ms. Rivers felt that the decision was made already and she was just going through a process. She wanted to leave at one point in this interview (Supra Page 142 Lines 20-24).

(ii) Education Coordinator Deborah Jacobs' Testimony With Respect To The Youth Development Coordinator Position

Deborah Jacobs testified that this Term Position was sponsored by Canada Employment and Immigration. She was responsible for the set up of this job interview and the short-listing. She was impressed by Carol Newman's qualification describing her paper as a "peer counselling model". Deborah Jacobs stated that she selected Carole Newman:

"On the basis of her personal suitability, her skills and work experience, which had been quite extensive in the area of working with youth at the Native Education Centre. But as well, what she brought to the interview was a peer counselling model as something that she had to offer by way of her skills and

background, to work with young people, and I recall we were really excited about that particular peer counselling model, or reevaluation. Counselling specific for aboriginal youth" (Transcript 13 Page 1685 Lines 6-14).

Deborah Jacobs also spoke highly of another applicant, named Orene Johnson. She said that Orene Johnson did an awful lot of volunteer work with the Big Brothers and Big Sisters group. She and the Selection Committee were quite excited by the work she had done at the Boy's Camp (Supra Page 1686 Lines 14-22).

Deborah Jacobs testified that Ms. Rivers barely made the interview on time, and she did not approve of her appearance -very soaking wet hair and in jeans. She described Ms. Rivers attitude as flippant and not co-operate with the Selection Committee. She described Ms. Rivers' attitude as well:-

"Okay, here I am again and we were going to go through the interview" and "You know what my experience is" (Supra Page 1687 Lines 1-9).

When cross-examined by Ms. Ross, Deborah Jacobs said that on the interview date (January 26th, 1987) for this job position she had already received Ms. Rivers' letters dated January 13th and 20th with respect to her not getting an interview for the Curriculum Developer position. These letters indicated that Ms. Rivers was upset and felt that she was not treated fairly (Supra Page 1738 Line 19 to Page 1740 Line 25).

Deborah Jacobs testified that she did not approve of Ms. Rivers' jean outfit for this interview. She stated:

"One expects that people come to an interview and their presentation of self is important. For me, if someone shows up in a tight blue jean outfit and a jean jacket, it is a consideration, because of like, they work with the youth, the youth and the Youth Development Co-ordinators was involving counselling and all that sort of stuff, as well, and being a good role model" (Supra Page 1743 Lines 13-19).

When Ms. Ross pointed out that Gloria Wilson, Social Development Director had no problem with applicants wearing designer jeans at job interviews if they were going to work with children, Deborah Jacobs said that she disagreed with Gloria Wilson's position, although Deborah

Jacobs acknowledged that Gloria Wilson was an "esteemed colleague who has been employed by the

- 32 -

Band for over 25 years" (Supra Page 1751 Line 22 to Page 1752 Line 17). Deborah Jacobs said that she was not the only one concerned about Ms. Rivers' appearance and interview presentation. The entire selection Committee noted and discussed Ms. Rivers' appearance at this job interview, as well as how she and the other candidates presented themselves. It was fairly obvious throughout this exchange with Ms. Ross on this issue that Deborah Jacobs was not sympathetic towards Ms. Rivers' conduct in the interview. (Supra Page 1744 Line 13 to Page 1745 Line 4).

I also questioned Deborah Jacobs as to whether she or the Selection Committee tried to elicit a more positive response from Ms. Rivers on some of the interview questions in spite of Ms. Rivers' apparent belligerent and abrasive attitude in the interview. She said that this interview could have been discontinued because there was such disrespect and non-interest being demonstrated (Transcript Volume 14 Page 1949 Line 1 to Page 1950 Line 11). Deborah Jacobs said that she personally invited Ms. Rivers to sit down and sincerely invited answers from Ms. Rivers, but that Ms. Rivers refused to sit down. But Ms. Rivers on recall said, in response to my question about Deborah Jacobs' allegation, that she had not been invited to sit down by anyone (Transcript Volume 17 Page 2458 Line 25 to Page 2459 Line 9).

(iii) Interview Panel Member Byron Joseph's Testimony With Respect To The Youth Development Coordinator Position

Byron Joseph testified that he did not recall or remember the interviews for the Youth Coordinator position (Transcript Volume 15 Page 1997 Lines 8-19).

(iv) Interview Panel Member Gwen Harry's Testimony With Respect To The Youth Development Coordinator Position

When questioned by Mr. Rich, Gwen Harry testified that she and Byron Joseph were on the Selection Committee. She said that this position was to work with youth in the Band, to more or less start up programs for them to keep them off the streets, and to help them along through that age group (Transcript Volume 15 Page 2148 Lines 14-21).

Gwen Harry testified that Ms. Rivers was only interested in the Youth Development Coordinator position not the trainee positions. She recalled that Ms. Rivers was very aggressive in her opinion (Supra Page 2150 Lines 1-12 and Transcript Volume 17 Page 2334 Line 24 to Page 2335 Line 4), although Gwen Harry did not have a clear recollection of the actual interviews with the candidates (Transcript Volume 15 Page 2149 Line 18 to Page 2150 Line 15).

She later qualified what she meant when she referred to the aggressiveness of Ms. Rivers:

- 33 -

"No, she wasn't aggressive to me. She was very aggressive at the general meetings. She come (sic) across very aggressive to me at the general meetings"  
Ms. Harry went on to explain that she was not talking about the interview when she was referring to aggressiveness (Transcript Volume 17 Page 2326 Lines 10-23).

## THE LAW

### PURPOSE OF THE CANADIAN HUMAN RIGHTS ACT

Section 2 of the Canadian Human Rights Act sets out the purpose of the Act namely:

...to extend the laws in Canada to give effect...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.

### ONUS AND BURDENS OF PROOF

The onus of proof with respect to a complaint under the Act has been described in the case *Basi v. Canadian National Railway* (No. 1)

(1988), 9 C.H.R.R. D/5029 (Can.Trib.) at D/5037, para. 38474:

The burden, and order, of proof in discrimination cases involving refusal of employment appears clear and constant through all Canadian jurisdictions: a complainant must first establish a prima facie case of discrimination; once that is done the burden shifts to the respondent to provide a reasonable explanation for the otherwise discriminatory behavior. Thereafter, assuming the employer has provided an explanation, the complainant has the eventual burden of showing

- 34 -

that the explanation provided was merely "pretext" and that the true motivation behind the employer's actions was in fact discriminatory.

And at para. 38475:

It is therefore incumbent on the complainant, in this case, to first establish a prima facie case: *Shakes v. Rex Pak Ltd.* (1981), 3 C.H.R.R. D/1001 at D/1002:

In an employment complaint, the Commission usually establishes a prima facie case by proving:

- a) that the complainant was qualified for the particular employment;
- b) that the complainant was not hired; and ,
- c) that someone no better qualified but lacking the distinguishing feature which is the gravamen of the human rights complaint subsequently obtained the position.

If these elements are proved, there is an evidence onus on the respondent to provide an explanation of events equally consistent with the conclusion that discriminatory on the basis prohibited by the Code is not the correct explanation for what occurred.

(See also *Israeli v. Canadian Human Rights Commission and Public Service Commission* (1983), 4 C.H.R.R. D/1616; and *Folch v. Canadian Airlines International* (1992) 17 C.H.R.R. D/261).

In *Blake v. Ministry of Correctional Services and Mimico Correctional Institute* (1984), 5 C.H.R.R. D/2417 (Ontario) the Board stated at para. 20090 [D/2425]:

Should the Respondent lead evidence of a non-discriminatory reason for refusing to employ the Complainant, the Complainant and Commission can still establish that the reason advanced for non-employment is in fact a pretext, and that discrimination on an unlawful ground was one of the operative reasons for the Respondent's actions.

Pretext is defined by *Funk & Wagnall's Standard College Dictionary* as "1. A fictitious reason or motive advanced to conceal a real one. 2. A specious excuse or explanation."

- 35 -

The trier of fact must then decide whether the explanation provided by the Respondent in answer to the Complainant's prima facie case either justifies the Respondent's discriminatory conduct or provides a reasonable explanation for conduct which would otherwise appear to be based on a discriminatory ground.

The ultimate onus of proof to establish the complaint on a balance of probabilities lies with the complainant and the Commission (*Blake, supra.* at para. 20090 [D/2425]).

It is also clear that it is not necessary to find that the respondent intended to discriminate against the complainant. It is sufficient to establish the complaint if it is found, on the balance of probabilities, that the respondent in fact discriminated against the complainant on one of the grounds alleged in her complaint (*Ontario Human Rights Commission v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536 at 547 and 549).

#### Direct Evidence of Discrimination

Direct discrimination has been defined as a practice or rule by an employer that discriminates on its face..."No Catholics or no women or no blacks employed here".



O'Malley, Ontario Human Rights Commission v. Simpson-Sears Ltd. Supra at Page 536.

### Circumstantial Evidence

Mr. Rich has submitted that I should adopt the definition for Circumstantial Evidence used in the Folch Case which is:

Circumstantial evidence is evidence that is consistent with the fact that is sought to be proven and inconsistent with any other rational conclusion.

The case of Gaba v. Lincoln County Humane Society (1992) 15 C.H.R.R. D/311 considers the definition of circumstantial evidence at page D/315, noting that it has been suggested in Vizkelety, Proving Discrimination in Canada (Toronto, Carswell, 1987) that the definition which had been previously adopted in the case of Kennedy v. Mohawk College Board of Governors, (1973) [unreported], and subsequently adopted in the Folch case was too rigid. Vizkelety suggests that an inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other inferences or hypothesis. In Gaba, the Board of Enquiry did not choose between the two definitions considered, but held :

"The pieces of the jigsaw puzzle must be arranged in such a manner that the picture is

- 36 -

complete. The evidence, when circumstantial, in cases such as this one, in order to succeed must go further than producing several equally consistent results; the second test, above referred to, which is more favourable to the position of the Commission, still requires that the inference of discrimination be "more probable than the other inferences or hypothesis."

I prefer and will apply this definition of circumstantial evidence in Human Rights complaints over the quasi-criminal law definition of circumstantial evidence used in the Folch decision. While the dangers of convicting an accused in criminal cases based on circumstantial evidence are well known, in Human Rights complaints I agree with Ms. Ross' Submission that:

...Discrimination is not a practice which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practised.

Since direct evidence is rarely available to a complainant in cases such as the present it is left to the Board to determine whether or not the complainant has been able to prove that the explanation is pretextual by inference from what is, in most cases, circumstantial evidence:

.....

...Surely, the conduct of the respondent, both before and after the alleged act of discrimination, cannot be isolated from the act itself. It would be virtually impossible for the complainant to prove that the explanation offered by Mr. Symenuk was pretextual unless he is able to rely on inferences drawn from the employer's actions both at the time of the hiring and subsequent thereto.

Almeida v. Chubb Fire Security Division, (1984) 5 C.H.R.R. D\2104 (Ont. Brd. of Inq.) at D\2105 (Authorities Tab 10)

See also Basi v. Canadian National Railway Co., (1988) 9 C.H.R.R. D\5029 (CHR Tribunal) (Authorities Tab 11) at D\5038 and D\5039-40:

- 37 -

Adverse effect discrimination arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force [O'Malley v. Simpson Sears Ltd. Supra]

MULTIPLE ALLEGATIONS OF DISCRIMINATION

The allegations of the complainant are that she has been discriminated against by the respondent on the basis of her national or ethnic origin and her family status. The complainant is entitled to succeed if discrimination on any one of these grounds is established in accordance with the onus and burden of proof described above. Therefore, it is necessary to examine the evidence in relation to each of the alleged grounds of discrimination [Folch v. Canadian Airport International Supra]

#### ALLEGED GROUNDS OF DISCRIMINATION

Leonie Rivers alleges she was discriminated against in employment opportunities with the Squamish Indian Band:

(a) because she is a "married in" as opposed to a "blood born" Band member, and

(b) because she is not a member of the Jacobs family, most particularly she is not a close relative of Councillor Gilbert Jacob which Ms. Ross, CHRC Counsel described as "nepotism " [CHRC Argument Paragraph 21 Page 10]. Ms. Ross defined "nepotism" as:- "favouritism shown to a relative (as by giving an appointive job) on a basis of relationship" [CHRC Argument Paragraph 23 Page 11].

Framed in the language of the prohibited grounds of discrimination in the Act, her complaint is that the Respondent Squamish Indian Band Council discriminated against her by reason of her national or ethnic origin and her family status by refusing to employ her and by employing a policy of nepotism for employment purposes, contrary to ss. 7 and 10 of the Act [CHRC Argument Paragraph 22 Page 10].

"Married in" women it is submitted represent an intersection of the grounds of discrimination - Leonie Rivers is a "married in" person, a person born of another distinct tribe - the Gitksan - who joined the Squamish community and acquired her membership in the Squamish Indian Band because of her marriage to a "blood born" Squamish man. But, in terms of the "discriminatory" characteristics that defined her in the eyes of the Respondent for the purposes of her job applications, she is much more than a

"married-in" person. She is also female - as all "married-in" people are by definition - and she is also not a member of the Jacobs family. [CHRC

## NATIONAL AND ETHNIC ORIGIN

The Complainant says that she is a Native Indian person whose "national and ethnic origin" is Gitksan by reason of her own birthplace at Kitwanga, north of Terrace, British Columbia, and the birth of her Native Indian mother into the Gitsegulka Band near Kitwanga (HR-7 Tab 2).

The Respondent declined to admit that Gitksan birth is a different national or ethnic origin than Squamish birth for the purposes of Human Rights legislation. For this reason, the Commission called Dr. Sheila Robinson to give expert evidence on some of the pre-historical and historical difference between the Squamish and the Gitksan peoples. The Respondent then chose not to call any evidence in its case disputing this issue. In his submission Mr. Rich stated that there was "no evidence that being outspoken or confrontational is a trait of people whose ethnic origin is Gitksan" (Transcript Volume 19 Page 2770 Lines 12-15), thus presumably acknowledging that Gitksan can be considered to be an ethnic origin.

Dr. Robinson was qualified as an expert with specialized knowledge in the anthropology, archaeology and ethnology of aboriginal peoples of northwestern North America. She gave evidence as to fundamental distinguishing features between aboriginal groups on the Northwest Coast and, in particular, fundamental differences in the ethnic identity, linguistic affiliation and other cultural features as between the Gitksan and the Squamish people (TR, Vol. 8, p. 876-877). She also testified with respect to the organization of tribal groups, such as the Squamish, by the chiefdom system which is a ranked society whereby status in that community is determined along kinship lines.

Dr. Robinson's specific evidence included:

- (a) The Squamish nation (described as geographically part of Central Coast Salish) and the Gitksan nation are located very far apart geographically.
- (b) The Squamish language (part of the Coast Salish language group) and the Gitksan language (part of the Tsimshian language grouping) are totally unrelated and mutually unintelligible.

(c) The Squamish have historically had a bilateral kind of social organization, in contrast to the Gitksan who are organized matrilineally.

- 39 -

(d) A particular system of clans and crests is part of the Gitksan ethnic identity (as according to Leonie Rivers is the use of button blankets in Gitksan ceremonies which contrast with other costumes for ceremonies in the Squamish culture).

(e) Historically and prehistorically, the Squamish and the Gitksan would have seen themselves as absolutely ethnically distinct, and it is very unlikely that there would have been amicable relations of any kind between the two nations or indeed any contact at all.

The meaning of the phrase "ethnic group" was discussed by the House of Lords in *Mandla v. Dowell Lee*, (1993) 1 All E.R. 1062:-

For a group to constitute an ethnic group in the sense of the 1979 Act, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community. The conditions which appear to me to be essential are these : (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive;

(2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant;

(3) either a common geographic origin or descent from a small number of common ancestors;

(4) a common language, not necessarily peculiar to the group;

(5) a common literature peculiar to the group;

(6) a common religion different from that of neighboring groups or from the general community surrounding it;

(7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups.

The meaning of the term "ethnic origins" was considered by the New Zealand Court of Appeal by King-Ansell v. Police, (1979) 2 N.Z. L.R. 531 at Page 543 with reference to a passage concerning Scotsmen from the judgment of Lord Simon in Ealing v. Race Relations Board (1972) 1 All E. R. 105:

- 40 -

Those same shared historical bonds to which he referred are sufficient to constitute national origin. In the same way a group is identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological terms is a common racial stock. It is that combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological term is common racial stock. They have a distinct social identity based on simply on group cohesion and solidarity but also on their belief as to their historical antecedents.

Based on the expert evidence, Ms. Rivers' testimony, and the caselaw cited I find that Gitksan and Squamish birth may be regarded as different ethnic or national origins as that term is used in the Canadian Human Rights Act.

## FAMILY STATUS

The term "family status" is not defined in the Act.

Tarnopolsky and Pentney in *In Discrimination and The Law* commenting on "family status" stated:

As to the word "family", however, common law authorities agree that "it has various meanings", "is used to designate many relationships", "can mean many things according to its context" or, of course, maybe determined by the statute in which it is found. On the other hand, it is fair to say that these authorities all agree that, although in a particular case a more limited meaning must be given, the word has always included the interrelationship that arises from bonds of marriage, consanguinity or legal adoption, including, of course, the ancestral relationship, whether legitimate, illegitimate or by adoption, as well as the relationships between spouses, siblings, in-laws, uncles or aunts and nephews or nieces, cousins, ect. Tarnopolsky and Pentney, CHRC Authorities Tab 5, Page 9-5.

- 41 -

The meaning of "family status" in the Act were examined at the Tribunal level in *Schaap v. Canada* (Department of National Defence (a case involving the status of a common law heterosexual couple)). After considering Professor Tarnopolsky's statements in *Discrimination and the Law* (Supra, Page 9-3), a number of authorities, and dictionary definitions, the Tribunal made the following observation at page D/4910:

The natural and ordinary meaning of the word "family status" I believe would include the inter-relationship that arise from bonds of marriage, consanguinity, legal adoption and including to use the words of Professor Tarnopolsky, the ancestral relationship whether legitimate, illegitimate or by adoption as well as the relationship between spouses, siblings, in-laws, uncles or aunts, nephews or nieces, cousins, etc. I have not found any authority which would extend the meaning of "family" beyond the above described types of relationships.

*Schaap v. Canada* (Canadian Armed Forces) (1988), 9 C.H.R.R. D/4890, rev'd on other grounds (1988), 56 D.L.R. (4th) 105 (Fed.C.A.)

At the Federal Court of Appeal level in Canada (Attorney General) v. Mossop (a case involving the status of a homosexual relationship), Stone, J.A. examined the legislative history of the amendment which added "family status" as a prohibited ground of discrimination to the Act. At page D/363, he stated:

In testifying before a Standing Committee of the House of Commons which was studying the proposed change, the then Minister of Justice pointed to the above-noted mischief and added the following with respect to the "family status" concept proposed for adoption.

This concept prohibits discrimination on the basis of relationships arising from marriage, consanguinity or legal adoption. It could include ancestral relationships, whether legitimate, illegitimate or by adoption, as well as relationships between spouses, siblings, in-laws, uncles or aunts, nephews or nieces, cousins, etc. It will be up to the Commission, the Tribunal appoints, and in the final cases, the courts, to ascertain in a given case the meaning to be given to these concepts.

Canada (Attorney General) v. Mossop (1990), 12 C.H.H.R. D/355 (Fed. C.A.); aff'd [1993] 1 S.C.R. 554.

- 42 -

I find that the term "family status" used in the Canadian Human Rights Act can include a prohibition as against "nepotism" as Ms. Ross has defined that term herein, in employment-hiring practices.

**IS THERE DIRECT EVIDENCE OF DISCRIMINATION BASED ON MS. RIVERS' FAMILY STATUS, OR HER NATIONAL OR ETHNIC ORIGIN?**

I have not found any DIRECT EVIDENCE of discrimination with respect to any of the five job competitions that form the subject matter of this Complaint on either of these prohibited grounds of discrimination. The evidence that does exist of possible discrimination is in my opinion virtually all circumstantial.

**IS THERE CIRCUMSTANTIAL EVIDENCE OF DISCRIMINATION BASED ON MS. RIVERS' FAMILY STATUS, OR HER NATIONAL OR ETHNIC ORIGIN ?**



I find that in addition to the circumstances surrounding the five job competitions that I have already described, there are six potential areas or persons whose testimony may involve possible circumstantial evidence of discrimination against Ms. Rivers based on family status and national or ethnic origin:

- (a) Band Council Meeting of February 4th, 1987
- (b) Chief Norman Joseph
- (c) Glen Newman
- (d) Gilbert Jacob
- (e) Deborah Jacobs
- (f) Specific Band Personnel Policies and Practices

I propose to discuss each of these areas in greater detail:

- (a) BAND COUNCIL MEETING OF FEBRUARY 4TH, 1987

At this February 4th, 1987 Band Council Meeting Ms. Rivers indicated that the five Job Positions which she applied for were not dealt with fairly and she submitted that the selections were not made on the basis of qualifications. She put forward five questions for the Band Council to answer:

- (1) How does Council select the Screening Committee for members, like the member's criteria in regard to education, housing, recreation, et cetera?
- (2) Does the Chairman of Council and the Band Administrator and the Screening Committee have power over the Squamish Council?
- (3) What is the appeal process or appeal procedure to any job opportunities open to the general public? Is this covered in the Policy Manual?

- 43 -

- (4) Has the Council Personnel Policy Manual been approved by the general membership, the Squamish Indian Council and/or the department heads?
- (5) If I cannot receive an appeal from the Squamish Council where am I supposed to go?

Ms. Rivers then in great detail related her complaints, her concerns and specified why she felt that she had been treated unfairly

in these five Job Competitions (Transcript Volume 10 Page 1211 Line 2 to Page 1234 Line 21).

Ms. Rivers requested verbatim minutes for her records at which point Gilbert Jacob pointed out to the Council that this type of discussions may lead the Council to some type of litigation (Transcript Volume 10 Page 1239 Line 10 to Page 1240 Line 3).

Bill Williams attempted to answer the first four questions (Supra Page 1236 Line 3 to Page 1238 Line 2).

He said that it was up to each department head to define who were on the Screening Committee. Interview questions were set out and each applicant was asked the same questions. Depending on the response of the individual the applicants were short-listed and the Selection Committee came to consensus and hired the best qualified person (Supra Page 1236 Lines 3-21).

With respect to the second of Ms. Rivers' questions, Bill William explained that the Band Council sets out the policies which were carried out by the administration.

In answer to the third question he explained that there had been no appeal process and there had been no real need for an appeal process up to this point in time (Supra Page 1236 Line 22 to Page 1237 Line 10).

With respect to question four, Bill Williams explained that a personnel policy has been put in place by Council, and before the personnel policy was voted on by Council it went through three meetings of all the employees of the Band. All employees know exactly what the procedures are for the personnel policy. Bill Williams left the fifth question to the Band to answer (Supra Page 1237 Line 11-20).

Bill Williams also explained that besides qualifications, an individual's personal appearance, general attitude as well as personal suitability are factors for consideration by the Selection Committee (Supra Page 1237 Line 22 to Page 1238 Line 2; Page 1241 lines 3-8).

Bill Williams stated that the Council should

identify and review the Policy Manual with respect to the process of job applications on matters of dates of interviews, follow-up letters on whether the person has been short-listed and how long after the interview should letters be submitted to all applicants, as well as the appeal process, all as requested by Ms. Rivers (Supra Page 1270 Lines 2-19).

Bill Williams explained that he requested Ms. Rivers take a two week extension in her Acting Education Coordinator position to orientate the candidate who was going to hire because he did not know Ms. Rivers was applying for this Education Coordinator position. He only looked at the job applications and the job resumes of applicants after the closing date for job applications (Supra Page 1235 Lines 2-22). Ms. Rivers disputed this contention at the Band Council Meeting advising that she received a letter from Band Manager Bill Williams' Office stating the time for her Education Coordinator job interview, which letter was obviously prior to the actual interview (Supra Page 1212 Lines 13-25).

Deborah Jacobs basically pointed out that the successful candidates for the term positions were fully qualified for their jobs. Although she herself is related to all the successful candidates, she sat as a non-voting member at their interviews, as did May Harris with her Education Committee. She explained that the appointment of the Selection Committees and the decisions for hiring came from the Selection Committees were in accordance with the Policy Manual. She found herself in an extremely awkward position because Ms. Rivers seemed to blame her for being unfair in the hiring process. She stated:

"As for appeal procedures to fairness or whatnot, what makes me feel so sad is that not only has my integrity and my professional reputation been challenged but so has Council. They are saying, well, Council is unfair, and that I find extremely disturbing" (Supra Page 1242 Line 1 to Page 1248 Line 22).

Gwen Harry said that she hired candidates that were best qualified for the job positions. She pointed out that Ms. Rivers was late for the Curriculum Developer position because she was at another job interview. Ms. Rivers' interview started at 1:00 p.m. and she phoned at 1:40 p.m. about her lateness. Ms. Rivers said that her priority was to work with the Band and at that time she was always under the impression that her interview was at 1:30 p.m. (Supra Page 1256 Line 19 to Page 1259 Line 4). Gwen Harry opposed the motion by Pauline Spence to hire Ms. Rivers

for the grant position in Recreation (Supra Page 1281 Lines 1-9; Page 1290 Lines 3-11).

- 45 -

Byron Joseph also said that he hired the candidates who were best qualified for the job positions.

Frank Rivers, who is Ms. Rivers' brother-in-law, agreed with Gilbert Jacob's comments with respect to litigation. To him Ms. Rivers was having her appeal now before the Council, and he did not agree with the allegation that the Jacobs family were getting all of the jobs due to nepotism because Deborah was not involved in the decision-making process. Frank Rivers said that Ms. Rivers should have tried to get a later interview time when Eva Jacobs notified her on January 8th that her interview was on January 12th, 1987 or made any arrangement for January 11th or the morning of January 12th to accommodate her interview schedule. Frank Rivers supported the decisions of the Screening Committee regarding the curriculum Developer position, and he supported the decisions of Byron Joseph and Gwen Harry in their hiring for the term positions (Supra Page 1259 Line 13 to 1262 Line 24).

Frank Rivers agreed with Bill Williams and Dick Williams that a review of the Policy Manual is necessary to clarify whether Band Council is the proper appeal mechanism, and that hiring procedures deal with extenuating circumstances. (Supra Page 1272 Line 21 to Page 1274 Line 6).

Philip Joe voted against the decision of the Selection Committee for the Curriculum Developer position. He said:

"Because, you know, I couldn't vote on all three if you know, a blanket vote. I could vote on some of them but there is one of them I can't vote on for reasons I stated --"

He also said:

"You know, for reasons I stated earlier about hiring with no interview. I may have some difficulties with that" (Supra Page 1303 Lines 6-14).

Dick Williams voted against the decision of the Selection Committee on the Curriculum Developer position but he had no problems with the other positions. He said:

"Thank you, Mr. Chairman. I made my statements earlier and my only concern is with this one situation. This is the first day I have seen these papers also, and it's the letter of December 16th, Curriculum Developer, where there was I guess a three-week advance notice, and the irregularities derived from

- 46 -

that. She identified two days she was not available, and I think the correspondence itself shows that it was not handled in a proper manner.

There was one whole day here where everyone was open and there was no appointment made for that, and there was a scheduled day for interviews. And the day she was to be interviewed was the following Monday, which was not in the actual notice to be identified. And she had given previously three weeks ahead of that time saying she wasn't available for that date, yet she was scheduled for the middle of that day. So I can't agree with that" (Supra Page 1309 Line 11 to Page 1310 Line 7).

.....

" Mr. Chairman, my digestion of these documents that have been, or letters or papers that have been placed before us, looking at the procedures that have been followed, they are not something that are normal to a selection committee, and I feel that I can't support the decision" (Supra Page 1299 Lines 15-21).

Chief Norman Joseph supported the decisions of the Selection Committee on all the Job Selections. He said that Deborah Jacobs has the Squamish culture which Ms. Rivers could not get from a university. He was pleased that Squamish Indians were hired and not just Band members (Supra Page 1250 Lines 15 to Page 1251 Line 2).

Chief Norman Joseph said:

"There's a difference in Band members and Squamish Indians, eh, I'm not going to keep it to myself. I'm

at home thinking about it all the time. And they keep asking" (Supra Page 1283 Lines 10-13).

He further stated:

"But I support the Committee's decision because, see, the Jacobs are part of this culture, the Squamish culture. And the knowledge is there through the whole family. We're left with some of the knowledge from the elders, every one of us here, and this is part

- 47 -

of it that you can't get in, like I said, in the university or anywhere else. And it's going to stay with this Band" (Supra Page 1291 Lines 7-15).

In the evidence, the silences following the remarks of Chief Norman Joseph was raised by the Canadian Human Rights Commission as evidence of discrimination. It was suggested, in questioning councillors, that the silence following Chief Norman Joseph's remarks was striking, and that the lack of a response or objection from other councillors indicated that the other councillors agreed with Chief Joseph. A table which appears on Page 78 of Mr. Rich's written submission summarizes the lengths of silences following various speakers at the Council meeting. It is clear that, although there were silences following Chief Norman Joseph's statements, there were also silences of equal or greater length following the statements of other councillors. It may be noteworthy that the longest silence followed a statement by Chief Norman Joseph which had nothing to do with discrimination. It appears that any significance attributed to these silences involve subjective inference and are somewhat speculative.

Norman Joseph was Seconded to the motion by Anthony Moody to agree with the decision of the Selection Committee hiring Lois Guss on the Curriculum Developer position (Supra Page 1313 Line 17 to Page 1314 Line 1).

Anthony Moody, who has been on Council for ten years supported the decisions of the Selection Committee. As far as he was concerned the procedures were in accordance with the Policy Manual. He said that it was tough luck if the applicant could not make the interview because the Committee has got other things to do (Supra Page 1251 Line 5 to Page 1252 Line 13). He said that they tried to involve councillors from each different community, administration and non-administration as Selection Committees for job

interviews, tried not to be biased and got away from favouritism but this was a hard situation as everyone is related somewhat in the Band and he encouraged Ms. Rivers to continue making job applications (Supra Page 1253 Lines 16 to Page 1254 Line 9).

Anthony Moody made the motion to agree with the decision of the Selection Committee on the Curriculum Developer position at the February 4th, 1987 Band Council Meeting (Supra Page 1313 Lines 12-21).

Sam George said that he did not see the need for a motion to revise the Policy. He was only concerned with the appeal process (Supra Page 1276 Lines 11-13).

Sam George also agreed with the decisions of the Selection Committee, he said:

- 48 -

"But I was on that committee a few times and it's not an easy job. There are a lot of people qualified. And it's still the same, they still work from the same policy, they try to pick the best person, and I'm sure they do"  
(Supra Page 1288 Line 12 to Page 1289 Line 8).

Sam George did not agree that a "granted" position in Recreation should be given to Ms. Rivers (Motion by Pauline Spence) (Supra Page 1290 Lines 14-22). He agreed with Bill Williams' answers to Ms. Rivers' four questions (Supra Page 1297 Lines 13-19).

Pauline Spence said that she and Bill Williams suggested that instead of hiring two Recreation Directors, that if funds were forthcoming from another source that Ms. Rivers take on that job, the grant job, as part of Recreation. Pauline Spence made a motion on this matter but was opposed by Gwen Harry and Sam George (Supra Page 1281 Lines 1-9; Page 1290 Lines 3-24).

Pauline Spence was of the opinion that Ms. Rivers should not appeal before the Council because the matter should be dealt with by the Band Manager. She said:

"It is an internal problem and that is what we hire a Band Manager for, to take care of internal problems. And if they are not satisfied with the Band Manager's

decision then I think they should just give it up and go on their own way, because they are wasting a lot of valuable time here. We have a lot of other business to take care of" (Supra Page 1304 Line 20 to Page 1306 Line 11).

She said that to her the selection procedures have always been "fair and square" (Supra Page 1306 Lines 12-13).

Gilbert Jacobs, when Ms. Rivers requested verbatim minutes, warned the Council that these discussions with Ms. Rivers may lead to some type of litigation. He said that he did not agree with the policy of "tough luck" kind of thing but he would like to improve the Policy so that everyone would know how and where they are at (Supra Page 1267 Line 20 to Page 1268 Line 22).

Gilbert Jacob made the motion to review the Band Policy Manual taking into account all the recommendations that have been made within a five week time frame (Supra Page 1277 Line 8 to Page 1278 Line 22). He also suggested inviting Steve Rettie, the Band's steward working for the Social Development Department to sit on this Review Committee (Supra Page 1285 Line 20-25).

- 49 -

Gilbert Jacob said that he supported the decision of the Selection Committee to hire his sister Lois Guss for the Curriculum Developer position. He said that he never lobbied anybody to hire his family members, and that the work ethic runs in his family. He further stated:

"And I would just like to say I'm glad Lois got the job. You know, she's fully qualified. She's got a textbook that's being written, or part of it, she's got me chapter that she helped produce put in that textbook, social studies. To me that's saying a lot. She has done the job before and it's great. She's done it on her own, you know" (Supra Page 1287 Line 2 to Page 1288 Line 8).

It is unclear whether Gilbert Jacob voted on the motion to support the decisions of the Selection Committee, although it was clear that he supported the decisions.

Leslie Harry Chairman of the Squamish Indian Band Council



testified that Gilbert Jacob was the Seconder for the motion put forward by Anthony Moody who said:

"I make a motion that we accept the decision made by the Selection Committee" ... "I nominate Gwen and Byron to get on the Selection Committee again" (Supra Page 1292 Lines 9-18; Transcript Volume 12 Page 1502 Lines 16-25, Page 1505 Lines 4-11).

Leslie Harry never did formally answer Ms. Rivers' five questions and in fact the Councillors appointed to revise the Band Policy never had another meeting again after February 4th, 1987 according to his testimony (Transcript Volume 12 Page 1486 Line 7 to Page 1487 Line 12; Page 1488 Line 17 to Page 1489 Line 1).

Leslie Harry said that it was a usual occurrence not to follow up on Council business (Supra Page 1487 Lines 4-12).

I find that Ms. Rivers gave an eloquent and concise summary of her position before the February 4th, 1987 Band Council Meeting. The discussion that followed I find to have been constructive and open. Ms. Rivers in my opinion received a fair hearing with respect to her complaints. A review of both the transcripts and the tape of the Meeting indicate a calm and collected judgement by Band Councillors after lengthy debate. While the results of the debate were not what Ms. Rivers had wanted, she did receive some support for her position. Ironically, it appears that the Band Councillors who were related to her, Frank Rivers and Pauline Spence, the brother and first cousin

- 50 -

respectfully to Ms. Rivers husband Glen Rivers, both voted in favour of the Selective Committee's decision to hire Lois Guss as Curriculum Developer. It also appears that the Band Council quite carelessly did not follow up on the resolution to review its selection procedures and the Council Chair Leslie Harry never did formally respond to the Complainant's questions. However inept, insensitive and unprofessional this and other administrative practices of the Band were, I can find no discriminatory element to these omissions. The only discriminatory remarks made during the Band Council Meeting were made by Chief Norman Joseph whose evidence I will now review.

(b) Chief Norman Joseph

Chief Norman Joseph has sat on the Squamish Band Council for 25 years and he is a hereditary Chief, a position which apparently has

no special powers attached to it. He is of the opinion that whenever a Squamish-born person was qualified for a Band job, they should get the job over a non Squamish-born person. (Transcript Volume 4 Page 465 Lines 12-23).

Married-in persons are accepted as Band members but many of them usually do not have stable marriages which resulted often in quick divorces. Chief Norman Joseph indicated that there were "a lot of qualified Squamish Indians out there" (Supra Page 466 Lines 1-5).

He did not want to speak for other Councillors on whether they preferred Squamish born over other Band members however (Supra Page 467 Lines 10-15).

In Chief Norman Joseph's statement to Human Rights investigator Penny Goldrick in February 1989 he stated:

"I don't think Byron Joseph would give preference to Squamish born. He and I have different opinions on a lot of things, we'll argue at Council Meetings" (Supra Page 474 Lines 15-18).

Chief Norman Joseph said that there is a difference in lifestyle, language and diet between a blood Squamish and a blood Gitksan" (Supra Page 484 Lines 4-16).

Chief Norman Joseph said that in the old way, the woman never did speak. He stated:

"It seems kind of funny to see a non-Indian get up there and speak, and a lot of them are doing it, eh, when they marry into our Band" (Supra Page 481 Lines 10-14).

- 51 -

When I asked Chief Norman Joseph as to whether Ms. Rivers being Gitksan made any difference to him, he said that it did not because he and his brother had married women from other tribes. Notwithstanding marriage by Squamish born persons to members of other tribes, the Chief still preferred Squamish born individuals for jobs and housing on the reserve because a lot of them were struggling to get by (Supra Page 481 Line 19 to Page 483 Line 10).

I find that Chief Norman Joseph's evidence indicated discriminatory intentions which were motivated by what was in his "benevolent" view the way Squamish Indian Band life should be like. However I also find that Chief Norman Joseph had no affect on Ms. Rivers employment in the band as he played no role whatsoever in the five job competitions complained of. I further find that the Chief had no special powers, little influence within the Band, and his views were disavowed by those who appeared before the Tribunal. His comments obviously hurt Ms. Rivers deeply and were very insensitive given the circumstances in which they were made, however, he appeared to be a relatively harmless anachronism within the Band.

(c) Glen Newman

Glen Newman was a Squamish born, Band Councillor from 1967 to 1982 and was the Band Administrator from 1982 to 1986. He was hired as the Social Development Director from 1969 to 1977. In 1977 he worked with the Ministry of Human Resources as a Native Child Welfare Consultant (Transcript Volume 7 Page 733 Line 16 to Page 735 Line 25). Glen Newman completed his Grade 12, and graduated from a two year welfare aide course at Vancouver City College in 1966.

Glen Newman knew Ms. Rivers when she first married in to the Band. He assisted Ms. Rivers and her husband financially and as a social worker Glen Newman also assisted Ms. Rivers in adjusting to the Squamish community. Glen Newman said that Ms. Rivers had difficulty adjusting to the Squamish cultural norm (Supra Page 736 Line 1 to Page 738 Line 6). He stated:

"I recall, I was speaking to her on a personal level, because it related to an individual person that didn't like her, and she expressed her feelings, or her emotional feelings as a result, that particular person didn't like her" (Supra Page 741 Lines 18-22).

Glen Newman acknowledged that Ms. Rivers in most cases did well in terms of tutoring of children (Supra Page 742 Lines 18-25). He was impressed by Ms. Rivers' Report or Educational plan when she was a Home School Coordinator before Deborah Jacobs took her over the position as the Education Coordinator in 1986.

Glen Newman stated:

"I read her comprehensive educational plan she did for the Band Council. It was well prepared and I believe it was received by Council, and accepted by Council" (Supra Page 744 Lines 4-6).

He further stated:

"Well, she was clear in the report. It was concise. It was very understandable. She knew her subject. Of course, her presentation was well thought out, and I understood it well, myself. She was--I believe--she was--we said a job well done. I think she was acknowledged at that meeting, when I was there. And Council accepted the report" (Supra Page 749 Lines 21 to Page 750 Line 1).

In terms of the Education Coordinator position Glen Newman was of the opinion that Ms. Rivers had equal qualifications compared to the other candidates (Supra Page 750 Lines 22-25).

Glen Newman acknowledged that Ms. Rivers' Native Teacher's Program qualification was important and beneficial particularly with native children. He also was of the opinion that an Education Director should have practical experience as a teacher so that she can identify and address educational problems of the native children. Glen Newman thought that Richard Band would be the successful candidate for the Education Coordinator position (Supra Page 751 Line 19 to Page 753 Line 13). Glen Newman clarified that when the Band hires in senior positions, it's important that the person hired is compatible with the interests of the ten Reserves. That person must be personally suited, have a good attitude and be cultural sensitivity (Supra Page 748 Line 21 to Page 749 Line 3).

Glen Newman testified that in 1967 when he was elected as a Band Councillor the Squamish nation people had strong feelings and difficulty with respect to married-in women coming in and getting houses, education, material and monetary benefits which the married-out women lost (Supra Page 755 Lines 4-21).

Glen Newman clarified that the Band had difficulty at times hiring non-Indians because by doing so they were paying non-Indians with the Band's monies that accrued from their businesses and from their lease revenues. But he did not see a problem with hiring other native people. He used

Gloria Wilson as a good example of a married-in woman that has blended well and is well accepted by the Squamish community" (Supra-53-

- 53 -

Page 762 Lines 8-11, Lines 20-24; Page 763 Lines 10-16).

He further explained that on occasion one or two married-in women would speak very loudly and they would get the "silent" treatment from the Squamish Community, since they had not adapted to the Squamish Community and they were perceived to be too individualistic for a community that was very communal in thought (Supra Page 767 Lines 3-8).

Glen Newman acknowledged that the Squamish people now have an open mind in terms of election to the Band Council and in hiring married-in and non-Indians but the majority of the employees are still Squamish born. He stated:

"Our people prefer to hire their own people. You know, that's just a natural -- that's a nationalistic and cultural norm with our people" (Supra Page 769 Line 17 to Page 770 Line 18).

He said that when he was Band Administrator from 1982 to 1986 he did not have a preference for hiring people of Squamish ancestry as opposed to other Band members. He stated:-

"When I was Band Manager, I had an open mind. As long as they were Squamish Band members within the meaning - -under the meaning of the Indian Act, you know, I had no problem. In my practice, it would be Squamish Band members first. And my record shows that I did hire a little bit of everything, married in, as you referred to, national born, non-Indians. It all depended on qualifications and the circumstances" (Supra Page 775 Line 25 to Page 776 Line 6).

But Ms. Ross in her examination of him pointed out that in his statement dated March 3rd, 1988 to the Human Rights investigator Mr. Peter Threlfall, Glen Newman stated:

"When I was Band Manager, my selection criteria was to give preference first to the people of Squamish

ancestry, and then to other Band members second" (Supra Page 787 Lines 7-11).

Glen Newman explained that when he made this statement on March 3rd, 1988 he was going through a lot of personal stress being Band Manager for four years with a heavy caseload, and being both a political leader as well as an administrator at the same time. However he stated that his hiring records did show that he hired Squamish Band members within the meaning of the Indian Act

- 54 -

and culturally speaking, that is persons who have acquired membership, married into the Band or were adopted into the Band, as well as hiring non-Band members (Supra Page 791 Lines 3-21). Glen Newman said that he subsequently changed his mind with respect to what he said to the Human Rights investigator in his March 3rd, 1988 Statement (Supra Page 804 Line 21 to Page 805 Line 6). However he did not contact anyone at the Canadian Human Rights Commission to tell them about the change even though he might have also been left with a copy of his Statement (Supra Page 805 Lines 13-14). In his testimony before the Tribunal he stated that he now disagreed with the Statement, did not hire under that criteria, that there was no Band policy to that effect, that he treated all Band members equally, and that what he said was said inadvertently without thinking (Supra Page 806 Line 17 to Page 807 Line 11).

When cross-examined by Ms. Ross with respect to a pending job application he had with the Squamish Indian Band for developing an ombudsman position because he was currently unemployed, Glen Newman denied that he was changing his position with respect to who he hired while Band Manager to avoid a problem or to gain an advantage with respect to his job application with the Band (Supra Page 805 Line 15 to Page 807 Line 25). He said:

"The testimony that I'm giving is from my own free will and it's got nothing to do with the Band Council, or anyone hiring me. Or whatever you're saying, it's not true"  
(Supra Page 806 Lines 14-16).

Glen Newman was not involved in any way in the hiring process for any of the five job positions complained of herein as he was not the Band Manager during these five Competitions in 1986 and 1987. He testified that he hired Ms. Rivers in 1982 and 1988 based on her

qualifications (Supra Page 811 Lines 9-23).

Glen Newman knows Ms. Rivers very well both on a personal and professional basis. Ms. Rivers confided in him when she got in trouble with the Council. Glen Newman described Ms. Rivers as:

"Leonie, like I said, is a very energetic person, very outspoken, very strong in her conviction. She was a very intelligent lady. And I guess when it came to the cultural sensitivity or it came to the community sometimes, I would hear from time to time that Leonie's not really listening to the people, or she's not quite understanding our ways, and maybe she should listen more than she talks. I'd hear that from time to time maybe she should listen first and then maybe, you know, speak later" (Supra Page 816 Lines 3-11).

- 55 -

Glen Newman's written Statement to the Canadian Human Rights Commission investigator revealed a probable discriminatory practice contrary to the Canadian Human Rights Act. However Glen Newman claimed what he said in his written statement to the investigator was not the way he actually conducted hiring while he was Band Manager, and that he misspoke when he made his comments/Statement to the investigator. I find that when he made the Statement to the investigator he did so without any reservation or equivocation. However I further find that his hiring practices while Band Manager on the evidence did not have any effect on the Complainant's five job competitions primarily because Glen Newman was no longer Band Manager at the time of these job competitions, and that he does not appear to have been involved in the hiring for these five positions.

Glen Newman and Ms. Rivers by their own testimonies are friends, and respect each other's abilities over a number of years. Mr. Newman did not in his evidence take any exception to Band Manager Bill Williams' (his successor as Band Manager) hiring practices. He also did not object to the manner in which Ms. Rivers was dealt with in the course of the five job competitions nor was he surprised by their outcome in his evidence. Mr. Newman portrayed a Squamish Band community that was reasonably civilized in its attitudes towards "married-in" persons such as Ms. Rivers. It is also reasonable to assume that his personal friendship with, and respect for Ms. Rivers would have caused him to voice any objection that he had regarding unfair or discriminatory practices that Ms. Rivers may have suffered from, either to the Band or to this Tribunal.

(d) Gilbert Jacob

Gilbert Jacob is Squamish born and has been elected to the Squamish Indian Band Council continuously since December 1981. He is the son of the deceased hereditary Chief Alfred Isacc Jacob (Transcript Volume 9 Page 1037 Line 21 to Page 1038 Line 17).

He has worked for the Squamish Indian Band firstly as a carpenter's helper in 1973 for three months before working on a non-Band union construction job (Supra Page 1041 Lines 7-14). Gilbert Jacob returned to work for the Band in May of 1980 as a Maintenance Supervisor in the Squamish Indian Band's Housing and Public Works Department. As a result of a promotion approximately one year ago by the Squamish Indian Band Council he is now employed as the Administrator of the Band's Housing and Public Works Department (Supra Page 1038 Line 20 to Page 1040 Line 22). Although he was a Member of Band Council at the time of his promotion, he didn't vote on his own promotion because he didn't feel it was appropriate (Supra Page 1040 Line 23 to Page 1041 Line 6).

- 56 -

Gilbert Jacobs is related to all five successful candidates for the five Job Competitions about which Ms. Rivers has complained. Deborah Jacobs, Kim Seward and Janice George are his nieces, Lois Guss is his older sister, Richard Band is his first cousin Teddy Band's adopted son, Carol Newman is his first cousin, and Krisandra Jacobs is his nephew's wife (Supra Page 1048 Line 2 to Page 1050 Line 19).

Gilbert Jacob's oldest sister Lois Guss inherited the title of the Chief from her father. Ms. Ross asked Mr. Jacob: "What's the significance of inheriting a hereditary chief title, what does it mean?"

Gilbert Jacob replied:

"There's no real significance. Basically our chiefs have the status of being a chief, but basically they have the same rights as each of one of us. Some see it different, that's basically how I see it. They are band members as well as I" (Supra Page 1043 Line 17 to Page 1044 Line 1).

Gilbert Jacob agreed that there is no formal Band Policy concerning the participation of immediate relatives in



hiring processes where a very close relative is going to be applying for a job. He explained:

"No, there isn't, as far as I know. Basically, if somebody knows they've got a family member who's going for the position, then they just don't bother sitting on any of the selection committee. That's basically an unwritten type of a rule" ( Supra Page 1051 Lines 7-16).

Gilbert Jacob expressed his personal view on this issue, he stated:

"That's my personal philosophy derived from my parents' teachings. I've religiously tried to stay away from any hiring committees. We're pretty well all related on reserve, so it's pretty hard to, you know, sit on a committee and not have somebody voice an opinion that you're hiring just your relatives, because we're all relatives some way or another"

Ms. Ross : "Do you draw distinctions in your mind between the degree of blood relationship of some of your relatives and others, in

- 57 -

terms of appearance of impropriety if you were to sit on a hiring committee where they have applied?"

Mr. Jacob : "No, they're all my relatives, I don't draw any distinction, I just try and stay out of it as best I can" (Supra Page 1051 Line 21 to Page 1052 Line 8).

With respect to the Band Council Meeting of February 4th, 1987 Ms. Ross asked:

"Were you opposed or in favour of providing Leonie Rivers with verbatim minutes, a verbatim transcript of the proceedings?"

Gilbert Jacob replied:

"Neither really for nor against it. I guess the standard policy had been that no minutes go out of the office and that if you wanted to, you

could stay and read them at the office and take whatever isolated motions or whatever comments you wanted to take off of there.

But as far as minutes going out, we do have at times very-- we must keep things close to the chest because of certain negotiations we're in. We can't let certain things out of our office"

He further stated:-

"So basically the policy is that the motions stay--or the minutes stay within our office"  
(Supra Page 1058 Line 17 to Page 1059 Line 11).

Gilbert Jacob took the position that he abstained in the February 4th, 1987 Band Council Meeting vote that affirmed the Selection Committee's choice of Lois Guss as Curriculum Developer since he had family involved (Supra Page 1060 Lines 1-5).

According to the tape of the Council Meeting on February 4th, 1987 Gilbert Jacob was a seconder to the motion made by Anthony Moody to accept the decisions made by the Selection Committee for the Job Competitions which were the subjects of Ms. Rivers' Complaint (Transcript Volume 10 Page 1292 Lines 10-18). Leslie Harry confirmed in his testimony that Gilbert Jacob seconded the motion (Transcript Volume 12 Page 1505 Lines 4-11).

Gilbert Jacob said that he supported the Selection

- 58 -

Committee's decision to hire his sister Lois Guss in his testimony (Transcript Volume 9 Page 1068 Lines 9-15).

Gilbert Jacob also acknowledged that he did speak proudly of his sister's qualification for the Curriculum Developer position (Transcript Volume 9 Page 1067 Line 9 to Page 1068 Line 8).

Gilbert Jacob was of the opinion that he abstained from voting on the motion to approve his sister Lois Guss for the Curriculum Developer position, and denied that there was any inconsistency in so abstaining while at the same time supporting the decision of the Selection Committee on this Job Competition (Supra Page 1068 Line 20 to Page 1069 Line 9).

When examined by Mr. Rich, Gilbert Jacob testified that he participated regularly in the business of the Squamish Indian Band and attended meetings on a regular basis. He said that there were difference in Councillors' opinions on matters (Supra Page 1069 Lines 13-25).

With respect to Chief Norman Joseph's opinion in hiring people on the basis of their Squamish blood, Gilbert Jacob said: "Not particularly. You know, the best qualified person for the positions is the belief that I have" (Supra Page 1070 Lines 5-9).

Gilbert Jacob testified that 80% of the employees on the Full-time Employee List of the Squamish Indian Band dated November 4th, 1992 and revised December 9th, 1992 (Exhibit HR-2 Tab 64) are his cousins in one form or another in the neighbourhood of fourth and fifth cousins (Transcript Volume 9 Page 1075 Line 12 to Page 1077 Line 12). Gilbert Jacob explained that work ethic has always been strong in his family. The majority of the children in the Jacobs Family are working or attending university (Supra Page 1078 Lines 5-19).

Gilbert Jacob when examined by Mr. Rich about Ms. Rivers:-

"How did you feel about Leonie Rivers, knowing her then?"

He replied:

"I wouldn't say it was a dislike, it was just, you know, somebody that I didn't want to have any dealing with, basically" (Supra Page 1079 Lines 7-13).

Gilbert Jacob agreed that there was a number of people that did not like or did not feel good about Ms. Rivers.

- 59 -

He further explained that the reason was not because Ms. Rivers was a married-in woman, but that she did not fit in well in the community (Supra Page 1079 Lines 19 to Page 1080 Line 6).

Gilbert Jacob acknowledged that some married-in women have a hard time in the Band but it is based on personal likes and dislikes which is normal between people. Gilbert

Jacob testified that his wife is a married-in woman and that he is a friend to a lot of married-in women such as Dorothy Joseph, Judy Baker, Alice Baker and Heather Newman (Supra Page 1080 Line 7 to Page 1081 Line 5).

Gilbert Jacob said that one always hears complaints about somebody not getting jobs because jobs are so few for their 2,500 people and it is human nature to complain.

He testified that he was not in any way involved in the hiring process for the five jobs which are the subject of this complaint. However with respect to Gloria Wilson's recollection that Gilbert Jacob had promoted Deborah Jacobs for the Education Coordinator position at a Band Council Meeting, Gilbert Jacob was equivocal stating:

"Anything's possible, I guess; it's over five years or six years, whatever. I don't even know how long she had been working with the Band. I guess I could have said it but I have no recollection of ever saying it, but over that time frame, I don't know anybody who can remember everything they say, so---" (Supra Page 1083 Lines 5-15).

His only involvement in the hiring process for these positions were his comments at the Band Council Meeting of February 4th, 1987 and he did not discuss the hiring for any of these positions with any members of the hiring panel members (Supra Page 1082 Line 12 to Page 1083 Line 4). He was of the opinion that the successful candidates for these five jobs were hired based on their qualifications (Supra Page 1083 Lines 12-20).

Gilbert Jacob explained that he recommended Steve Rettie take on the Committee to review the Squamish Band Policies in the February 4th, 1987 Band Council Meeting because Steve Rettie is a non-Band member who had the trust of the staff. Steve Rettie is a social development worker who was elected by the staff members to be the job steward (Supra Page 1085 Line 23 to Page 1086 Line 8).

I find on the evidence that Gilbert Jacob did not have any direct involvement in the five job competitions complained of, save and except for his possible remarks to a Band Council Meeting about the appropriateness of his niece Deborah Jacobs for the Education

Coordinator position, if that position were to finally be created. I find that even if Mr. Jacob made such a remark that it is not evidence of discrimination against Ms. Rivers because the only persons aware of the comment on the evidence appear to be Gloria Wilson and possibly Ms. Rivers. Noone on the Selection Committees or Band Council recalls or was influenced by these remarks, or any other remarks made to them by Gilbert Jacob on the evidence. The remarks, if they were made, also appear to have been made at a time long before the actual Education Coordinator job was posted. Finally indicating a preference for one's niece who did appear have some qualifications for the job is not sufficient circumstantial evidence establishing the prohibited ground of "nepotism" alleged by the Complainant.

Gilbert Jacob's participation in the Band Council Meeting of February 4th, 1987 seemed reasonable both in its nature based on the transcript and tape, and based on his duty as an elected Band Councillor. He asked for a review of hiring policies, and dealt with the issues at hand during the debate without exhibiting any personal animosity towards Ms. Rivers. While it was unclear whether or not he voted to support the Hiring Committee's decisions, his support however demonstrated, is not in my view sufficient circumstantial evidence to support the Complainant's allegation of "nepotism".

(e) Deborah Jacobs

Deborah Jacobs' reasons for not hiring the Complainant for the positions of Curriculum Developer, Career Councillor and Youth Development Coordinator can be categorized into the following three separate areas:-

(1) Vancouver Indian Centre

The evidence of Deborah Jacobs was that she was advised of Leonie Rivers' activities at the Indian Centre by a person who was a Board Member both at the Indian Centre and at the Professional Native Women's Association, where Ms. Jacobs worked. She further testified that her organization, the Professional Native Women's Association, did not do business with the Indian Centre while Ms. Rivers was there, due to the well known problems there. Deborah Jacobs stated that she had been advised that Ms. Rivers was responsible for the problems at the Indian Centre. This impression was confirmed by Wayne Clark a status Indian and the Executive Director of the Vancouver Indian Centre in the early 1980s.

Mr. Clark explained that at that time the Indian Centre was going through somewhat of a debt crisis on the repayment of the loan to

build the new Indian Centre. There was a \$1.2 million dollar shortfall which the senior staff and board of directors were aware of (Transcript Volume 14 Page 1960 Lines 14-19; Page 1962 Lines 17-19).

- 61 -

Ms. Rivers was involved with the group that wished to take over control of the Indian Centre and new elections were called for when the requisition under Section 50 of the provincial Societies Act was successful.

Mr. Clark described the atmosphere at the Indian Centre at that time as "extremely volatile". He stated:

"It was extremely volatile. There was the old board of directors were obviously upset because they felt that they'd put in a number of years of hard work and that these new people who had come to the Centre, the majority of them never having contributed anything to the Centre, or as a matter of fact, even to the Native community in Vancouver. There was a lot of resentment from that board of directors towards the new group" (Supra Page 1961 Line 24 to Page 1962 Line 6).

Mr. Clark complained about Ms. Rivers' actions when she became President of the Vancouver Indian Centre including:

(a) Ms. Rivers allegedly opened a separate bank account at a C.I.B.C. branch and deposited Centre monies into it without CMHC's approval or a board resolution, all this while the Centre's banking was still being done at the Royal Bank (Supra Page 1965 Lines 1-24).

(b) Ms. Rivers allegedly ordered two First Class flight ticket to attend a First Minister's Conference in Ottawa which were paid out of this C.I.B.C. Account. When I further questioned Mr. Clark on this matter he explained that the Indian Centre could only be an observer at this Conference and he didn't even think they had an invitation to attend. (Supra Page 1966 Lines 2-13; Page 1984 Lines 1-11). He added that the Centre's participation would "be like a stockboy participating in a boardroom meeting of Bloomingdales" (Supra Page 1984 Lines 3-6).

(c) Ms. Rivers allegedly hired her own sister in place of Mr. Clark's secretary. Wayne Howard Clark said that Ms. Rivers paid her sister \$11,000 for eight weeks or \$8,000 for eleven weeks,

either way, much more than what his previous secretary was getting (Supra Page 1966 Line 20 to Page 1967 Line 3).

(d) Ms. Rivers allegedly hired her husband to paint the Indian Centre with its hundreds of thousands of dollars worth of art, and Mr. Rivers tried to paint the Centre with a five horsepower paint sprayer and compressor. According to Mr. Clark, Ms. Rivers did not

- 62 -

choose a proper paint but yet he was blamed for the matter by Ms. Rivers (Supra Page 1968 Line 1 to Page 1969 Line 7).

(e) Ms. Rivers allegedly had no sympathy for the poor at the Food Bank Distribution. Mr. Clark explained that Ms. Rivers instructed the building coordinator at that time to keep women and children outside even in the rain until such times as the food was scheduled to be distributed, and not to let the people use the Centre's bathrooms, which she ordered to be locked, when the only other toilet within walking distance was a gas station approximately 150 feet across a busy street (Supra Page 1970 Line 25 to Page 1971 Line 12).

(f) Ms. Rivers allegedly instructed her sister to clean out the files prior to 1982 at the Housing Society. Within those files were mortgage agreements with the banks that pre-dated 1982, the Section 56(1) Agreements that pre-dated 1982 and ministerial loan guarantees (Supra Page 1972 Lines 16-22).

(g) Mr. Clark claimed that Ms. Rivers was involved in allegations and rumours in corruption. He resented Ms. Rivers for firing a Filipino bookkeeper who served the Centre for 14 years and who was, according to him, very honest (Supra Page 1981 Lines 4-25).

(h) Mr. Clark said that Doug Purdy was a deputy Vancouver Director of Social Planning who rarely dealt directly with the Indian Centre. However he acknowledged that meetings between Ms. Rivers and Doug Purdy were possible but they would have been outside the Indian Centre (Supra Page 1973 Line 24 to Page 1974 Line 5; Page 1975 Lines 2-25). Wayne Howard Clark criticized Doug Purdy's statement to the effect that:-

"There had previously been other directors of both societies-and there had been some indication of mismanagement, of corruption, of nepotism, to the point where we, of our own volition, had made strong representations to Council and to the, at that time,

Secretary of the State's Department to withholding funding pending the resolution of these matters" (Supra Page 1977 Lines 3-13).

In response to my question on the subject, Mr. Clark said that he was "baffled" by Doug Purdy's accusation of corruption because there were no charges laid against anyone at the Centre (Supra Page 1980 Lines 10-19). He further however explained that although there was some misuse of funds (funds that were not allocated for specific reasons), the misuse was not by staff members but by the board of directors (Supra Page 1980 Line 24 to Page 1981 Line 3). He further explained that there was no paid members of his family working for the Indian Centre, just family members who have volunteered at the Centre (Supra Page 1980 Lines 6-9).

- 63 -

Mr. Clark described himself as playing the role of a mediator 95 percent of the time during the confrontations between both groups in the Indian Centre (Supra Page 1978 Line 22 to Page 1979 Line 5).

He stated: " To be very frank with you, I really didn't give a damn who the board of directors were, just as long as they did their job and allowed us to do ours" (Supra Page 1979 Lines 12-14).

With respect to Mr. Clark's charges Ms. Rivers on recall explained that the treasurer and bookkeeper would be responsible for establishing new bank accounts and for the movement of funds under the Board's direction, and that she had no direct involvement (Transcript Volume 17 Page 2366 Lines 23 to Page 2367 Line 16).

She attended the Conference with the Prime Minister and Premiers as an observer for public relations purposes because of all the bad publicity the Centre was receiving in the press over these two factions of the Board. At that Conference she tried to let people know what the new Board did and how they did it. She was directed by the Board to attend this Conference and as far as she could recall she flew economy class (Supra Page 2444 Line 5 to Page 2445 Line 9).

Ms. Rivers explained that Mr. Clark was directly responsible for the missing funds in the Housing Department. She stated:

"It wasn't just in my mind. The whole board was quite aware of it after an investigation revealed what was happening. With the results there had to be some



changes made. It was very clear by the funders if we didn't that they'd take action not to support us" (Supra Page 2441 Lines 10-18).

Ms. Rivers further explained that approximately \$200,000 was missing because people were asked to pay cash instead of cheques for their rent.

She actually had to "coerce" her sister into this job of investigating the missing funds. Her sister was neutral, had a good financial background and she recalled her sister was paid not more than \$3,000 a month (Supra Page 2441 Line 20 to Page 2443 Line 8).

Ms. Rivers had her husband did spray painting for the Indian Centre because the people that were working there didn't have enough manpower to get the Centre into "a fashion suitable for the retirement of the capital debt debenture". The Board was under pressure to get the job completed prior to the visit of the

- 64 -

Secretary of State and the Band was aware of Mr. Rivers' involvement (Supra Page 2363 Line 11 to Page 2364 Line 2). Ms. Rivers did not recall whether Mr. Clark had confronted her with respect to Mr. Rivers' painting of the Building but he might have (Supra Page 2436 Line 4-10).

Ms. Rivers explained that because of the huge operating deficit, the Indian Centre tried to reduce the material and maintenance costs so there was a change in hours of operation of the food bank and access to the use of washrooms in the Centre.

Ms. Rivers clarified that she never asked anyone to destroy files and was concerned that some of the files had been stolen. She had to put in new locks for security (Supra Page 2450 Lines 1-8). Ms. Rivers testified that after the assessment of the Housing Department which was a huge operation, it was felt that there was misappropriation of dollars and the collecting of the rents was an issue. Wayne Howard Clark was responsible for these housing units and he was encouraged to resign by the Board. He was very resentful and wrote a letter stating that he was very disappointed and discouraged with the Executive at the time, and targeted Ms. Rivers as being a three-headed dog (Supra Page 2434 Line 3 to Page 2435 Line 13).

While it is difficult and not necessary for purposes of this decision to decide which of these two testimonies to accept regarding the Vancouver Indian Centre, I do find that Ms. Jacobs did have some reasonable basis for concluding that Ms. Rivers' involvement at the Centre demonstrated negative aspects of her personality and ability.

(2) Personal Conduct - Promiscuity

Deborah Jacobs testified that in her opinion, Leonie Rivers' personal conduct of a sexual nature was unacceptable as an employee who would be a role model in the Community. Ms. Jacobs was reflecting matters which were of concern to her and were known in the Squamish Community. The evidence of Pauline Spence (Transcript Volume 15 Page 2086 Lines 6-24), Byron Joseph (Supra Page 2070 Lines 6-18), and Bill Williams (Transcript Volume 14 Page 1857 Line 22 to Page 1859 Line 16) tended to confirm Ms. Jacobs' views of Ms. Rivers' personal conduct.

(3) Personality/Attitude

Several witnesses observed that Leonie Rivers' personality and attitude were not well received in the Squamish community. She identified the qualifications she sought in employees:-

- 65 -

"The qualifications that we were seeking were ones in which people had a very strong personal suitability. Given the educational field, one, and working with a membership as large as ours in various communities, we were looking for people who had the ability to interact with community members, who are very respectful of protocol and presence or appearance, given that the work involved working from the very youngest of children to elders within our community..." (Transcript Volume 13 Page 1654).

Similarly Bill Williams stated:

Q. And in the interviewer's determination, is the personal suitability of the individual considered as one of the factors?

A. Very much so. Ninety-five per cent of all the positions in the Band deal directly with the Band membership themselves, and it is very important to be

able to walk into an office and feel that you're not only wanted to be in that office atmosphere, but also to be able to feel comfortable in asking for a lot of different things that Band members ask for, and just be comfortable.  
(Transcript Volume 12 Page 1558 Line 23 to Page 1559 Line 7).

Gloria Wilson testified that she did not find the Complainant's outspoken qualities a positive attribute on some occasions (Transcript Volume 6 Page 663 Lines 8-14), she agreed that the Complainant was outspoken in her criticism of Band Council and its policy (Supra Page 696 Lines 6-11); she agreed that people in the Band were surprised when she hired the Complainant because of the Complainant's disposition and lack of diplomacy (Supra Page 712 Lines 4-10).

I find that while Deborah Jacobs was quite sincere in her beliefs about Ms. Rivers inappropriate personal conduct, controversial leadership techniques, and her inability to fit into the Squamish culture, she treated Ms. Rivers unfairly in regards to the three temporary job competitions. Ms. Jacobs applied a "double-standard" subjecting Ms. Rivers to a standard of moral and personal conduct that she did not apply to any of the other job applicants. Ms. Jacobs was unfair to Ms. Rivers in the three temporary job competitions because although she realized the rumours and gossip adversely affected her opinion of Ms. Rivers for these positions, she took no steps to verify their accuracy. When confronted about her feelings and conduct towards Ms. Rivers,

- 66 -

Ms. Jacobs became defensive and often evasive in her answers before this Tribunal. However I find that Ms. Jacobs was not ultimately directly involved in the final selections for these term positions in that she was not a voting member of the Selection Committee. Furthermore I find that although Ms. Jacobs was unfair to Ms. Rivers in the Selection process, and although her actions were motivated at times by beliefs honestly held and at other times by personal bias and animosity, she did not engage in discriminatory acts as alleged by the Complainant. Her treatment of Ms. Rivers regarding the three term positions regarding her alleged promiscuity caused an irregularity in the hiring process, however that should not necessarily result in a finding of discrimination.

I further find that although Deborah Jacobs was very subjective regarding Ms. Rivers' personality and attitude, she was supported in her view of Ms. Rivers' personality shortcomings by others

within the Band, I find that personal qualities such as attitude and personality are relevant to the job competitions in issue. Even if the subjective judgements were not entirely correct, they nonetheless were not evidence of discrimination as alleged, but rather errors regarding the hiring process the effect of which were described in *Kibale v. Transport Canada* 6 C.H.R.R. D/3033:

"It seems very dangerous to me to establish a rule whereby if there is an irregularity or outright illegality in the administration of the staffing process of the Public Service of Canada, a Human Rights Tribunal must presume that the irregularity or illegality arises from a discriminatory practice, without other evidence linking this irregularity or illegality to a prohibited ground of discrimination. The failure or refusal of government employees to comply with rules established to limit their discretionary power and their room to manoeuvre can be explained by a host of human flaws other than discrimination"  
Page D/3038, Paragraph 24369

On review, by a full panel this view was upheld:

"Otherwise stated, under the Act, the Human Rights Tribunal does not have the power to monitor and supervise the way in which the respondent exercised the hiring authority delegated to it by the Public Service Commission"  
Page D/4060 Paragraph 32055

- 67 -

And further, the Review Tribunal, at page D/4060, paragraph 32057 states :

"In the present case, careful study of the issue leads us to conclude, as did the initial Tribunal, that the testimony and exhibits do not offer proof that any of the parties involved in the hiring process acted on a prohibited ground of discrimination"

(f) Specific Band Personnel Policies and Practices

Band Policy respecting hiring dates back to 1975 when a Band Membership resolution directed that all job openings for jobs within the Squamish Nation had to be posted, with everybody in the community to have the opportunity to apply (Transcript Volume 12 Page 1559 Lines 15-19; Transcript Volume 14 Page 1821 Lines 19-24).

Bill Williams Band Manager indicated:

"And the membership themselves felt that everybody in the whole community had to have the opportunity, if they wished to and felt that they had the skills to apply for the position in the community, then it was theirs to go out and apply for these jobs, and not have the jobs be appointed, and have what I guess a lot of the government positions are being slandered for today is that they're appointing too many people of their friends and family members and not letting the best skilled or most qualified people apply for the jobs" (Transcript Volume 12 Page 1559 Lines 20-25).

Councillor Pauline Spence testified that the 1975 Policy from the Membership was passed to avoid favouritism in departments (Transcript Volume 15 Page 2109 Lines 9-18; Page 2110 Lines 1-10).

Leslie Harry, Band Chairman, testified that the formal policy of Band Council included the statement that "Every attempt will be made to hire new personnel from within the Squamish Band membership" (Exhibit HR-2 Tab 63, Page 4-1 was passed in April 1986; Transcript Volume 10 Page 1156 Line 20 to Page 1157 Line 7).

The majority of persons testifying interpreted the Band Council Policy to mean that persons on the membership list were to be given preference, including persons who had acquired their position on the membership list through marriage.

- 68 -

(a) Leslie Harry testified that there was no distinction between married-in women and other Band members in terms of employment (Transcript Volume 10 Page 1158 Lines 1-12).

(b) Councillor Byron Joseph when questioned by Ms. Sangster clarified that what he meant by people in the nation was people

on the membership list (Transcript Volume 15 Page 2056 Lines 9-15; Page 2061 Lines 11-19).

With respect to sitting on Selection Committee for close family members, Byron Joseph made reference to the draft Conflict of Interest (Supra Page 2042 Line 18 to Page 2043 Line 5). Byron Joseph clarified that he will not involve himself in decisions involving the hiring of immediate family members (Supra Page 2044 Lines 20-25). He explained that if he was in Gilbert Jacob's situation he probably would not vote for his sister at the February 4th Council Meeting (Supra Page 2044 Lines 23-25).

(c) Administrator Bill Williams stated that membership, in reference to the hiring policy, meant persons on the Band List (Transcript Volume 14 Page 1801 Lines 2-9). He further clarified that since June 1985, the Squamish Indian Band had its own Band membership code which might be different from that in the Indian Act (Supra Page 1802 Lines 9-13).

Bill Williams was of the opinion that if there are immediate family members such as brother, sister, mother or other close family members involved in job interview, that relative should not participate in the interview process (Supra Page 1805 Lines 1-2). He also pointed out however that in some cases one can love his seventh cousin more than his first cousin (Supra Page 1805 Lines 12-22).

Bill Williams pointed out that department heads were left on their own to decide if they should be voting or participating members on a panel if a relative was involved, and that he hoped department heads would not participate if an aunt for example was involved in the hiring procedure (Supra page 1848 Lines 13-21).

(d) Councillor Pauline Spence indicated that with respect to the hiring policy, membership meant being on the Band List (Transcript Volume 15 Page 2106 Lines 1-5).

Pauline Spence clarified that she would not be on a Selection Committee in job interviews involving her aunt, sister, nieces and first cousins (Supra Page 2111 Lines 2-14). She is of the opinion that it is all right to be involved in questioning at the interviews but she would not talk about her relatives' qualifications with the Panel (Supra Page 2112 Lines 1-7). She explained that there is no standard that governs who sits on a Selection Committee and it is up to the individual who sits on the

Committee to decide what is appropriate.

Ms. Spence stated that the Jacobs family were involved very much in Band business and are related to a lot of people (Supra Page 2114 Lines 10-17; Page 2116 Lines 15-20).

(e) Gwen Harry was not familiar with the full details of this Band Employee Policy in 1986/1987. She knew about the hiring practices and the interview process (Transcript Volume 17 Page 2312 Line 17 to Page 2313 Line 6). Gwen Harry was not aware of the statement "Every attempt will be made to hire new personnel from within the Squamish Band Membership" (Supra Page 2314 Lines 11-18).

Gwen Harry is of the opinion that if her close family members such as her first cousin, brother, sister and her children were involved in the job interview she would refuse to be on the Selection Committee. She was only involved with job interviews of distant cousins (Supra Page 2300 Line 11 to Page 2301 Line 4). She would not sit on a panel if she was closely related to the applicants (Supra Page 2303 Lines 12-14). She clarified that because Deborah Jacobs was the Director of Education, she was involved with the questioning at interviews because the successful candidate that was hired would be working under her (Supra Page 2301 Lines 9-12; Page 2302 Lines 3-7).

(f) Gilbert Jacob said that the discussions in the Squamish Indian Band Council considered those women who had married-in to be members, however that upon divorce from their Squamish husbands that they would be automatically struck from the Squamish Band Membership's List. There was no formal policy with respect to hiring Squamish born members rather than married-in members.

He said that Chief Norman Joseph's personal opinion of giving priority to Squamish Indians in everything is not shared by anybody (Supra Page 1081 Line 6 to Page 1082 Line 4).

I find that Deborah Jacobs, Chief Norman Joseph and Glen Newman were exceptions to the general view that Band Council Policy which was that: "Every attempt will be made to hire new personnel from within the Squamish Band membership":

(g) Deborah Jacobs stated that prior to Bill C-31, persons who had lost membership through marriage to a non-band member

would still be considered as Band members for purposes of the Policy (Transcript Volume 13 Page 1698 Lines 4-21).

Deborah Jacobs was also of the opinion that it was all right for her to participate in job interviews involving close family relatives. She stated:

- 70 -

"No, it does not because given again, looking at our genealogy and the family trees within the Nation and how our kinship system works, whereas for someone to be for a first cousin or an aunt, it's just practically impossible for me not to be related to absolutely everyone in some way or some degree of closeness" (Supra Page 1786 Lines 4-14).

Deborah Jacobs testified that while she respected the views of Gloria Wilson, Linda George, Leslie Harry and Gilbert Jacob (referred to earlier herein), in her role and responsibility as a director called upon to advise she could not "slice hairs" too much (Supra Page 1787 Lines 1-2). She further stated:

"And I respect their views. There is no written policy to that affect within our Personnel Policy Manual" (Supra Page 1788 Lines 7-9).

I find that Deborah Jacobs' view herein do not assist the Complainant's case of discrimination because her views while different from the majority do not constitute circumstantial evidence of discrimination as alleged. Her statement that persons who lost their status by marrying-out were still treated as Band members, does not necessarily mean that married-in women were not treated as Band members.

Her statement concerning her kinship with many Squamish Band members reflects the statistical reality in that Band as it relates to the Jacobs family. For example Deborah Jacobs testified that she had more than 100 cousins within the Squamish nation (Transcript Volume 13 Page 1633 Lines 11-18).

(h) Chief Norman Joseph was of the opinion that Squamish -born members should be preferred in hiring over Squamish Band members including the married-in women (Transcript Volume 4 Page 465 Lines 12-23). He also suggested changing Band Policy to



conform with his view (Volume 10 Page 1284 Lines 19-22). I find that his view was not shared by anyone except perhaps Glen Neuman.

(i) Glen Newman gave a statement to the Human Rights investigator Mr. Peter Threlfall that his policy while he was the Band Manager was to give preference to Squamish-born members (Transcript Volume 7 Page 787 Lines 7-11). In his testimony, Glen Newman denied that this statement was accurate (Supra Page 791 Lines 3-21). I find that his term as Band Administrator ended in March 1986, and that he did not have no direct involvement with any of the five hiring panels which are at issue in this Complaint.

I further find that although Deborah Jacobs, Chief Norman Joseph, and Glen Newman were exceptions to the general view of

- 71 -

the Band's hiring policy, these exceptions do not constitute circumstantial evidence of discrimination as alleged by the Complainant.

Furthermore the evidence establishes that there were numerous married-in employees of the Squamish Band both at the time of the alleged discrimination and at the time of the hearing of this Complaint. Exhibit HR2, Tab 62, provided a list of employees of the Squamish Indian Band at July 21st, 1987, indicating those who are non-Indians, other natives from other Bands, and persons who have married into the Squamish Band. Of the sixty-seven Band members employed at that date, ten, or 14.9%, acquired their membership by marriage.

Population statistics for the Squamish Band, compiled at Exhibit HR 2, Tab 66, establish that at July 29th, 1987, 13.6% of the estimated adult population were married-in. In this calculation, the adult population is estimated to be 63.9% of the total population. The figure of 63.9% is derived from 1992 statistics, when information was kept respecting the numbers of adults and minors.

In Exhibit HR 2, Tab 66 the figures for 1987 are summarized, establishing that the percentage of Band member employees who are married-in (14.9%) is greater than the percentage of Band members who are married-in (13.6%).

At Exhibit HR 2, Tab 64, a list of Band employees at June 4th, 1993 is set out, including identification of non-Indians, natives from other Bands, and people who have married into the Band. Of 101 Band member employees, 12 are married-in (11.9%).

At Tab 66, population figures for October 19th, 1992, are set out. A comparison of the born-in employees as a percentage of Band member employees and married-in members as a percentage of the adult population of the Band establishes that there is a greater percentage of married-in women as employees (11.9%) than the percentage of married-in women in the Band (9.5%).

It is now necessary to analyse each of the five job competitions to determine whether the Complainant has established a prima facie case for any of the positions, and to review each position in relation to the criteria set out in the Basi, Israeli and Folch cases cited earlier.

#### EDUCATION COORDINATOR: PRIMA FACIE CASE

Is There a Prima Facie Case With Respect To The Education Coordinator Position?

The first element of proving a prima facie case is

- 72 -

establishing that the Complainant was qualified for the Education Coordinator Position.

I find that the Complainant Ms. Rivers was qualified for the Education Coordinator position. She possessed the requirements as specified in the job description. Ms. Rivers had been performing in the "acting" role for this position and had been hired by Bill Williams Band Manager, as Home School Coordinator, although Bill Williams stated that the "acting" position was not identical to the permanent position. After the interviews, Ms. Rivers was chosen as the best candidate by Interview Panelist Byron Joseph. Bill Williams and Gwen Harry, the other interview panel members, agreed that Ms. Rivers had the minimum qualifications for Education Coordinator Position. Both of them also acknowledged that Ms. Rivers had some impressive qualifications for the position although they did not select her for the job.

I find that the first element of a prima facie case has been established by the Complainant with respect to the Education Coordinator Position.

### The Second Element of a Prima Facie Case

The second element of proving a prima facie case is establishing that the Complainant was not hired by the Respondent, which has been admitted by the Respondent and has been clearly proven.

### The Third Element of a Prima Facie Case

The third element of a prima facie case requires proof that someone obtained the position who was no better qualified than the Complainant but who lacked the distinguishing features that are the gravamen of the complaint.

### The Third Element In Relation To The Allegation of Discrimination On The Basis Of National or Ethnic Origin and Family Status

The third element deals with the qualification of the successful candidate and requires a finding that that successful candidate had no better qualifications than the Complainant.

Having already found Ms. Rivers to be qualified for the position, a comparison of Ms. Rivers' qualifications to the successful candidate, Deborah Jacobs' qualifications leads me to the conclusion that Deborah Jacobs was not more qualified to be Education Coordinator. Deborah Jacobs did not have a teaching certificate, although she had related educational, financial and fundraising experience. The fluid and broad nature of the Education Coordinator job description and the emphasis on

- 73 -

the Coordinator's "personal suitability" to Band members make it difficult to determine what an "ideal" set of qualifications a candidate should possess for this position. However it was not clear to me on the evidence that Deborah Jacobs was more qualified than Ms. Rivers for the Education Coordinator position.

With respect to the alleged grounds of discrimination there are differences with respect to the distinguishing features that are the gravamen of the Complaint:-

(a) Allegation as to discrimination based on National or Ethnic Origin including "Married-In" Status

Deborah Jacobs the successful candidate is a Squamish-born Band member while Ms. Rivers is a married-in Gitksan.

(b) Allegation as to discrimination based on family status specifically "nepotism" and the Jacobs family, in particular Gilbert Jacob

Deborah Jacobs is Band Councillor Gilbert Jacob's niece and is a member of the Jacobs family which is one of the alleged grounds of discrimination whereas Ms. Rivers is not related to the Jacobs' family.

I find that on this basis then that the third element of a Prima Facie Case with respect to the Education Coordinator has been established.

Has The Respondent Provided An Explanation For Not Hiring The Complainant That Is Equally Consistent With The Conclusion That Discrimination On The Basis Of Family Status Or Ethnic Origin Is Not The Correct Explanation Of What Occured?

I find that the Respondent has established on a balance of probabilities that the decision not to hire the Complainant was not based on or related to any of the alleged grounds of discrimination.

Bill Williams testified that the changing nature of the interview was because the Squamish Band did not know what it wanted. He was impressed by Deborah Jacobs' accounting, fundraising program development and government relations experience. He felt that Deborah Jacobs was more personally suited for the job, being concerned with Ms. Rivers' abruptness of language and mannerisms. He discounted Ms. Rivers previous experience while "acting" in the position by indicating that the

- 74 -

Education Coordinator job as now envisioned was different than the "acting" position duties, although clearly felt that Ms. Rivers' classroom teaching experience and NITEP Certificate were important qualifications.

Byron Joseph who had chosen Ms. Rivers as his first choice after the interviews, however still felt that her "outspokenness" and "rabble rousing" nature were negative qualities for the jobs and eventually went along with the consensus view to choose Deborah Jacobs for the position.

Gwen Harry testified that she found that Richard Band to be very well-spoken and very calm. He had an M.A. Degree, had completed one year of a Ph.D. Anthropology program and had worked with students at the University of California (Transcript Volume 15 Page 2140 - Page 2141).

Gwen Harry testified that Ms. Rivers had an impressive set of qualifications with respect to the position but she was not as calm and confident as the other two (Supra Page 2141). She found Deborah Jacobs was confident in herself and her manner of answering questions in the interview superior to Ms. Rivers' "aggressive" style of responding. The responses to interview questions seemed very important to Gwen Harry.

Is The Respondent's Explanation A Pretext For Discrimination?  
Evaluation Of The Respondent's Explanation In Relation To The Allegation of Discrimination Based On " Ethnic/National Origin

Byron Joseph did not relate being "married-in" to disrespectfulness or outspokenness. Byron Joseph rejected Chief Norman Joseph's opinion in giving preference to Squamish-born over the Squamish members in hiring. Gwen Harry took great exception to Chief Norman Joseph's remarks (Transcript Volume 17 Page 2333 Lines 9-21).

I found that on a review of the evidence before the Tribunal that the "married-in" status of the Complainant was also not a factor in the decision to reject the Complainant's application and that the Respondent did not discriminate against the Complainant on the basis of her national or ethnic origin.

Ms. Rivers appear to have had some problems with the interview. Ms. Rivers testified that the interview was not what she expected (Transcript Volume 3 Page 253 Lines 2-5). She did not expect questions related to how she would deal with situations if they came up in the Band (Supra Page 253 Lines 9-12), including how she related to people that were hostile and in disagreement with the way changes were being made in the education structure (Supra Page 254 Lines 10-16).

The interviewers, while not professional trained interviewers were nonetheless in my opinion generally qualified to deal with the Education Coordinator selection. Bill Williams had

- 75 -

some experience in interviewing, and Gwen Harry seemed well qualified to serve on the Selection Committee both on the basis of her personal experience in family and educational matters, and in terms of her maturity and temperament. The interviews conducted were short (approximately 15

minutes each), resumes were only given to the interviewers just before the interviews, but the questions and methodology seemed reasonable, a view confirmed by the expert witness David Hughes.

I do not find that the Respondent's explanation is a pretext for discrimination based on ethnic or national origin.

#### Evaluation Of The Respondent's Explanation In Relation To The Allegation Of Discrimination Based on Family Status ("Nepotism")

Deborah Jacobs is the niece of Band Councillor Gilbert Jacobs, and he is her maternal uncle. Gloria Wilson testified that Gilbert Jacobs was a powerful counsellor who had made a remark at Band Council meeting to the effect that Deborah Jacobs would make a good Education Coordinator. Gilbert Jacobs does not remember whether he made such a remark, but he does not deny the possibility that he did make such a statement.

Ms. Rivers was also related to Band Councillor Frank Rivers through her marriage to Frank's brother Glen Rivers.

Interview Panelist Gwen Harry was distantly related to Deborah Jacobs and Richard Band through her great-great grandfather.

Interview Panelist Byron Joseph was a first cousin to Ms. Rivers' husband and a distant relation of Richard Band.

The nepotism alleged by the Complainant primarily relates to Gilbert Jacob. The most specific Gilbert Jacob connection to the Education Coordinator position is Gloria Wilson's testimony with respect to Gilbert Jacob remarks made at a Band Council meeting concerning Deborah Jacobs. No evidence is available to establish when the remark was made except that if such a remark was made it was before the actual job competition was posted. No evidence exists that any of the interviewing panel heard the remark, and in fact each interviewer testified that no one lobbied them with respect to the position.

The presence of the two of Deborah Jacobs' cousins in the interview has been explained by Bill Williams. They were non-voting observers who had been warned by Bill Williams to be impartial even when questioning relatives who had applied.

I do not find that the Respondent's explanation is a pretext for discrimination based on family status.

## CAREER COUNSELLOR : PRIMA FACIE CASE

Is There A Prima Facie Case With Respect To The Career Counsellor Position?

The first element of proving a prima facie case is establishing that the Complainant was qualified for the Career Counsellor Position.

I find that the Complainant Ms. Rivers was qualified for the Career Counsellor position even though she was not short-listed for this Career Counsellor position.

She possessed the requirements as specified in the job description. She worked with individuals in Adult Basic Education, and gave counselling assistance to sensitive individuals to rebuild their self-esteem and self confidence (Transcript Volume 2 Page 130 Lines 7-18). She had several years of counselling experience at the King Edward Campus and the Canada Employment and Immigration (Supra Page 130 Line 19 to Page 131 Line 14).

Selection Committee member for this job interview Byron Joseph said that he would have given Ms. Rivers an interview had he known that she had applied for the Career Counsellor position and he acknowledged that the Career Counsellor job was a lesser position than what Ms. Rivers was qualified for (Transcript Volume 15 Page 2015 Line 21 to Page 2017 Line 13).

The other Panel member Gwen Harry also agreed that Ms. Rivers had the minimum qualifications for the Career Counsellor position (Transcript Volume 17 Page 2297 Lines 10-14).

I find that the first element of a prima facie case has been established by the Complainant with respect to the Career Counsellor position.

## The Second Element Of A Prima Facie Case

The second element of proving a prima facie case is establishing that the Complainant was not hired by the Respondent, which has been admitted by the Respondent and has been clearly proven.

### The Third Element Of A Prima Facie Case

The third element of a prima facie case requires proof that someone obtained the position who was no better qualified than the Complainant but who lacked the distinguishing features that are the gravamen of the Complaint.

- 77 -

### The Third Element In Relation To The Allegation Of Discrimination On The Basis On National Or Ethnic Origin And Family Status

The third element deals with the qualifications of the successful candidate and requires a finding that successful candidate had no better qualifications than the Complainant. A comparison of Ms. Rivers' qualifications to that of the successful candidate Richard Band leads me to the conclusion that Richard Band was more qualified than Ms. Rivers.

Richard Band had a Masters Degree and had completed one year of a Ph.D. Anthropology program from the University of California. He had extensive administrative, teaching and counselling experiences for native and non-native students, groups, programs and organizations all over the United States (Exhibit HR-2, Tab 14).

With respect to the alleged grounds of discrimination are there differences with respect to the distinguishing features that are the gravamen of the Complaint between the successful candidate and the Complainant?

(a) Allegation as to discrimination based on National or Ethnic Origin including "Married-In" Status

Ms. Rivers is a married-in Gitksan.

Richard Band is the adopted son of Teddy Band who is Squamish-born, but his natural mother Olive Band was not Squamish-born and is a married-in person (Transcript Volume 9 Page 1049 Lines 1-19).

I find that there is not any significant difference between Richard Band's distinguishing features from those of the Complainant Ms. Rivers.



(b) Allegation as to discrimination based on family status specifically "nepotism" and the Jacobs Family, Gilbert Jacob in particular

Richard Band is the adopted son of Teddy Band, who is the first cousin of Band Councillor Gilbert Jacob. When Ms. Ross questioned Gilbert Jacob whether he knew Richard Band when he was growing up, he stated:

" Just vaguely. He never really hung around the reserve. He went to off-reserve schools. I knew of him to see him but basically that was about it" (Transcript Volume 9 Page 1048 Lines 19 to 23).

Gilbert Jacob admitted that he knew Richard Band was his cousin's son so he figured Richard Band must be a relation

- 78 -

somehow or other (Supra Page 1049 Lines 1-3).

Ms. Rivers is not related to Gilbert Jacob.

I find that there is no discrimination based on family status, specifically "nepotism" and the Jacobs Family, Gilbert Jacob in particular, because the relationship and familiarity between Richard Band and Gilbert Jacob are so tenuous and distant.

I find that on this basis the third element of a prima facie case with respect to the Career Counsellor has not been established.

Notwithstanding my conclusion that a prima facie case has not been made out on any of the alleged grounds of discrimination, I shall proceed with the analysis of the other issues in the test in case an Appellate Court disagrees with my finding that a prima facie case has not been made out.

Has The Respondent Provided An Explanation For Not Hiring The Complainant That Is Equally Consistent With The Conclusion That Discrimination On The Basis Of Family Status, Or National or Ethnic Origin Is Not The Correct Explanation Of What Occurred?

I find the Respondent has established that the decision not to hire the Complainant was not based on or related to any of the alleged grounds of discrimination.

Deborah Jacobs when questioned by Ms. Ross in July, 1993 explained that she did not short-list Ms. Rivers for the Career Counsellor position because the short-listed applicants had extensive counselling experience and therefore they were better qualified.

Ms. Ross pointed out that Ms. Jacobs' Statement to the Human Rights Investigator Threlfall dated March 1st, 1988 stated that the Screening-out involved Ms. Rivers' personal conduct:-

"She (Ms. Rivers) was screened out because of--for the Career Counsellor position because she lacked inter-personal skills, because her work as a teacher at the Alternate School was less than satisfactory and because there were parental complaints lodged against her in terms of her personal conduct with students"  
(Transcript Volume 13 Page 1709 Lines 15-22).

Deborah Jacobs testified that she stood by her Statement to Mr. Paul Threlfall dated March 1st, 1988 and that she was concerned about Ms. Rivers' sexual conduct in front of the students and her sexually promiscuous behaviour (Supra Page 1706 Line 9 to Page 1707 Line 23). "Personal suitability" or "morality" appear

- 79 -

to be important factors for Deborah Jacobs in her hiring choices.  
(Transcript Volume 17 Page 1722 Line 20 to Page 1723 Line 17).

Deborah Jacobs said that Ms. Rivers had an extramarital affair with the aboriginal constable which was well-known in the community (Supra Page 1719 Line 24 to Page 1720 Line 7).

Is The Respondent's Explanation A Pretext For Discrimination?  
Evaluation Of The Respondent's Explanation in Relation To The Allegation Of Discrimination Based On Ethnic or National Origin or Family Status

Ms. Rivers said that she was very sexually conservative, discreet and professional with respect to her work (Transcript Volume 17 Page 2447 Lines 9-24).

Ms. Rivers explained that:

"The only relationship I had with any Native Constable is I helped work on a project with the R.C.M.P., the Native Constable that worked with the Band, doing a project orientation package for the new constables coming into the division or the area to appreciate and understand the values and traditions of the Squamish band members" (Supra Page 2376 Lines 14-19).

Ms. Rivers felt that she had strong interpersonal skills. She was very sensitive towards other people's interest and needs (Supra Page 2451 Lines 22-25).

Although Ms. Rivers could defend herself against all the accusations that Deborah Jacobs had for not shortlisting her for the Career Counsellor position, Deborah Jacobs did appear to honestly believe that Ms. Rivers was sexually promiscuous and was not suitable to be a role model for the Squamish children (Transcript Volume 13 Page 1663 Line 23 to Page 1665 Line 15; Page 1718 Line 14 to Page 1719 Line 10).

Deborah Jacobs did not have a good impression of Ms. Rivers when she worked with the Professional Native Women's Association. She was advised by board members there that they had a difficult time doing business with Ms. Rivers, who was then the acting Executive Director of the Vancouver Indian Centre at that time because Ms. Rivers was very difficult to deal with, and there were concerns over her performance from board members (Supra Page 1662 Line 23 to Page 1663 Line 22).

As discussed previously in this Decision, irregularities in the hiring process do not necessarily constitute a pretext for discrimination, but are rather evidence of a defective process of

- 80 -

hiring. I do not find that the Respondent's explanation is a pretext for discrimination based on ethnic or national origin.

The successful candidate Richard Band is the adopted son of Teddy Band, first cousin of Band Councillor Gilbert Jacob. Gilbert Jacob acknowledged that Richard Band is related to him somehow but there is no close relationship or interaction. Ms. Rivers' Husband Glen Rivers was a distant cousin of Deborah Jacobs (Supra Page 1659 Lines 12-17). Richard Band was not closely related to Deborah Jacobs. I do not find that the Respondent's explanation is a pretext for

discrimination based on family status.

## RECREATION COORDINATOR : PRIMA FACIE CASE

Is There A Prima Facie Case With Respect To The Recreation Coordinator Position ?

The first element of proving a prima facie case is establishing that the Complainant was qualified for the Recreation Coordinator position.

I find that the Complainant Ms. Rivers was qualified for the Recreation Coordinator position. She possessed the requirements as specified in the job description. Ms. Rivers had a degree in Education with Physical Education as her minor. Out of her six and a half years work in education, four years were in the physical education field, two years in the elementary level and two years in adult education. Besides teaching, she also had experience in setting up schedules, volunteers and budgeting in the recreation field (Transcript Volume Page 1230 Line 18 to Page 1231 Line 4).

I find that the first element of a prima facie case has been established by the Complainant with respect to the Recreation Coordinator position.

### The Second Element Of A Prima Facie Case

The second element of proving a prima facie case is establishing that the Complainant was not hired by the Respondent, which has been admitted by the Respondent and has been clearly proven.

### The Third Element Of A Prima Facie Case

The third element of a prima facie case requires proof that someone obtained the position who was no better qualified than the Complainant but who lacked the distinguishing features that are the gravamen of the Complaint.

The Third Element In Relation To The Allegation Of Discrimination On The Basis Of National or Ethnic Origin and Family Status

The third element deals with the qualifications of the successful candidate and requires a finding that the successful candidate had no better qualifications than the Complainant. Having already found Ms. Rivers to be qualified for the position, a comparison of Ms. Rivers' qualifications to that of the successful candidate, Krisandra Jacobs, leads me to the conclusion that Krisandra Jacobs was not more qualified to be Recreation Coordinator.

Ms. Rivers had a teaching certificate. She had both the teaching and related practical experiences in the physical education field. Krisandra Jacobs did not have any teaching or practical experience in recreation. She had just graduated from a two year Leadership Recreation Program at Langara College.

It was not clear to me on the evidence that Krisandra Jacobs was more qualified than Ms. Rivers for the Recreation Coordinator position.

With respect to the alleged grounds of discrimination are there differences with respect to the distinguishing features that are the gravamen of the Complainant?

(a) Allegation as to discrimination based on National or Ethnic Origin including "Married-In" Status

The successful candidate, Krisandra Jacobs, was a Squamish-born Band member while Ms. Rivers is a married-in Gitksan.

(b) Allegation as to discrimination based on family status specifically "nepotism" and the Jacobs Family, Gilbert Jacob in particular

Krisandra Jacobs was wife of Band Councillor Gilbert Jacob's nephew and was a member of the Jacobs family. Ms. Rivers was not related to the Jacobs family.

I find on this basis that the third element of a prima facie case with respect to the Recreation Coordinator has been established.

Has The Respondent Provided An Explanation For Not Hiring The Complainant That Is Equally Consistent With The Conclusion That Discrimination On The Basis Of Family Status, Or National Or Ethnic Origin Is Not The Correct Explanation Of What Occured ?

I find that the Respondent has established on a balance of probabilities that the decision not to hire the Complainant was not based on or related to any of the alleged grounds of discrimination.

- 82 -

Bill Williams was impressed by the fact that Krisandra Jacobs graduated from the same Leadership Recreation Program from the Langara College as he did (Transcript Volume 12 Page 1582 Line 25 to Page 1583 Line 3). In his opinion Krisandra Jacobs had the best proposed recreation program for the Squamish Nation and she was willing to work within the salary range that was identified while Ms. Rivers wanted more money (Supra Page 1582 Lines 12-17).

The other panel member Byron Joseph was not really aware of what a Physical Education Minor in an Education Degree involved. He was impressed by Krisandra Jacobs' achievement of a two year Leadership Recreation diploma as well as her answers to the ten questions at the job interview (Transcript Volume 15 Page 2031 Line 9 to Page 2032 Line 14).

Byron Joseph was concerned that Ms. Rivers' "outspokenness", "rabble rousing" nature and disrespectfulness towards people were negative qualities for the Recreation Coordinator position (Supra Page 2032 Lines 15-22).

Panel member Pauline Spence was of the opinion that Ms. Rivers was not qualified to take on the recreation system for the Squamish Band. She did not think that a Minor in Physical Education at University was equivalent to a two year Leadership Recreation Program which was solely recreation (Supra Page 2092 Lines 6-10). She did not think that Ms. Rivers' Education background was relevant for the recreation field (Supra Page 2092 Lines 11-19).

Pauline Spence had a negative impression of Ms. Rivers' personal life at the time she applied for the Recreation Coordinator position. She stated that Ms. Rivers while parttime Education Director was trying to get a raise from her boss Glen Newman "by any means", as someone who was in and out of the office all the time, and as one who would do anything to get ahead (Supra Page 2085 Line 9 to Page 2086 Line 19).

Is The Respondent's Explanation A Pretext For Discrimination?  
Evaluation of the Respondent's Explanation in Relation To The Allegation of  
Discrimination Based on Ethnic or National Origin or Family Status

Bill Williams selected Krisandra Jacobs because she was a graduate from the Leadership Recreation Program from Langara College just like himself. He had great faith in this program.

Byron Joseph neglected Ms. Rivers' Physical Education Minor qualifications. He basically did not know what a Physical Education Minor involved. He did not relate being married-in to being disrespectful or outspoken. Byron Joseph also rejected

- 83 -

Chief Norman Joseph's opinion of giving preference to Squamish born members over the Squamish Band members including those who were married-in.

Pauline Spence said that in her opinion Krisandra Jacobs had taken and passed a course in the recreation field, and Ms. Rivers had no qualifications as far as the recreation field was concerned. She said that the Recreation Coordinator position is an important issue within the Squamish Band because they had a previous Recreation Director who was not doing the job properly (Transcript Volume 15 Page 2084 Lines 8-24).

Pauline Spence admitted that she did not have any great qualifications to hire a Recreation Director but being a Councillor she was put on the Selection Committee and she did her best she could (Supra Page 2093 Lines 8-14).

Pauline Spence did not acknowledge Ms. Rivers' experience at the Alternate School where her children had been attending as recreation experience (Supra Page 2091 Lines 5-15).

Pauline Spence's father, Chief Simon Baker has been on the Board of the Indian Centre for years and Pauline Spence had the opinion that the Indian Centre always had problems amongst the staff members (Supra Page 2103 Lines 1-22).

Pauline Spence explained that her negative impression regarding Ms. Rivers' personal life had no affect on her decision for the Recreation Coordinator position, although I find this to be a rather dubious statement given Ms. Spence's strong personal animosity towards Ms. Rivers. She basically did not think that Ms. Rivers was qualified to be the Recreation Coordinator (Supra Page 2102 Lines 2-14).

Pauline Spence agreed with Bill Williams' suggestion that the grant job in Recreation which was referred in the February 4th, 1987 Council Meeting if funded, should be offered to Ms. Rivers. This

position also required a commensurate degree of skill and qualifications and responsibilities but this grant position would be under the Recreation Coordinator, and Ms. Rivers would not have complete control over programs and funds (Supra Page 2100 Line 1 to Page 2101 Line 16). This concession to Ms. Rivers is consistent with the view Ms. Spence and Mr. Williams seemed to have of Ms. Rivers, namely, that she was best working under someone else's supervision not directly relating to the Squamish Band membership.

I do not find that the Respondent's explanation is a pretext for discrimination based on ethnic or national origin.

Although the successful candidate Krisandra Jacobs was the wife of Gibert Jacobs' nephew, Ms. Rivers was also related to

- 84 -

two interview panel members in the Recreation Coordinator Competition. Both Pauline Spence and Byron Joseph were first cousins to Ms. Rivers' husband Glen Rivers. I do not find that the Respondent's explanation is a pretext for discrimination based on family status.

There are sufficient personal and professional reasons enunciated by the selectors to convince me that they were not motivated in their decisions by discrimination based on ethnic or national origin or family status.

#### CURRICULUM DEVELOPER: PRIMA FACIE CASE

Is There A Prima Facie Case With Respect To The Curriculum Developer Position ?

The first element of proving a prima facie case is establishing that the Complainant was qualified for the Curriculum Developer position.

I find that the Complainant Ms. Rivers was qualified for the Curriculum Developer position. She possessed the requirements as specified in the job description.

Ms. Rivers had been a child care worker and had Curriculum Development experience in dealing with the Language Arts pilot project under Steve Kosey in the Squamish Band's Social Development Office



and was a teacher (Transcript Volume 2 Page 112 Line 20 to Page 113 Line 5).

I find that the first element of a prima facie case has been established by the Complainant with respect to the Curriculum Developer position.

#### The Second Element Of A Prima Facie Case

The second element of proving a prima facie case is establishing that the Complainant was not hired by the Respondent, which has been admitted by the Respondent and has been clearly proven.

#### The Third Element Of A Prima Facie Case

The third element of a prima facie case requires that someone obtained the position who was no better qualified than the Complainant but who lacked the distinguishing features that are the gravamen of the Complaint.

#### The Third Element In Relation To The Allegation Of Discrimination On The Basis On National Or Ethnic Origin And Family Status

The third element deals with the qualifications of the

- 85 -

successful candidate and requires a finding that successful candidate had no better qualifications than the Complainant. A comparison of Ms. Rivers' qualifications to that of the successful candidate Lois Guss leads me to the conclusion that Lois Guss was more qualified to be the Curriculum Developer.

Lois Guss was a Native Curriculum Developer for School District 44 from Grades K to 4. She was a contributing author of the book Native People and Explorers of Canada which was a Social Studies Textbook in British Columbia (Exhibit HR-2 Tab 18). Based on the evidence Lois Guss knew the Squamish culture, languages and had a good rapport with the Squamish elders (Transcript Volume 13 Page 1676 Lines 6-16). Ms. Rivers rated her knowledge of Squamish culture and language as 5.5 to 6.0 on a scale of ten (Transcript Volume 17 Page 2453 Lines 7-22).

With respect to alleged grounds of discrimination are there differences with respect to the distinguishing features that are the

gravamen of the Complaint between the successful candidate and the Complainant?

(a) Allegation as to discrimination based on Ethnic or National Origin including "Married-In" Status

Ms. Rivers is a married-in Gitksan.

Lois Guss was the daughter of a Squamish born hereditary Chief (Transcript Volume 9 Page 1042 Lines 6-21).

I find therefore that there is a difference between Lois Guss' distinguishing feature from that of the Complainant Ms. Rivers.

(b) Allegation as to discrimination based on family status specifically "nepotism" and the Jacobs family, Gilbert Jacobs in particular

Lois Guss is Band Councillor Gilbert Jacob's sister and is an immediate family member of the Jacobs family (Supra Page 1042 Lines 6-21).

I find therefore that there is difference between Lois Guss' distinguishing feature from that of the Complainant Ms. Rivers.

However I find that on this basis that the third element of a prima facie case with respect to the Curriculum Developer position has not been established since the successful candidate was more qualified.

Notwithstanding my conclusion that a prima facie case

- 86 -

has not been made out on any of the alleged grounds of discrimination, I shall proceed with the analysis of the other issues in case an Appellate Court disagrees with my finding that a prima facie case has not been made out.

Has the Respondent Provided An Explanation Not Hiring The Complainant That Is Equally Consistent With The Conclusion That Discrimination On The Basis Of Married In, Family Status or Ethnic Origin Is Not The Correct Explanation of What Occured ?

I find that the Respondent has established that the decision not to hire the Complainant was not based on or related to any of the alleged grounds of discrimination.

Deborah Jacobs pointed out that the expectations for this job position was very high because a general membership resolution declared the Squamish language to be a priority within the Nation (Transcript Volume 13 Page 1655 Lines 14-19).

Deborah Jacobs was pleased with the Lois Guss' interview and her achievements in the curriculum development field. She described Lois Guss as "very enthusiastic" and "very cooperative" (Supra Page 1676 Lines 6-16).

Deborah Jacobs explained that she was a non-voting member in the job interview and she let the Selection Committee decide whether to interview Lois Guss without waiting for Ms. Rivers, and to hire Lois Guss without interviewing Ms. Rivers (Supra Page 1674 Line 21 to Page 1675 Line 2; Page 1677 Lines 1-13).

Panel member Byron Joseph was impressed by Lois Guss' knowledge of the Squamish culture, legends and stories which were important considerations for the Curriculum Developer position (Transcript Volume 15 Page 2074 Line 12 to Page 2075 Line 6). Byron Joseph could not comment on Ms. Rivers' knowledge in this aspect (Supra Page 2079 Line 15 to Page 2080 Line 8).

Byron Joseph was of the opinion that if the job was important to Ms. Rivers she would be there for her interview. He was one of the panel members who decided not to interview Ms. Rivers due to her lateness and to hire Lois Guss without interviewing Ms. Rivers (Supra Page 1966 Line 22 to Page 1997 Line 4; Page 2027 Lines 2-9).

Panel member Gwen Harry was impressed by Lois Guss' Curriculum Development experience with the School Board in North Vancouver (Supra Page 2148 Lines 1-9).

Gwen Harry explained that she made a decision to hire Lois Guss without interviewing Ms. Rivers because she was concerned that Ms. Rivers was at another job interview and that

she was not interested in the Curriculum Developer position (Supra Page 2146 Line 22 to Page 2147 Line 18).

Is The Respondent's Explanation A Pretext For Discrimination?  
Evaluation Of The Respondent's Explanation in Relation to The Allegation Of  
Discrimination Based On Ethnic or National Origin or Family Status

Ms. Rivers was not clear in her testimony with respect to the time she called about her lateness and the reasons for her lateness.

When questioned by Ms. Ross in November 1992 Ms. Rivers testified that she called Eva Jacobs on January 12th, 1987 around twelve thirty, twenty after twelve (Transcript Volume 2 Page 118 Lines 12-19). Ms. Rivers when questioned by Mr. Rich in July 1993 testified that the time she called Eva Jacobs was one thirty (Transcript Volume 17 Page 2425 Lines 2-10). In December 1992 Ms. Rivers testified that when she left Terra Consulting after the meeting on January 12th, 1987 she went down into her car, looked at her watch and realized that she would not make it to the Band office for the Curriculum Developer position. But when questioned by Mr. Rich in July 1993, she testified that after she left the Terra Consulting offices, as she was in her car and leaving the parking lot, she heard on her car radio that there was a stall on the First Narrows Bridge (Supra Page 2425 Lines 22 to Page 2427 Line 4).

At the time when Byron Joseph and Gwen Harry made their decisions to hire Lois Guss without interviewing Ms. Rivers, both Byron Joseph and Gwen Harry firmly believed that if Ms. Rivers was interested and serious about the Curriculum Developer position she would not be late for her designated interview time due to other appointment. Both Byron Joseph and Gwen Harry were ignorant of the fact that Ms. Rivers had already notified Eva Jacobs of the Education Department several weeks in advance of her inavailability for the Curriculum Developer job interview on January 12th, 1987.

Lois Guss was Deborah Jacobs paternal Aunt but Deborah Jacobs was a non-voting member of the Curriculum Developer Selection Committee.

Essentially Ms. Rivers failed to make the Curriculum Developer interview and did not contact the interview panel until approximately 1:40 p.m., forty minutes after her scheduled interview time. During this time, Lois Guss was interviewed and I find that she was a well-qualified candidate for the position. David Hughes, the expert witness testified that not interviewing the Complainant under these circumstances was an acceptable and reasonable option. He stated:-

"So it's not unreasonable to say that if they couldn't make the interview on time when they had to be at their very best and they were trying in their best way to impress you to get the job, then that's an indication that things could only get worse from there"  
(Transcript Volume 16 Page 2204 Lines 15-19).

Even if the Tribunal were to find that refusing the Complainant an interview was not reasonable, there is no evidence that this refusal was motivated by discrimination. On the evidence, the committee simply felt that they had made the right choice. The case of *Syed v. Canada* [Department of National Revenue (Customs and Excise)] [1990] 4 C.H.R.D. No. T.D. 4/90 deals with a situation where there was unfairness in an employment situation. At page 30 of the decision, the Tribunal holds:

"It is true that Adamson was obviously in a conflict position. .... These actions, if they in fact can be attributed to Adamson, may have been unfair or improper on his part. But that alone does not constitute a contravention of Section 7 of the (Canadian Human Rights Act).

As stated by Chairman John D. McCamus sitting as an Ontario Board of Inquiry in *Ingram v. Natural Footwear* (1980) 1 C.H.R.R. D/59 at D/61:

"Such a dismissal, even though it be harsh and even though it be one which could not be upheld under the terms of a typical collective agreement, would be immune from attack under the Human Rights Code, provided that the reasons for the dismissal were completely unrelated to the grounds of discrimination prohibited by the Code. To accede to council for the commission's suggestion, would convert the Ontario Human Rights Code from an anti-discrimination statute to one which generally prohibits harsh or unwarranted dismissal of employees. This is a construction, in my view, which the Ontario Human Rights Code cannot reasonably be expected to bear."

According I find that the Respondent's Explanation was not a pretext for discrimination.

## YOUTH DEVELOPMENT COORDINATOR: PRIMA FACIE CASE

Is There a Prima Facie Case With Respect To The Youth Development Coordinator Position?

The first element of proving a prima facie case is establishing that the Complainant was qualified for the Youth Development position.

I find that the Complainant Ms. Rivers was qualified for the Youth Development Coordinator. She possessed the requirements as specified in the job description. She had experience working with native youth and in counselling (Transcript Volume 2 Page 130 Line 7 to Page 131 Line 14).

### The Second Element Of A Prima Facie Case

The second element of proving a prima facie case is establishing that the Complainant was not hired by the Respondent, which has been admitted by the Respondent and has been clearly proven.

### The Third Element Of A Prima Facie Case

The third element of a prima facie case requires proof that someone obtained the position who was no better qualified than the Complainant but who lacked distinguishing features that are the gravamen of the Complaint.

### The Third Element In Relation To The Allegation Of Discrimination On The Basis On National Or Ethnic Origin And Family Status

The third element deals with the qualifications of the successful candidate and requires a finding that the successful candidate had no better qualifications than the Complainant. A comparison of Ms. Rivers' qualifications to that of the successful candidate, Carole Newman, leads me to the conclusion that she was more qualified to be Youth Development Coordinator. Carole Newman had extensive working experience with youth at the Native Education Centre. She had an extensive volunteer and counselling work experience. She had counselling experience in the areas of family, sexual abuse and training experience in the field of alcoholism.

With respect to alleged grounds of discrimination are there differences with respect to the distinguishing features that are the gravamen of the Complaint between the successful candidate and the Complainant?

(a) Allegation as to discrimination based on Ethnic or National Origin including "Married-in" Status

- 90 -

Ms. Rivers is a married-in Gitksan.

Carole Newman is Squamish-born.

I find that there is a difference between Carole Newman's distinguishing features from that of the Complainant, Ms. Rivers.

(b) Allegation as to discrimination based on family status specifically "nepotism" and the Jacobs family, Gilbert Jacob in particular

Carole Newman is Band Councillor Gilbert Jacob's first cousin.

I find that there is difference between Carole Newman's distinguishing features from that of the Complainant Ms. Rivers.

I find that on this basis that the third element of a prima facie case with respect to the Youth Development Coordinator has not been established since the successful candidate was more qualified.

Notwithstanding my conclusion that a prima facie case not been made out on any of the alleged grounds of discrimination. I shall proceed with the analysis of the other issues in case an Appellate Court disagrees with my finding that a prima facie case has not been made out.

Has The Respondent Provided An Explanation For Not Hiring The Complainant That Is Equally Consistent With The Conclusion That Discrimination On The Basis of Family Status, Or National Or Ethnic Origin Is Not The Correct Explanation Of What Occured?

I find that the Respondent has established that the decision not to hire the Complainant was not based on or related to any of the alleged grounds of discrimination.

Deborah Jacobs testified that Carole Newman was selected on the basis of her personal suitability, her skills and work experience. She recalled that she and the Selection Committee members Byron Joseph and Gwen Harry were really excited about Carole Newman's paper which was prepared for the purpose of the Youth Development Coordinator's interview. Deborah Jacobs described Carole Newman's paper or proposal as a "peer counselling model" specific to aboriginal youth (Transcript Volume 13 Page 1685 Lines 6-14). Besides Carole Newman, Deborah Jacobs was also impressed by the volunteer work of another applicant named Orene Johnson.

Deborah Jacobs testified that Ms. Rivers was barely at the Youth Development Coordinator interview in time and she

- 91 -

did not approve of her appearance - very soaking wet hair and in jeans. She described Ms. Rivers attitude as flippant and not cooperative with the Selection Committee (Supra Page 1687 Lines 1-9). Deborah Jacobs said that the Selection Committee was also concerned about Ms. Rivers' appearance at the Youth Development Coordinator job interview (Supra page 1744 Lines 13-25).

Panel member Gwen Harry said that Ms. Rivers was very aggressive in her opinion but otherwise she did not really remember what happened at the Youth Development Coordinator interview (Transcript Volume 15 Page 2149 Line 18 to Page 2150 Line 15). When questioned by Ms. Shivji whether Ms. Rivers was aggressive to her in the interview, Gwen Harry said that Ms. Rivers was not aggressive to her at the interview, and she further explained that she did not really use the word "aggressive" until she was later interviewed by the Human Rights investigator (Transcript Volume 17 Page 2326 Lines 10-23).

Panel member Byron Joseph testified that he did not recall the interview for the Youth Development Coordinator position (Transcript Volume 15 Page 1997 Lines 8-19).

Is The Respondent's Explanation A Pretext For Discrimination?  
Evaluation Of The Respondent's Explanation In Relation To The Allegation Of  
Discrimination Based on Ethnic or National Origin or Family Status

Deborah Jacobs disapproved of Ms. Rivers for wearing jeans and a jean jacket to the Youth Development Coordinator interview. I find that this reaction was probably unreasonable given that there was no dress code for interviews in the Squamish Band. Gloria Wilson, Director of the Social Development Department, who was described by Deborah Jacobs as



an "esteemed colleague" and who has been employed by the tribe for over 25 years, testified that she had no problem with applicants wearing designer jeans at a job interview when they were working with children (Transcript Volume 13 Page 1747 Line 25 to Page 1752 Line 17).

The expert witness David Hughes stated that appearance is an appropriate consideration at job interviews. Mr. Hughes stated that job applicants are expected to be "at their best" at an interview. The issue is whether it was appropriate to wear jeans and appear this way at a job interview. However Deborah Jacobs' position herein, however unreasonable, does not relate to discrimination based on the alleged grounds.

Ms. Rivers acknowledged that the Youth Development Coordinator job interview was not a good one and she wanted to leave at one point in the Youth Development Coordinator job interview (Transcript Volume 2 Page 141 Line 11-14; Page 142 Lines 23-24).

- 92 -

Ms. Rivers explained that she felt uncomfortable due to Gwen Harry's tone in questioning, her abruptness and body language and she also suspected that this attitude might be due to the jeans outfit that she was wearing (Transcript Volume 2 Page 140 Line 11 to Page 141 Line 8).

Deborah Jacobs testified that Ms. Rivers' attitude was flippant, belligerent, and abrasive at the Youth Development Coordinator job interview (Transcript Volume 13 Page 1687 Lines 1-9). Gwen Harry commented and described Ms. Rivers' attitude as "aggressive" at this interview as described earlier herein (Transcript Volume 15 Page 2150 Lines 7-10).

Although it was understandable that Ms. Rivers was frustrated by, and somewhat cynical of, these interviews by the time of the Youth Development Coordinator interview, she did not respond well in the interview by her own admission.

Deborah Jacobs stated that personal suitability was one of the deciding factors in hiring Carole Newman:-

Q. And on what basis was she selected?

A. On the basis of her personal suitability, her skills and work experience, which had been quite extensive in the area of working with youth at the

Native Education Centre. But as well, what she brought to the interview was a peer counselling model as something that she had to offer by way of her skills and background, to work with young people, and I recall we were really excited about that particular peer counselling model, or reevaluation. Counselling specific for aboriginal youth"  
(Transcript Volume 13 Page 1685 Lines 5-14).

I do not find that the Respondent's explanation is a pretext for discrimination based on ethnic or national origin.

The successful candidate Carole Newman was Band Councillor Gilbert Jacob's first cousin. Deborah Jacobs was a non-voting member of this interview panel but severely criticized Ms. Rivers' interview appearance and answers. Interview Panel member Byron Joseph was only a distant relative to Carole Newman but he was also Ms. Rivers husband Glen Rivers' first cousin.

I do not find that the Respondent's Explanation is a pretext for discrimination based on family status.

- 93 -

## CONCLUSION

Leonie Rivers is a well-educated, articulate, married-in member of the Squamish Indian Band whose personality and personal qualities unfortunately just seemed to concern or offend a number of decision makers within the Band. Although Ms. Rivers was unsuccessful in each of the five employment opportunities which form the subject of the Complaint herein, she met or exceeded the minimum requirements for all the positions she applied for.

The decisions as to who to hire for the five positions largely involved subjective judgements in areas such as interview performance, often in relatively short fifteen to twenty minute interviews, and "personal suitability". Resumes, references, job experience and qualifications did not play as great a role as they should have in my opinion. This may be partly explained by the fact that the interview panels were generally not made up of professionally trained interviewers, but rather Band Councillors, the Band Manager, and other Band employees, some of whom were biased against Ms. Rivers because of her personality and personal life. There was a long passage of time between the actual events

complained of, which occurred in 1986 and 1987. There was also an almost complete lack of notes, records and in some cases recollection, of what transpired in the interviews and in the deliberations of the Selection Committees. There were also many inefficient and inept administrative practices in the Band. All of these factors made the task of scrutinizing whether the subjective elements of the hiring decisions were used to mask discrimination a difficult one.

I have conducted a detailed review of the hiring decisions, the circumstances surrounding the job positions, and the nature of Ms. Rivers role in the Band at the time in question. It is the Tribunal's function to determine whether the Complainant was discriminated against on any of the prohibited grounds as alleged. It is not the Tribunal's function to determine whether or not it is in agreement with the Respondent's hiring decisions regarding these five positions. I am satisfied on a balance of probabilities that while the Complainant's applications for employment were not fully or fairly considered by the Respondent in some instances, the Complainant was not discriminated against by the Respondent on the grounds as alleged in her Complaint.

**FOR THE FOREGOING REASONS, THE COMPLAINT HEREIN IS HEREBY DISMISSED.**

#### ALTERNATIVE FINDINGS

Although my finding is that there has not been any discrimination on the grounds alleged, and I have dismissed the

- 94 -

Complaint, I shall proceed to consider the issue of damages in the event that an Appellate Court finds that there was discrimination on a prohibited ground by the Respondent.

#### Loss Of An Opportunity To Compete For A Position

If an Appellate Court finds discrimination on a prohibited ground as a result of the Respondent's contravention of the Act, the effect of that finding is that Leonie Rivers lost opportunities to fairly compete for jobs with the Band. Damages may be awarded in Human Rights cases for lost wages where there is a reasonable possibility that a Complainant would have been a successful candidate for the position but for the discriminatory conduct of the

employer. I find that there a reasonable possibility existed for Ms. Rivers to have been hired for any or all of the positions in issue in this Tribunal Hearing.

Ms. Rivers claims wage losses from June 1986, when her contract with the Squamish Indian Band as Home School Coordinator ended, to June 19th, 1989, when she commenced working for the Ministry of Education of the Province of British Columbia, at a salary of \$45,000.00 per annum.

Had she been successful in competing for the Education Coordinator position, she would have become a permanent full time employee of the Band, at the annual salary level of at least \$28,000.00, the annual salary accepted by Deborah Jacobs. Therefore from June 1st, 1986 to June 1st, 1989 (the date the Commission advised the Tribunal on which any claim for lost wages would end), Leonie Rivers would have earned \$84,000.00 as Education Coordinator (Transcript Volume 2, Page 96 Lines 14-25; Transcript Volume 13 Page 1649 Lines 8-11).

Ms. Rivers has a duty to mitigate damages however despite efforts on her part to find work she was unable to find comparable employment until June 19th, 1989. She testified to the following employment history subsequent to June 1986, the earnings from which shall be deducted from the \$84,000.00 in potential earnings as Education Coordinator.

(a) Summer of 1986 - Approximately \$1,000.00 (gross, non-taxable) from casual employment at the Capilano Nursery School (Transcript Volume 3 Pages 176-177).

(b) Fall of 1986 - collected unemployment insurance.  
(Transcript Volume 3 Pages 179-180).

(c) October to December of 1987 - \$6,000.00 (gross, taxable) from contract with the Urban Native Indian Education Society ("UNIES")  
(Transcript Volume 3 Page 185 Lines 9-25; Page 186 Lines 1-7).

(d) January to June of 1988 - \$14,776.00 (\$11,506.10 net of income

- 95 -

tax deducted) and \$3,675.50 (gross) from contract with UNIES  
(Transcript Volume 3 Pages 184-187; Exhibit HR-4, T4-1988 and T4A-1988).

(e) June to October of 1988 - \$6,412.00 unemployment insurance benefits  
(\$5,362.00 net of income tax deducted)

(Transcript Volume 3 Page 189 Line 13 to Page 190 Line 21; Exhibit HR-4, T4U-1988).

(f) October to December of 1988 - \$7,436.34 (\$5,949.70 net of income tax deducted) contract position with the Province of British Columbia (Transcript Volume 3 Page 188-189; Exhibit HR-4, T4-1988).

(g) January to June of 1989 - \$18,793.57 (\$14,517.68 net of income tax deducted) contract position with the Province of British Columbia (Transcript Volume 3 Pages 188-191; Exhibit HR-4, T4-1989).

If the Complainant is entitled to claim compensation for lost wages, I find the amount to be \$35,989.02 [\$84,000.00 potential earnings as Education Coordinator at \$28,000.00 per annum less earnings of \$48010.98, which amount is net of income tax].

In the Total Earnings of \$48010.98 net of income tax deducted. I have used calculations of monies earned net of tax because of the tax-free status of earnings Ms. Rivers would have made as Education Coordinator because of the Indian Reservation tax-free status of the Squamish Indian Band. I also did not deduct Ms. Rivers' Fall 1986 Unemployment Insurance payments received because collateral benefits such as unemployment insurance or welfare benefits are not, as a matter of public policy, deducted from an award for lost wages under human rights legislation *Anthony v. B.C.H.R.C and Wolfe* (1990), 11 C.H.R.R. D/58 (B.C.S.C.); *Holloway v. MacDonald and Clairco Foods Ltd.* (1983), 4 C.H.R.R. D/1454 (B.C. Bd. Inq.).

While a duty to take reasonable steps to mitigate damages for lost wages rests with the Complainant, the Respondent carries the burden of demonstrating a failure on the part of the Complainant in this regard *Red Deer College v. Michaels et al* (1975), 57 D.L.R. (3d) 386 at 390 (S.C.C.)

Ms. Rivers had a job offer from Indian and Northern Affairs Canada to be vice-principal at a school on the Tache Indian Reserve, which is part of the Klaska Nation located in a very rural area of northeastern British Columbia, for the fall of 1986 in relief of the existing vice-principal who was going on maternity leave. She was unable to accept the position because her husband was not prepared to relocate. I find that there was in this no failure to mitigate damages as it would have been an unreasonable burden for Ms. Rivers to have been forced to be further dislocated in her relationships with the Squamish community and her husband

by relocating alone to a remote part of the Province (Transcript Volume 10 Pages 1111-1112; Shiels v. Sask. Government Insurance (1988), 20 C.C.E.L. 55 (Sask. Q.B.) at 66-67.

Had the calculations of lost earnings been performed using any of the other four positions, they would result in significantly smaller amounts for loss of earnings for Ms. Rivers, calculated as follows:-

Three Term Positions Beginning Late January, 1987

Had the Complainant been hired for any of these three term positions and worked until June of 1989, she would have made \$1,500.00 per month for a total of 28 months which is \$42,000.00 in lost wages (Transcript Volume 14 Page 1916 Line to Page 1918 Line 1; Exhibit HR-2 Tabs 5 and 6).

As was previously noted, the Complainant actually made a total of \$47,010.98 (\$48,010.98 less the Summer of 1986 earnings of \$1,000.00) from January 1987 to June 1989.

Since the Complainant during that time made in excess of any potential claim for lost wages, she is in a better financial position than she would have been had she been awarded any of these jobs, therefore, there were no lost wages regarding her lost opportunity to compete fairly for these three term positions.

Recreation Coordinator Position Beginning late January 1987

Had the Complainant been hired as the Recreation Director and worked until June of 1989, she would have made \$25,000.00 per year or \$2,083.33 per month for 28 months, which is \$58,333.24.

As above, within that time, the Complainant made \$47,010.98 which represents a loss in wages of (\$58,333.24 less \$47,010.98) \$11,322.26 for her lost opportunity to compete fairly for this position.

## COMPENSATION IN RESPECT OF HURT FEELINGS OR SELF-RESPECT

Section 53(3)(b) of the Canadian Human Rights Act provides a Tribunal with discretion to make an order for the payment of compensation for hurt feelings or loss of self-respect. The Complainant, when asked in direct evidence about the effect of being turned down for these jobs in the Council Meeting of February 4th, 1987 stated:-

Q: How did it affect you, being turned down for these jobs and the circumstances of the way you were treated at the Council meeting on the 4th of February?

- 97 -

A: Well, of course, it was obvious I was very disappointed. I lost some confidence. I felt my self esteem and my credibility was kind of like, in question. Like I had to review the situation and it had an ever-lasting effect for the next few months, or maybe about eight months or so before I got myself together again to start pursuing things" (Transcript Volume 3 Page 174 Lines 22 to Page 175 Line 5).

In the case of Morgan v. Canadian Armed Forces (1989) 9 C.H.R.R. D/6386, the Tribunal awarded the complainant \$1,000.00 for hurt feelings and loss of self-respect. The Tribunal on Page D/6403 Paragraph 45272-45274 suggests that the upper range of the monetary scale, which is \$5,000.00 under the Act, should be reserved for more severe cases where there is evidence of either physical or mental manifestations of stress caused by the hurt feelings or loss of self-respect. Further, the Tribunal noted that the award of \$1,000.00 would have been lower but for the length of time that has passed since the discrimination (9 years) and the filing of the complaint (6 years). I believe that the sum of \$1,000.00 would have been an appropriate award for hurt feelings or loss of self-respect in this case.

Therefore I would have awarded the sum of \$35,989.02 as compensation for lost wages as result of Ms. Rivers loss of opportunity to compete fairly for the Education Coordinator Position, and furthermore I would have awarded the sum of \$1,000.00 for hurt feelings or loss of self-respect in this case.

HOWEVER FOR ALL OF THE REASONS PREVIOUSLY GIVEN, I HEREBY DISMISS THE COMPLAINT HEREIN.

- 98 -

I am deeply indebted to Counsel in this case for their excellent professionalism, advocacy skills, and submissions in organizing and presenting an extremely lengthy and complex case. Additionally I also

note that Ms. Ross, CHRC Counsel, performed as the Record shows, under the difficult additional circumstance of having only become involved in this case at a very late stage just prior to the commencement of the Tribunal Hearings.

Dated at Edmonton, Alberta this 2nd day of November, 1993.

-----  
DONALD LEE Q.C.  
TRIBUNAL CHAIRPERSON

I Concur

-----  
JILL SANGSTER, MEMBER

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

HUMAN RIGHTS TRIBUNAL

BETWEEN:

LEONIE RIVERS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

SQUAMISH INDIAN BAND COUNCIL

Respondent

DISSENTING OPINION BY GULZAR SHIVJI



## INTRODUCTION

Leonie Rivers (the Complainant) filed a complaint with the Canadian Human Rights Commission in which she alleged that the Squamish Indian Band Council (the Respondent) had discriminated against her in violation of Section 7(a) and 10 of the Canadian Human Rights Act. The Complainant's allegation of discrimination is based on her family status and national or ethnic origin. Ms. Rivers initial complaint was filed on May 7th, 1987, and was later amended on June 25th, 1987. The complaint as amended refers to the discriminatory practice between June 1986, and December 1986 and the early part of 1987. The full particulars of Ms. Rivers Complaint are as follows:

"The Squamish Indian Band Council discriminated against me because of my family status, and my national or ethnic origin by refusing to employ me, and by pursuing a policy of nepotism for employment purposes, in violation of Sections 7 and 10 of the Canadian Human Rights Act.

I am a Native Indian. My mother is a member of the Gitsegukla Band, north of Terrace, B.C., where I was born. Because of my birthplace, I am known as Gitskan. During August 1976, I married a member of the Squamish Indian Band, which is located in North Vancouver, B.C., where I now live. Consequently, I became a registered member of that Band. Between June 1986 and December 1986, I applied for five employment opportunities with the Squamish Indian Band: Education Coordinator (June 1986), Curriculum Developer (December 1986), Career Counsellor (December 1986), Youth Development Coordinator (December 1986), and Recreation Director (December 1986). The successful applicants for each of these positions were less qualified and experienced than me, however each one of them was related to a specific Band Council member.

I appealed these employment decisions to the Squamish Indian Band Council. During its discussion of my appeal in February 1987, one of the Band's chiefs stated that we are not just hiring band members, we only hire blood members. My appeal was subsequently rejected because of this policy."

## NATURE OF HEARING

The hearing into this complaint took place in Vancouver commencing in November 1992, and lasted for four weeks, and the hearing of the evidence

was finally completed on July 21st, 1993. The Tribunal adjourned then to September 16th for final argument by the Counsels which was concluded on September 17th, 1993. Ms. Susan Ross represented the C.H.R.C., whilst the Respondents were represented by Mr. Rich. During the course of the hearings, the Tribunal heard testimony from approximately fifteen witnesses and two experts, one from the Commission and one from the Respondent. The Commission brought in Dr. Sheila Robinson who is an expert on Coastal Native communities. Mr. David Hughes was qualified as an expert in the field of human resource management with specialised knowledge in recruiting and hiring practices.

- 2 -

Some of the witnesses appeared somewhat evasive and were not entirely forthright in their testimony. The fact that some five to six years had elapsed between the time Ms. Rivers first complained and the start of the hearing, created some difficulties in specific recollections of the sequence and timing of events leading to the complaint. In the main, the Complainant had little difficulty recalling the incidents and was able to articulate her case without too much of a problem. The exception to this was the timing of the disclosure of some hard core evidence in the form of the tape of the proceedings of the Band Council Meeting. This tape had apparently been missing until the second week into the hearings, after the Complainant had completed her testimony in chief. The Tribunal had to therefore hear submissions on this and rule on it. Another ruling the Tribunal had to make was on the admissibility of Similar Fact Evidence and on witnesses turning adverse in interest in this case to the Complainant. In all instances particularly in the admissibility of hard core evidence in the form of the full tape of Council Meeting, various case authorities were referred to by both Counsels before the rulings were made, upon very lengthy submissions.

The Tribunal finds itself divided in its conclusions. Two of the Panel members including the Chairman are in agreement, while I have differing views. What follows therefore, is my minority decision with respect to this complaint.

- 3 -

## BACKGROUND

### 1. THE COMPLAINANT

Leonie Rivers is from the Gitksan nation. She is thirty seven years old and was born in Kitwanga, B.C. Her mother was a member of the Gitsegukla Band and was a descendant from the House of the Frog. Five bands located from Terrace to Burns Lake form the Gitksan Wet'suweten Tribal Council, Kitwanga being one of them. Ms. Rivers spent her childhood in the band under the care of both her mother and grandmother and completed her high school in Prince Rupert. In 1976, she married Glen Rivers, who was a member of the Squamish Band and by virtue of her marriage, she acquired membership in the Band, (married in member). After joining the Band, Ms. Rivers continued her studies whilst working on part time assignments with the Band. She completed her B.Ed degree from the University of British Columbia in 1983, majoring in Canadian Studies with a minor in Physical Education. Ms. Rivers also joined and completed the NITEP Programme and got her certificate in the Native Indian Teacher Education Programme in May 1983. Furthermore, Ms. Rivers did some legal studies for native people at the University of Saskatchewan, qualifying for admission into law school at the University of British Columbia. She also did computer programming at BCIT. Her educational background therefore is impressive and displays a lot of initiative for self-advancement.

As for her work experience, Ms. Rivers started out in 1978/79, working as a Counsellor/Teacher on a part-time and later term position at the Ustla-Hahn Alternate School operated by the Band in conjunction with the North Vancouver School District for a period of two years. Her other short term and summer jobs in the band included working as a child care worker, developing a language arts pilot project kit in relation to curriculum development and working as a Language Arts Tutor. In additions to these short term positions with the Band, Ms. Rivers did volunteer work with different Band organisations. She also worked on voluntary and temporary assignments with other native organisations notably The Assembly of First Nations and the B.C. Tribal Council. She also got a summer job with the United Native Nations and assisted in the Special Needs Educations Programmes designed for students of Native Ancestry. In this capacity she attended provincial conferences on behalf of the United Native Nations.

Ms. Rivers was also actively involved with the Vancouver Indian Centre as the Acting Executive Director for five months in a volunteer capacity. The Vancouver Indian Centre was responsible for Social Services and Housing for Native Indians. As Acting Executive Director, Ms. Rivers was responsible for all administrative duties, staffing and maintenance, preparing reports and budget proposals to retire a \$1.9 million mortgage to save the centre. Ms. Rivers took over as the President of the Board at a time when there was schism

between the two factions wanting control over the Centre. It was a virtual upheaval at the Centre and the Complainant had to bring some stability to the organisation of the Centre crippled by a power struggle. As the Centre was affiliated with

- 4 -

the City of Vancouver, Mr. Purdy of the Planning Department gave testimony on his associations with Leonie Rivers as President of the Centre, and stated that he found Ms. Rivers to be even handed and an intelligent leader who handled her responsibilities in a very professional manner in very trying circumstances. There was a conflict at the Centre as mentioned by Ms. Rivers who stated that it was a very contentious time with lots of accusations and counter accusations. Ms. Rivers upon further questioning on her factious role stood her ground very well and foiled the Respondent's attempt to damage her character by bringing in Mr. Clarke who had nothing but an axe to grind. Ms. Rivers came out unscathed from this vicious attack.

Ms. Rivers' other jobs included working as an instructor/counsellor at Vancouver Community College with a special interest in the Native Employment Skills Training Program (NEST) initially on part time basis. Later she taught adult education classes for about a year or so. She also worked as a teacher's aide with the North Van School District. She worked her way up to being a full time teacher and worked in five Elementary Schools, teaching Native Studies to fourth grade students. During the summer of 1985, she worked as Youth Information Officer with Employment and Immigration Canada, counselling native youth. Later she worked for a month with Health and Welfare Canada as an Administrative Assistant.

Ms. Rivers work experience prior to the summer of 1986, was varied and involved some pretty challenging positions and stressful responsibilities. Overall, by her own testimony and by some reference letters, it is apparent that she never really got any negative assessment on her employment record. If anything, most of her superiors have given her raving reviews. In her own words she stated in response to the following:

Q. "How would you describe your work experience up to 1986 in these different jobs in terms of your ability to relate to your employers".

A. "I had strong interpersonal skills, I had good rapport with my supervisors. I was effective in my work. I was efficient. I really worked hard in all my positions because I wanted to do well. They were short term but I always know they might lead to good positions at some point and so I thought that was really important to do my best up to that time".

This summarises Ms. Rivers positive attributes. She was ambitious, a go-getter, very persistent to achieve her goals, very strong in her convictions, to the point of sometimes being misjudged as a self interested, self-serving individual. But her commitment and absolute drive to do the best for her people is unquestionable. Her work in the Band and other native organisations bear witness to her absolute commitment to advance the cause of the Native people. She belonged to numerous organisations, some of which she chaired and held other executive

- 5 -

positions. She even achieved special Honour in being the only woman of Native ancestry to be selected as the B.C. Representative for the first Governor General's Canadian Study Conference held in 1983. Ms. Rivers thus was a highly competent individual. However, her outspoken nature, her persistence in pursuing issues to their resolutions and even challenging people in authority got her labelled as a trouble-maker, or "rabble rouser", as mentioned by Byron Joseph.

## THE RESPONDENT

### THE SQUAMISH NATION - STRUCTURE - BAND COUNCIL

The Squamish Band in 1987 had a population of about 1800 members, 8% of whom were not Squamish born but acquired their membership by marriage, in terms of the estimated adult population, 13.6% were married in. The Band comprises of three main reserves located in the Squamish - Pemberton, Capilano and the Mission reserves. The Band is administered by the Band Council, which is elected every four years. There are sixteen council members and in 1987 four of these were hereditary chiefs. The Chairman of the Council is appointed and is responsible for scheduling council meetings and oversee the day to day operations. The council is the policy making body and is overall

the governing authority. The meetings take place weekly and the minutes are recorded and taped. The Band Administrator or the Manager is elected every two years and is responsible for day to day operations of the Squamish Nation. There are six major departments which are social development, education, housing, recreation, economic

- 6 -

development and business ventures. At the time of Ms. Rivers applying for the various jobs, the Band Manager was Mr. Bill Williams and the chairman of the council was Les Harry. The chairman and Band Manager were very powerful positions. The Band Council through its appointment of selection committees was ultimately responsible for employment in the Band. It was an all power-wielding body respected by all members who were always conscious of the protocol and did not believe in challenging the chiefs and council. Each member of the Council had one vote and whereas no member had more power than others, in practice the hereditary chiefs were held in great esteem. As Glen Newman stated in his testimony in reference to Chief Norman Joseph. "He's the symbol of our leadership and the symbol of our culture and our identity".

As stated earlier, the Band Council in its administrative structure employed about 125 full time and about thirty part time employees. Limited employment opportunities within the Band were sought after by Band members, partly because of the tax exempt earnings. There were some married in members in the Band organisation, but most of them were in junior positions, and had acquired their jobs way prior to the period in question, when their status sure changed. One married in person in a senior position was Gloria Wilson, who had been hired in the late 60's, when the number of educated and qualified born Squamish could be counted on the fingertips. In 1986, the Band Council passed its membership code which included all Squamish born members, including those married in prior to Bill C-31 and women being reinstated after having lost their membership by marrying out. Prior to 1985, when Bill C-31 came into force, the women who lost their membership and all rights in the band were quite bitter about the injustice as articulated in the following statement by Glen Newman who was the Band Manager before Bill Williams.

"That did create a strong feeling of injustice. Not because we made that injustice, but it was put on us by the Federal Indian Act. They determined who was an Indian and who wasn't an Indian". There was

some resentment against married in women enjoying all the rights and benefits when the Indian women who are heart of the culture, "our blood" weren't allowed to be Indian. Mr. Newman further stated "it's very difficult for our people to see the culture ripped from your community and then other people come in". No wonder 1985/86 witnessed some tension between married in women and Squamish born women returning to the Band after Bill C-31, as testified by Ms. Rivers.

## THE SQUAMISH CULTURE

The culture mainly consisted of an extended family structure, very closely knit with about seven to nine major families. All members of the band were very proud of their culture, few spoke the language but all most keen to preserve the culture. Thus for any person seeking employment within the Band, the knowledge of the culture was desirable. The knowledge of the cultural norms, traditions and protocol was almost a prerequisite as enunciated by Glen Newman, "To try to continue the advancement of our identity and to enrich our culture and to be self-determined". The Squamish have hereditary chiefs who inherited their titles through blood lines and these chiefs are respected in the community

- 7 -

as leaders, as mentioned in the evidence of Ms. Gloria Wilson and corroborated by the testimony of Mr. Newman and Ms. Jacobs. Ms. Jacobs in her evidence displayed enormous knowledge and respect for her culture and took exception to any challenges to the authority of the Band Council. She was very vocal about the culturally behavioural norms. Speaking for herself with regard to community participation she said: "Because of the family I was born in to stemming down from a hereditary chieftainship, there are very high expectations of how we conduct ourselves within our community life".

## GITKSAN AND SQUAMISH CULTURE

The Complainant stated that she is a Native Indian whose national and ethnic origin is Gitksan. Gitksan, Ms. Rivers described have their own identity as a nation. In this case the nation could be defined as a distinct group of people born in a certain area with their own unique ethnic characteristics. The Complainant was born in Kitwanga, North of Terrace, Kitwanga being part of the Gitksan Nation. As a distinct ethnic group, the Gitksan share costumes, beliefs, traditions derived from their common past. For the purposes

of the human rights legislation, therefore, the fact that the Complainant was of "Gitksan birth" establishes the differential in the national or ethnic origin as opposed to Squamish birth.

For this reason, the Commission called an expert witness Dr. Sheila Robinson to give evidence on some of the pre-historical and historical differences between these two

- 8 -

nations. Dr. Robinson was qualified as an expert with specialised knowledge in the anthropology, archaeology and ethnology of aboriginal people of the northwestern coast of North America. She provided evidence about the fundamental distinguishing features between aboriginal groups in their ethnic identity, linguistic affiliation and other cultural aspects focusing on these differing features between the Gitksan and the Squamish People. The thrust of Dr. Robinson's evidence may be briefly summarized in the following points:

- a) The Squamish nation (described as geographically part of Central Coast Salish) and the Gitksan nation are located very far apart geographically.
- b) The Squamish language (part of the Coast Salish language group) and the Gitksan language (part of the Tsimshian language grouping) are totally unrelated and mutually unintelligible.
- c) The Squamish have historically had a bilateral kind of social organization, in contrast to the Gitksan who are organized matrilineally. D. Jacobs agreed with this statement in her evidence.
- d) A particular system of clans and crests is part of the Gitksan ethnic identity (as according to Leonie Rivers in the use of button blankets in Gitksan ceremonies contrast with other costumes for ceremonies in the Squamish culture).
- e) Historically and prehistorically, the Squamish and the Gitksan would have seen themselves as ethnically distinct, and it is very unlikely that there would have been amicable relations of any kind between the two nations or indeed any contact at all.
- f) The Squamish were exogamous - tended to marry out of their own lineage or community - but this was limited to marrying into



other Squamish or Coast Salish villages within a fairly small geographically confined area.

g) Even amongst the Coast Salish, the Squamish constituted a distinct division with both language and customs that differed considerably from other tribes.

h) The fundamental differences between Native Indian groups in traditional times, based on language and cultural distinctions, are persistent into modern times as are the influence and role of chiefly families in Native Indian cultures (Tr., Vol. 9, p. 983 (Robinson)):

"Yes, I think that one of the things that seems to have, in many instances, retained a good deal of integrity with the old ways is the chiefly lineages, high ranking families still value their heritage, value who they are, and continue to often be dominant within small communities.

- 9 -

And examples of those are that although there are now elected band chiefs and councillors and have been for a long time, often, not always, but often you will find that it's members of those old chiefly families who are in positions of office within the band councils today.

.....

One thing we want to refer to though, with regards to that last point that there is persistence today, not invariably, but often, that chiefly families are still in positions of control or their members in band councils.

Ms. Rivers in her direct evidence had also identified some of the differences between the Gitksan and the Squamish people. She stated that the Gitksan were promoting their tradition and customs which she felt were not as strong amongst the Squamish as they were for her ethnic religion where the language was also very important. She stated that some of her culture was matrilineal upbringing, the role of women was greater than in the Squamish culture, which was more patrilineal. In the Gitksan band, women had lots of responsibilities and played leading roles.

From the evidence of the expert and further supported by the testimony of the Complainant, Ms. Rivers contentions that she is from a different ethnic or national community is ratified. Although the Respondent did not directly admit to these ethnic differences, they did not dispute Dr. Robinson's evidence. Besides most of their witnesses were aware of Ms. Rivers heritage from a matrilineal descent. Ms. Jacobs in response

- 10 -

to a question on the Complainants outspoken nature stated "It is very appropriate behaviour for her culture. She is from a matrilineal people so it would be viewed differently".

#### CONCEPT OF MARRIED IN

Ms. Rivers was a married in member of the Squamish Nation. Under the Indian Act when a native woman married into the band, she became a band member under the law and instantly enjoyed benefits and services. But from a cultural and social point of view, a married in woman had to blend into the ways of the culture, adopt the norms and appropriate ways of behaviour usually imparted by the family a woman marries into. As stated by D. Jacobs in her testimony, there was every opportunity for married in women to adapt and learn the culture through in law family, extended relations and also through "SMA'AS" or people with knowledge of the culture. The onus was on the married in woman to adjust to the cultural norms. In the case of Ms. Rivers, there was not much evidence of her family orientation into the culture. Ms. Rivers understood what her expectations were as a married in as she stated "you learn about their values, their culture and their ways".

But she also said "I learned a lot of that on my own, my own self interest in the Band and be knowledgeable in that area". Glen Newman who was the Band Manager before Bill Williams, testified that Ms. Rivers had difficulty adjusting to the Squamish community and he counselled her and assisted her in understanding the culture particularly in relation to

- 11 -

the role of the women. He felt Ms. Rivers had to sensitize and blend into the culture particularly relating to people and how certain protocol had to be followed.

Being the energetic, committed individual who always wanted to contribute, Ms. Rivers got involved in the Band activities. She joined voluntary organisations, put forward proposals to the Band Council for different projects and funding for projects like tutoring for elementary students. She took initiatives to volunteer at the Alternate School as mentioned earlier. She also participated in the general band meetings, challenging the Band Council on issues and being very forthright in voicing her opinions. She stated she was not afraid of challenging issues or policies of people in authority and in some cases she became a spokesperson for women who were afraid to speak up. In one of the general meetings when Ms. Rivers was addressing the housing issues, she was told she had no right to speak because she was a married in member. She remembered being told that blood born members should be the ones who should be speaking. She also recalls getting an apology for these remarks.

### BANDHIRING POLICIES

Band hiring policy dates back to 1975 when a membership resolution stated that all jobs had to be posted in the community for all members to have the opportunity to apply. The Band Council Policy was to give priority to Squamish Band Membership. Majority of the witnesses testifying interpreted this policy to mean all members including married in

- 12 -

members, or members on the Band List which even included women being reinstated under Bill C-31. Most of the witnesses were able to relate to some close family members having acquired their Band membership by marriage.

Whereas actual interpretation of this membership code was a debatable point, two important Band Council members took the membership code to mean only blood born Squamish. One of these was a hereditary chief Norman Joseph who held the view that the born Squamish members should be preferred and recommended changing the policy to reflect this in the interest of preserving the culture in looking after "our own people first".

Glen Newman who was the Band manager prior to April 1986, had given a statement to the Human Rights investigator that his policy was also to give preference to born Squamish when he was Band Manager. He stated in his evidence that he was for this preference for blood Squamish in the interest of achieving "self determinations", there

was need to enhance and protect the culture, the norms, the traditions, the language.

Most of the witnesses testified that chief Norman Joseph's views were strictly his own and not reflective of the Band Council. In particular Councillors involved in the hiring committees did not agree with chief Norm Joseph's feelings. Most of them including the chairman of Council Les Harry emphasised band members as including married in members and Bill C-31 and blood born female membership returning to the Band.

- 13 -

Apparently, there was some lobbying by these women to get positions within the Band at the expense of married in women at the time when the employment opportunities came up in 1986.

#### CONFLICT OF INTEREST POLICY

The band had no formal policy, only a draft which no witnesses really knew about. In reality there was the Unwritten Policy in relation to band hiring and matters where relatives were involved. Owing to extensive inter- relationships among members and extended family relationships, these situations were common. In most instances it was left to individual Council members or hiring committee members to determine areas of conflict of interest and act accordingly in abstaining from discussion, decision making or voting. In most instances family relationships were confined to immediate family and it was generally acceptable by witnesses that not voting on an issue was sufficient to avoid a perceived conflict. Mr Harry chairman of Council confirmed the informal non voting policy as being adequate to counter any conflict of interest. He further stated that it was left to the discretion of the Council members, and hiring panels when faced with any potential problems in this area.

#### POSITIONS Ms. RIVERS APPLIED FOR

##### 1. EDUCATION CO-ORDINATOR

Prior to summer of 1986, the Education Department was part of the Social Development Department, headed by Gloria Wilson. At that time Jackie Gonzales was the Home School Co-ordinator responsible for education matters. When proposal to split the two departments came up, there was a lot of feeling for and against and this issue

took a political turn. Jackie Gonzales resigned in May 1986 and Leonie Rivers took over as Acting School Co-ordinator, recommended by Gloria Wilson and hired by Bill Williams. She was responsible for managing, co-ordinating, designing and promoting education programs to the Band membership.

Subsequently in accordance with Band Policy, the position was posted and the qualifications outlined in the posting included:

- a) Several years experience in education administration, instruction and program development.
- b) Valid Teaching Certificate, academic qualifications or related and relevant practical experience.
- c) Excellent oral and written communication skills.

#### APPLICANTS

- 14 -

There were five applicants for the position but the three main contenders were:

| NAME | EDUCATION |
|------|-----------|
|------|-----------|

- a) Leonie Rivers B. Ed. NITEP
- b) Deborah Jacobs Second yr University
- c) Richard Band M.A. Anthropology

#### HIRING PANEL

The selection committee was appointed by Bill Williams, the Band Manager and consisted of himself, two councillors Byron Joseph and Gwen Harry. None of these three panellists had any significant family relationship with the three applicants. Two student representatives selected by the post secondary students were however related to one of the applicants. These students had been instructed by Bill Williams to ask relevant questions but not to show any bias. In any event these students were not involved in the actual selection of the successful candidate.

## INTERVIEWS

Each panellist received a prepared package which included set of questions and the candidates resumes. Ms. Rivers was not asked questions about her actual qualifications and previous experience which she had prepared. She was intimidated by Ms. Harry's body language and generally felt that the selection committee were not really interested in her and had already targeted the successful candidate. This feeling was reinforced by her observation that not all panellist were making notes. She felt it was a mere exercise. "I felt we were just going through the motions". The presence of the two student reps and their relationship to D. Jacobs further accentuated her discomfort. Besides, prior to her interview, the Band Manager had asked her to extend her contract for two weeks to orientate the new Education Co-ordinator. All this made her feel the decision to hire someone other than herself had been made and the whole interview was impugned. Leonie Rivers felt she had presented herself quite well in these circumstances despite feeling nervous and uneasy.

## DECISION

The selection committee chose the successful candidate by identifying their first and second choices and reaching a consensus.

Their initial choices were:

### D. JACOBS R. BAND L. RIVERS

|               |     |     |
|---------------|-----|-----|
| GWEN HARRY    | 2nd | 1st |
| BYRON JOSEPH  | 2nd | 1st |
| BILL WILLIAMS | 1st | 2nd |

Based on this selection and their reasons for their choices, Deborah Jacobs was awarded the position even though she was not as qualified as Leonie Rivers. Each of the panellist had different explanation for choosing Deborah Jacobs, Gwen Harry finding her to be very confident, whilst Bill Williams selected her for her work experience with the Secretary of State. Byron Joseph had selected Leonie to be his first choice but when it came to defending Deborah Jacob's

appointment all he could say was that she was the best qualified person and the committee had made the right choice.

According to the Complainant's qualifications and impressive work experience outlined earlier, she had an edge over other candidates. Richard Band had a university degree but in Anthropology where Leonie's was in Education and Native Studies. To add to this Ms. Rivers had even worked as Home School Co-ordinator in an acting capacity. She had comparable interpersonal skills and absolute commitment and loyalty to the Band as evidenced from the numerous voluntary and short term positions. Gwen Harry admitted

- 16 -

Leonie's qualifications were good as testified by both Glen Newman and Gloria Wilson, both of whom had given her good reference letters, and had felt Ms. Rivers was definitely qualified for the position mainly because of her university degree in education. Bill Williams who had even referred to Leonie as a "mentor" to orientate the new Education Director, was really hard pressed to justify his first choice in Ms. Jacobs, pointing at her fund raising capabilities when Ms. Jacobs did not really meet the basic requirements as set out in the job description. Mr. Williams stated that a month after the first job description had been posted, the requirements for this job were re-hashed and fund raising capability was inserted. Yet this deviation was not communicated to potential candidates. Also Leonie did have fund raising experience with the Vancouver Indian Centre but was never questioned on this. Bill Williams when questioned at length about this whole apparently tainted process of changing the minimal requirement, did not seem to be bothered by it even though he claimed to handle his job so professionally.

Bill Williams was overly taken in by D. Jacobs fund raising capability when her tenure with the Secretary of State was only for six months. Being one of the women who had lost her Band membership prior to Bill C-31, D. Jacobs actual involvement with the Band prior to 1985 does not appear to be as extensive as Leonie Rivers. In trying to further back their decision to hire D. Jacobs, Bill Williams mentioned some of the negatives he had heard about Ms. Rivers, one of which was she was abrupt. Gwen Harry mentioned Leonie being aggressive but she also clarified when questioned about this that:

"I didn't really use the word aggressive until I was interviewed by the man concerning this

- 17 -

Human Rights". A pretty revealing statement which lends support to earlier suggestion of the hard pressed attempt at justifying their reasons for not hiring Ms. Rivers. Bill Williams testified that he had personally no problems with Ms. Rivers but had known her to be abrupt. He believed Deborah Jacobs had a "more complete background" particularly in relation to dealing with the community, clearly distinguishing as one of them, blood bond.

If the qualifications in teaching or university degree were not as important as the fund raising capabilities, why were two students from Cap College included in the interview process. Ms. Jacobs had stated in her application that she lacked experience in classroom instruction. But more importantly, she had not completed her university degree and still managed to get this senior position.

From all this evidence, the complainant, establishes the Prima Facie case that she was discriminated against on the grounds that she was qualified for the position, yet not hired, and the successful candidate was definitely less qualified but well known to the panellists as being one of them as she was from the Jacob family. On their part the respondent highlighted Ms. Rivers outspoken, abrupt and aggressive nature. The Commission established that these reasons for not hiring her were pretextual as none of the hiring panel members could actually substantiate their reasoning as being anything other than second hand and hearsay. I accept the view that Ms. Rivers was indeed the best qualified for the job for reasons already mentioned but summarised here.

- 18 -

1. She had the right education/academic qualifications.
2. She had the right kind of experience for the job, varied including teaching experience and administrative experience obtained during her involvement at the Vancouver Indian Centre.
3. She had acted in the acting capacity as Home School Co-ordinator for eight weeks during which time she prepared a



comprehensive report on the splitting of the social development and education department, presented and approved by the band council.

4. According to her evidence which I accept, she had the right interpersonal skills, requisite character, demeanour, and ability to work as part of the team.

## TERM POSITIONS

Following the establishment of the Education Department, three term position, all for a term of four months, were posted. These were Curriculum Developer, Career Counsellor and Youth Co-ordinator. The new Education Co-ordinator, Deborah Jacobs, was responsible for the job description and devising questions for the interview process.

- 19 -

Interviewing panels consisted of Deborah Jacobs, Gwen Harry and Byron Joseph and the interviews were scheduled for January 1987. The Complainant applied for all three term positions and indeed met the minimum requirements for all three postings.

### a) CURRICULUM DEVELOPER

This was the first term position advertised and involved working with language teachers and advisers, to research and develop locally based material and learning activities to supplement the Squamish Language Curriculum Guide.

Of the four applicants for this position, the Complainant and chief Lois Guss were short-listed. The Complainant's qualifications have been defined before but her teaching experience, her NITEP Certificate and her involvement in the language arts project must be re-emphasised. Ms. Guss's resume did not indicate her academic level but highlighted her involvement in the native curriculum development with the North Van District and her contribution of a chapter in a book on native people in 1984.

Ms. Rivers had been advised about the possible dates for the interview and had specifically asked if she could be scheduled for January 9th, 1987, as she had prior commitments on January 12th, 1987. Almost ignoring this request, she was notified about her actual interview date and time, January 12th, 1987 at 1.00 p.m., on January 8th. Ms.

Rivers had another job interview on the 12th and a meeting in Vancouver and her second attempt at re-scheduling was to no avail. Thinking her interview was at 1.30 and realising she was going to be late for it, the Complainant phoned to ask Ms. Jacobs for a later time as she feared she would not make it on time. She was told by the secretary that she would get Ms. Jacobs to call her. Meanwhile, the interviewing panel realising Ms. Rivers had not shown up for her actual interview time of 1.00 p.m., went ahead and interviewed Ms. Guss and actually decided to offer her the position.

The position taken by the selection committee on this lateness issue was surely unreasonable. Ms. Rivers had twice attempted to have this scheduled time which she thought was 1:30 p.m. to be re-scheduled. Besides some other witnesses like Linda George and Gloria Wilson had made concessions in this area in certain reasonable circumstances. The hiring committee determined that the Complainant did not have sufficient interest in the job since she was late and apparently at another job interview. How unconscionable of them to hold this against Ms. Rivers. But then, this unreasonable stance points to their dislike for Ms. Rivers and therefore no desire to make any compromises on this issue.

There were some issues of credibility raised by the Respondents in relation to the timing of the interview and Ms. Rivers explanation for the delay. These discrepancies arose from the initial examination of the Complainant at the start of the hearings and subsequent disclosure of the tapes of Council meeting wherein Ms. Rivers had talked of a stall on the

bridge. The Tribunal ruling on the admissibility of the tape clearly stated " That the intent of the Tribunal is to restrict the use of the verbatim transcript as we now know it to impeach the credibility of Ms. Rivers", with respect to inconsistent statements. I maintain that with the time lapse of five to six years from the time of the complaint to the time of the hearing, such inconsistencies are unavoidable and therefore I attach little if any significance to these issues of lack of credibility.

The issues remain that Ms. Rivers was not given an interview and it appears that even if she would have made it, her chances of getting

the job were minimal as the panel was more than convinced about Ms. Guss' qualifications. Yet Ms. Guss was Squamish born from a chiefly family and a sister of Councillor Jacob and an aunt of Deborah Jacobs who sat on the interviewing panel as a non voting member in deference to the two Council members.

Ms. Rivers qualifies for the Prima Facie case because she was qualified for the job, was not given an interview, and Ms. Guss was no better qualified but well known to the Panel for her work in the field. Ms. Rivers was just as qualified but because she was not one of them, her lateness was not accommodated. The respondents' recourse was to resort to her lack of interest in the job and being at another interview but these reasons became a pretext for Ms. Rivers was actively seeking work, was interested in working in the Band and was definitely qualified. It was almost a crime in the eyes of the selecting panel that, Ms. Rivers should have been at another job interview and they used this to bar her from the interview process.

## 2. CAREER COUNSELLOR

This was the second of the term positions involving career and education planning geared to post secondary and secondary students. The educational requirement was Grade 12 level plus university degree or combination of relevant experience. Personal qualities called for, included strong commitment to improve social/education being of Squamish people and strong communication skills. There were five applicants for this position including Richard Band, Carol Newman and the Complainant. Ms. Jacobs short listed three candidates, excluded the Complainant who was definitely qualified because she felt the other three candidates had extensive experience in counselling. Yet in her statement to Human Rights Investigator, Ms. Jacobs had given the following four reasons for not short-listing Ms. Rivers.

- a) Lacked inter-personal skills.
- b) Her work as a teacher at the Alternate School was less than satisfactory.
- c) There were complaints lodged against her in terms of her personal conduct with students.
- d) In terms of her relation with the Vancouver Indian Centre, she had the reputation of being extremely difficult. This has been

previously referred to in the section dealing with Ms. Rivers involvement at the center.

Ms. Jacobs was evasive in much of her testimony with regard to her reasons for excluding Ms. Rivers and displayed a lot of dislike even bordering on personal prejudice against the Complainant. Ms. Jacobs spoke with pride about her own culture and family status vis a vis the Complainant's alleged misconduct as a teacher, which she had merely heard about, sheer gossip dating back to the time when Leonie worked at the Alternate School.

"It was something that happened prior, actually a few years back, but it was certainly just again indicative of other behaviour by this woman."

Ms. Jacobs in her evidence showed her superiority complex, looking down on Ms. Rivers and attacking her personal character so recklessly and worse still, not giving her a chance to counter these allegations of sexual misconduct. This coming from a so called professional Education Co-ordinator, showing such a disdainful and condescending attitude. It is therefore accepted that Ms. Jacobs as part of the selection committee and in charge of the Education Department clearly discriminated against Ms. Rivers in excluding her from the interview process, for the following reasons:

1. Ms. Rivers was not only academically qualified for this position but she also had extensive experience as a teacher/counsellor at the Vancouver Community College.
2. She had good inter-personal skills and rapport with students.
3. The allegation of inappropriate behaviour were not corroborated by any other witnesses including Mr. Williams, the Band Manager who dismissed them as rumours.

The reasons stated by Ms. Jacobs were again mere excuses and it was simply heartless of her to cut Ms. Rivers out. Ms. Jacobs action was

unwarranted and it can be inferred that her reasons were mere pretext to keep Ms. Rivers out as she just didn't like her because I say Ms. Rivers was not from the Squamish Culture or related to the Jacob family. Richard Band, the successful candidate was extremely well educated but had hardly been associated with the Band. But the fact remains that he was a Squamish born, and adopted son of Teddy Band, who was cousin of Councillor Gibby Jacob and therefore great uncle of Deborah Jacob, Richard Band was second cousin to D. Jacobs. Ms. Jacobs insisted that frivolous gossip against Ms. Rivers was a valid consideration in determining her suitability for employment with the Band. Furthermore, it was bad faith on her part not to disclose these concerns to Ms. Rivers so she could answer them. Her reasons for screening the Complainant out were based on sheer hearsay and malicious gossip. Ms. Rivers countered these allegations and character assassination with great honour and strength in her rebuttal evidence.

#### YOUTH DEVELOPMENT CO-ORDINATOR

This term position was to do with co-ordination and direction of after school educational programmes and consultation and collaboration with representation of drug, alcohol and recreation programmes. The Complainant was amongst the applicant as was Carole Newman and other applicants who were hired as trainees.

- 25 -

For the interview, Ms. Rivers was dressed in designer jeans and a jacket because she thought this was appropriate attire for the position, much to the annoyance of Deborah Jacobs who once again showed negative feelings against Ms. Rivers. She remembered her coming in "soaking wet hair" and a very flippant attitude. Ms. Harry once again made Leonie Rivers uncomfortable but she felt Ms. Rivers did not do poorly in the interview. However, Leonie was dejected, this was her fourth interview and she admitted it was not a good interview, accentuated by her impressions that she was not going to make it and this is how she describes her feelings.

"I just felt that the decision was made already ... I was just wanting to get out of the interview".

Ms. Rivers felt there was a definite pattern developing in her being excluded from the hiring process with the Band.

The successful candidate was Carole Newman who according to Ms. Jacobs was selected on the basis of her skills and experience at the Native Education Centre and had brought a peer counselling model which was very impressive. But she had no university degree and her experience at the Native Education Centre was more adult oriented. Ms. Rivers was qualified, she had experience with native youth, as a teacher, counsellor with CEIC and V.C.C. But she gave a mediocre interview which was understandable because of her feelings. The successful candidate, Carole Newman was once again Squamish born and related to Councillor Gibby Jacob, Ms. Newman was Mr. Jacobs' cousin.

- 26 -

With reference to all three term positions, a Prima Facie case can be established as the Complainant was qualified, she was not hired even though she was just as competent as the successful individuals. The primary reason can be inferred to be the utter contempt with which Ms. Jacobs and to a lesser degree Ms. Harry viewed Ms. Rivers personality, mainly attributable to her being married in.

#### RECREATION DIRECTOR

This position was being created to develop and co-ordinate a recreational program for all groups. There were two applicants, Leonie Rivers and Krisandra Jacobs, who had a diploma in Community Recreation leadership acquired in April 1986. Ms. Rivers had a minor in Physical Ed as part of her B. Ed. The selection committee consisted of Band Manager Bill Williams, Councillor Byron Joseph and Councillor Pauline Spence. Ms. Rivers felt she had given a good interview, stood a good chance of getting the job as she felt her involvement in the sporting community made a good impact on the interviewing panel. But the position was offered to Krisandra Jacobs because of her diploma, and her selection was described as "automatic". Even though Krisandra Jacobs had the qualification, she hardly had any experience. Ms. Rivers can make a case one again because she too was qualified with a Physical Education minor which none of the panellists bothered to find out from her. She had taught Physical Ed at the Alternate School and organised tournaments. In actual fact if funding had been available she could have got the position of the Assistant Director according to Ms. Pauline Spence. If she

was capable of getting that, she should have been given fair consideration for the position of the director. But evidence of Bill Williams and Pauline Spence indicated an unreasonable preference and bias for Krisandra Jacobs who was one of them and once again related to Councillor Gibby Jacob. Neither of these people even attempted to canvas more information from Ms. Rivers on her Phys Ed Minor, because once again they could not be bothered with the Complainant as she was not one of them. Notice the use of "automatic" when it is a member of the Jacobs family being considered for employment.

### THE APPEAL PROCESS

Band Council Meeting Feb. 4, 1987

Leonie Rivers had written to Deborah Jacobs, the Education Co-ordinator, on Jan 13th, 1987, asking for clarification on the selection process and appealing the decision to hire Ms. Gus. She had copied this letter to all sixteen members of the Band Council. Failing to get a response, she wrote to Ms. Jacobs a week later. Ms. Jacobs replied on Jan 26th'87 where she advised Ms. Rivers that the selection procedure was in accordance with the Council Personnel Policy Manual which Ms. Rivers and many others were not familiar with. She further stated that the contract with Ms. Gus was signed with the endorsement of the Chairman of the Council and Band Administrator. Ms. Rivers was not satisfied with this reply and therefore wrote to the Chairman of the Council about her concerns and requested she be given an opportunity to address the Band Council at their next meeting on Feb. 4, 1987.

Leonie Rivers had spoken to her brother-in-law, Frank Rivers, who was a Council member about the unfair treatment, prior to the council meeting. Each Councillor had been given copies of all pertinent documentation and prior to asking for clarification to her five questions, Leonie requested a copy of the verbatim minutes.

The five questions Leonie Rivers had put to the Council were:

1. How does the Council appoint the members of the screening committee for different portfolios like education, housing, and recreation?

2. Do the Chairman of the Council, the Band Administrator, and the screening committee have power over the Council?
3. What is the appeal process or procedure and is it covered in the Policy Manual.
4. Has the Council Personnel Policy Manual been approved by the general membership, the Band Council, and the department heads?
5. If I cannot receive an appeal from the Squamish Band Council, where am I supposed to go?

She then went through the five positions she had applied for, dwelling at length on the lateness issue with reference to the Curriculum Developer job. She emphasised her

- 29 -

competency for all these jobs and felt she had been given unfair treatment. Her questions were addressed by Bill Williams at length, followed by Deborah Jacobs, both of whom were quick to point out that everything was done as per Council policy and the best qualified applicants were hired. Even though Leonie Rivers had not actually brought up the family connections, Deborah Jacobs jumped on that issue defensively, saying:

"There have been allegations that the people hired were my relatives and I don't dispute that at all..... Since everything was done by Council Policy Manual and hiring procedure,...there was no nepotism, no favouritism,...everything has been done extremely by the book."

A long discussion ensued, some councillors wanting the policies on lateness and other issues clearly spelled out. Interestingly, Councillor Gibby Jacobs raised concerns about "some type of litigation" in relation to Leonie's request for verbatim minutes and felt minutes should not be given to her in such an eventuality. The Council appointed a sub-committee to review all aspects of hiring policies and procedures.

Discussions followed on Council hiring practices with some concerns expressed about Ms. Rivers not being given an interview for the Curriculum Developer job just because she was late. This issue offered an opportunity for Council members not on selection committees to address ambiguities in the draft Policy Manual they



were not familiar with but mentioned by Band Manager and Education Co-ordinator. Consequently, the following motion was put forward:

- 30 -

"Council form a committee of Council and Band Members to review all aspects of hiring policies and procedure of the Band to complete with a five week time transition."

During the course of the discussion, Chief Norman Joseph made discriminatory remarks at least four times suggesting right at the start that the Squamish-born Indian, not just the Band members should be given priority in the hiring process, even suggesting that this principle be incorporated in the revised Policy Manual. He went on to say that he was pleased the Jacobs were hired as they were very much part of the culture. There was silence after his remarks. Nobody disputed, refuted, or objected to these repeated interjections from Chief Norman Joseph. I agree with the position that an inference can be drawn from this, of acquiescence on the part of the members present. Obviously, from the lack of response to these very bold statements from a hereditary chief, one can infer some sharing of the same belief on the part of the band Council on a balance of probabilities from this evidence.

Later, the Council confirmed Ms. Gus's appointment as Curriculum Developer after raving reviews from her brother Councillor G. Jacobs and her niece Deborah Jacobs. Gilbert Jacobs fully participated in this discussion even though it was concerning his sister and supposedly abstained from voting on the proposal confirming her in the position. There is some evidence on the contrary and it remains unclear whether he was as clean as he made it on this conflict of interest issue. The following remark is quite revealing:

- 31 -

"I stay off the Selection Committee because a lot of time it is my family involved and I have never ever lobbied anybody in this Council."

From this statement made by Councillor G. Jacobs, one can infer some complicity in the whole issue of influence peddling. If this isn't so, why the need to make this statement when the Complainant did not even allude to this issue in her presentation to the Band Council. Les Harry, the Chair of the Council, was asked to respond to Ms.

Rivers' queries. After several reminders, Ms. Rivers had still not received a response. Clearly, the inference here is that Les Harry did not consider Leonie Rivers's concerns important enough to warrant a reply. To add to this, Ms. Rivers did not feel she had a fair hearing at the Band Council meeting because she had stated that they had not specifically dealt with the issues she had raised. This in itself can be considered differential treatment.

Combined with this and other circumstantial evidence with respect to concerns about litigation and being careful with what they said, one can infer some intention of a cover-up. Certainly, the fact that the verbatim minutes of the meeting were never made available to Ms. Rivers adds to the drawn inference. In addition, Les Harry's negligence, indifference, or carelessness to write to Ms. Rivers gives further credence to the inference. It can be deduced on the balance of probabilities that there was some conspiracy at play since the complainant was Leonie Rivers, by some, considered to be an outsider and a trouble-maker, challenging their sacred authority as council members and not respecting the correct protocol.

#### Chief Norman Joseph's Evidence

Chief Norman Joseph in his evidence before the Tribunal stated that he had sat on the Band Council for twenty-five years. He reiterated that he says its all the time that Squamish born should be preferred because

"I was brought up by my father and my mother and a lot of other chiefs, that we do look after our people, our own people

- 32 -

first."

As for married in women, Chief Norman Joseph said that they were Band members but they do not remain members for long because they separated and divorced too frequently. On questions about whether other Band Councillors shared his views, Chief Joseph replied:

"I guess a few of them feel the same way, but they don't well they don't bring it up, you know. Our lawyers are there all the time, so..."

Chief Joseph also mentioned that whereas he could be considered from the old school of thought, there were younger councillors with

perhaps different thinking. But, he maintained most of the councillors were from the chiefly families and could well concur with his sentiments. This reinforces an inference formed earlier that the silence following his remarks was somewhat suggestive. This is deduced notwithstanding the fact that in their evidence every witness asked about Chief Joseph's opinions said that they did not agree with him and he was speaking for himself. Yet from the evidence of the expert

- 33 -

and other witnesses, the clout of the chiefs within the band was far greater than these witnesses would have us believe.

#### Grounds of Discrimination

Leonie Rivers alleges she was discriminated against in being denied employment with the Squamish Indian Band on the following grounds of discrimination, contrary to Sections 7 & 10 of the Act.

- a) National or Ethnic origin, because she is a "married in" as opposed to a blood born member of the Squamish Band.
- b) Family status, because she is not a member of the Jacobs Family, most particularly she is not a close relative of Councillor Gilbert Jacobs.

#### a. National or Ethnic Origin

The distinction between Squamish and Gitskan cultures has been examined in detail. The complainant was a married in member of the Band and got fully involved in the Band activities. But, she was outspoken and took up issues in the General Band membership meetings. She spoke her mind and felt she could act as a champion on behalf of other women in the Band. Even though this assertion was rejected by witnesses like Councillor Linda George and Deborah Jacobs, Leonie was known to speak her mind and she felt she was a role model for some women because as she said "I wasn't afraid to challenge

- 34 -

decisions or policies or represent the groups of women together that were afraid to speak". In her culture, women played a more active

role and she was merely continuing with this tradition in her adopted culture.

Patrilineal culture as pervasive in the Squamish band did not view such independent minded, self motivated women who spoke out, in too favourable a light. Chief Joseph for one showed some dislike for this tendency on the part of some married in women because he said he was not used to women speaking up. He was used to his father being the spokesperson for his family, for his mother, sisters and he saw that some women chose to speak through the elders. Chief Norman Joseph went on to say that a lot of married in women had this outspoken character:

"It seems kind of funny to see a non-Indian get up there and speak, and a lot of them are doing it when they marry into our Band".

Witness the reference to a married in as a "non-Indian", an outsider, not blood born, not one of them. Therefore in 1986, when job opportunities in the band were limited, the tendency could be said to favour their own people for the few coveted positions.

#### Family Status

The expression "family status", which is not defined in the Act, is commented upon as follows by Tarnopolsky et al (emphasis added):

As to the word "family", however, common law authorities agree that "it has various meanings", "is used to designate many relationships", "can mean many

- 35 -

things according to its context" or, of course, maybe determined by the statute in which it is found. On the other hand, it is fair to say that these authorities all agree that, although in a particular case a more limited meaning must be given, the word has always included the inter-relationship that arises from the bonds of marriage consanguinity or legal adoption, including, of course the ancestral relationship, whether legitimate, illegitimate or by adoption, as well as the relationships between spouses, siblings, in-laws, uncles or aunts and nephews or nieces, cousins, etc. Tarnopolsky and Pentney, Authorities Tab 5.

The meaning of "family status" and "marital status" in the Act were examined at the Tribunal level in *Schaap v. Canada* (Department of National Defence) (a case involving the status of a common law heterosexual couple). The Tribunal found that only two human rights statutes in Canada defined "family status" (Ontario and Manitoba) but that their definitions were significantly different from each other. Though the Tribunal's ultimate conclusion that a common law relationship could not be brought within the scope of the term "family status" has no bearing on this case, however, after considering Professor Tarnopolsky's statements in *Discrimination and the Law* (Tab 5, page 9-3), a number of authorities, and dictionary definitions, the Tribunal made the following significant observation at page D/4910:

"The natural and ordinary meaning of the word "family status" I believe would include the inter-relationship that arise from bonds of marriage, consanguinity,

- 36 -

legal adoption and including to use the words of Professor Tarnopolsky, the ancestral relationship, whether legitimate, illegitimate or by adoption as well as the relationships between spouses, siblings, in-laws, uncles or aunts, nephews or nieces, cousins, etc. I have not found any authority which would extend the meaning of "family" beyond the above described types of relationships."

*Schaap v. Canada* (Canadian Armed Forces)  
(1988), 9 C.H.R.R. D/4890, rev'd on other grounds (1988), 56  
D.L.R. (4th) 105 (Fed.C.A.)

The five positions Ms. Rivers applied for and was unsuccessful, the successful candidates were not only blood born Squamish but also connected to one of the "chiefly" families in the Band, known as the Jacobs family. Councillor Gibby Jacobs sat on the Band Council since 1981 and held powerful positions in the housing department as Maintenance Supervisor and later was promoted to the head of the Housing Department as administrator for public works and housing. In his testimony, he acknowledged being a member of the SUYAM, or chiefly family. The SUYAM Chief title is hereditary and in the case of the Jacobs family, this title was inherited by his sister Lois Gus which was really a breakthrough from tradition of the male offspring getting the title.

Councillor Jacob did not get involved in selection committees where any relatives were applying. He maintained that he followed unwritten policy of staying away from the hiring

- 37 -

process where close relatives were involved. He had expressed similar sentiment at the Band Council meeting of Feb. 4th, 1987. Yet he did not think twice about participating in discussions of his sister's appointment as Curriculum Developer and supposedly abstained from the voting. However in voicing his opinions, there surely would be some impact on the people present and how they feel about a partisan issue like this and inevitably be affected in their biased consideration.

In a similar vein, Councillor Gibby Jacob did not have to be actually sitting in a selection committee to exert this kind of influence. The mere fact that the successful candidates were all related to him could be perceived to be have been a factor. The respondents say that none of the people sitting in these committees were related to Gibby Jacobs or any of the candidates being interviewed. If anything, it was the complainant who had any kind of relationship worthy of note with a panel member and that was Byron Joseph, who was first cousins of Glen Rivers, Leonie's husband. Yet, if nepotism was a factor this relationship by marriage must be insignificant to play any part because Ms. Rivers was the unsuccessful player. The point remains about the status of the Jacob's family vis a vis the Rivers family and the innate influence flowing from there. Yes, none of the people, Bill Williams, Gwen Harry and Byron Joseph were related to the people they selected but they not only hired blood Band members but ones whose ties to an influential Council member were well known. Gibby Jacobs stated he never lobbied any of these people to hire his relatives and indeed these panellists denied having been approached by him. However, knowing the family background of these successful candidates the hiring committee could well have had that inadmissible latent emotional

- 38 -

ties at the back of their minds. Therefore, some form of nepotism could well be at play but never admitted, such was the status of certain families in the band.

Witness the choice of Deborah Jacobs who was Mr. Jacob's niece. Prior to her appointment there were rumours afloat that she was the one touted for the position. These rumours were denied by Bill Williams. However, Gloria Wilson who was the head of the Social department and a very well respected employee of the band expressed no surprise at Ms. Jacobs getting the position as she stated,

"Well, I was not surprised I guess there certainly was talk within the band that Deborah should be the person for the job".

Ms. Wilson substantiated her statement by saying Ms. Jacobs's uncle was part of the Band Council and had spoken of her suitability for the job at a Council meeting Ms. Wilson had attended before her department had split up. Ms. Wilson further stated in terms of her influence

"I guess he was in a powerful position being on a Council, a powerful family group".

Ms. Wilson's evidence has not been challenged or refuted by any Respondent witnessed except for Mr. Bill Williams denying any such rumours with a simple "none whatsoever". But no refuting of the evidence that Deborah Jacob had been mentioned at a previous Council meeting as the right person to be Education Co-ordinator.

Therefore, I take Ms.

- 39 -

Wilson's evidence as being truthful. For one thing, Ms. Wilson was a married in person who has been a long time employee of the Band and as such was highly respected. She was an outspoken person but also one not concerned about what she said unlike other witnesses who may have been concerned about the repercussions in the Band, of their coming out in the open and giving evidence in a public forum.

So, Mr. Gibby Jacob did command an influential clout in the band. As such, the hiring panel could have been unconsciously influenced by him in selecting Ms. Jacob who was also a blood born. Ms. Wilson had definitely stated that there was a close relationship between the band Council and the hiring Committee. This position of Education Co-ordinator was a very significant one and was being contested in a somewhat political sense as there were some people favouring the splitting of the Social Dept. whereas others were for keeping Education as part of the same.

As for the term positions and the issue of family status, again it cannot be dismissed as sheer coincidence that the successful candidates had connections with the Jacob family, which was one of the 7 or 9 important families in the Band. The hiring panel for the term position was made of Deborah Jacob as the new Education Co-ordinator, Byron Joseph, and Gwen Harry. Deborah Jacob was responsible for preparing the interview questions and did in fact participate in the full process except for voting for the successful candidate. She stated she was a non-voting member not out of any concern for any conflict of interest or perception of one, but merely out of deference to the two council

- 40 -

members who she held in extremely high esteem. So here you have, a member of the panel fully involved in interviewing her relations and in turn relatives of her uncle Gibby Jacob. In such a process, the apprehension of bias could easily exist in favour of not only blood Squamish but actual relatives of a powerful councillor and his niece who did not even feel there was anything wrong in being part of the hiring process. She placed more importance in abstaining from the actual voting, which was a mere formality.

The successful candidate for the Curriculum Developer job was Lois Guss who was the aunt of Deborah Jacob and sister of Councillor Gibby Jacob. Richard Band who was the adopted son of Teddy Band, cousin of Councillor Gibby Jacobs was the new Career Counsellor. Carol Newman, who was Gibby Jacob's first cousin, got the job of Youth Co-ordinator. This leaves the last position which was Recreation Director and Krisandra Jacob, who was the wife of Gibby Jacob's nephew, was given the job.

Since all of the candidates had equivalent qualifications for the jobs they applied for, it is submitted that some kind of favouritism had to be a factor. There it is adduced that family relationship led to an apprehension of bias of an enriched nature, the natural tendency to both favour blood relations and to view their qualities and actions in a favourable light, in other words a reasonable apprehension of nepotism. Nepotism existed by reason of the presence and participation in the interview and decision process of close blood relatives of the successful candidate, and by reason of close kinship ties between those who participated in the interviews, in the hiring process, the successful candidates and Councillor Gilbert Jacob.



The Respondent's stand on this question of the close family relationship has been that the extended family structure in the Band was so extensive that everybody was related in one form or another. In the Band Council meeting of Feb. 4th, 1987 when Leonie Rivers sought an appeal process, Deborah Jacob jumped at the question of her relatives being hired, saying

"I don't dispute that at all, I can look around this table and I am related to every single one of the Councillors around this table."

Quite a few other witnesses talked about the extent of family relationships. I accept the suggestion that this was a cope out and non defence against the absolute perception of nepotism and favouritism at play, for a line had to be drawn when the relationships were close. Besides, except for Ms. Jacobs, most of the respondent witnesses were careful of any apprehension of bias and on their own merit abstained from hiring process where close relatives were concerned. Mr. Bill Williams, knowing the relationship of the two students with Deborah Jacobs, had cautioned them to just stick to their prepared questions to avoid any bias in the Education Co-ordinator job. Ms. George and Ms. Wilson, both testified that in their departments, when close relatives were being interviewed, people on the selection panel would not participate in the interviewing process to avoid any accusation of nepotism. But this was left to the discretion of individuals concerned.

- 41 -

## THE INTERSECTION OF GROUNDS OF DISCRIMINATION

The Complainant's alleged grounds of discrimination of national or ethnic origin and family status have been analyzed separately but the two grounds are very closely related and in fact overlap. To add to greater understanding of the complaint, the dimension of the interaction of multiple grounds or the concept of "intersectionality" has been relied on. This concept has been written about quite widely and most recently was recognised in the dissenting judgement of L'Heureux-Dubé's in the Mossop Case.

"It is increasingly recognised that Categories of discrimination may overlap, and that individual may suffer historical exclusion on the basis of both race and gender, age and physical handicap or some other combination. The situation of individuals who confront

multiple grounds of disadvantage is particularly complex. (Patricia Williams, *The Alchemy of Race and Rights*, 1991); Nitya Duclos, "Disappearing Women: Racial Minority Women in Human Rights Cases" (1992).

In the Case of the Complainant Leonie Rivers, the intersectionality of the two grounds is evident. She is from a different ethnic group, a married in Band member, but not married into the Jacobs family. She was married into the Rivers Family and no evidence has been presented to the status of this family vis a vis the high status of the Jacobs family. There may be married in women working in the Band but they may have been married into a powerful family, like Eva Jacobs was and also be employed in not too senior positions which were few and far between.

## THE LAW IN GENERAL

In an effort to allow both parties, the Complainant and the Respondent to make a full presentation of their cases to the maximum extent, the Tribunal heard every bit of evidence presented. This included hearing some similar fact evidence before ruling on it, hearing the tape of the Band Council meeting before allowing it and hearing every submission to its fullest, and including numerous exhibits. It is also acknowledged that in hearing cases of discrimination, such leeway is needed as it is difficult to prove discrimination in a direct manner, that is discrimination must be overt and admitted. As in the case of Ms. Rivers vs the Respondent, subtle, covert form of discrimination lying behind a camouflage of pretext, is evident which pit the Complainant's word against an absolute denial by the Respondent.

The Complainant forms her complaint on the grounds of her national or ethnic origin and family status contrary to Section 7a and 10 of the Canadian Human Rights Act. The relevant sections of the Act are as follows:

3.1) For all purposes of this Act, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for which a pardon has been granted are prohibited grounds of discrimination.

7. It is a discriminatory practice, directly or indirectly,

a) to refuse to employ or continue to employ any individual,  
or

10. It is a discriminatory practice for an employer, employee organization or organization of employers

a) to establish or pursue a policy or practice, or that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

I make references to the following cases and authorities with respect to the law in cases of discrimination.

1. Proving Discrimination in Canada. B. Vizkelety. (1987).
2. Basi V Canadian National Railway (1988), 9 C.H.R.R. D/5029.
3. Grover Vs National Research Council (1992) T.D. 12/92.
4. Folch vs Canadian Airlines International (1992) 17. C.H.R.R.  
In the Basi case the paragraphs 38474 and 38475 state:

"The burden, and order, of proof in discrimination cases involving refusal of employment appears clear and constant through all Canadian Jurisdictions: a complainant must first establish a prima facie case of discrimination; once that is done, the burden shifts to the respondent to provide a reasonable explanation for the otherwise discriminatory behaviour. Thereafter, assuming the employer has provided an explanation, the complainant has the eventual burden of showing that the explanation provided was merely a "pretext" and that the true motivation behind the employer's actions was in fact discriminatory."

It is therefore incumbent on the complainant, in this case, to first establish a prima facie case: Shakes v. Rex Pak Ltd. (1982), 3 C.H.R.R. D/1001 at 1002"

In an employment complaint, the Commission usually establishes a prima facie case by proving:

- a) that the complainant was qualified for the particular employment;
- b) that the complainant was not hired; and,

c) that someone no better qualified but lacking the distinguishing feature which is the gravamen of the human rights complaint subsequently obtained the position.

If these elements are proved, there is an evidentiary onus on the Respondent to provide an explanation of events equally consistent with the conclusion that discrimination on the basis prohibited by the Code is not the correct explanation for what occurred. (See also *Israeli v. Canadian Human Rights Commission and Public Service Commission* (1983), 4 C.H.R.R. D/1616.)

It is permissible and appropriate in an inquiry under the Act for evidence to be tendered that the individuals responsible for the impugned decision making or decision making process (Gwen Harry and other Band Councillors) possess discriminatory attitudes and propensities and that those attitudes and propensities played a role in denying the Complainant employment opportunities with the Band. This may be the only means the complainant can convince the Tribunal

- 43 -

that the reasons offered by the Respondent as explanations for the decisions in question are "pretextual" in the sense that they constitute a pretext for the decisions which masks the role played by discriminatory attitudes in the minds of the decision makers.

*Almeida v. Chubb Fire Security Division*, (1984) 5 C.H.R.R. D\2104 (Ont. Brd. of Inq.) at D\2105 (Authorities Tab 10)

See also *Basi v. Canadian National Railway Co.*, (1988) 9 C.H.R.R. D\5029 (CHR Tribunal) (Authorities Tab 11) at D\5038 and D\5039-40:

...Discrimination is not a practice which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practised.

Since direct evidence is rarely available to a complainant in cases such as the present it is left to the Board to determine whether or not the complainant has been able to prove that the explanation is pretextual by inference from what is, in most cases, circumstantial evidence".

The Chairman in the Basi case then dealt with the onus requirements for establishing circumstantial evidence and refers to a passage in the book Proving Discrimination in Canada (Toronto, Carswell 1987) by B. Vizkelety wherein the following passage is referred to:

"There is indeed, a virtual unanimity that the usual standard of proof in discrimination cases is a civil standard of preponderance. An appropriate test in matters involving circumstantial evidence, which could be consistent with this standard, may therefore be formulated in this manner: an inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses."

#### DIRECT AND INDIRECT DISCRIMINATION

I accept the Commission's submission that the evidence in this inquiry, on a balance of probabilities, establishes that both direct and indirect forms of discrimination on the grounds alleged, were present. "Direct discrimination occurs ... where and employer adopts a practice or rule which on its face discriminates on a prohibited ground. For example, No Catholics or no women or no blacks employed here" "In this case "on its face" may reasonably be interpreted to mean not that the discrimination must be overt and admitted, but rather that the rule or practice must in some way have been based upon, influenced by or directly affected by one of the prohibited grounds" Proving Discrimination in Canada B. Vizkelety 1987

- 44 -

From the evidence presented, one of the most blatant examples of direct discrimination are the repeated statements of hereditary chief Norman Joseph at the Band Council Meeting of February 4th, 1987 and the non reaction of the Councillors present. The statements made are direct evidence but the non reaction of the members could be considered circumstantial evidence or indirect evidence. I feel it was more indirect evidence and therefore on a balance of probabilities, from the silence after the statements or lack of reaction, an inference of complicity on the part of the Band Council can be drawn.

Direct Discrimination is also evident in the allegation of family status of the successful candidates in relation to the participation

in their hiring of close blood relative. For instance in the Education Co-ordinator position, two students related closely to D. Jacobs were present in the interviewing panel even though they were not directly involved in the decision making. But the perception of bias cannot be denied. In the term positions, D. Jacobs was one of the three people on the selection committee, in fact chairing the panels as the Head of the Department but saying she left the decisions to the two councillors out of respect of their authority as council members. But she takes full part in the interview process, quite easily influencing the decision but abstaining at the final stage. Once again apprehension of bias is evident for each of the successful candidates were closely related to her. What then of the latent but real influence of Councillor Gibby Jacob analyzed earlier. Finally direct evidence is manifest in all the successful candidates being blood born Squamish.

- 45 -

To add to this, I feel that treatment accorded to Leonie Rivers at the Band council meeting of February 4th, 1987 was quite discriminatory in the following examples.

The attitude of certain council members made Leonie feel very uncomfortable and in fact an outsider. Witness statements from councillor Gibby Jacob on "some type of litigation" with reference to Ms. Rivers wanting verbatim minutes if "it is going to be used against us Council and the people of the Squamish Nation". Yet Ms. Rivers is "part of the membership" as she herself asserted. Frank Rivers who was Ms. Rivers brother-in-law made a remark which reinforces this point. "First of all getting back to Gibby's point in terms of litigation, I think, Leonie is a Band member but also she is as far as I am concerned, we are listening to an appeal on an application for employment so I am not looking at Leonie as a Band member right now". So who is she, an outsider because she is married in?

I feel D. Jacobs, Pauline Spence and Gwen Harry also made remarks which are revealing about their feelings that Leonie is really not one of them. For they felt she had no business challenging their decisions and in turn the authority of the Council. For instance Deborah Jacobs said;

"My heart has really a heavy feeling today because all this has been brought to the Council Table... this is disruptive to the kinds of, to our activities to have to come and speak to this".

Pauline Spence said: "I didn't think it should have come to this table myself... if they are not satisfied with the band manager decision they should

- 46 -

give it up and go on their own way because they are wasting a lot of valuable time".

So because it is Ms. Rivers appealing the process, it becomes a waste of time because she is really not entitled to do that as a Band member, at least this is what I infer. This is what I infer from these statements, that is looking on Ms. Rivers as not one of them but an outsider, a trouble maker. Ms.Spence had shown some jealousy towards Ms.Rivers for succeeding in getting housing on the reserve even though she was a married-in member.

Overall Deborah Jacobs has displayed a lot of dislike for Ms. Rivers in her evidence, bordering on personal prejudice. I go further and say her personal prejudice can be inferred to be discriminatory on a balance of probabilities and confirmed by statements in the Council Meeting, and her combative demeanour when giving evidence. This was evasive and long-winded, always hinting at her high status and enormous pride in being born Squamish, and quite often not responding to the questions asked of her.

#### INDIRECT OR ADVERSE EFFECT DISCRIMINATION

This concept was defined as follows in the case O'Malley v Simpson Sears Limited. "There is the concept of adverse effect discrimination. It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral and which will apply to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some

- 47 -

special characteristic of the employee or group, obligations, penalties or restrictive conditions not imposed on other members of the work force". Vizkeley Pg 53.

In the context of this complaint, there were instances of indirect discrimination. Firstly the Squamish Indian Band Policy made available in Exhibit HR2, Tab 63 stated; "Every attempt will be made to hire new personnel from within the Squamish Band membership". Every witness questioned, stated this meant all members registered including married in, blood born and Bill C-31 women returning and stated there was no distinction. This policy was prepared in 1986 but not many witnesses including the Complainant were aware of this document. But the point is that this neutral standard "all members" in actuality, in the case of Ms. Rivers, precluded her from being considered for the five positions. In contrast, Ms. Jacobs, Squamish born but married out, did not gain her membership back until Bill C-31, in 1985 but was always considered part of the Band even prior to Bill C-31 by virtue of her birth. In the case of the Complainant, this policy can be said to have worked against her for being a married-in member especially in the somewhat troubling politically charged period following the reinstatement of Bill C-31 women in 1985. I am prepared to accept suggestion that Ms. Jacobs was favoured over Ms. Rivers because she was one of the ones formally returning to the Band as part of Bill C-31.

Secondly, Ms. Jacobs made a big issue about the genuine requirement of the knowledge of the Squamish language, more importantly culture and the implicit norms of behaviour. This was a necessary qualification that was important but it put Ms. Rivers to some

- 48 -

disadvantage because she was married in. She stated that she had good knowledge of the culture but in the eyes of some key people, like Deborah Jacobs, her alleged misconduct meant not behaving in the Squamish way. So this issue related to the first one had adverse impact on Ms. Rivers even though she was fairly familiar with the culture but was not born into it. When questioned on her knowledge of the Squamish culture, Ms. Rivers was honest in giving herself 6 out of 10, but considered her teaching of native studies helpful in her attuning to the cultural requirements.

Thirdly the adverse impact is evident in the whole question of "personal suitability" once again related to the two points made above. A lot was attached to this characteristic to be employed in the Band particularly by Bill Williams, D. Jacobs and Gwen Harry. Therefore their awareness of Ms. Rivers aggressive, abrupt and rude manner worked against her. To add to this was their impression of her being an "outspoken" person. So most of these witnesses



testified, in various way, they felt a more suitable candidate would be one who was perceived as "carrying herself" in a manner more in keeping with Squamish Cultural norms, particularly for women. So the standard of personal suitability as understood by the selection committee worked against Ms. Rivers. Yet there were other women who were outspoken and held positions with the Band. So this "outspoken" characteristic was over-emphasized where Ms. Rivers was concerned. Ms. Rivers in her testimony stated her own personal qualifications to be good enough for all the positions.

Ms. Ross argument refers to the following case authorities:  
A Canadian Human Rights Tribunal has recently followed the minority judgement of Sopinka J. Central Alberta Dairy Pool in his rationalization of the defence to direct and indirect discrimination.

Thwaites v. Canada (Canada Armed Forces). [1993] C.H.R.D. No. 9:

The logical conclusion from this analysis is that there is very little, if any, meaningful distinction between what an employer must establish by way of a defence to an allegation of adverse effect discrimination. The only difference may be semantic. In both cases, the employer must justify its rule or practice by demonstrating that there are no reasonable alternatives and that the rule or practice is proportional to the end being sought. In the case of adverse effect discrimination, the neutral rule is not attacked but the employer must still show that it could not otherwise reasonably accommodate the individual disparately affected by that rule. In both cases, whether the operative words are "reasonable alternative" or "proportionality" or "Accommodation", the inquiry is essentially the same: the employer must show that it could not have done anything else reasonable or practical to avoid the negative impact on the individual.

- 49 -

The Respondent has elected to defend the Complaint on its merits. It has not sought to rely upon any of the exceptions in s. 15 of the Act - namely, the BFOR exception in S. 15(a). Nor has it asserted adverse effect discrimination (ie. the existence of a prerequisite that candidates, or at least female candidates, for employment with the Band not be "outspoken",

which would operate to the disadvantage of otherwise qualified "married in" candidates who have been raised in cultures where women are permitted and encouraged to be more outspoken, forthright and assertive) and that accommodation would be an undue hardship for the Respondent.

Canadian Human Rights Act, s. 15.  
TR., p. 23, 1. 24 (Commission Opening).

Accordingly, there is no evidence to indicate, with respect to the direct discrimination against "married in" women, that this it was a bona fide policy founded upon sound and accepted business practice that was reasonably necessary to assure efficient and economical performance of the jobs. Nor is there evidence with respect to the indirect discrimination, that any hardship whatsoever would have flowed from accommodation of perceived differences in the communication styles of married in versus born in female Band members.

Stated another way, the position apparently taken by the Respondent in the presentation of its defence is not that the discriminatory qualification alleged by

- 50 -

the Complainant is justified, but that the alleged discriminatory qualification is non-existent.

#### PRIMA FACIE CASE

From all the evidence analyzed and reviewed and applying the test elucidated in the Basi Case, it is submitted that Ms. Rivers has established a prima facie case that the Respondent have discriminated against her in her employment with them.

Firstly in the case of the ground of family status, the evidence is clear on the successful candidates all being closely related to Deborah Jacobs and more importantly Councillor Gibby Jacob. There was definitely reasonable apprehension of bias in the form of nepotism to make out a prima facie case of discrimination. The Respondent's defence here was the extended relationship in the band, "everybody related". To this the Complainant establishes that close relationships were at play and the reason given was pretextual.

In the case of the differential treatment based on her national and or ethnic origin, the evidence is clear on the five positions, already analyzed at length.

1) Ms. Rivers was definitely qualified for all the positions, both in her academic qualifications and experience. She also met requirements on interpersonal skills and oral and written communication skills.

2) She was not hired for any of the positions.

- 51 -

3) In all five cases, she was just as qualified as the successful candidate, in fact in all virtually all cases more qualified. But she was unsuccessful because she was not a blood born Squamish, and added to that not a member of the Jacobs family.

The Complainant has proved all three elements, leaving the Respondents' to provide an explanation for not hiring her. The Respondent lead evidence of non-discriminatory reasons for refusing to employ the Complainant, which was her outspoken nature, her unsuitability because of her abrupt, abrasive, aggressive nature.

From the evidence of the Respondent witnesses, it appears that they had difficulty justifying their reasons for eliminating Ms. Rivers from employment with the Band. So they highlighted her negative qualities based on hearsay and Ms. Rivers previous involvement in the Band activities, not necessarily around the period in question, 1986-87. They even resorted to bringing in an ex-employee of the Vancouver Indian Centre, who had an axe to grind and delivered most vocal attack on Ms. Rivers integrity and honesty. But she stood her ground as mentioned earlier. I accept the suggestion that in trying to look for valid reasons for excluding her from the job opportunities, the Respondent had to come up with some defence of this nature giving it greater profile in hindsight.

The Complainant has proved these reasons advanced were merely pretextual and that she became victim of differential treatment based on her not being a blood born Squamish but a married in member of the Band. So the Complainant has quite clearly met the onus put on her and made out a prima facie case of discrimination by the

- 52 -

Respondent, the Squamish Band Council which was a contravention of Section 7 of C.H.R.A. I cannot find a credible explanation on the part of the Respondent for the discriminatory treatment, the explanation given by the Respondent for not giving Ms. Rivers employment as detailed herein, is in my opinion pretextual.

## OTHER ISSUES

### 1. THE RESPONDENT EXPERT

I am in agreement with Ms. Ross in her assessment of the respondent expert David Hughes. It is submitted that Mr. Hughes testimony was in no way supportive of the Respondent's and, in fact, he confirmed that the considerations and methods followed by the Band in their hiring practices (particularly with respect to the involvement of people in the hiring of their close family members and the considerations taken into account by Ms. Jacobs) were not supportable as valid recruiting and hiring methods.

### 2. TRIBUNAL RULINGS

#### a) SIMILAR FACT EVIDENCE

The Commission resorted to presenting similar fact evidence to lend support to the Complainant's case. Three witnesses who were also married in women were called in evidence. However, before they could be heard, The Tribunal had to rule on whether to hear their evidence before ruling on admissibility of the similar fact

- 53 -

evidence. A number of cases were referred to with the Counsel for the Commission reminding the Tribunal about the broader nature of Tribunal hearings where different considerations apply and therefore requested the evidence be heard before ruling on admissibility. After lengthy submissions from both Counsels, The Tribunal decided to hear the witnesses first and then determine the issue of admissibility at a later date.

After the completion of the testimony of the three witnesses, called by the Commission, written arguments were presented by both Counsels during the break between hearings. Once again

both Counsels relied on case authorities on the admissibility issue, with the Commission Counsel relying in the probative value of the similar fact evidence of Amelia Joseph, Theresa Newman and Gloria Wilson to be fair for the evidence to be admitted because of the nexus established, therefore the probative value of the evidence outweighs its prejudicial effect. The Respondent's stand on this was that the similar fact evidence of these three witnesses tendered by the Commission, was of little probative value, had an insufficient nexus with the complaints before the Tribunal to be admissible and in fact the admission of this evidence would be prejudicial to the Respondent.

The Tribunal weighed both the submissions and studied case authorities and relevant parts from "The Law of Evidence in Canada" - Sopinka, Lederman and Bryant before coming to its decision. The Tribunal failed to see the nexus between

- 54 -

the Complainant's case and particularly the experience of two of the married witnesses Amelia Joseph and Terri Newman and therefore disallowed their evidence. Ms. Gloria Wilson's evidence was allowed as it was not all similar fact but more relevant information.

#### b) ADVERSE WITNESSES

An important witness called by the Commission changed his testimony, on a major issue and there had been some inconsistency between the statements he had given and his evidence in chief. The witness was Mr. Glen Newman, the former Band Manager prior to March 1986, therefore his evidence was important. Mr. Newman had given a statement to Human Rights Investigator in which he had clearly stated his stand on the hiring of Squamish born people. His statement read: "When I was Band Manager, my selection criteria was to give preference first to the people of Squamish ancestry and then to other Band members second". His statement had clearly been signed by him and he had given this statement on March 3rd, 1988. On the stand, he changed his position and stated that in his hiring practices, he gave priority to Band members within the Indian Act. Mr. Newman's statement was impeached on the paragraph shown above and the Commission Counsel asked the Tribunal to declare Mr. Newman as adverse in interest to the

Commission and the Complainant because of the contradictory statements made. In response to the Respondent's Counsel's concern about relevance of Mr. Newman's testimony, the Commission Counsel stated that Mr.

- 55 -

Newman was Band Administrator till April of 1986 and one of the positions Ms. Rivers applied for was in May 1986, therefore there were contingency in time. Ms. Ross had pointed to Section 9 of the Evidence Act. The Tribunal ruled that this witness was adverse in interest, because his written statement contradicted statement made under oath. The Tribunal then allowed cross examination of the witness. Upon his cross examination, it appeared that this witness changed his testimony because he was afraid he would not be considered for a position with the Band if he continued to stand by his earlier statement that he gave prior to Squamish born. Mr. Newman disagreed with that line of questioning but on a balance of probabilities, I accept, the inference that his chances of getting the job as an Ombudsman would be jeopardized. It appeared witnesses like him, Mr. Dick Williams, and to a lesser degree others, were somewhat disturbed by the complaint being heard in an open public forum, as an affront to their culture, being such a closely knit and proud community.

#### THE TAPE/VERBATIM TRANSCRIPT OF THE BAND COUNCIL MEETING

At the time of her appeal to the Band Council in February 1987, Ms. Rivers had requested a verbatim copy of the proceedings. No such request was granted with the exception of the excerpt from the minutes which was tendered as an Exhibit. This excerpt was totally incomplete and conveniently excluded any remarks by Chief Norman Joseph. In fact the Counsel for the Respondent at the time, Mr. Campbell had written to Ms.

- 56 -

Penny Goldrick, Human Rights officer in June 2nd, 1989, enclosing the excerpt as verbatim minutes of the Council meeting and these were the minutes which Ms. Rivers received before going on the stand. But these minutes were totally out of sync with the actual verbatim minutes. Mr. Campbell's letter spoke of Chief Norman

Joseph's "alleged" comments but these were conveniently missing from this document. The tape of the minutes was also conveniently lost.

After Ms. Rivers had completed her own testimony, and into the second week of hearings, these mysterious tapes came into Mr. Rich's possession. After lengthy argument and appreciating the fact that the tape was real evidence and should be tendered as admissible, arrangements were made for Ms. Rivers and the Commission Counsel to hear the tape and go through full transcript which was in the process of being prepared by Mr. Rich's office, all this prior to being allowed as an exhibit.

Following the resumption of the hearings in July 1993, the matter was ripe again when the Respondent opened their case and submitted that the tape would be introduced through Mr. Les Harry, the chairman of the Band Council. The tape was played in Mr. Harry's presence followed by full submissions by both Counsel. Ms. Ross presented her case, with case authorities to prevent any prejudice to the complainant who had not been privy to these tapes and transcript till after she had given her evidence, which really was beyond anybody's control. But Ms. Rivers was being put on the spot and this could not be entirely cleared by her giving evidence in rebuttal. The Counsel for the Commission

- 57 -

expressed a lot of concern for the way the case was being conducted and its unfairness to the Complainant and brought cases like Browne vs Dunn, Yonsset v Cross all pointing to the compliance with rule of fairness. Accepting the extreme cogency of the tape evidence, Ms. Ross, the Commission Counsel stated that notwithstanding her initial objection to the admissibility, Ms. Rivers and the Commission could live with the tape evidence so long as the evidence was not going to be used in any form or manner prejudicial to Ms. Rivers. But the reservations and extreme concern about the timing of the tapes being released by the Respondent still remained, without any aspersion of their Counsel bringing them forward.

Mr. Rich in response to Ms. Ross's submission presented just as detailed a case, presenting case authorities as well, emphasising the truth coming out was fundamental, procedure was secondary, such evidence should not be excluded, and the overriding principle was getting to the truth of the matter, with the remedy in rebuttal for the Complainant. On the question of the missing tapes, Mr. Harry the chairman of the Band Council said the tapes had been misplaced in

the Secretary's office and the excerpts given to the Investigator in 1989 was all they had until December 1992.

After hearing the tape, the extensive submissions, Mr. Harry's testimony with reference to the tapes and their disappearance until early part of December 1992, the Tribunal came to a decision in what was a very difficult matter. The Chairman whilst not attaching any fault on Mr. Rich the current counsel for the Respondent for the inadvertent

- 58 -

unavailability of the tapes, expressed concern with Mr. Campbell's role in not realising that the document sent as verbatim minutes to the Commission investigator was in fact only an excerpt. The Chairman clearly stated that the ultimate responsibility for the misrepresentation, and other matters with respect to the verbatim transcript and the tapes being misplaced, lay with the Squamish Indian Band Council whose absolute duty was to provide all the relevant material under the Rules of Evidence and Procedure. Referring to the Browne vs Dunn case, a decision of the British House of Lords as a leading case in this matter and other related cases, with respect to rules of fair advocacy, impeaching the witness and other issues, the Tribunal addressed the issue of whether Ms. Rivers was prejudiced by not having the advantage of the tape transcript in front of her during her cross examination. In Machado vs Berlet issues of impeachment of the veracity of the evidence given by the witness were also discussed and their remedies available to the witness in the interest of fairness. The overriding factor here was that the tapes and verbatim transcripts were real evidence and in all fairness to Ms. Rivers, any attempt at impeaching her credibility with respect to prior inconsistent statement had to be borne in mind. The concerns expressed by Ms. Ross about this were addressed by the chairman in the following statement. "The intent of the Tribunal is to restrict the use of the verbatim transcript as we know it to impeach credibility of the witness Leonie Rivers". This was in fairness to the Complainant and protects her interest in face of deprivation of these documents in her briefing process and preparation of her case.

- 59 -

So the Tribunal went ahead and admitted the tapes and transcripts as real evidence with the restriction mentioned above in relation to



any prior inconsistent statements made by Ms. Rivers in her evidence in chief and cross examination. At the same time the Respondents who were to be held responsible for this initial contravention of the rules of disclosure, for whatever reason, would not gain any advantage. Ms. Rivers was left with the option of giving rebuttal evidence, if she chose to but the chairman reiterated "Any inconsistent statements, or impeachment of the witnesses as a result of the verbatim transcripts will not be presented or used to impeach the credibility of the witness".

This was a very difficult ruling to arrive at as the Case Precedents did not actually deal with the situation faced by this Tribunal. In admitting the tapes as real evidence, full consideration had to be given to Ms. Rivers and make every effort not to put her in any prejudicial position. This ruling was made after referring to many case authorities.

Taking all these Tribunal rulings starting with similar fact, adverse witness and most importantly the admissibility of tapes, one can see Ms. Rivers in a slightly disadvantageous position. Similar fact evidence was not admitted, Mr. Newman became adverse to her interest and the tapes were disclosed way after her testimony in chief. But as stated earlier every attempt was made to be fair in the circumstances. Despite these trying, and problematic situations, Ms. Rivers was able to stand her ground and in my opinion vindicate her case in these special circumstances. The Respondent's handling of the tape disclosure, added to the whole problem of differential treatment Leonie Rivers

- 60 -

was subjected to in the jobs she applied for, when viewed in the total context, definitely impute blame on the Squamish Indian Band Council in its vicarious liability. The Selection committees made up of Council members were mere representatives of the Band Council, extension of their authority and as stated by Ms. Jacobs the hiring decisions were sole authority of these councillors and ultimately the Band Council. So if there was any responsibility to be attached or any complaints about the impugned process, the ultimate authority was the Band Council, thus its vicarious liability.

The Band Council and its selection committee acted in collusion in their joint and concerted conspiracy to keep Ms. Rivers out of its employment. They have to be chastised for their role in the late disclosure of the tape evidence. Any attempt at damaging Ms. Rivers

credibility can be offset by the Band Council's irresponsibility and lack of concern about the disappearance of the tapes.

## CONCLUSION

Ms. Leonie Rivers has thus succeeded in substantiating her complaint against the Squamish Band Council. She managed to do this in some of the most difficult and trying cross examination and rebuttal evidence, honourably withstanding a lot of tough questions.

Finally a word or two about Ms. Rivers hurt feeling after being so unfairly treated, her total feeling of rejection and exclusion. For one thing she quit applying for any more jobs. She

- 61 -

felt disappointed, her self confidence and her self esteem were adversely affected. She said she felt isolated but not ostracised. She quit being actively involved in the Band for she did not want to be labelled a troublemaker. She pursued employment opportunities outside the Band.

I personally feel that with the commitment, education and dedication she had, her departure was a loss to the Squamish Band. Furthermore, she stated that her personal relationship was affected by this terrible experience with the Band Council, in her own words: "The experience I had with the Band council at that meeting, did have an impact on my relationship with my husband at that time, and it was one of the main reasons that I left and moved off the reserve".

So Ms. Rivers was wounded and hurt by this differential treatment she suffered as a married in member. It is my conclusion that she be awarded damages for these hurt feelings, humiliation and loss of self-respect.

Dated this 10th day of November, 1993

GULZAR SHIVJI, MEMBER