

BC Supreme Court overrules BC Human Rights Tribunal

Women-Only Rape Crisis Centre and Transition House
Did Not Discriminate Against Male-To-Female
Transexual

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Court confirms any woman's human right to organize
with peers.

VANCOUVER, B.C. - On December 19, 2003, the British Columbia Supreme Court set aside the decision of the Human Rights Tribunal which had held, in error, that the Vancouver Rape Relief and Women's Shelter had breached the Human Rights Code when it refused to allow Kimberly Nixon, a person without the life experience of being treated as a woman, to train as a volunteer peer counselor at the women-only rape crisis centre and shelter for battered women. Kimberly Nixon is a post-operative male to female transsexual. The court further declined to send the matter back to the Tribunal for a rehearing.

The Court also set aside the Tribunal's award of damages, which means that Kimberly Nixon must now return the \$7,500 that the non-profit volunteer run organization was ordered to pay. Until it was overruled, it was the highest ever amount awarded to compensate for hurt feelings.

Vancouver Rape Relief argued that their organization did not discriminate and, as well, is protected by the section of the Human Rights Code (sec. 41) which protects charitable groups and their right to freedom of association.

"Vancouver Rape Relief argued that the tribunal's decision failed to recognize the rights of women to organize independently in order to address historic experiences of inequality and oppression. In fact the tribunal's decision opened the way for men to demand entry into women's organizations. In Vancouver Rape Relief's case such a situation would have undermined the peer-based self-help objectives of the organization," explains Gwendoline Allison, co-

counsel for Vancouver Rape Relief and Women's Shelter.

Christine Boyle, Professor of Law at the University of British Columbia, also represented Vancouver Rape Relief. She said, "This decision reinforces existing case law which rejects a formal equality approach to human rights. Ms Nixon had argued for a "disadvantage neutral" approach to human rights. Vancouver Rape Relief had argued that the analysis of discrimination should be contextual and take into account the needs of equality-seeking groups."

"Other women's groups felt intimidated by the threat of human rights complaints for organizing exactly as we are entitled to organize," says Suzanne Jay of Vancouver Rape Relief and Women's Shelter, "Women are an historically disadvantaged group and there is provision in the Charter of Rights and Freedoms and in the Human Rights Code for us to group independently to address these experiences of inequality."

Adds Jay, "We're very glad to be able to turn our full attention to organizing with the raped and battered women seeking our help. Women across the province are suffering the consequences of massive government cutbacks and we're working to prevent women from falling through the cracks."

Vancouver Rape Relief and Women's Shelter made the decision to appeal the Tribunal decision after careful consideration of the tribunal decision and in consultation with legal experts across the country.

The original complaint was filed in August 1995. The lengthy Tribunal hearing took place from December 2000 to February 2001. The tribunal decision was released January 18, 2002.

The judicial review was heard by the Honourable Mr. Justice Robert Edwards. Lawyers for Vancouver Rape Relief are Gwendoline C. Allison, Bull, Housser & Tupper and Christine Boyle, Faculty of Law, University of British Columbia.

For more information Suzanne Jay, 604-872-8212

