IN THE MATTER OF THE *HUMAN RIGHTS ACT*
S.B.C. 1984, c.22 (as amended)

AND IN THE MATTER of a complaint before

the British Columbia Council of Human Rights

BETWEEN:

Nigel Howard

COMPLAINANT

AND

University of British Columbia

RESPONDENT

REASONS FOR DECISION

Tom W. Patch	-	Council Member
Henry Vlug	-	Counsel for the Complainant
Bruce Fraser, Q.C.	-	Counsel for the Respondent

Nigel Howard is a counsellor at the Jericho Hill School for the deaf. Mr. Howard is deaf. In the fall of 1989, he decided to return to the University of British Columbia (the "University") to obtain his teaching certificate. After completing one of the prerequisite courses, he learned that he would not receive sufficient funds to pay for an interpreter. He was therefore unable to continue his schooling. He filed a complaint in which he alleged that the University discriminated against him, contrary to section 3 of the *Human Rights Act,* S.B.C. 1984, c. 22, as amended (the "*Act*"), by failing to provide a sign language interpreter.

A. THE FACTS

At the hearing into this matter, there was some confusion about the "Particulars of Allegation". According to section 11 of the *Act,* a person may file a complaint with particulars with the Council. Under cross-examination, Mr. Howard was unable to recall whether he filed the Particulars of Allegation that were marked as Exhibit #15 "with" the complaint. He did recall that particulars were prepared but did not recall if they were attached to the complaint form.

The Respondent is entitled to know the case it must meet. That is the reason for requiring particulars. In this case, there was a document referred to as "Particulars of Allegation" that set out the basis for the complaint. The Respondent had that document in its possession at the time of the hearing, though there is no evidence as to the actual date the Respondent became aware of the document. There is no evidence that any other particulars were filed. With the exception of the estimated cost of an interpreter, the Complainant confirmed the accuracy of Exhibit #15. I am satisfied that the Respondent knew the case it had to meet. I do not think that the fact that the Complainant could not say with certainty that Exhibit #15 was attached to his complaint should be a bar to this proceeding. Section 22(1) of the *Act* states that "No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity." It is far from clear that there was any defect in form; however, even if there was a defect, section 22 gives me

authority to proceed. I accept Exhibit #15 as the particulars of the complaint.

Before I deal with the substantive issues, it is necessary to review the funding sources and other assistance available to students with disabilities, as well as the Complainant's experience in attempting to return to the University. There is no dispute about these facts.

1. <u>Funding Sources</u>

i) Vocational Rehabilitation Services

Vocational Rehabilitation Services ("VRS") is part of the Ministry of Advanced Education, Training and Technology of British Columbia (the "Ministry"). The federal and provincial governments share funding for VRS under the Vocational Rehabilitation of Disabled Persons Agreement. VRS provides assistance to people who have disabilities that prevent them from undertaking competitive employment by examining their abilities and disabilities and developing vocational plans to enable them to enter competitive entry-level employment.

When individuals apply to VRS, they are required to supply medical information from their doctor, their past work history, and other social and educational information. If a person is eligible for assistance, a plan is developed to enable the person to undertake competitive employment at entry level. VRS then contracts and pays for whatever services are necessary for the individual to complete the plan. There is no maximum amount that it will pay. VRS would pay for interpreting services if they were required. VRS policy is that it will not fund training for people with disabilities if they already have entry-level employment skills.

ii) Assistance Program for Students with Severe Disabilities

The Ministry also funds a forgivable loan program for disabled students. Under that program, severely disabled post-secondary students may receive up to $10,000 per year as a forgivable loan to assist in paying the cost of disability-related expenses that may be a barrier to education. To be eligible, the student must establish financial need and must have exhausted all other funding options. The program will provide loans to fund interpreter services for eligible students. Normally, students are expected to utilize liquid assets and accumulated interest toward the financing of their education. There is a $2,000 exemption on RRSP funds. The funds must be used for the intended purpose.

iii) Funds for College Students

Students at community colleges who require sign language interpreters must first apply to VRS for funding. If they are not eligible for VRS funds, or if VRS has insufficient funds to meet all requests, deaf or hard of hearing students may apply to receive funds from a special fund established by the Ministry specifically for interpreter services. There is not a similar fund for university students.

iv) The British Columbia Student Assistance Program

This program provides funding to any student who wishes to pursue post-secondary education and receive a loan for some of the costs related to their education. It incorporates the Canada Student Loan Program. At U.B.C., the program currently authorizes loans in excess of 30 million dollars. The program is primarily a loan program, but it also provides funds for scholarships and a need-based bursary program.

v) Internal Discretionary Funds

The University has some internal funds available to distribute on a discretionary basis. For example, the Complainant was given a $1,000 grant to pay for an interpreter for one prerequisite course. The University also uses these funds to modify buildings to provide

access to students with mobility impairments.

2. Other Services

i) Disability Resource Centre

The Disability Resource Centre (the "DRC") became operational in September, 1991. It facilitates the participation of people with disabilities within the post-secondary system. At the University, the DRC seeks to ensure that there is research done about access to post-secondary education, and that the curriculum of the University incorporates content related to persons with disabilities. It also concerns itself with the physical accessibility of the institution. The DRC provides advocacy for students with disabilities. It also distributes a publication, *The Enabler*, that describes the resources available to students with disabilities. The DRC does not have any funds to disburse other than its own budget. It does not provide any funds directly to students. The costs of the DRC are covered by an endowment fund provided by the federal government.

ii) Student Assistance Program

The DRC is involved in the Student Assistance Program which is funded by the Ministry. Students with disabilities are matched with students who are hired to do note-taking, tutoring, research assistance and mobility assistance. The students are hired by the Office of Awards and Financial Aid of the University. The program is need-based and is only available to B.C. residents. It is limited to the period from September to April. The University uses its internal funds to pay for the program during the summer and for non-B.C. residents.

iii) Modifications for Access

The provincial government provides funds for the purpose of maintaining the University's

buildings, roads and infrastructure. Some of that money is used to accommodate people with disabilities by improving physical access. In addition, occasionally on an individual basis, the University has converted doors or combined rooms to allow a student with a disability to reside in a dormitory with a caregiver. The University may also reschedule classes to locate them in accessible locations.

3. The Complainant's Experience

The Complainant was born profoundly deaf. At the age of three or four, he entered the Vancouver Oral Centre, which is a school for the deaf. He was then transferred to a regular school for hearing students. Though enroled in a deaf class, he took some classes with hearing students. After high school, he attended a community college for one year and then transferred to the University where he completed a Bachelor of Arts degree in Psychology in 1987.

Mr. Howard's native language is American Sign Language. He is able to speak and lip read but he has difficulty using those skills if there are more than one or two people present. Lip reading is difficult in the classroom. He had interpreters in his hearing classes commencing about Grade 9. Except for a brief period of a few weeks when funding for interpreters was withdrawn, Mr. Howard had interpreters throughout his undergraduate training at the University.

After graduation from the University, Mr. Howard moved to Ontario to work as an information officer for the Canadian Hearing Society. He then returned to Vancouver and has been working as a child-care counsellor at Jericho Hill School ever since. In the fall of 1989, Mr. Howard decided to return to university to obtain his teacher's certificate. Jericho Hill School was moving its location and he did not know whether the government would continue to employ child-care counsellors at the school. He applied to the Respondent and was accepted. He met with Dr. Perry Leslie and the program head to determine what requirements would be necessary to enable him to enter the

education program. Dr. Leslie gave him a list of prerequisites on the understanding that, if he did well in them, he would be able to take the program to become a teacher of the deaf or a counselling psychologist. He intended to begin classes in the spring of 1990.

Mr. Howard also discussed interpreting services with Dr. Leslie. Dr. Leslie suggested that he apply to VRS, but Mr. Howard did not think he should be required to put his life history on a form to get an interpreter. Dr. Leslie contacted VRS on Mr. Howard's behalf and was advised that Mr. Howard was ineligible for VRS because he already had entry-level skills. VRS advised Dr. Leslie that:

> VRS would not fund graduate courses or interpreting services for Nigel as he already has training and experience which would allow him to enter the competitive job market. He has more than entry level employment skills. (Transcript p.128)

Julie Anne Brassington, area manager for the Skills Development Office of the Ministry, testified that the above interpretation is a correct interpretation of VRS policy. Mr. Howard did not submit an application to VRS, nor did he attempt to appeal the decision.

Mr. Howard first indicated to the University on April 20, 1990 that he would require an interpreter. His course was to begin on April 30. Prior to that time, he had been in contact with the University's student counselling centre to try to arrange an interpreter. They referred him to VRS. The DRC was not yet operational.

On April 30, 1990, Mr. Howard commenced one of the prerequisite courses. He did not have an interpreter for the first few days. Through the assistance of Dr. Leslie, the University agreed to pay $1,000 towards the cost of an interpreter. The actual cost was $1,360. Mr. Howard paid the difference. During the few days that he was without an interpreter he relied on other students; however, he was uncomfortable asking them for help. He testified as follows:

> I felt that I was interrupting their studies. They paid for the course too, and they should be able to pay attention to the instructor without having a constant interruption of someone asking what's going on, their attention would be divided. And I felt that I should be able to be independently taking the course. I felt like a little kid asking someone, "Can you help me, can you help me out here please?", and I felt like I wanted to be more responsible and independent, and I couldn't. (Transcript p.22)

Dr. Leslie continued to encourage him and suggested he apply for a forgivable loan, which he did on June 11, 1990 (Ex. #7). He requested $9,000 for the cost of interpreters for the three prerequisite courses. On August 9, 1990, the Complainant was advised that he was eligible for a forgivable loan in the amount of $2,000. He would be required to pay the remaining $7,000 out of his savings (Ex. #9).

At the hearing, the Complainant indicated that his estimate of $9,000 for the cost of an interpreter in paragraph 6 of the Particulars of Allegation was not accurate; the cost would have been about $9,000 to complete the prerequisites and a further $40,000 per year for a full-time interpreter to complete his teaching certificate.

Without funding for an interpreter, the Complainant did not feel that he could afford to return to school; he did not continue with his education. He was required to repay his forgivable loan to the Ministry.

B. THE ISSUES

The Complainant alleged that he was discriminated against contrary to section 3 of the *Act* which, at the time of this complaint, stated:

> 3. No person shall
> (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
> (b) discriminate against a person or class of persons with respect to any accommodation, service or facility

> customarily available to the public,
>
> because of the ... physical ... disability of that person or class of persons....

The issues I must decide are as follows:

1. Was the Respondent providing a service customarily available to the public?
2. If so, was the Complainant discriminated against because of his disability?
3. If he was discriminated against, is the Respondent responsible for the discrimination?
4. If the University is responsible, did it accommodate the Complainant to the point of undue hardship?

C. ANALYSIS

1. Was the Respondent providing a service customarily available to the public?

The Respondent's position is that the service offered to the Complainant by the University is not a service customarily available to the public. According to the Respondent, the service provided by the University is to assist students to obtain funding for interpreters. The University does not provide funding; that is the responsibility of the government.

The Complainant's position is that the service offered by the University is education. In order to provide deaf people with access to that service, it is necessary to provide sign language interpreters; sign language interpreters are not a service -- they are an accommodation to provide access to the service.

The British Columbia Court of Appeal considered the application of section 3 of the *Act*

to a university in *Berg v. University of British Columbia* (1991), 56 B.C.L.R. (2d) 296, (S.C.C. decision pending). The case involved a graduate student enroled in the University. The faculty director provided an incomplete rating sheet in support of her application for an internship. Her internship application was rejected. The complainant was also denied a key to give her access to a building although other graduate students were customarily given a key. Legg J.A., writing for the Court (at 307), concluded as follows:

> In my opinion, s.3 of the *Act* has no application to the facilities or services of the type under consideration here which were available only to students who were registered at the university and who were enrolled as students at the school. Human rights legislation obviously applies to members of the public seeking admission or entrance to the university from outside the university. The legislation may also have a place within the university setting. It does not apply, however, to the type of service under consideration here which was only available to students with particular qualifications who were enrolled in courses at the school.
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> ...
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> The provision of a rating sheet was a discretionary matter with each faculty member having to decide whether he or she would complete the rating sheet with respect to an individual student. The providing of a service which requires the exercise of a discretion is a circumstance which may weigh against it being a service customarily available to the public. Support for this view is to be found in the decision in *Alberta (Department of Education) v. Deyell* (1984), 8 C.H.R.R. D/3668 (Alta. Q.B.). In that case, Veit J. held that under the *School Act*, R.S.A.1980, c.S-3, of Alberta the Minister of Education might make grants but that power was entirely discretionary and that accordingly there was insufficient evidence to support a finding that students with learning disabilities attending private schools in Alberta were a class of persons to whom an educational grant was customarily available.

The Court of Appeal is clear that the *Act* does apply to universities. The decision in *Berg* rested on the characterization of the service in question as a discretionary service. I must, therefore, determine the nature of the service at issue in this case.

The Respondent says that the service is one of facilitating or advocating on behalf of students who seek funding. Undoubtedly, that is a service provided by the University. It is not, however, the service that forms the basis of the complaint. The basis of the complaint is set out in paragraph 7 of the Particulars of Allegation (Ex. #15):

> The Respondent discriminates against deaf students by failing to provide sign language interpreters for deaf students. The Respondent places the burden on deaf students to pay for their own interpreters with their own money and inadequate grant and loan funds that are available from outside agencies. The Respondent places a burden on deaf students that creates an insurmountable barrier for the deaf students, including the Complainant, who seek post graduate degrees.

The Complainant was consistent in taking that position in his evidence. For example, he testified that when he spoke to Dr. Leslie about interpreters, he told Dr. Leslie he did not think he should have to fill out an application form to VRS. He testified, "...it should be as simple for me as it is for other UBC students to get in there" (Transcript p.16, see also Transcript pp.17, 18, 22). He never did complete an application. He did apply for a forgivable loan but testified that he did not think he should have to:

> Q How did you feel about filling that [application] out?
>
> A I didn't really like it. I felt, what was the point, the service should be there, I should be able to get an interpreter, it should be equal access, I shouldn't have to do all the paperwork and waste all this time when I could be concentrating on my studies, getting ready for school.
>
> And they knew what my needs would be, they knew that I would need an interpreter, the professors should have been informed before so they could be comfortable with it, but there was no time to do any of that, it was all very pressured, and I felt looked down upon, and I felt like I had no privacy.
>
> Q So do you mean that you were feeling a lot of pressure, that you felt that you had to fill that out, so that you didn't feel that you had enough time to meet your professors and also you felt that having to give all this information, you shouldn't have to do that?

> A I felt like I didn't have any choice. If I wanted to get in and improve my future, I didn't have any choice, that I would have to fill these out. (Transcript pp.26-27)

The complaint, as I understand it, is not about the facilitation service provided by the University. The complaint is that the University does no more than facilitate. The complaint is that deaf people need interpreters to benefit from the education offered by the Respondent and, by placing the burden on the deaf student to obtain financing for an interpreter, the Respondent is discriminating against deaf people. I do not think it is an answer to the complaint to say that the University does not provide the interpreters or funding for them -- that is the very omission complained of.

This is a complaint about access to education. It does not deal with the types of ancillary and discretionary services dealt with in *Berg.* The Court of Appeal stated that the *Act* does apply to those seeking admission or entrance to a university. While it is true that the Respondent admitted the Complainant to the University, without interpreters the Complainant did not have meaningful access to the service. In *U.S. v. Board of Trustees for U. of Ala.*, 908 F.2d 740 (11th Cir. 1990), the United States Court of Appeals described the issue as follows (at 748):

> A university, by offering lecture, laboratory and discussion courses, also offers a benefit to its students .... In the case of a deaf student, however, all access to the benefit of some courses is eliminated when no sign-language interpreter is present. In the context of a discussion class held on the third floor of a building without elevators, a deaf student with no interpreter is as effectively denied meaningful access to the class as is a wheelchair bound student.

This case has more in common with those cases which the Court referred to in *Berg, supra* at 307-308, as dealing with admission to educational facilities than it does to *Berg*.

Nor is this a case like *Deyell*. In that case, it was not alleged that the complainant was being denied schooling. The Court said "no" in answer to the narrow question of "...whether the grants in the amounts requested are generally available to the public" (at D/3673). The Court also concluded (at D/3672 para.29053) that:

> ... the provision by the School Board to those children [from the ages of six to sixteen] of education in [sic] and a place in which to absorb the education, is a service and facility which is customarily available to the public.

That case involved the manner in which the Minister of Education and the School Board exercised discretion in providing grants to the complainant to attend private schools. Though the availability, or unavailability, of grants is a relevant fact in this case, it is not the basis of the complaint. I do not think that *Deyell* is determinative of the issues in this case.

The principles of interpretation that are to be applied to human rights statutes have been described by the Supreme Court of Canada in a series of cases. The *Act* must be given an interpretation that is consistent with its broad purposes: see, for example, *Ontario (Human Rights Commission) and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, 7 C.H.R.R. D/3102 at D/3105. In *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114, 8 C.H.R.R. D/4210 (the *Action Travail* case), Dickson C.J.C. wrote (at D/4224 para.33238):

> Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a court of law. I recognize that in the construction of such legislation the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact.

The purpose of human rights legislation for people with disabilities was described in *Robinson V. Canada (Armed Forces)* (1992), 15 C.H.R.R. D/95 at D/121 para.94 (Can.Trib.):

> The purpose of such legislation is to guarantee, *inter alia*, to disabled persons that they will not be excluded by society and that they enjoy a real, and not simply hypothetical, right to equal opportunity with other individuals to make for themselves the lives that they are able and wish to have through their fullest possible integration into and participation in society. Isolation is probably the best ally of preconceived notions about a group or category of persons identified by a personal characteristic. It fosters ignorance, which leads to and nurtures prejudice and discrimination. It is to counter these very scourges that human rights legislation has been adopted.

The Complainant sought access to a post-graduate education at the University. The service complained of is a post-graduate education. Applying the interpretive principles discussed above, as well as the guidance provided in *Berg*, I conclude that it is service customarily available to the public.

2. Was the Complainant discriminated against?

There is no dispute that the Complainant is disabled within the meaning of the *Act*. What I must determine is whether the absence of sign language interpreters at the University constituted discrimination against the Complainant.

Counsel for the Complainant argued that this issue has been dealt with by American courts for many years and that I need not "reinvent the wheel". In particular, he referred me to *U.S. v. Board of Trustees for U. of Ala.*, 908 F.2d 740 (11th Cir. 1990). That case involved the application of regulations passed by the Department of Health, Education and Welfare. Those regulations expressly require those agencies affected by the regulations to:

> ... take such steps as are necessary to ensure that no handicapped student is denied the benefits of ... the education program ... because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

Interpreters are included within the term "auxiliary aids". The Court (at 742) characterized the case as one that required it to determine the validity of the regulations. The duty to provide sign language interpreters was considered in the context of a legislative scheme in which they were expressly required. There are no similar regulations in this jurisdiction. The legal context is entirely different. In these circumstances, I do not think that I can rely on American cases to decide this issue.

There is no indication that the University intentionally discriminates against deaf people. On the contrary, there was evidence that the University was very supportive of the Complainant's desire to enrol. However, the law is clear that it is not necessary to establish an intention to discriminate to prove discrimination. One need only establish an adverse effect on a prohibited ground: *O'Malley v. Simpsons Sears, supra* at D/3106.

Subsequent to the hearing, the B.C. Supreme Court decided *Eldridge v. A.G. of British Columbia et al,* (unreported, Vancouver Registry No. A903669, October 27, 1992). In that case, the Plaintiffs applied for a declaration that the failure of the Government of British Columbia to provide interpreter services for the deaf as an insured benefit under the B.C. Medical Services Plan is contrary to s.15 of the *Canadian Charter of Rights and Freedoms*. The Court concluded that s.15 had not been infringed because an interpreting service is ancillary to the provision of medically-required services and such services are not authorized to be paid for under the *Medical and Health Care Services Act*, S.B.C. 1992, c.76. The Court found that Act did not limit the access of deaf people to medical services either directly or indirectly. The limitation on deaf people "exists quite apart from the Act." The decision was based on the narrow issue of whether the *Medical and Health Care Services Act* violated the Charter. I do not think that it is determinative of

the issues in this case.

In *Eldridge*, the Court said (at p.22) that discrimination can occur "... when a rule or burden is imposed on all groups equally but the rule or burden affects one group differently as a result of characteristics of that group." The evidence in this case establishes that a deaf person without an interpreter will be at a disadvantage in a regular university setting. The Complainant testified about the effect on him of not having an interpreter. Although he is able to lip read, he misses much that is said in the classroom setting.

> Also, in a classroom, I'm totally left out because I can't figure out who is speaking, the teacher moves around, sometimes they turn around to write on the blackboard, and with so many people in an audience it's just too much pressure. Trying to lip read someone all day ... is so tiring, that it's impossible. (Transcript p.8)

The effect on deaf people is beyond their control. No matter how well they read lips, they cannot read the lips of a professor whose back is turned or a student who speaks unexpectedly from behind them, nor can they hear the soundtrack of a video presentation. I find that there is a burden on deaf students that is not imposed on other students and that they are adversely affected by the absence of interpreters in the classroom. I also find that this burden constitutes discrimination on the basis of physical disability.

3. Is the Respondent responsible for the discrimination?

The Respondent argued strenuously that the complaint was against the wrong party. Its position was that funding for interpreters is provided by the provincial government; that the University merely provides a facilitating service to students to assist them to access those funds; and that, while there is a gap in the funding into which the Complainant fell, that is the fault of the government, not the University. Moreover, the University has

attempted to persuade the provincial government to provide funds for interpreters. Dr. Srivistava, who is a vice-president of the University and is responsible for student services and information systems, testified that:

> ... we have asked the government for the last, at least two years, to make special grants for disabled students in a manner similar to what they do in colleges, for interpretation services. And this year, we have made a request which is -- which includes services to the disabled group at large. And the monies needed for that are fairly significant. (Transcript p.107)

He also stated that the government has indicated that it was not going to change the rules for the VRS or forgivable loan programs.

Although I heard from Ms. Brassington, she was called as a witness for the Respondent to describe the programs available through the Ministry; she was not there to explain the rationale for government policy. It would have been helpful to hear more directly from the provincial government. It could have explained why interpreters are provided to at least some undergraduates but not to graduate students. It could have explained why it designates funds to colleges to provide interpreters for deaf students but not to universities. It could have explained why it has not made the changes to its funding policy in this area as requested by the University administration. However, while it would have been helpful to hear from the government, and it may even have been open to the Complainant to allege discrimination against the government, that does not absolve the University from responsibility. The complaint is not about the gaps in provincial funding for interpreters; it is about the fact that the University places the burden on deaf students to obtain funding. That is a matter within the control of the University. It is the Complainant's case. He has chosen to make it against the University. I am satisfied that he has established that the University is providing a service in a manner that has an adverse effect on deaf people.

4. <u>Did the University reasonably accommodate the Complainant?</u>

In *Central Alberta Dairy Pool v. Alberta (Human Rights Comm.)*, [1990] 2 S.C.R. 489, 12 C.H.R.R. D/417, the Supreme Court of Canada held that where an employment rule has an adverse effect on a prohibited ground, the rule will be upheld if the employer can show that it accommodated the employee to the point of undue hardship. That principle has also been applied in cases related to the provision of public services: eg., *Youth Bowling Council of Ontario v. McLeod* (1990), 12 C.H.R.R. D/417 (Ont. Div. Crt.); *Pandori v. Peel Board of Education* (1990), 12 C.H.R.R. D/364 (Ont. Bd. of Inq.); *Woolverton et al v. B.C. Transit operating HandyDart* (unreported, 13 August 1992, B.C.C.H.R.).

The Supreme Court of Canada elaborated on the concept of reasonable accommodation in *Central Okanagan School District No. 23 v. Renaud* (1992), 95 D.L.R. (4th) 577. Sopinka J., on behalf of the Court, stated (at 585):

> More than mere negligible effort is required to satisfy the duty to accommodate. The use of the term "undue" infers that some hardship is acceptable; it is only "undue" hardship that satisfies this test. The extent to which the discriminator must go to accommodate is limited by the words "reasonable" and "short of undue hardship". These are not independent criteria but are alternate ways of expressing the same concept. What constitutes reasonable measures is a question of fact and will vary with the circumstances of the case. Wilson J., in *Central Alberta Dairy Pool*, listed factors that would be relevant to an appraisal of what amount of hardship was undue ....
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> She went on to explain that (at p.439 [D.L.R.]): "This list is not intended to be exhaustive and the results which will obtain from a balancing of these factors against the right of the employee to be free from discrimination will necessarily vary from case to case".

The onus is on the Respondent to establish that it has fulfilled its duty to accommodate: *Central Alberta Dairy Pool, supra* at D/438. The duty to accommodate is part of a defence to a finding of discrimination. As a defence, it must be narrowly construed. In *Zurich Insurance Co. v. Ontario (Human Rights Commission)* (1992), 16 C.H.R.R.

D/255 (S.C.C.), Sopinka J., for the majority of the Court, stated (at D/263 para.18):

> In approaching the interpretation of a human rights statute, certain special principles must be respected. Human rights legislation is amongst the most pre-eminent category of legislation. It has been described as having a "special nature, not quite constitutional but certainly more than ordinary" (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R.536 at 547 [7 C.H.R.R. D/3102 at D/3105, para.24766]). One of the reasons such legislation has been so described is that it is often the final refuge for the disadvantaged and the disenfranchised. As the last protection of the most vulnerable members of society, exceptions to such legislation should be narrowly construed (*Brossard (Town) v. Quebec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279 at 307 [10 C.H.R.R. D/5515]; see also *Bhinder v. Canadian National Railway Company*, [1985] 2 S.C.R. 561 at 567 and 589 [7 C.H.R.R. D/3093]).

In this case, the Respondent did take steps to accommodate the Complainant. Dr. Leslie made efforts on behalf of Mr. Howard to find funds to pay for an interpreter. When Mr. Howard advised the University that he required an interpreter for his first semester, an emergency grant was given to him. The University has also taken steps to accommodate other students with disabilities by making modifications to improve access and by participating in the establishment of the DRC; the Complainant, however, did not benefit from those activities.

The steps taken by the University were not sufficient to enable the Complainant to benefit from its classes. The accommodation required by the Complainant was an interpreter. The Complainant estimated that it would cost approximately $40,000 per year to pay for a full-time interpreter. The Respondent has not disputed that estimate.

The main hurdle to the accommodation is the cost of an interpreter and the impact of such an expenditure on the University and its students. Dr. Srivistava testified that the University's annual budget is approximately $700,000,000. About half of that consists of funds that have been granted to the University for a specific purpose -- those are

referred to as designated funds and can only be spent as specified by the funding source. The remainder are discretionary funds. The method for determining how discretionary funds are to be spent was described by Dr. Srivistava as follows:

> In a university of our size, there are always competing demands. All units, whether it's a department of electrical engineering, or a department of psychology, or a director of student financial aid, the registrar's office, they make individual requests to their directors, and from the directors to the division heads or the deans or the vice-presidents. And we all compete for the same pot.
>
> These recommendations, there's a lot of consultation processes. For example, there is a senate budget committee on which the students are represented. There are advisory committees, for example there is a senate committee on student awards. All these committees make recommendations, and eventually the recommendations end up -- all the vice-presidents make recommendations to the president, the president in the end has to make up his mind of how to apportion the pie, and those recommendations finally go to the Board of Governors.
>
> So the ultimate authority in establishing how the resources are being used is the Board of Governors under the *University Act*. (Transcript p.92-93)

Dr. Srivistava also testified that one of the principles used by the University in allocating funds is that part of the cost of education is to be borne by the students. He stated that this is a principle that is shared by the government. The terms of reference for the Review of B.C. Student Assistance and Barriers to Post-Secondary Participation Committee, which was established by the provincial government, stated:

> As both society and students are beneficiaries of education, the educational costs and responsibilities for financing an individual's post-secondary education should be recognized and shared among society, the student and where appropriate, the student's parent(s) or spouse. (Exhibit #16)

However, Dr. Srivistava also testified that the government has told the University that it can do whatever it wishes with the resources available to it.

The University does spend some of its internal funds to improve access for people with disabilities. To provide access to all disabled students would cost a significant amount. Dr. Srivistava estimated that if the participation rate of people with disabilities equalled their representation in the general population, there would be approximately 2,500 disabled students at the University. He also estimated that it would cost as much as $10,000 per student to provide access. I do not think that I should put much weight on those estimates; they are highly speculative. Even if I assume that Dr. Srivistava's participation rate statistics are accurate, it will be some time before participation reaches the maximum level. Many of the access changes will be one-time-only modifications, such as building ramps or altering bathrooms; others may be shared by a number of students. Further, in assessing the hardship on the Respondent, I think the real cost to it must be considered. There are external funds to assist many students with disabilities; there may be relatively few students who require the University's assistance to pay for access to the University or its facilities.

I received no evidence about the number of sign language interpreters that might be required at the University. Ruth Warwick, the Director of the DRC, stated that between five and eight deaf or hard of hearing students had contacted the DRC in the 1991-1992 school year; however, there was no evidence about the number of those who would require an interpreter.

Nevertheless, it is reasonable to conclude that the costs to the University would be significant. The cost for the Complainant alone would be approximately $40,000 per year. There will likely be other students with disabilities who also fall through the funding gaps. It is also possible that some sources of funds will be lost, particularly if the University takes responsibility for funding access.

The financial cost is one of the factors to consider in assessing the hardship that would be caused by an accommodation. In *Renaud, supra*, the Court expressly rejected the "*de minimus*" test which had been accepted by some American courts. That test stated that

a minimal expenditure will constitute undue hardship. The Supreme Court of Canada concluded that, in the Canadian legal context, the expenditure must be more than trivial; it must be substantial.

The Respondent did not adduce any evidence to suggest that the operations of the University would be seriously affected if it provided the Complainant with an interpreter. There is no evidence to suggest the nature of its operation would fundamentally change or that it would cease to operate. Indeed, beyond Dr. Srivistava's speculations, there was no evidence at all about the potential economic impact of the requested accommodation. It is obvious, however, that making the accommodation would have some impact on the University's resources. The University would have to either reallocate funds or increase revenues. To raise revenues, it would either have to persuade the government to contribute more or raise tuition. Raising tuition fees would have an impact on other students. I calculate that with approximately 30,000 students enroled, each student would have to pay slightly more than $1.00 per year to fund each full-time interpreter. Alternatively, if funds were reallocated from other programs, there would be some impact on students whose programs were cut back. There was no evidence before me on the impact of such a reallocation.

It is necessary to balance the hardship to the University in providing access to the Complainant against the Complainant's right to be free from discrimination. The cost of attending university is prohibitive if the Complainant is required to pay for his own interpreter. Even if he exhausts all his own resources and, as a result, qualifies for a forgivable loan, the loan of $10,000 will only cover about a quarter of the cost of an interpreter. He would be required to pay as much as $30,000 per year for the interpreter, in addition to tuition, books and living expenses. It would effectively prevent the Complainant from becoming a teacher, or obtaining any other professional degree. In addition to the Complainant's testimony about the effect of the absence of interpreters on him, the DRC's submission to the Review of B.C. Student Assistance and Barriers to Post-Secondary Participation Committee (Exhibit #19) describes the effect on deaf

people in general:

> At the University of British Columbia, students may apply to VRS for support for their first degree; VRS's stated position is that they will not fund a second degree or diploma after a degree. This has a major impact on deaf and hard of hearing students at this university, preventing many students from entering graduate school and pursuing the career of their choice (Why, for example, should a career as a lawyer be denied a deaf student?).

In *Renaud, supra* at 585, Sopinka J. stated that:

> Minor interference or inconvenience is the price to be paid for religious freedom in a multicultural society.

Surely, no lower standard can be acceptable when it affects the freedom of people with disabilities to access a service as fundamental as education. The Respondent has failed to persuade me that accommodating the Complainant by providing an interpreter, or funds for one, would constitute more than a minor interference with the operations of the University.

The Complainant's position was that he should not be required to fill out applications to obtain funding for an interpreter. He felt it should be as simple for him to get into the University as anyone else. There is, however, a duty on the Complainant to be reasonable:

> To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.
>
> ... The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged. (*Renaud, supra* at 593)

In this case, the Respondent suggested that the Complainant seek external funds in the form of a forgivable loan. The Complainant completed the necessary forms. He also paid a portion of the cost of an interpreter for his first course. He did not apply for VRS funding nor did he attempt to appeal the policy; however, it was made clear to him that he did not qualify for such funding. I do not think he should be required to take all possible steps, no matter how futile they may be. I do not go so far as to say that the University cannot ask a student to attempt to obtain funding from other sources. On the contrary, the *Renaud* case indicates that the search for an accommodation is a joint effort in which the Complainant is expected to participate. There are, undoubtedly, limits on what may be asked of a complainant; however, it is unnecessary for me to determine those limits. I find the efforts of the Complainant to have been reasonable in the circumstances of this case.

In conclusion, I find that the Respondent has discriminated against the Complainant by providing a service -- post-graduate education -- in a manner that adversely affects the Complainant, and that it has failed to reasonably accommodate the Complainant by providing a sign language interpreter.

My conclusion does not mean that the Respondent must, out of its own resources, meet the access needs of all students with disabilities. In assessing the cost to the University, I have considered that the costs for many students are paid by the government or other agencies. If that situation changed then the hardship on the University would also change; the hardship might then be undue. I find only that the Respondent is required to accommodate students who are deaf by providing sign language interpreters, or funding for them, where funds are not otherwise available.

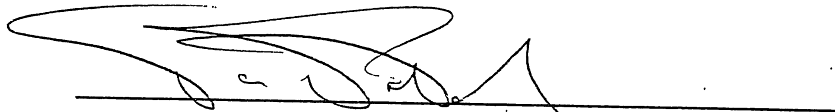
D. REMEDIES

I order the Respondent to cease its discriminatory practice and to refrain from engaging in the same or a similar practice. More precisely, I order the Respondent to provide

access to the Complainant to programs for which he is otherwise qualified by providing him with a sign language interpreter if he is unable to qualify for funding from outside sources. The Respondent's position was that the government should be responsible for providing such funds. The government was not a party and I am unable to order that it provide funds, even if I were so inclined. I do note, however, that the government has acknowledged that both students and society are beneficiaries of education. It seems appropriate that society share in the cost of providing access to people with disabilities rather than requiring the University and its students to bear the burden alone. There may be a reasonable explanation for why the government has accepted that burden for some students but not for others; however, the explanation is not apparent to me.

The parties agreed that I should provide them with an opportunity to resolve the issue of damages between themselves. I will leave open the question of damages, and I will retain jurisdiction on that issue. If the parties are unable to resolve it between themselves either party is at liberty to apply to me for a determination of that issue.

Dated at Victoria, British Columbia, this 3rd day of March, 1993.



Tom W. Patch, Council Member
B.C. Council of Human Rights

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Victoria, 1993

IN THE MATTER OF THE *HUMAN RIGHTS ACT*
S.B.C. 1984, c.22 (as amended)

AND IN THE MATTER of a complaint before

the British Columbia Council of Human Rights

BETWEEN:

Nigel Howard

COMPLAINANT

AND:

University of British Columbia

RESPONDENT

REASONS FOR DECISION

Tom W. Patch	-	Council Member
Henry Vlug	-	Counsel for the Complainant
Bruce Fraser, Q.C.	-	Counsel for the Respondent

In my decision of 3 March 1993, I held that the University of British Columbia (the "Respondent") had discriminated against Nigel Howard (the "Complainant") by failing to provide a sign language interpreter to enable him to take its courses. At the request of counsel for both parties, I reserved my decision on the question of damages so they could attempt to resolve that issue between themselves. They were unable to do so and requested that I decide the issue of damages. As the issue was not thoroughly argued when I heard the case, I requested and received written submissions on damages from both parties.

The Complainant seeks damages for the following: loss of future wages and benefits; expenses incurred in paying for an interpreter and for repayment of a loan; compensation for loss of dignity; and interest.

Loss of Future Wages

The Complainant submits that, as a result of the Respondent's discriminatory actions, he has been delayed by three years in his planned teaching career. He is presently at the top of the pay scale for his current position. Until he reaches the top of the teachers' pay scale, he will continue to be affected by the three-year delay. Counsel for the Complainant calculates that the future loss of earnings due to the delay amounts to $67,566. Counsel for the Respondent submits that the Complainant should be compensated for a two-year delay only, at $3,000 per year, less contingencies, for an amount of $2,000 for lost opportunity.

Generally, victims of discrimination are entitled to be put, as nearly as possible, in the position they would have been in had the discrimination not occurred: *Airport Taxicab (Malton) Assn. v. Piazza* (1989), 10 C.H.R.R. D/6347 (Ont. C.A.). Section 17(2) of the *Human Rights Act*, S.B.C. 1984, c.22 as amended (the "*Act*") gives me discretion to "compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost ... by the contravention".

Some distinction is made in the cases between those situations in which the discrimination results in a direct loss of employment, for which the complainant receives compensation for all lost wages, and those in which the complainant has merely lost an employment opportunity and for which wage loss may not be awarded: (see, for example, *Canada (Canadian Human Rights Commission) v. Greyhound Lines of Canada* (1987), 8 C.H.R.R. D/4184 (F.C.A.); *Muir v. Emcon Services Inc.* (1991), 16 C.H.R.R. D/65 (B.C.C.H.R.); for a discussion of the distinction, see *Chapdelaine v. Air Canada* (1991), 15 C.H.R.R. D/22 (Can. Rev. Trib.) at D/27 para. 19 - D/32 para. 32). I do not find the distinction to be helpful in this case. A complainant is entitled to be "made whole". In doing so, it may be necessary to consider the effect of the discrimination on a complainant's future income. That calculation is necessarily speculative. In some cases, the evidence may indicate a denial of a specific job at a specific wage for a specific period and, therefore, the calculation of lost wages can be relatively precise. In other cases, the evidence may show that, had the discrimination not occurred, the complainant would have competed for a job but the likelihood that the complainant would succeed in the competition was too uncertain to warrant any compensation for wage loss. This case does not fall at either extreme.

The delay faced by the Complainant in changing to a better-paid profession had measurable economic costs. The likelihood and extent of that loss require consideration of future events. In these circumstances, I think the appropriate approach in assessing damages is to calculate the difference between what he likely would have earned as a teacher if his entrance to the profession had not been delayed, and what he will earn if he now proceeds as quickly as possible to obtain his degree and employment as a teacher, then to adjust that figure to allow for uncertainties. This approach is consistent with the reasoning of Marceau J.A. in *Canada (Attorney-General) v. Morgan* (1991), 85 D.L.R. (4th) 473 at 479 (F.C.A.):

> It seems to me that the proof of the existence of a real loss and its connection with the discriminatory act should not be confused with that of its extent. To establish that real damage was actually suffered creating a

> right to compensation, it was not required to prove that, without the discriminatory practice, the position would *certainly* have been obtained. Indeed, to establish actual damage, one does not require a probability. In my view, a mere possibility, provided it was a serious one, is sufficient to prove its reality. But, to establish the extent of that damage and evaluate the monetary compensation to which it could give rise, I do not see how it would be possible to simply disregard evidence that the job could have been denied in any event. The presence of such uncertainty would prevent an assessment of the damages to the same amount as if no such uncertainty existed. The amount would have to be reduced to the extent of such uncertainty.

In *Lewington v. Vancouver (City) Fire Dept. (No. 1)* (1984), 7 C.H.R.R. D/3247 (B.C. Bd. Inq.), Professor Elliot considered (at D/3249 para. 25908) the difficulties in determining the appropriate amount of an award when considering future loss of income:

> It seems clear that there is no simple formula to be applied in a case such as this. All that one can do is identify, and give careful consideration to, each of the factors that can be said to be relevant to the making of an award of this nature, and then, in light of those factors, arrive at an amount that appears fairly and reasonably to compensate for what they have lost.

The evidence indicates that the Complainant was accepted by the Respondent as an unclassified student. He met with a professor in the education program, Dr. Perry Leslie, and contacted the program head. The Complainant testified that they gave him a list of prerequisites with the understanding that, if he got good grades in those, he would be able to take the program to become a teacher of the deaf or a counselling psychologist. Dr. Leslie left him with the impression that, if he passed the prerequisites, it would be very easy for him to enter the program. He received a second-class standing in the one course he took.

If he had successfully entered and completed the teaching program, the Complainant would then have had to compete with other graduates for employment as a teacher. His uncontradicted evidence was that he had "checked" and found there to be a need for

"recognized teachers of the deaf who are deaf to act as role models as well, that there's a great need and a high demand for deaf teachers" (Transcript p.36). Though his prospects for progressing into the teaching profession were promising, they were far from certain. His testimony also indicated that he was uncertain about his future career plans.

> Yes, I wanted to keep my options open. I would like to have -- I already have my B.A. in Psychology, which would assist in becoming a counsellor, and I wanted my education teacher's certificate so that I could have the option. I would be able to go into a school as a teacher, or as a counsellor. And possibly get my Master's degree in counselling or whatever.
>
> If I liked teaching, I would stay in the teaching field with my B.Ed., and follow that career track. Or if I found I didn't like it, I would transfer to the counselling career. (Transcript p.40)

The Complainant's evidence at the hearing was that his annual income in his present employment is $31,000. In his written submissions, counsel for the Complainant corrected that amount to $38,000 per year. Although the amount of $38,000 was not properly in evidence, the correction was to the prejudice of the Complainant and I therefore accept it as the more accurate of the two figures. In the absence of any contradictory evidence, I think it just in the circumstances to apply the corrected figure. The Complainant is at the top of the pay range for his current employment. The pay scale for teachers in the district in which he is employed, and in which he hoped to be employed as a teacher, is described in Exhibit #12. His evidence was that, with his qualifications, he would enter at the "TQS-5" level. Counsel for the Complainant submitted that a 10% "special counsellor" adjustment should be added. The Complainant testified, however, that: "<u>if</u> I were to start working as a counsellor ... I would get the increase to the ten percent ..." (Transcript p.81, emphasis added). In my opinion, the ten percent adjustment was not a certainty, but a mere possibility. The possibility of a 10% adjustment should be considered as a positive contingency and not an actual loss.

The Complainant testified that he intended to begin taking prerequisite courses in April 1990. I rendered my decision on 3 March 1993. In that decision I ordered the Respondent to cease its discriminatory practice. The Complainant could, therefore, have continued his studies in April 1993, three years after the discrimination occurred. There is no evidence that either the Respondent or the Complainant contributed to the delay in this matter being heard. I think it likely that much of the delay was caused by processing and investigating the complaint; however, no evidence was led on that issue. The Respondent did not argue that the delay within the Human Rights Council was undue, but its counsel did submit that the Complainant should be compensated for only two years of delay.

The delay was not, on its face, unreasonable. Furthermore, such delays are reasonably foreseeable in cases of discrimination. In *Morgan, supra;* the Federal Court of Appeal considered, among other things, whether damages should be reduced to compensate for delays in investigating a complainant of discrimination. In that case, MacGuigan J.A. (in dissent) concluded that a delay of five and a half years was attributable to the Canadian Human Rights Commission. He stated that, where there is no satisfactory explanation for the delay, two years should be presumed to be the outside limit for the Commission to investigate and decide whether to proceed to a tribunal. Mahoney J.A. disagreed that the time taken by the Commission was relevant in assessing damages. Whichever view is correct, I was designated to hear this matter on 24 March 1992, which is within the two-year period.

The Court in *Morgan* was unanimous that there must be a causal connection between the discriminatory act and the damages.

> I think one should not be too concerned by the use of various concepts in order to give effect to the simple idea that common sense required that some limits be placed upon liability for the consequences flowing from an act, absent maybe bad faith. Reference is made at times to foreseeable consequences, a test more appropriate, it seems to me, in contract law. At other times, standards such as direct consequences or reasonably closely connected consequences are mentioned. The idea is always the

> same: exclude consequences which appear down the chain of causality but are too remote in view of all the intervening facts. Whatever be the source of liability, common sense still applies. (*Morgan, supra*, per Marceau J.A. at 482)

It is foreseeable that a student who is prevented from pursuing a career because of discriminatory practices will suffer financial loss as a result of the discriminatory practice. The Complainant should be compensated for the three-year delay in his education. There is a duty on the Complainant to mitigate that loss; the burden,however, is on the Respondent to prove a failure to mitigate. The Respondent has not argued that the Complainant failed to do so.

Based on these considerations, I calculate the Complainant's loss of income as follows:

YEAR	TEACHERS SCALE	PROJECTED EARNINGS	DIFFERENCE
1	32,921	38,000	-5079
2	34,930	38,000	-3070
3	36,939	38,000	-1061
4	38,948	32,921	6,027
5	40,957	34,930	6,027
6	42,966	36,939	6,027
7	44,975	38,948	6,027
8	46,984	40,957	6,027
9	48,993	42,966	6,027
10	51,002	44,975	6,027
11	53,011	46,984	6,027
12	55,020	48,993	6,027
13	55,020	51,002	4,018
14	55,020	53,011	2,009
15	55,020	55,020	0
		Total	51,060

The Complainant's wage loss, assuming that he completed his teaching certificate, obtained employment immediately after graduation, and continued to teach in the same school district for 12 years, would be $51,060. This amount must be adjusted for contingencies. On the negative side are the contingencies that he might not complete the

prerequisites, that he might fail or drop out of the teaching program, that he might not find employment as a teacher at all or at the rates quoted above, that he might choose another career or that other events might prevent him from continuing as a teacher. On the positive side are the possibilities that he might be accepted as a special counsellor, that he might upgrade his qualifications or that he might find a job in a higher-paying district.

Any figure I choose for future wage loss will, by necessity, be an arbitrary one. The evidence on the future possibilities was inexact. No actuarial evidence was led concerning the quantum of future loss; no one from the education community was called to testify concerning typical career paths for teachers; no one from the University testified as to the Complainant's prospects for success in the program. The only evidence is that provided by the Complainant, much of which is hearsay. There was little examination or cross-examination on the issue of future contingencies. I must, nevertheless, make a decision based on the evidence before me. My duty is to assess an award that in all the circumstances of this case is fair.

Considering the uncertainties in the career path chosen by the Complainant and the uncertainty expressed by the Complainant as to his choice of careers, I am of the opinion that a relatively large deduction should be made for contingencies. In *Chang v. Muskett* (unreported, 22 December 1988, B.C.C.A, Vancouver Registry CA008746), the Court of Appeal considered the award for loss of income to a plaintiff who had lost one year of dentistry school as a result of a personal injury. The evidence indicated that the average taxable income for dentists was approximately $87,490. After allowing for contingencies, the Court awarded $40,000 non-pecuniary damages; that figure included other non-pecuniary damages assessed at $14,000 by the trial judge. In the *Chang* case, there was evidence that the plaintiff had failed to achieve satisfactory results in her dentistry course before her injury. I do not think this case warrants such an extreme deduction. In my view, a deduction of 40% is appropriate in the circumstances of this

case. Therefore, I award an amount of $30,636 as compensation for future loss of earnings.

The Complainant also seeks compensation for lost benefits and for inflation. Counsel for the Complainant conceded that there was no evidence on this issue, but submitted that it is possible to assess damages without exact evidence or mathematical formulas. While it is true that it is sometimes necessary to determine damages based on incomplete or inexact evidence, as I have done with respect to wage loss, there must be some evidence on which to make a determination. In this case there is no evidence concerning the benefits available to teachers or how they compare to the benefits the Complainant now receives. While I accept the principle that compensation for lost benefits may be appropriate in some cases to make a complainant whole, there is no evidence on which to make such an award in this case and I decline to do so. For the same reasons, I also decline to make an award for inflation.

Compensation for Loss of Dignity

The Complainant seeks $2,000 for loss of dignity. The claim is based on his evidence that he had to "fight for his rights" twice, and that he had strongly objected to the requirement that he disclose personal information. The Respondent submits that it acted in an "exemplary" manner towards the Complainant and that no more than a modest award would be reasonable.

The Respondent, particularly Dr. Leslie, did provide support to the Complainant in his efforts to extend his education; however, it is the effect of the discriminatory conduct on the Complainant that is determinative. In human rights cases, it may be presumed that there should be general damages for the denial of equality rights: see, for example, *Cameron v. Nel-Gor Castle Nursing Home and Nelson* (1983), 5 C.H.R.R. D/2170 (Ont. Bd. Inq.) at D/2198 para. 18539. The evidence concerning the effect of the Respondent's actions on the Complainant is sparse; however, he did testify that he "felt

like a little kid" when he had to ask other students for help (Transcript p. 22). He also testified that he "didn't want to put ... [his] whole life on paper for another agency." (Transcript p.16). Eventually he did fill out a form to apply for a loan. He described his feelings at that time:

> I felt I didn't have any choice. I either had to do that or fail the course. And after five years, I expected things would be solved and smoothed out. They had a Disability Centre, I thought great, I'm going to be able to go in there, I'm going to get the good grades that I can get. And then I went in and everything was a mess, and I was extremely frustrated. (Transcript p.22)

Although it was not the Respondent's fault that government agencies required the Complainant to fill out forms that he found invasive, his frustration was caused, at least in part, by the Respondent's failure to have adequate support in place for him. The conduct in this case is analogous to that in *Woolverton et al. v. B.C. Transit operating "HandyDart"* (unreported, 13 August 1992, B.C.C.H.R.) where the complainants were found to have been discriminated against by the respondent because it failed to accommodate their disabilities in providing its service. In that case, $1500 for emotional distress was awarded to the complainants who testified. I think that a similar award is appropriate in this case. I therefore order the Respondent to pay $1500 to the Complainant as compensation for his loss of dignity.

Expenses

The Complainant seeks compensation for the money he paid for the services of an interpreter and for the interest on a loan. The Complainant applied for and received a $2,000 forgivable loan from the provincial government to assist in the cost of interpreting services. He used $360 of that loan to pay for interpreters. When he learned that he would be unable to obtain funding for the necessary interpreting service to complete his program, he did not continue his education. The lender therefore demanded repayment

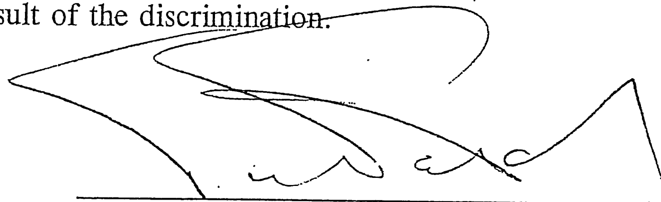
of the loan. The Complainant testified that the lender would not let him pay out the loan in full; he was required to continue making monthly payments.

I have some difficulty accepting that the loan could not be paid off in full; however, in any event, the Complainant has had the use of the unspent portion of the loan and, therefore, would only be entitled to the difference between what he would have received in interest on the unspent amount and the amount of interest he paid on the loan. The evidence before me is insufficient to make such a calculation. The Complainant is entitled to compensation for the $360 he paid for interpreters, and for interest on that amount, the interest to be calculated on the same basis as the interest paid on the $2,000 loan.

Interest

Counsel for the Complainant submitted that this is an appropriate case to award interest on the damages. The damages for loss of income are for future loss. The Complainant has not, to date, suffered actual loss. On the contrary, he has earned more money than he would have earned had the discrimination not occurred. I do not think interest on the wage loss is appropriate. The compensation for loss of dignity does not replace any loss of income; rather, it is to provide some solace for the loss of dignity. In awarding the amount I have considered the value of his loss in present dollars; therefore, an award of interest is not appropriate. Interest is included in my award for expenses incurred.

In summary, I order under section 17(2) of the *Act* that the Respondent pay to the Complainant $30,636 for loss of future wages, $1500 for loss of dignity, and $360 plus interest for expenses incurred as a result of the discrimination.



Tom W. Patch, Member

Victoria, British Columbia
October 22, 1993