ALBERTA
PUBLIC SERVICES AND
FACILITIES/ RELIGION AND CREED
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Paragraphs 1 – 76

Raminder Singh

Complainant

v.

Royal Canadian Legion, Jasper Place (Alta.), Branch No. 255

Respondent

Date of Decision
January 19, 1990

Before
Board of Inquiry, K. J. Chapman

Appearances
R. D. Albert and J. K. L. Wallace, Counsel for the Alberta Human Rights Commission
J. E. B. Johnston, Counsel for the Respondent

Keywords
Dress and Grooming Codes — headdress not allowed on club premises — **Public Services and Facilities** — private clubs as services customarily available to the public — **Religion and Creed** — Sikh wearing turban prevented from attending social function

Summary
The Board of Inquiry rules that Raminder Singh was discriminated against by Branch No. 255 of the Royal Canadian Legion because he could not attend his wife's staff Christmas party at the Legion hall wearing his turban.

Mr. Singh is a member of the Sikh faith, and wearing a turban is a requirement of his religion. His wife's staff Christmas party was held at the Legion premises on November 7, 1987. However, Mr. Singh was informed ahead of time that the Legion's dress regulation prohibited the wearing of headdress on the premises.

The Legion argues that Mr. Singh was not discriminated against because of his religion within the meaning of the Individual's Rights Protection Act because the Legion does not provide services to the public, but is a private club.

The Board of Inquiry finds, however, that many special events are held at the Legion which are open to non-members. The Legion allows weddings, banquets, parties, and many other events to be held there and by-laws which require non-members to be signed in by members of the Legion are not enforced.

Consequently, the Board finds that the Legion is providing a service customarily available to the public and it did discriminate against Mr. Singh because of his religion.

The Board finds further that section 11.1 of the *Individual's Rights Protection Act* which allows discrimination where it is reasonable and justifiable in the circumstances, provides no defence for the Legion in this case.

Maintaining its dress regulations does not provide a justification of sufficient importance to warrant discrimination against Mr. Singh on the basis of his religion.

The Board finds that the Legion violated section 3 of the Individual's Rights Protection Act. It orders the Legion to refrain from further contravening the *Act*, to amend its dress regulations to comply with the law, and to apologize to Mr. Singh for the discrimination.

Cases Cited

Applin v. *Race Relations Board,* [1974] 2 All E.R. 73 (H.L.): 40
Canadian National Railway Co. v. *Canada (Canadian Human Rights Comm.),* [1987] 1 S.C.R. 1114, 76 N.R. 161, 40 D.L.R. (4th) 193, 8 C.H.R.R. D/4210: 20, 22
Charter v. *Race Relations Board,* [1973] A.C. 868: 33, 36
Dockers' Labour Club and Institute Ltd. v. *Race Relations Board,* [1974] 3 All E.R. 592: 33, 36, 41
Letendre v. *Royal Canadian Legion, South Burnaby Branch, No. 83* (1988), 10 C.H.R.R. D/5846: 19
Ontario (Human Rights Comm.) and O'Malley v. *Simpsons-Sears Ltd.,* [1985] 2 S.C.R. 536, 64 N.R. 161, 23 D.L.R. (4th) 321, 7 C.H.R.R. D/3102: 20, 21
R. v. *Oakes,* [1986] 1 S.C.R. 103, 26 D.L.R. (4th) 200: 59
Rawala v. *DeVry Institute of Technology,* 3 C.H.R.R. D/1057: 39
University of Alberta v. *Alberta (Human Rights Comm.)* (1988), 9 C.H.R.R. D/5403: 58, 60

Legislation Cited

Canada

Canadian Charter of Rights and Freedoms, Part 1 of the *Constitution Act, 1982,* being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11: 9, 60

Alberta

Individual's Rights Protection Act, R.S.A. 1980, c. I-2
s. 3(a): 2
s. 3(b): 2
s. 11.1: 3, 56

British Columbia

Human Rights Act, S.B.C. 1984, c. 22: 19

THE COMPLAINT AND THE FACTS

[1] According to the "Agreement as to Facts and Procedures," filed as Exhibit No. 1 to these proceedings, the complaint arises as follows:

Mr. Singh and his wife made plans to attend a Christmas party organized by [the] staff of Mrs. Singh's place of employment and scheduled for November 7, 1987 at the Jasper Place Branch No. 255 of the Royal Canadian Legion.

Mr. Singh is a baptized member of the Sikh faith and one of the fundamental tenets of the Sikh religion is that all baptized male members of the Sikh faith must, on all public occasions, wear a turban.

Mr. Singh is said to have recalled that the Royal Canadian Legion had a policy respecting the wearing of a headdress on Legion premises.

Enquiries confirmed the fact that the Jasper Place Branch No. 255 had a rule prohibiting the wearing of headdress on their premises.

It was further confirmed by the Jasper Place Branch No. 255 of the Royal Canadian Legion that this rule would be enforced at the November 7, 1987 function.

As a result of being notified of the official Legion branch policy, Mr. Singh, because of his religious beliefs, had no alternative but to cancel his plans to attend the function.

[2] Mr. Singh filed his complaint with the Human Rights Commission alleging discrimination contrary to ss. 3(a) and (b) of the *Individual's Rights Protection Act,* [R.S.A. 1980, c. I-2]. When a settlement could not be negotiated, this Board of Inquiry was appointed on August 16, 1989 by Ministerial Order pursuant to s. 27(1) of the *Individual's Rights Protection Act.*

THE ISSUES

[3] A: Does the application of the dress regulation policy of the Jasper Place Branch No. 255 of the Royal Canadian Legion regarding the wearing of headdress contravene any of Mr. Singh's rights at stated in ss. 3(a) and, or 3(b) of the *Individual's Rights Protection Act?*

B: If so, was the contravention of the *Act* such that it was reasonable and justifiable in the circumstances so as to be excused as provided for in s. 11.1 of the *Individual's Rights Protection Act?*

CLAIMS ADVANCED BY THE COMPLAINT AND THE COMMISSION

[4] Counsel for the Commission, on behalf of the complainant, claims that the effect of the Legion's dress regulation policy, as applied to Mr. Singh, has "the effect of discriminating against practising Sikhs who must wear turbans" (see transcript, November 21 & 22, 1989 at p. 9). They claim that the rule, while " . . . apparently neutral on its face, creates a barrier to persons holding certain religious beliefs and has a discriminatory effect on them" (see transcript, November 21 & 22, 1989 at p. 9).

[5] The Commission further argues that there is nothing in [the] evidence that justifies the contravention of the *Act* nor provides any defence to the actions of the respondent in violation of the *Act* as provided for in s. 11.1 thereof.

CLAIMS ADVANCED BY THE RESPONDENT

[6] The respondent claims the Legion is a private club and consequently its services and facilities are not "customarily available to the public . . ." as provided for in the wording of s. 3(a) of the *Act.*

[7] As well, the respondent relies, if necessary, on s. 11.1 of the *Act,* claiming if there is discrimination against Mr. Singh, it is of such a circumstance as to be reasonable and justifiable for the Legion to require members and guests to follow their dress regulations since they are a private club.

[8] The respondent further argues that Mr. Singh was not discriminated against because of his religious beliefs. They contend Mr. Singh is subject to the house rules of this Legion branch because they are applicable to all members and guests of this private club.

[9] The Legion contends that Mr. Singh's access to their premises is discretionary because of certain admission policies and procedures that apply to guests. As a result, the service they provide is

discretionary and therefore not one "customarily available to the public." They argue that the Legion is exercising its right of freedom of association under the *Canadian Charter of Rights and Freedoms* [Part 1 of the *Constitution Act, 1982,* being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11] and the enforcement of house rules, including dress regulations, is an element of this right as a private club.

THE DECISION

[10] The first question to be decided is: Did the respondent violate s. 3 of the *Individual's Rights Protection Act* under the circumstances set out in the Agreement as to Facts and Procedures, in Exhibit No. 1 of this Board of Inquiry?

[11] There is no doubt nor dispute as to the facts in Exhibit No. 1 nor was there any inconsistency in the testimony with Exhibit No. 1. The facts are also set out very clearly in that Exhibit. They are particularly clear as set out in paragraphs 6, 7, and 8. There it is stated that Mr. Singh had recalled a Legion policy at Branch No. 255 regarding the wearing of headdress. An enquiry was made and the existence of such a policy was confirmed by a Legion official. The fact that this "rule would be enforced at the November 7th function," the event in question in this matter, was also confirmed by the management and representatives of the executive of the branch.

[12] Paragraph 8 of the Agreement as to Facts and Procedures states:

> Upon being notified of the official Legion policy, Mr. Singh, because of his religious beliefs, had no alternative but to cancel his plans to attend the function. [Emphasis added.]
>
> Based on this agreed fact there can be no doubt the respondent denied services or facilities to Mr. Singh based upon his religious beliefs.

[13] Given this agreed fact, it is argued by the respondent that, as a private club, it is entitled to restrict membership, to create policies and procedures, to control access to its services and facilities, as well as create and enforce its "House Rules," which include a restriction on the wearing of headdress on its premises.

[14] The respondent further submits that Branch No. 255 of the Royal Canadian Legion is a private club and, as a result, the services or facilities that were denied to Mr. Singh were not "customarily available to the public." Consequently, the respondent argues, s. 3 of the *Act* has not breached. The Legion argues that the wording of s. 3 regarding "customarily available to the public" is a saving clause or justifying clause (see the transcript, December 14, 1989 at p. 157).

[15] The respondent may be a private club but there is no exemption for private clubs in the *Individual's Rights Protection Act.* According to the wording of s. 3 it applies to any person, alone or with another, by himself, or by the interposition of another either directly or indirectly. The *Act* makes no exception for private clubs.

[16] This point is emphasised when one considers the preamble of the *Act.* Here we see language that shows the intent of the legislation and is therefore helpful in the interpretation of the *Act.*

In the preamble, it is stated that:

> . . . it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical disability, age, ancestry or place of origin.

The *Act* goes on to say that it is fitting that this principle be "affirmed" and rights of the individual be "protected."

[17] Then, to be sure of the fundamental importance of this type of legislation, it goes further in s. 1 and makes any law of the province of Alberta inoperative, to the extent that it authorizes or requires the doing of anything prohibited by this legislation.

[18] A review of the cases dealing with the constituent elements of a private club and the definition of what "customarily available to the public" means in human rights legislation is necessary.

[19] I have been referred to a number of cases, by both sides of this Inquiry, on the point of what constitutes a private club. In addition, I have been given the reasons for decision of a hearing under the British Columbia *Human Rights Act,* S.B.C. 1984, c. 22 (as amended) *Letendre* v. *Royal Canadian Legion, South Burnaby Branch, No. 83,* of December 1988 [10 C.H.R.R. D/5846].

[20] I have also reviewed the case law regarding the approach to be taken in the interpretation of human rights legislation (see *Action travail des femmes* v. *C.N.R.,* 40 D.L.R. (4th) 193, *(sub nom. Canadian National Railway Co.* v. *Canada (Canadian Human Rights Comm.)),* [1987] 1 S.C.R. 1114, 8 C.H.R.R. D/4210 and *Ontario (Human Rights Comm.) and O'Malley* v. *Simpsons-Sears Ltd.,* [1985] 2 S.C.R. 536, 23 D.L.R. (4th) 321, 7 C.H.R.R. D/3102). The Supreme Court of Canada in a unanimous decision in *O'Malley* said that legislation of this nature is special, not quite constitutional but certainly more than ordinary, and it is up to the Courts and boards of inquiry, "to seek out its purpose and give it effect . . . the removal of discrimination."

[21] The *O'Malley* case also discussed [at D/3106 C.H.R.R.] the applicability of the concept of adverse effect discrimination in human rights legislation. Adverse effect discrimination is described in *O'Malley* as the adoption of a rule or standard which is on its face neutral, and which will apply equally to all but which has a discriminatory effect on a prohibited ground on one employee or group.

[22] In *Action travail* the Supreme Court set out the principles that are to be applied in interpretation of human rights legislation. Essentially the rights being protected are to be interpreted broadly and the defences are to be interpreted narrowly.

It is in that light that I have reviewed the facts and circumstances in this matter.

[23] The complainant argues that it is not the service provider, the Legion in this case, but rather the service itself that is the focus of the legislation. They say the characterization of a respondent or an institution as "outside the scope of Section 3 ... (is) not the focus" (see transcript, December 14, 1989 p. 86).

[24] I agree with this approach. We must look at the service provided to see if it is one customarily available to the public. The fact that the service provider is a private club or not, is not the test of what is a service or facility customarily available to the public under the *Act.*

[25] The service in question was a staff Christmas party scheduled at the respondent Legion branch premises. In the evidence, these type of events were not seen as Legion sponsored. They were therefore characterized as "special events."

[26] The service provided included a meal, prepared and served, a cash bar with a waitress and bartender, followed by dancing to a live orchestra supplied by the Legion. In the case of the Legion facilities, an area [was] set aside for the meal and was divided from other diners in the facility by a temporary barrier which was removed when the dancing started.

[27] The exhibits submitted by the respondent showed a number of these special events taking place over a three-year period, involving a wide variety of groups, events, companies, various government entities, organizations, and other clubs. The exhibits showed special events involving

weddings, engagements, anniversaries, birthdays, retirements, receptions, banquets, meetings, luncheons, and dinner parties.

[28] The evidence showed that the services and facilities provided were the same as any catered event in any conventional commercial banquet or dining facility. As a result of this evidence, I am of the opinion that the Legion provides a service in the form of their special events that is one customarily available to the public.

[29] This is in no way to suggest that the Legion is not a private club. It may well be. In my judgment, whether the respondent is a private club or not, and based on the facts in this matter, is not a defence to a violation of Mr. Singh's s. 3 rights. I have already found there is an admitted s. 3 violation contained in the Agreement as to Facts and Procedures Exhibit No. 1 discussed above, based on Mr. Singh's religious beliefs.

[30] This branch of the Legion can, and in my opinion does, have a private and a public sphere in its operations. Counsel for the respondent argued (see transcript, December 14, 1989 p. 160):

> ... that customarily available to the public clause has meaning which should be taken in the context of whether it's public or private spheres. I would state that if it's in the public sphere, that clause has meaning. If it's in the private sphere of human intercourse, it allows one not to be within the *Act.*

[31] Again, I have reviewed some case law on the qualities and conditions of a private club and how that relates to the rights in s. 3 of the *Act.*

[32] The Legion submits that since a guest can only gain access to their premises by sponsorship of a member and according to the provisions of the by-laws of Branch No. 255 (see Exhibit No. 4), it is for all intents and purposes a private club. They say that the club trusts its members, or those who have the right to book the facilities, like fraternal affiliates, to handle the matter as to who should enter, but the club itself still has the right to say who comes in (see transcript, December 14, 1989 p. 171–72).

[33] They submit that the cases for authority on this point are *Charter* v. *Race Relations Board,* [1973] A.C. 868 and *Dockers' Labour Club and Institute Ltd.* v. *Race Relations Board,* [1974] 3 All E.R. 592.

[34] I have reviewed these cases and note that they are essentially dealing with matters of membership. The matter before me is not one of membership. As I read the agreed fact, No. 6 in Exhibit No. 1, it states clearly that Mr. Singh is not a member of the Royal Canadian Legion. His attendance at his wife's staff Christmas party had nothing to do with his status as a member or not of this Legion branch.

[35] As stated earlier, the respondent may be a private club. That is not the issue I have to decide. Nor is the status of the respondent as a private club any defence to the application of the *Individual's Rights Protection Act* to the facts in this matter. Private clubs are not exempt from the provisions of the *Act* simply because they are private. The discrimination against Mr. Singh was not in relation to his applying for membership nor in the exercise of any membership rights and therefore the *Charter* and *Dockers'* cases are of little help.

[36] These cases are helpful, however, in determining the boundary where a private club enters the public sphere and is then clearly within the s. 3 provision. In the *Dockers'* case at p. 594 Lord Reid notes that the *Charter* case " ... was only concerned with election to membership of a club. It was recognized that some clubs, or so-called clubs, are so conducted that they are not truly within the private sphere." He goes on at p. 595 to say:

> But again a club can go outside the private sphere. Reference was made to a golf club which might admit members of the public or of some selection of the public at particular times in payment of a green fee. There too I would have no doubt that they would commit an offence if they discriminated against anyone wishing to play on any of the grounds stated in the *Act.*

[37] This example of a club going "outside the private sphere" is very analogous to the situation where Mr. Singh wanted to attend his wife's staff Christmas party. This special event, like many, many others at the Legion, is not a Legion-sponsored activity and is therefore outside the private sphere of the "private club's" activities. The evidence showed, by my count, about 160 such special events in a 33-month period, spread throughout the year (see Exhibits 11, 12, & 13).

[38] The respondent contends that each attendee at a special event on their premises is in fact a guest of a member, and therefore subject to the house rules contained in their by-laws. They argue that since there is a formal process of signing in guests the Legion cannot be seen as being customarily available to the public. They submit that all special event attendees are guests within the meaning of the by-laws of the branch because someone, with the right to sign in guests for such events, has done so (see Exhibit No. 4).

[39] In the matter of *Rawala* v. *DeVry Institute of Technology,* 3 C.H.R.R. D/1057 at para. 9375 we have what I consider to be [a] helpful comment of the determination of whether a service is public or private. It says:

> Although the proper delineation of the boundary between public and private in this context has proven to be a difficult task, review of the cases amply demonstrates that the critical question is whether the person providing the services or facilities exercises sufficient discretion or selectivity in restricting access to them that it cannot be said that the service or facilities have been made to the public at large.

[40] The case of *Applin* v. *Race Relations Board,* [1974] 2 All E.R. 73 (H.L.) held that a family that opened their own home to foster children on a regular basis, to the point that some 300 children had been in their care over the years, had in fact become a service to the public.

[41] Lord Reid in *Dockers', supra,* acknowledged the private nature of a householder's right to select his own guests and in doing so [he] would be exempt from the operation of the relevant statute on discrimination at issue in that case. He went on to say however:

> On the other hand, the head of a household can go outside the private sphere. If he opens his house to the public on certain occasions I have no doubt that he would commit an offence if he refused admission to anyone on any of the grounds stated in the Act. And I think the same would apply if he opened his house to a section of the public, e.g. members of a particular profession.

Lord Reid goes further to say he believes the same principles apply to a club.

[42] Since Mr. Singh is not a member of the Legion, and the matter is not one of membership nor the criteria as to whether the Legion is a private club or not, I find the *Charter* and *Dockers'* decisions, *supra,* not very helpful, except for Lord Reid's example of a private club going "outside the public sphere."

[43] The question, according to the respondent, is whether the barriers to entry in the procedures and policies of the Legion for special events, like the one in question, are sufficient to bring them outside s. 3 of the *Act* because the barriers establish that the services and facilities are not customarily

available to the public. The Board is invited to characterize the nature of the service or facility provider as the test of what is customarily available to the public, and not the service or facility itself.

As already stated, I believe the proper test is to focus on the service and not the service provider.

[44] In any event, on the facts at hand, I think the so-called barriers to entry at the respondent branch are, by their nature, not a sufficient exercise of discretion nor of control to hold that the services or facilities of the respondent for special events are not available to the public.

[45] The evidence showed that there need be no significant connection between the member signing in the "guest" and the guest themselves. In fact the "guests" and the sponsoring member would not need to know each other at all under the typical circumstances of a special event, and a so-called "guest" could still gain admission to the Legion premises. There is little if any significant evidence to show any judgment, control, or discretion being exercised by the member or fraternal affiliate who signs in "guests" for special events. The respondent argues that they, as a private club, rely on and trust the judgment of the member or the fraternal affiliate as to whether a person is appropriate to be admitted as a guest (see transcript, November 21 & 22, 1989 at p. 61, and December 14, 1989 at pp. 151 and 171).

[46] [In] the case at hand, the Legion facility was booked by a fraternal affiliate of Branch No. 255 on behalf of his wife's staff Christmas party. When the booking was made there was no enquiry of the person booking the event as to the composition or backgrounds of those attending the function (see transcript, November 21 & 22, 1989 at p. 22). There was no evidence in this matter that the person entitled to, and who made the booking for his wife's staff Christmas party, exercised any judgment, control, or discretion as to who would be appropriate to attend or not.

[47] The Past President of the Legion, under cross-examination, admitted the special events were not Branch functions (see transcript, November 21 & 22, 1989 at p. 59). The event in question was described as one of these "non-official Legion function[s]."

[48] He further admitted that the by-laws of the branch do not address the matter of these special events and stated that they are a "matter of practise, sir." (see transcript, November 21 & 22, 1989 at p. 60) In my opinion the word "customarily" as contained in s. 3 of the *Act* is well defined within the phrase, a "matter of practice."

[49] The by-laws of the branch (Exhibit No. 4) had some interesting and helpful provisions in this regard. Article XIII House Rules (d) to (g) provide, *inter alia,* the number of guests various categories of members may "sign in" to the premises as well as requiring "guests" to remain in the company of their sponsors.

[50] A review of the Exhibits Nos. 11, 12, and 13, showed the number and attendance at special event functions as well as Legion sponsored functions for 1987, 1988, and most of 1989. The Exhibits documented many special events with over 100 in attendance. While there was testimony that some of these occasions would have many members in attendance, there was no evidence that they each brought and "signed in" the other attendees as their guests, as required by the by-laws.

[51] In fact, in the testimony of the Past President of the branch, he admitted that a special event could take place on the Legion premises without any branch member in attendance. Further he admitted that such an event could take place on their premises and all attendees could have no affiliation, with the Legion or this branch, of any nature whatsoever (see transcript, November 21 & 22, 1989 at p. 64).

[52] He further admitted that the house rules regarding the restriction on the number of guests

certain categories of members or fraternal affiliates may have on the Legion premises, do not apply to special events (see transcript, November 21 & 22, 1989 at p. 60).

[53] The facts of the matter show that the house rules regarding guests are either honoured in the breach or ignored. The evidence showed that the "signing in" process is not a matter of judgment, selection, discretion, or control by the members or fraternal affiliates, but, at best, a mere formality where special events are concerned.

[54] The "signing in" process is more of a formality, due to the requirement of the Alberta Liquor Control Board regarding licensing for such clubs, rather than an exercise in judgment, selection, discretion, or control of access to the services and facilities as contended by the respondent.

[55] As a result, I find that the respondent, in offering the kind of special event service and facility in question, has gone over the boundary from the absolute private into the realm of the public. The number of special events scheduled and the way they are conducted by the respondent is in fact offering service and facilities customarily available to the public.

As a result, the respondent is in contravention of s. 3 of the *Act* and has discriminated against the complainant on the basis of religious beliefs.

APPLICATION OF SECTION 11.1 OF THE ACT

[56] The next question to be dealt with is whether the contravention was reasonable and justifiable in the circumstances as provided for in s. 11.1 of the *Act.*

Here the respondent encourages the Board of Inquiry to acknowledge the social and military "custom" of removing headdress that is consistent with the dress regulation in question. Since the Legion is a club, they contend that it is reasonable for them to have rules for this sort of thing.

[57] On the second point of the discrimination being justifiable, it is argued that the Legion's members' right of freedom of association is justification. The point is that if it is legal for individuals to have and enforce dress regulations in the private sphere, then it is acceptable for a group to do so as well.

[58] The Commission, on behalf of the complainant, has referred the Board to the Alberta Court of Queen's Bench decision of *University of Alberta* v. *Alberta (Human Rights Comm.) and Dickason* (1988), 9 C.H.R.R. D/5403 as the leading case in the interpretation of s. 11.1 of the *Act.*

[59] This case is clearly binding upon this Board and determines, *inter alia,* the proper guidelines to be followed in interpreting the application of s. 11.1 of the *Act.* The guidelines for interpreting the extent to which an individual's protected rights under the *Act* could be limited are determined to be the same as provided in the *Charter* case *R.* v. *Oakes,* [1986] 1 S.C.R. 103, 26 D.L.R. (4th) 200 by the Supreme Court of Canada.

[60] *Dickason, supra,* establishes the criteria in determining what is a reasonable and justifiable limitation on an individual's rights under the *Act.* They are the same in the situation at hand as applicable under a s. 1 analysis of limitation under the *Canadian Charter of Rights and Freedoms.*

[61] In summary they are firstly, the measures responsible for a limitation of a right or freedom must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom" (see *Dickason, supra,* para. 40458). Mr. Justice Murray says the standard must be high in order to ensure that the objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain s. 1 protection. He suggests the matter need be "pressing and substantial in a free and democratic society before it can be characterized as sufficiently important"

(see *Dickason, supra,* para. 40458).

[62] Secondly, provided the first test of sufficient importance has been met, the party wishing to invoke the defence must show that the means chosen are reasonable and demonstrably justified. This is called a "proportionality test" which depends on the particular circumstances of each case, but will require the courts (and boards of inquiry) to balance the interests of society with those of individuals and groups.

[63] Thirdly, there needs to be a proportionality between the effects of a measure that is limiting the individual's rights or freedoms and the objective which has been identified as of sufficient importance. Again, the Court notes that with a wide range of rights and freedoms being protected, and the almost infinite number of factual situations which could arise, some limitations on rights and freedoms will be more serious than others. Some situations could therefore meet the first two criteria but will still not be justifiable because they are too severe in light of the purposes they intend to serve.

[64] I have applied these tests to the matter at hand in interpreting the application of s. 11.1 of the *Act.*

What is the valid objective(s) of the respondent that is of sufficient importance to warrant overriding Mr. Singh's rights under the *Act?*

[65] As I understand the arguments put forth by the respondent, the dress regulations in question are a "custom" from both a social and military point of view. It is argued that the Legion adheres to these customs from both perspectives.

[66] Secondly, the justification presented, is that the Legion has a freedom of association under the *Charter.* As such, they are justified in making rules like dress regulations, which they can enforce on their premises.

[67] As to the second point, I do not see how the protection of Mr. Singh's right of not being discriminated against by virtue of his religious beliefs is contrary to the Legion's right of freedom of association. Again, we are presented with a membership argument in a matter that has nothing to do with membership. The complainant's fundamental right of religious beliefs and the freedom of association of Legion members are not in conflict here and no issue of paramountcy arises. The "justification" argued is irrelevant to the issues in this case.

[68] The evidence was that a turban could be worn as part of a costume in a theme party and it could be worn as part of a military uniform. The evidence was also that Sikhs are required by Canadian military regulation to wear their turbans as part of their uniform. The branch by-law dress regulation itself allows headdress to be worn during events like Klondike Days and the now defunct Muk Luk Mardi Gras. As well, we heard of several exceptions or adaptations to this dress code within the Legion membership itself where members wore headdress as part of their ceremonial and official activities.

[69] Given these circumstances and the high standard set for the first criteria by the Chief Justice of the Supreme Court of Canada in the *Oakes* case, *supra,* I cannot see how the objective of dress regulations regarding the wearing of headdress in the house rules of the by-laws of the Royal Canadian Legion Branch No. 255 are pressing and substantial enough in a free and democratic society to warrant limiting one's right not to be discriminated against because of religious beliefs.

[70] In short, neither social nor military customs, nor festive community events have more importance in our society than the fundamental right to one's religious beliefs. As a result of this determination I need not deal with the remaining criteria with regard to any s. 11.1 defence.

Accordingly, I find the complaint is justified.

THE ORDERS

[71] According to the powers of the Board of Inquiry as set out in s. 31(1)(b) of the *Act* the respondent is hereby ordered to:

1. cease contravention of s. 3 of the *Act;*
2. refrain in future from committing the same or any similar contravention;
3. forthwith and as provided in the by-laws, amend their by-laws Article XIII Dress Regulation (d) to insert after the words Mardi Gras " . . . or as protected by law . . ."

[72] The general by-laws of the Royal Canadian Legion (Exhibit No. 5), p. ix, outline the organization's Testament and Articles of Faith. They are worth reviewing in the context of the *Act* and the matter before this Board of Inquiry.

These are said to be among the founding principles of the Legion which "endure today" and will serve well in the future. They include, in part:

> A solemn remembrance of Canadians who gave their lives so that our nation might be free;
>
> Maintaining in and for Canada the rule of law — encouraging the national and united spirit —ordered government — and striving for peace, goodwill and friendship between Canadians and among all nations.

[73] As additional remedy, the complainant has requested an apology from the respondent branch. Apologies are only meaningful if sincerely given. The Board hesitates to order an apology as a matter of form, however, in considering the circumstances I believe one is in order.

[74] The house rule regarding the wearing of headdress in this branch is not absolute. The rule itself allows an exception to the rule for "such occasions authorized by the management" (see Exhibit No. 4, p. 13). It was the management and representatives of the executive of this branch who considered Mr. Singh's situation and decided not to exercise the discretion given to them in the by-laws.

[75] As a result, much embarrassment, time, and expense ha[ve] been incurred by the respondent, as well as the violation of Mr. Singh's rights protected under the *Act.* All of this could have been avoided by the proper exercise of judgment and discretion by the "management" of the respondent when they considered the application of their dress regulations in this matter.

[76] As a result I further order the executive and management of the branch to:

4. apologize to Mr. Singh for any embarrassment, humiliation, or distress their actions and lack of judgment may have caused him in these circumstances.

There was no submission made as to costs and none shall be ordered.