

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Trudy Carpenter (now Trudy Jack)

COMPLAINANT

A N D:

Limelight Entertainment Ltd. doing business as "Limit Night Club"

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Barbara Humphreys

Counsel for the Complainant:

Joseph Gereluk

On Behalf of the Respondent:

Jack Weeks

Place and Date of Hearing:

Victoria, British Columbia
April 19 and 20, 1999

[1] The Complainant, Trudy Carpenter (now known as Trudy Jack), filed a complaint (Exhibit 1) with the B.C. Council of Human Rights in which she alleged that the Respondent, Limelight Entertainment Ltd. doing business as "Limit Night Club" (the "Limit"), denied her a service customarily available to the public because of her race, colour, and/or ancestry, contrary to section 3 of the *Human Rights Act*, S.B.C. 1984, c. 22, now section 8 of the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the "Code").

[2] Ms. Carpenter alleges that she was refused admittance to the Limit because she is Aboriginal, and that a racially derogatory remark was made to her by Mr. Jack Weeks, the owner of the Limit. Mr. Weeks says that Ms. Carpenter was denied admittance to the Limit because she had asked the employees of the Limit for protection from a violent ex-boyfriend. He denies that Ms. Carpenter's race, colour or ancestry were a factor in the incident in question. He also denies that he made a racially derogatory remark.

EVIDENCE

THE COMPLAINANT'S CASE

[3] Ms. Carpenter testified that she is a status Indian who is a member of the Nuchanlet nation. She has lived in Victoria for over 20 years. She enjoys going to nightclubs to dance and to socialize with family and friends. Because of a medical condition, she restricts her consumption of alcohol to one or two drinks.

[4] On June 16, 1995, Ms. Carpenter went to the Limit "to dance the night away". She knew there was a dress code there and she testified that she was appropriately dressed. She had made plans to meet her cousin, Debbie Webster. Ms. Carpenter arrived at 9:00 p.m., paid an admission fee of about \$3, and had her hand stamped. She spent \$2.50 on a non-alcoholic drink and sat down to wait for Ms. Webster.

[5] After waiting for about half an hour, Ms. Carpenter went downstairs to look for her cousin. She took a quick look outside, and then turned around to re-enter the Limit. She testified that Steve, the doorman, refused to let her in. When asked in the hearing if he told her why she was not permitted to enter the Limit, she answered as follows:

Yeah. He said that I was wasn't allowed back in. And I asked him by who. And he said it was by the owners and Jack Weeks. And then I asked him why. And he said it was because of the dress code.

[6] Ms. Carpenter said that she went around the corner to the Day and Night restaurant and told her friend, Joe Motuz, what had happened.

[7] Mr. Motuz and Ms. Carpenter had previously been in a common law relationship. Their relationship ended in 1989, and since that time Mr. Motuz said that they lead separate lives, except for discussions related to the welfare of their son.

[8] Mr. Motuz testified that, on the night in question, Ms. Carpenter came into the Day and Night restaurant. He said that "she was quite upset, she was crying a little bit". She showed him the stamp on her hand and told him that she had not been permitted to re-enter the Limit because she did not meet the dress code. Mr. Motuz said that she was very nicely dressed and that she had not been drinking.

[9] Mr. Motuz telephoned the Limit and asked to speak to the owner. He said that he spoke with a man who identified himself as the owner. Mr. Motuz arranged to meet him outside the club.

[10] Ms. Carpenter and Mr. Motuz returned to the Limit. Ms. Carpenter asked the doorman for permission to enter the club; he refused. Ms. Carpenter and Mr. Motuz asked the doorman to call the owner, Mr. Weeks. When Mr. Weeks came downstairs, Ms. Carpenter asked him why she was not permitted in the club. She testified that he answered that her dress was "too country style".

[11] Ms. Carpenter testified that she was stunned by Mr. Weeks' decision not to allow her into the Limit. She asked him what she had ever done to him to deserve this

treatment; she said that he did not answer. She said that Mr. Motuz suggested that she make a complaint. Ms. Carpenter testified that, when she mentioned to Mr. Weeks that she could file a human rights complaint against him, he told her that she would be barred for life if she did.

[12] Ms. Carpenter testified that Mr. Weeks and Mr. Motuz got into a heated discussion; she described Mr. Weeks as "pretty emotional and pretty worked up." She testified that Mr. Weeks stated that "all drunken Indians should go to Merlin's", and that Steve, the doorman, gave them some passes to Merlin's.

[13] Mr. Motuz testified that Mr. Weeks told Ms. Carpenter that her dress was "too shabby" and that "all Natives are drunk and they should go to Merlins". Mr. Motuz said that he was very surprised by Mr. Weeks' remarks, which were directed to Ms. Carpenter. Mr. Motuz described Ms. Carpenter as "in tears ... really upset".

[14] Ms. Carpenter gave evidence that she and a friend, Lynn Skog, who is white, had gone to the Limit on another occasion. Ms. Carpenter said that she was again told that she could not enter because of her dress code; Ms. Skog gained entry without any problem. At one point in her evidence Ms. Carpenter said that this occurred one week after June 16; at another point she agreed that it occurred before June 16.

[15] Rosemary Schade, a waitress at the Day and Night restaurant, testified that she had known Ms. Carpenter as both a customer and a friend for 10 years. Ms. Schade described Ms. Carpenter as a "very sensitive and very polite and very kind". On June 16, Ms. Carpenter told her that she had been called a "drunken Indian" by the bouncer at the Limit.

[16] Ms. Carpenter testified that she told Ms. Schade that "Jack" had made the remark and that she did not identify "Jack" as either the bouncer or the owner.

[17] Ms. Carpenter testified that she separated from her husband, George Carpenter, in 1993 and obtained a divorce in 1994. She said that Mr. Carpenter had moved away from Victoria in 1994 and she had not seen him since that time. She said that she was not

experiencing any difficulty with him or any other ex-boyfriend in 1995. Ms. Carpenter denied that she had spoken to Mr. Weeks about an ex-boyfriend who was threatening her with a knife or that she had requested "protection" from the staff at the Limit. Ms. Schade, who had known Ms. Carpenter since 1989, testified that Ms. Carpenter had never mentioned anything about a restraining order against an ex-boyfriend to her. Mr. Motuz said that there was no restraining order against Mr. Carpenter.

[18] I have not considered the testimony of Ms. Webster, Ms. Carpenter's cousin, as her evidence was based on what she had been told by Ms. Carpenter. Furthermore, Ms. Webster testified in a vague manner and she was confused about the chronology of events.

THE RESPONDENT'S CASE

[19] Jack Weeks testified on behalf of the Respondent. At the time of the hearing, he worked as a bartender at the Limit. In September 1994, he, Balbant Singh Sadhu and Brian St. Cyr were the managers of the nightclub, which was then called "Buckley's on Broad". The absentee owner was Harry Lalli. Mr. Weeks testified that in 1994 the nightclub was in danger of losing its liquor licence because of its poor reputation. He described it as a "dirty, tough bar".

[20] At some point in early 1995, Mr. Weeks, Mr. Singh and Mr. Cyr purchased the nightclub. Mr. Singh continued as manager. During March and April 1995, they met to discuss the concerns of police and liquor officials. They recognized that they needed to improve the security at the nightclub. They identified certain individuals who should be kept out of the nightclub because they were prone to violence.

[21] Mr. Weeks testified that, during this period, Ms. Carpenter approached him. She told him that she was having problems with an ex-boyfriend who was "chasing her around with a knife" and who was not adhering to a restraining order. Ms. Carpenter asked him if the nightclub would protect her. Mr. Weeks testified that he told Ms. Carpenter that the nightclub would not get involved in her personal problems and that the safest place for her was her home.

[22] Mr. Cyr and Mr. Singh testified that they were told by Mr. Weeks about his conversation with Ms. Carpenter.

[23] Steve Kessel was the doorman/bouncer at the nightclub in 1995. His shift started at 9:30 p.m. His position was at the bottom of the stairs leading up to the nightclub. He testified that he was instructed by Mr. Weeks not to allow Ms. Carpenter in the nightclub; Mr. Weeks did not give him any reasons.

[24] Mr. Weeks stated that the doorman at the nightclub was instructed to screen people at the door in two ways. The first was to request identification because drug dealers, prostitutes and pimps rarely carry identification. The second was to use the dress code as a nonaggressive way to deny entry to people whom the doorman considered "undesirable" for a variety of reasons.

[25] On May 15, 1995, after substantial renovations, the nightclub opened as the Limit. Mr. Cyr testified that the owners wanted to make the nightclub "more up-scale" to attract a new clientele who would spend more money.

[26] Mr. Weeks testified that, in early June 1995, Ms. Carpenter and a blond woman wanted to enter the Limit. He said that he happened to be downstairs at the time. Even though Ms. Carpenter was not in violation of the dress code, Mr. Weeks testified that he told her she could not enter because of the dress code. He gave evidence that she was wearing "black style track pants" and a white T-shirt. The reason he did not allow her to enter was the situation she had spoken to him about concerning her ex-boyfriend.

[27] Mr. Weeks testified that, on June 16, 1995, he noticed Ms. Carpenter in the Limit at about 9:30 p.m. when he arrived. Mr. Weeks saw Ms. Carpenter leave. Mr. Weeks said he did not talk to Mr. Motuz on the telephone or arrange to meet him outside the nightclub.

[28] Mr. Weeks said that he went downstairs to speak with Mr. Kessel, who told him that he had not seen Ms. Carpenter enter the nightclub. Ms. Carpenter arrived and wanted to re-enter the nightclub. Mr. Weeks testified that he told her she could not re-enter

because of the dress code. He said he told her that her cowboy boots were inappropriate, because he did not want to discuss her personal situation in front of the people who were waiting to enter the nightclub. Mr. Weeks said that he gave her passes to Merlin's. He denied that he made any comment to the effect that "drunken Indians should go to Merlin's". He said that he had never seen Ms. Carpenter have an alcoholic drink.

[29] Mr. Weeks testified that the onus was on Ms. Carpenter to contact him and inform him that she was no longer experiencing problems with her ex-boyfriend.

[30] Mr. Kessel testified that, on June 16, 1995, he recalled Mr. Weeks speaking to Ms. Carpenter about her boots. Mr. Kessel stated that he did not recall Mr. Weeks making the alleged derogatory comment. Mr. Kessel said he did not recall an earlier occasion in June when Ms. Carpenter was denied entry. He testified that Ms. Carpenter came by the nightclub a few times subsequent to June 16 to inquire if she was still barred, and he had told her, "Yes".

[31] Mr. Kessel wrote a letter giving his account of the events in question (Exhibit 12). He testified that he wrote the letter 5 days before the hearing from his own recollection. He denied that Mr. Weeks had told him what to write.

[32] Balbant Singh Sadhu testified that he was involved in managing both Club California and Buckley's on Broad, which were the names of the nightclub before it became the Limit. At the time of the hearing, he was the owner of the Limit.

[33] Mr. Singh wrote a letter (Exhibit 14) stating that at a meeting in April or May 1995 he, Mr. Cyr and Mr. Weeks had discussed security concerns as a result of Ms. Carpenter's conversation with Mr. Weeks. Mr. Singh testified that he had been told the date of the meeting by Mr. Weeks in September 1998, when he wrote the letter.

ISSUE

[34] The issue before me is whether the Respondent discriminated against the Complainant by denying her a service customarily available to the public, contrary to section 8 of the *Code*.

DECISION

[35] The relevant portion of section 8 of the *Code* states that a "person must not, without a bona fide and reasonable justification, deny to a person... any ... service or facility customarily available to the public ... because of the race, colour, ancestry ... of that person".

[36] Clearly, the Respondent provides a service or facility customarily available to the public.

[37] There is no disagreement that Ms. Carpenter was denied admittance to the Respondent on the night of June 16, 1995. What is at issue is the reason for the denial. Ms. Carpenter says that her race, colour and/or ancestry were a factor in the Respondent's denial. The Respondent says these factors played no part in its decision to deny Ms. Carpenter admittance.

[38] There are two areas where the testimony of the parties and their witnesses diverge. One is the derogatory comment that Ms. Carpenter and Mr. Motuz have testified was made by Mr. Weeks, which he and Mr. Kessel have denied that he made. The other is the reason provided by Mr. Weeks for refusing to allow Ms. Carpenter into the Limit, which she has disputed.

[39] In these circumstances, I must weigh the respective credibility of the witnesses to determine which version is in harmony with the preponderance of the probabilities. I do so in the context of the principles set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.). The trier of fact must also weigh "... the motives of the witnesses, their relationship or friendship with the parties, their attitude and demeanour in the box, the

way in which they gave their evidence ..." (*MacDermid v. Rice*, 45 R. de Jur. 208, at 210-211, referred to in Sopinka and Lederman, *The Law of Evidence in Civil Cases* (Toronto: Butterworths, 1974) at p. 531).

[40] Both Ms. Carpenter and Mr. Motuz gave their evidence in a very straightforward and forthright manner. I did not form the impression that they exaggerated their evidence to bolster the allegations of discrimination. Even though Mr. Motuz and Ms. Carpenter had a previous relationship, Mr. Motuz impressed me with his neutrality and his frankness. I do not find that Ms. Carpenter's credibility is diminished by her confusion about the timing of her and Ms. Skog's visit to the Limit.

[41] I was not similarly impressed with the evidence of Mr. Kessel. He testified that he authored a letter (Exhibit 12) 5 days before the hearing. In that letter, he referred to Ms. Carpenter's first and second visits to the Limit. However, in his oral evidence, he could not recall her first visit at all. I am not convinced that he wrote the letter from his own recollection. I am also not convinced that the evidence he gave about the incident on June 16 was from his own recollection of events.

[42] I found much of Mr. Weeks' evidence questionable. It seemed improbable to me that he would remember in detail what Ms. Carpenter was wearing when she was denied admittance in early June. There was no evidence that she protested or responded in any way that might make this incident stand out from denials on other nights. He testified that he denied Ms. Carpenter permission to enter the nightclub because she had told him about a problem with a knife-wielding ex-boyfriend. However, he never explicitly told her that she could not return to the Limit; he only told her that the safest place for her was at home. According to his evidence, she was turned away in early June and given the reason of "dress code". She returned again on June 16. It must have been obvious to Mr. Weeks at that time that Ms. Carpenter did not understand that she was barred from the Limit until she informed him that she no longer had a problem with her ex-boyfriend. If Mr. Weeks' real reason for not allowing Ms. Carpenter into the Limit was her ex-boyfriend, it seems improbable to me that he would not have stepped aside with her and quietly explained the situation to her when she tried to enter the nightclub on June 16.

[43] I accept Ms. Carpenter's evidence that she did not speak to Mr. Weeks about a violent ex-boyfriend or ex-husband. I reject Mr. Weeks' evidence on this matter. It follows that I reject Mr. Weeks' explanation for refusing to allow Ms. Carpenter to enter the Limit.

[44] I also note that there was no evidence that Ms. Carpenter was particularly upset in early June when she was refused admittance. Given her evidence of her reaction on June 16, and that of Mr. Motuz and Ms. Schade, all of which I accept, I conclude that something in addition to being told that she could not enter because of the dress code must have occurred.

[45] I accept the evidence of Ms. Carpenter and Mr. Motuz concerning the derogatory comment made by Mr. Weeks to Ms. Carpenter. I conclude that Ms. Carpenter's aboriginal ancestry was a significant factor in Mr. Weeks' and Mr. Kessel's refusal to allow Ms. Carpenter into the Limit: see *Holloway v. Clairco Foods Ltd.* (1983), 4 C.H.R.R. D/1454 (B.C. Bd. Inq.).

[46] I note Ms. Carpenter's evidence that she had attended at Buckley's on Broad many times. However, according to Mr. Weeks, she had only tried to enter after it reopened on May 15 as a more upscale nightclub, the Limit, on two occasions - early June and June 16.

[47] In summary, I find that the Respondent denied the Complainant a service or facility customarily available to the public because of her race, colour and/or ancestry, contrary to section 8 of the *Code*.

REMEDY

[48] Ms. Carpenter seeks compensation for injury to her dignity, feelings and self-respect.

[49] I accept Ms. Carpenter's evidence that she was humiliated by the events of June 16. She said that the way Mr. Weeks spoke to her made her feel like a "bad person". She

testified that she doesn't feel as comfortable going downtown to dance anymore because she is worried that someone else "might look at ...[her] the same way Mr. Weeks does". I accept her evidence, and that of Ms. Schade, who testified that Ms. Carpenter was very hurt and wounded by this incident.

[50] Ms. Carpenter was refused admittance to a public place and spoken to in a most derogatory manner. In the circumstances of this case, I consider \$3500 appropriate compensation.

[51] The Respondent is liable for the actions of Mr. Kessel and Mr. Weeks: see *Robichaud v. Canada (Treasury Board)* (1987), 8 C.H.R.R. D/4326 (S.C.C.).

[52] Therefore, pursuant to section 37(2)(d)(iii) of the *Code*, I order the Respondent to pay the Complainant \$3500 as compensation for injury to her dignity, feelings and self-respect.

[53] I am required by section 37(2)(a) of the *Code* to order the Respondent to cease the contravention, that is discriminating against a person regarding any accommodation, service or facility customarily available to the public, because of race, colour or ancestry, and to refrain from committing the same or a similar contravention. I so order.

Barbara Humphreys, Tribunal Member

Victoria, British Columbia
September 7, 1999