IN THE MATTER OF THE HUMAN RIGHTS CODE
OF BRITISH COLUMBIA; AND

IN THE MATTER OF A COMPLAINT MADE
BY CAROL JOY FELSTAD WILSON AGAINST
THE VANCOUVER VOCATIONAL INSTITUTE

REASONS FOR DECISION AND ORDER

REASONS FOR DECISION OF

CAROLYN GIBBONS

IN THE MATTER OF THE HUMAN RIGHTS CODE

OF BRITISH COLUMBIA

IN THE MATTER OF A BOARD OF INQUIRY HEARING RESPECTING A COMPLAINT BY CAROL JOY FELSTAD WILSON AGAINST VANCOUVER VOCATIONAL INSTITUTE

REASONS FOR DECISION AND ORDER

Dates of Hearing: July 9, 14, 15, November 26, 27, 28, December 1, 2, 19, 1975, February 3, 4, 5, 6, March 1, 2, 3, 5, April 12, 26, 27, May 3, 15, 1976

Members of Board of Inquiry: Rod Germaine (chairman)
Frank Hunter
Carolyn Gibbons

This is a complaint made by Carol Joy Felstad Wilson against Vancouver Vocational Institute. The complainant alleges that, because of her sex, age and without reasonable cause, she was denied a facility or service customarily available to the public, specifically she was refused attendance at classes in the graphic arts department of Vancouver Vocational Institute. At the hearing days in July 1975 the complainant was represented by counsel and thereafter she conducted her own case. The complainant also gave sworn testimony. On November 26, the Director of the Human Rights Code was joined by consent as a party and was represented by Tom Gove. The Respondent named in the complaint, Vancouver Vocational Institute, is a part of Vancouver Community College and, as such, was represented by Gavin Hume and Peter Gall. Each of the parties was given an opportunity to call witnesses, cross-examine all witnesses and make submissions to the Board. The complaint was amended at the opening of the hearing with consent of the respondent to add "discriminated against in respect of services" and "without reasonable cause".

The complainant gave testimony that extended for several days and was extensively cross-examined by all other parties thus providing the Board ample opportunity to assess character and credibility. Five other witnesses gave testimony on behalf of the complainant, one of whom was Sheila Day, Human Rights Officer, who gave testimony as to her investigations of the complaint.

A number of witnesses gave testimony on behalf of the Respondent. The principal of Vancouver Vocational Institute, Mr. J. McInnis, gave testimony as did Mr. D. Kremer, a career counsellor at the Institute. Mr. Harold Kirchner, now Dean of Career Programmes at Capilano College, gave testimony as to vocational instruction in British Columbia. Each of the instructors in the graphic arts department, Messrs. Frandsen, Smith, Pinkerton, McLeod, gave testimony. Five students of the graphic arts department of the Institute gave testimony on behalf of the Institute.

A very great number of exhibits were tendered by both complainant and respondent.

I make the following finding of facts after careful consideration of all the evidence. The complainant, Carol Joy Felstad Wilson, is a female person aged fifty-six years at the time of the complaint. She has an impressive formal educational background. She has several post-graduate degrees including a doctorate from the University of Paris-Sorbonne in art history. In addition, the complainant has a number of years of experience as a teacher and has written a book. She enrolled in the two-year graphic arts course at Vancouver Vocational Institute in September 1974.

At the time of enrollment the complainant's interest in the course was to learn to operate small presses, books and booking making including printing her own books. No-one else in the class had a similar educational and employment background to the complainant and no-one except the complainant was over forty years of age. The average age of students in graphic arts is eighteen to twenty-five years.

The first section of the course was taught by Mr. Smith. The evidence shows that the complainant passed all four areas of that section. The portion of the course taught by Mr. Pinkerton was next and the evidence shows the complainant passed that section. In both sections the complainant had higher marks on the theory examinations than on the practical examinations.

Throughout the fall term the complainant's progress in the course was discussed amongst the instructors and Mr. Pinkerton recommended to Mr. Frandsen, the department head, that she be terminated. At the request of the department, Mr. Kremer interviewed the complainant on December 23 with respect to her progress. On January 24, 1975, Mr. Frandsen told the complainant she was terminated. Exhibit 8, the notice of termination stated that the reason was "theory marks alright, but unable to put it into practical work". The termination notice also indicated that the complainant was considered unsuitable for the trade and was directed to the Vancouver School of Art. Further, the Respondent gave as reasons for the termination student complaints about the complainant's behavior in the class and the belief of more than one of the instructors that the complainant was a safety hazard to herself and others. Considerable testimony was given about a number of incidents that occurred in the classroom that the Respondent argued substantiate the broad allegations that the complainant could not use the machinery adequately.

Section 3 of the Human Rights Code reads as follows:

3. (1) No person shall
(a) deny to any person or class of persons any accommodation, service or facility customarily available to the public; or
(b) discriminate against any person or class of persons with respect to any accommodation, service, or facility customarily available to the public,
unless reasonable cause exists for such denial or discrimination.

(2) For the purposes of subsection (1),
(a) the race, religion, colour, ancestry or place of origin of any person or class of persons shall not constitute reasonable cause; and
(b) the sex of any person shall not constitute reasonable cause unless it relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of insurance.

It is my opinion that the Respondent has contravened Section 3(1) of the Human Rights Code. In view of the short time that elapsed from the complainant's enrollment and her termination, I do not feel she was given an adequate opportunity to become proficient in the use of the machinery. Further, no extra time was extended to her to complete assignments or use the machinery and no special effort was made by the instructors to teach her the practical work even though they saw she was having some difficulty with parts of the course. The reasons advanced by the Respondent for termination of the complainant do not, in my opinion, amount to reasonable cause within the meaning of Section 3(1) of the Human Rights Code.

The Respondent did not dispute that it is a service or facility customarily available to the public. Vancouver Vocational Institute is established under the Public Schools Act of the province. Where there is a denial of such a service or facility and the reasons advanced are unsubstantiated, an inference may be drawn when the elements of age and sex are present, that discrimination has occurred. The assessment that the complainant was not suitable for the trade was subjective. I find that the age of the complainant played a role in that assessment. Where an assessment is subjective and elements like age or sex play some part, a prima facie case is established whereas a result of that assessment there has been a denial of a service or facility. In addition therefore to a finding that reasonable cause for the denial has not been established, I find that the Respondent discriminated against the complainant because of her age.

I am aware that my fellow Board member, Mr. Germaine, disagrees with my opinion. My view of the facts is such that, even if the reasons advanced by the Respondent amounted to reasonable cause, the respondent has failed to establish on the facts that the complainant was unable to do the practical work adequately.

The complainant did not seek by way of relief to be reinstated in the graphic arts programme. It should be understood, however, that a Board of Inquiry does have the authority to order that a person who has contravened the Code make available to the person discriminated against such rights, opportunities or privileges as he was denied. That authority is found in Section 17(2)(a) of the Code. The relief sought is private lessons at the expense of the Respondent. I have therefore decided to order that Vancouver Vocational Institute provide to the complainant eighteen three-hour lessons on the press of her choice by an instructor satisfactory to her. Also I order Vancouver Vocational Institute to provide eighteen three-hour lessons on the use of cameras as specified by the complainant by an instructor satisfactory to her. I will also order that Vancouver Vocational Institute refrain from committing the same or a similar contravention. I would emphasize that this order does not fully compensate the complainant; however, it is what I consider appropriate in all the circumstances of a difficult case.

Carolyn Gibbons

Dated this 4 day of June 1976 in the

City of Vancouver, British Columbia

REASONS FOR DECISION OF

FRANK HUNTER

JUN 15 1976

As a member of the Board of Enquiry examining the complaint of Carol Joy Felstad Wilson against Vancouver Vocational Institute, I concur with the statements of my fellow board member, Ms. Carolyn Gibbons in her report, page 1 to page 2 inclusive. I agree with the remainder of the report, but wish to enlarge upon some of the points covered.

On page 3, paragraph 1, referring to the marks received by the Complainant, an examination of the mark books and summary of marks by Mr. Smith and Mr. Pinkerton shows erasures and changes in these exhibits. It was unfortunate that most of the examination papers from which this information was drawn had been destroyed. This left the Board without the means of cross-checking the entries. Dr. Wilson claimed there were inaccuracies.

Regarding Paragraph #2, page 3, the Notice of Termination (exhibit 8) states "Not suitable for the Trade". After leaving the Vancouver Vocational Institute the Complainant found employment with Deluxe Typesetting Co., 1644 West 3rd for 6 weeks, and on terminating her employment received a letter (Exhibit 79) from her employer, Mr. John Dorozio, which states in part "She is punctual and reliable, and has an adeptness for learning the Graphic Arts skills". Mr. Dorozio testified he would be willing to hire her again.

Mr. Frandsen, the Department Head, provided his superiors with his assessment of the Complainant (Exhibit #21) that "I find Carol a hard person to motivate towards the learning process". Two of the instructors, witnesses for the Respondent, disagreed with this assessment. Items 1 & 2 of the same exhibit claim she was continuously taking notes, and

asking questions which would indicate to me a highly motivated student.

Exhibit 10, signed by 6 students of Class B, states that the Complainant did not hinder them in their work in the classroom. Exhibit 23, signed by a number of students, stated she was a hindrance, however the author of this exhibit stated, under oath, that he started this statement as a joke. It was claimed by the Respondent that Dr. Wilson was a hazard in the classroom. Mr. J. McInnis, Principal of Vancouver Vocational Institute, questioned by a Board Member as to the existence of any records of the Complainant being injured, or causing injury to anyone stated there were none, and that this fact had "bothered him". There was one serious accident recorded, during the Complainants attendance at the Institute. One of the students sustained a severe cut to a thumb, requiring stitches, while working with one of the instructors removing some cutting wheels from a machine. This student was not terminated. Another incident involved a student causing a squirt of hot lead from the Ludlow machine, which splattered another student some distance away. This student was not terminated. Several students, witnesses for the Respondent, testified that the manner in which the Complainant approached the machines was slow and hesitant. My finding in fact is that the Complainant was not a hazard.

Regarding paragraph #1, page 4, and with particular reference to the use of machinery, a board member questioned a student witness for the Respondent as to Dr. Wilson being kept from using the machines. The reply was that it had been arranged that way. A second student, witness for the Respondent, when asked the same question replied that it had been decided. Exhibit 41, dated December 19, 1974, is a time sheet

record of Dr. Wilson's activities for the day. This records her complaints as to not being allowed use of the machines, due to other students crowding around them. Mr. Smith's policy was to allow the students to pair off with whom they chose, which in turn assisted them in completing their projects more quickly. The Complainant stated that on several occasions she was without a partner, and consequently her work time was greater. I accept these facts to be discriminatory towards the Complainant, and by limiting her use of the machines thereby affecting her ability to complete the practical work satisfactorily.

I am in agreement with the award to the Complainant, as outlined in the closing paragraph of Ms. Gibbons report of June 4th, 1976.

F. HUNTER

Dated this 10th day of June, 1976 in the City of Vancouver, British Columbia.

REASONS FOR DECISION OF

ROD GERMAINE

I have had the opportunity to read and consider the reasons for decision of my colleague, Ms. Gibbons, and the concurring reasons of my colleague, Mr. Hunter. Pursuant to Section 18(2) of the Human Rights Code of British Columbia Regulations, their majority opinion will constitute the decision of this Board of Inquiry. With great respect to my colleagues, however, I am unable to agree with their decision.

The complaint alleges a contravention of Section 3 of the Human Rights Code. More particularly, the Complainant says she was denied a service customarily available to the public or she was discriminated against in respect of such a service because of her sex and age and without reasonable cause. In the course of argument, counsel for the Respondent, Vancouver Vocational Institute ("VVI"), acknowledged that the Respondent constitutes a service customarily available to the public within the meaning of that language in Section 3 of the Code. It is furthermore clear that the termination of the Complainant in her course in the graphic arts department at VVI constituted a denial. A previous Board of Inquiry in the case of The Gay Alliance Towards Equality and The Vancouver Sun has described the consequences which flow in these circumstances:

> Once a denial or a discrimination with respect to a service or facility customarily made available to the public is established the onus rests upon the respondent to satisfy the Board of Inquiry that reasonable cause existed for the refusal and/or discrimination. Were it otherwise a complainant would be required to establish a

cause for the denial or discrimination which would be a difficult if not impossible enterprise under those circumstances where a respondent has denied a service without giving reasons. Requiring the complainant to both establish the cause for the denial or discrimination as well as the lack of reasonableness of same would in such circumstances enable the respondent to avoid responsibility for what would otherwise be a discriminatory act, by simply remaining silent. The very expression "reasonable cause" impels one to the conclusion that no cause at all would, prima facie be unreasonable. Accordingly, a respondent faced with proof of a denial of a service or discrimination in respect thereof must of necessity establish two things if he is to avoid the consequences of a finding that the allegation is justified under Section 17(2) of the Code. He must first establish the cause for discrimination and secondly he must satisfy the Board of Inquiry that the cause was a reasonable one.

In my opinion the Respondent in these proceedings has established both of the elements it is required to establish in order to avoid a finding that the Complainant's allegation is justified.

With respect to the first element of cause for the denial, it is significant that the evidence discloses no equivocation on the part of the Respondent in stating its reasons for the termination to the Complainant, to the investigating Human Rights Officer and to the Board of Inquiry. The principal reason was that the Complainant manifested an inability to perform the practical skills necessary to succeed in the graphic arts program. The Complainant testified that the graphic arts department head,

Mr. Frank Frandsen, told her on the date she was terminated, January 24, 1975, that the reasons for her termination were first, that she was failing in the practical work, second, that she was a hazard to herself and others, and third, that she was preventing other students from learning. This first reason of failure in the practical work was also specifically stated on the termination form dated January 24, 1975. In a portion of that form headed "If Course Not Completed Give Reason Where Possible", the following remarks are written:

> "Theory marks alright but unable to put it into practical work."

There was no evidence to suggest that the Respondent or representatives of the Respondent at any time departed from this stated principal cause for the Complainant's termination.

Quite apart from the consistent position of the Respondent as to the reasons for the Complainant's termination, I am convinced that the Complainant was unable to perform practical work at a level which was minimally satisfactory according to the standards adopted by the instructors in the graphic arts program. My colleague, Ms. Gibbons, has referred to the overall passing grades of the Complainant during the period she was enrolled in the graphic arts program. This observation overlooks the evidence of the instructors, which I accept, to the effect that the Complainant's overall passing average was attained by her very high marks in theory examinations

offsetting her very low results in practical examinations. In addition to the actual practical examinations administered, the instructors also had an opportunity to observe the Complainant's practical skills when the students were assigned projects which were not examinations. Unlike my colleague Mr. Hunter, I am unable to draw any inference adverse to the Respondent simply because the mark books of the graphic arts instructors showed erasures and changes or because most of the examination papers, the results of which were recorded in the mark books, had been destroyed. The erasures and alterations made to the mark books were not confined to the Complainant's marks and it is reasonable that an educational institution would not wish to store an ever-accumulating supply of old examination papers. In summary, I have concluded that the Complainant was terminated for the primary reason that she showed an insufficient practical aptitude.

The second and third reasons for the termination given by Mr. Frandsen on January 24, 1975 were, in view of the comment appearing on the termination form, merely supplementary considerations on the part of Mr. Frandsen and the instructors in the graphic arts department. Counsel for the Respondent relied upon those reasons only as secondary to the primary reason of the Complainant's inability to adequately perform the necessary practical skills. In my view of the evidence, both of the supplementary reasons were established as fact.

I find that the Complainant's use of the equipment in the graphic arts department was haphazard, hesitant and often excessively time consuming. On one occasion, the Complainant ignored the advice and instructions of another student who had been assigned to operate a machine called the "Baum Folder" and activated that machine thereby causing some slight damage. I agree with my colleague Mr. Hunter that the Respondent was unable to establish any occasion on which the Complainant either injured herself or caused injury to another person but, in my opinion, the instructors were not obliged to await an injury before they were entitled to make an honest assessment of whether the Complainant's presence in the class gave rise to a risk of injury. I also find that the Complainant tended to engage in excessive and detailed questioning of the instructor while the instructor was giving a lecture or demonstrating the proper use of equipment. Such behaviour on the part of the Complainant was disruptive of the other students' efforts and, unlike my colleague Mr. Hunter, I am unable to draw any inference whatsoever either in support of the Complainant or otherwise from the two petitions which were filed as exhibits in these proceedings. The first of those petitions, Exhibit 10, was circulated by the Complainant and signed by six students. The petition is supportive of the Complainant but more than one of the signatures on it was obtained by the Complainant upon her promise that she would not seek to operate some of the large presses when the class commenced the portion of its program involving printing presses. The second petition, Exhibit 23, is

extremely critical of the Complainant and was signed by nine students including some of the students who signed Exhibit 10. In his youthful embarrassment at the appearance of his signature on both petitions, the instigator of Exhibit 23 did testify that he started the second petition as a joke. The same student also testified that at first he thought the Complainant's petition was also a joke and there is no doubt that he sought to countermand the petition in support of the Complainant. I have concluded, in summary, that the Complainant was terminated in part because she was considered a potential hazard in the class and in part because she constituted a disruption to the other students in her class.

Since I have concluded that the Complainant was terminated for the principal reason that her practical work was unsatisfactory, I turn now to the question of whether that cause was also a reasonable cause. The graphic arts program is considered by the VVI to be a pre-employment training experience. Emphasis is placed upon practical skills and the working environment is simulated as far as possible. This simulation of the working environment extends to the teaching and testing of practical skills to be carried out within prescribed time periods in order to give the students a taste of the production schedule atmosphere. The instructors are drawn from the trades and are expected to have a minimum trade experience

of 10 years as journeymen. The instructors are required to obtain a teaching diploma in summer programs at the University of British Columbia. Furthermore, the graphic arts department operates under the guidance of a Trade Advisory Committee. That Committee consists of management and union representatives from the industry. The functions of the Committee are to advise the VVI of developments in the industry and the implications of those developments for the training in the graphic arts department. In addition, the Trade Advisory Committee monitors the integrity of the graphic arts program and assists in the selection and review of the instructors by advising the Vancouver Vocational Institute as to the competence of its graduates.

Although the graduates of the graphic arts department may elect to enter any aspect of the entire industry including such areas of endeavour as sales and marketing, administration, employment in a small non-union shop or even self employment, it is not surprising in light of the nature of the program that the standards of achievement a student must accomplish are related to the instructors' collective view of competence to embark upon an apprenticeship in the printings trades. In other words, the pre-employment nature of the program encompasses preparation for employment in all facets of the graphic arts industry and therefore includes preparation for employment in the printing trades. For this reason emphasis is placed upon practical skills and manual dexterity and use of the printing

trades equipment and machinery. In order to succeed a student must be able to demonstrate sufficient practical skills and competence to embark on an apprenticeship in the printing trades, the one specific facet of the industry which most clearly requires the practical skills and competence.

The evidence established that for the reasons I have described, the instructors in the graphic arts department require a student to achieve a certain standard of performance in respect of practical skills. Having chosen those standards, it is not the province of this Board of Inquiry to assess whether the standards are appropriate or inappropriate so long as the standards are not applied unevenly on account of such factors as race and sex or any of the other factors which are prohibited by the Code either specifically or under the umbrella of reasonable cause.

In assessing whether the graphic art department's standard were applied to the Complainant unevenly on account of her age and sex as specifically alleged or on account of some other factor which would not constitute reasonable cause, I am obliged to observe at the outset that I find the Complainant's evidence almost totally unreliable and her argument equally unacceptable in this respect. The Complainant relied heavily upon inferences she invited the Board to draw from various casual remarks made by instructors to her or in her presence. As an

example, the Complainant alleged that the Department Head, on the first day of classes at a general assembly of both sections of her class, explained that the students were to address him as Mr. Frandsen for the reason that he was the oldest and he added words to the effect "or almost the oldest". In fact, the Complainant was the only student older than the Department Head and the Complainant invited the Board to draw the inference from that remark that the Department Head manifested a bias against older students. I am convinced that any such remark constituted merely an attempt at humour or sociable exchange. I am confirmed in this conclusion that the Complainant errs in perceiving sinister significance in such remarks by the Complainant's insistence that alleged comments not remotely connected with her age or sex or, for that matter, her educational background or lifestyle, ought to be similarly treated by the Board as evidence of discrimination.

The Complainant's argument and evidence was further undermined by her position in respect of examination results. The Complainant appeared satisfied with every high mark she received but she insisted that every low mark was evidence of discrimination. I find the Complainant's evidence unreliable for the additional reason that in her appearance before the Board throughout the hearing she manifested an ability to generate explanations for virtually every evidentiary point, regardless of the significance or insignificance of the point, that might be construed as negative to her case. Indeed, at

one point in the hearing the Complainant offered an explanation for the absence of a certain signature on her petition, Exhibit 10, and it was then discovered that the question had been asked by mistake since the signature did appear on her petition. My colleague Mr. Hunter has referred to another of the Complainant's explanations found in Exhibit 41 which consists of a record of the Complainant's activities during a day on which an instructor was conducting a practical examination. The Complainant's explanation was that she had been spurned by other students who were working in small groups during the examination and she was therefore unable to gain access to the machinery necessary for her to complete the examination. I find the evidence of the instructor and more than one student in corroboration of the instructor's version of the facts to be such that I must accept their version of the events of that day rather than the Complainant's. I conclude that the Complainant was given some assistance by another student early on that day and then the Complainant refused to queue up for an opportunity to use some of the equipment necessary to complete the examination. She was absent from the classroom for the major portion of the day and during the time she was absent the queues on the various pieces of machinery disappeared and the machinery would have been available for her use. For the foregoing reasons, then, I reiterate my conclusion that the Complainant's evidence and argument are of little or no value.

In my opinion there was no evidence to suggest that the Complainant's sex was a factor in her termination. There were several other women in the Complainant's class and in the previous class in the graphic arts program. The Board heard the sworn testimony of other women students in the program and both in chief and on cross-examination the evidence of those women disclosed no hint of different treatment because of their sex. There was also evidence that prior to the class which commenced in September of 1973 there were no women in the graphic arts course. Evidence on behalf of the Respondent suggested that no women had applied prior to 1973 but, in my view, whether or not VVI discriminated against women prior to 1973, the evidence heard by the Board clearly established that there were no discriminatory practices because of sex in the Complainant's class.

In support of the allegation that both sex and age were a factor in the Complainant's termination, the Board was invited to infer that the instructors were influenced by the fact that women are not common in certain highly skilled jobs in the printing trades and by the probably ligitimate assumption that, because of her age, the Complainant would have had difficulty obtaining an apprenticeship or employment in the printing trades. It was contended that the words, "Not recommended for the trade" which appear on the termination slip support this inference. In my opinion, the inference is illogical. In order to accept the inference it would be necessary to ignore the presence of other women in the graphic arts program. Furthermore,

there was no dispute in the evidence as to the fact that the graphic arts industry is much wider than merely the printing trades. Vancouver Vocational Institute prides itself on its success in the placement of its graduates in employment and considers as "placed" many of its graduates who do not enter the printing trades and who never intended to enter the printing trades. Therefore, even if there remains discrimination against women or older persons in certain aspects of the printing trades, and I make no such finding, it is my opinion that the graphic arts instructors were mindful of other opportunities in the industry and were not influenced in their decisions respecting the Complainant by the possiblity that the Complainant would not succeed in obtaining employment in a single branch of the overall industry. I conclude that the express reference to the "trade" on the termination slip is merely a reference to the failure of the complainant to attain the standards set by the instructors in relation to the practical skills required in the printing trades.

My colleague Mr. Hunter refers to the Complainant's employment with Deluxe Typesetting Service Co. Ltd. following the commencement of these proceedings. Mr. John Dorozio, the proprietor of Deluxe Typesetting and a journeyman in his trade, told the Board he was unable to judge the Complainant's suitability for the trade. The Complainant was hired by him to perform simple operations in his small shop and she performed those operations satisfactorily for his purposes. Upon leaving his employment,

the Complainant obtained from Mr. Dorozio a written letter of recommendation. The Complainant requested the letter of recommendation in order to assist her to locate further employment and she did not disclose to Mr. Dorozio that her real purpose was to produce the letter in these proceedings. In my opinion the limited accomplishments of the Complainant at Deluxe Typesetting and the letter of recommendation obtained by means of a pretence add nothing to the Complainant's case. The Complainant's Deluxe Typesetting experience contradicts neither the statement referring to suitability for the trade appearing on the termination slip nor the conclusion of the instructors that the Complainant's practical aptitude was insufficient.

I reject the allegation that the Complainant's age or sex were a factor in her termination and the suggestion that the instructors were influenced by a consideration of realities in certain aspects of the printing trades for a further and final reason. Very near the outset of her evidence, the Complainant related the details of an occasion before she enrolled in the program on which she went to see the Department Head to seek advice in relation to the technique of operating a certain type of printing press. She stated in her evidence that she requested instruction from Mr. Frandsen in relation to the operation of a 1250 multilith printing press and Mr. Frandsen told her she would have to take the entire course. He showed her the department and the students engaged in the course in the department. Her evidence was that he said words to the effect that she would

have to learn the peripheral matters as well. Nothing in the Complainant's evidence suggested that Mr. Frandsen attempted to discourage her from entering the program. Rather, I believe the tenor of her evidence was that Mr. Frandsen encouraged her to enrol. At that point in time, the Complainant's age and sex as well as her specific ambitions unrelated to an apprenticeship or employment in the printing trades would have been perfectly obvious to the Department Head. In my opinion it would be extremely unlikely that he would subsequently change his mind and terminate the Complainant because of her age or sex or because she had little opportunity to work in the printing trades.

For the reasons I have set out I am satisfied that neither the Complainant's age nor her sex played any role in the decision to terminate her from the graphic arts program. Having arrived at this conclusion on the facts, I am relieved of the necessity to consider whether a denial of a service customarily available to the public because of age constitutes a contravention of Section 3 of the Code. The factor of age is specifically enumerated as a consideration which would not constitute reasonable cause in other sections of the Human Rights Code incorporating the scheme of reasonable cause. However, the factor of age is not specifically enumerated as a prohibited consideration in Section 3. While it may therefore be arguable that age could constitute reasonable cause under that section, I am confident that the legislature would not have deliberately intended such a consequence. I leave the determination of that issue to a future Board of Inquiry.

The Respondent and counsel for the Director of the Human Rights Code argued that the Complainant was not terminated merely because of her age and sex. It was contended that the Complainant's educational background and her lifestyle were also factors in the decision to terminate the Complainant and because they were factors in that decision there existed no reasonable cause for the termination. Were I satisfied that the decision to terminate the Complainant was in part a product of bias or prejudice in relation to the Complainant's educational background or her lifestyle then I would be forced to conclude that there was no reasonable cause. In my opinion, however, the evidence heard by the Board discloses no basis for a conclusion that the Complainant's termination was motivated in any respect by either her educational background or her lifestyle.

It was contended by the Complainant and by counsel for the Director of the Human Rights Code that because of her educational background and lifestyle the Complainant was shunned by other students and that, by allowing this treatment of the Complainant to continue, the instructors were discriminating against the Complainant on account of her educational background and lifestyle. I would agree with the logic of this conclusion if the students had shunned the Complainant for these reasons and if the instructors had the power to prevent such treatment of the Complainant. It would also be necessary, of course, that this treatment of the Complainant be detrimental to the Complainant in terms of her progress in the graphic arts program. The contention fails, however, because in fact the other students

did not shun the Complainant because of the Complainant's educational background or her lifestyle. On the direct evidence given the Board by various students and on a consideration of the nature of the Complainant's evidence in relation to certain social acitivities of the other students and the instructors, I am convinced that if there was any failure on the part of the Complainant to be accepted as a member of the class by her fellow students then that situation arose as much from the Complainant's wishes as from the desires of the other students. I note that neither of my colleagues rely upon either of these factors of educational background or lifestyle as considerations which were a part of the decision to terminate the Complainant and thereby render the termination a prohibited denial. In short, there exists no basis upon which any conclusion can be drawn to the effect that the Complainant was treated differently because of her educational background or her lifestyle.

In my view, the foregoing exhausts the possible factors which, in the circumstances of this allegation, the Respondent would be prohibited from considering by virtue of Section 3 of the Human Rights Code in connection with its decision to terminate the Complainant as a student in the graphic arts program. I conclude that the Respondent, on the whole of the evidence, has established the cause for the Complainant's termination as well as the reasonableness of that cause. I conclude that, on the balance of probabilities, the Complainant was terminated primarily because of her insufficient practical

aptitude and in part because she was a potential hazard and she was disruptive to her class. These reasons for the termination constitute reasonable cause because they were unaffected by any consideration prohibited by the Human Rights Code which could possibly be relevant in the circumstances. To state my conviction in another manner, I believe that a student of any age, sex, lifestyle or educational background who performed in the graphic arts program in the manner that the Complainant performed would have been similarly terminated by the Respondent.

I would make two further observations. My colleague Mr. Hunter has referred to a written assessment provided by the Department Head, Mr. Frandsen, to the Principal of VVI. I agree with my colleague that the content of that assessment is in many respects inconsistent and exagerated. That finding does not alter my view of the proper disposition of this complaint. The termination of the Complainant by the Respondent was initiated through meetings between the Complainant and the VVI counsellor and between the Complainant and Mr. Frandsen. At those meetings it was suggested to the Complainant that she should consider voluntary termination. The reasons given to the Complainant were the reasons given her by Mr. Frandsen on January 24, 1975. The Complainant however refused to accept the advice and resisted termination both before January 24, 1975 and after that date. Mr. Frandsen was called upon to justify his conclusions and in doing so, an experience he had never before encountered, he expressed his views in a scattergun manner in the assessment provided to the

principal. His conduct was less than creditable. Nevertheless, the theme of the Complainant's failure to perform the necessary practical skills was present in the assessment in question and, as I have already recited, was confirmed both orally on January 24, 1975 and in writing on the termination slip. That theme represented the principal reason for the Complainant's termination and that reason, as I have said, constitutes reasonable cause.

Finally, my colleague Ms. Gibbons, in the course of concluding that there was no reasonable cause for the Complainant's termination recites her conclusions that an inadequate opportunity to become efficient in the use of the machinery was provided, that no extra time was extended to her to complete assignments or use the machinery, and that no special efforts were made by the instructors to teach her the practical work even though the instructors were aware of the difficulties being encountered by the Complainant. Those observations may in fact be true. However, those facts do not, in my opinion, constitute the absence of reasonable cause. So long as any other student performing in the same manner as the Complainant would have been treated in the same way by the instructors and the Department Head, and I have already stated my conclusion that such would have been the case, then the treatment received by the Complainant is outside the scope of the Human Rights Code. The Code is a remedial enactment intended to prohibit different treatment of individuals on account of irrational or unwarranted prejudices or biases stemming from some characteristic of the

person treated differently such as race, sex, age, etc. The scheme of the Human Rights Code of British Columbia incorporating, as it does, the concept of "reasonable cause" does not, in my view, extend the operation of the statute to the point that all citizens are obliged to act with perfect fairness in every aspect of their conduct. So long as an individual assessment is made unaffected by motivations arising out of such characteristics as race, sex, age, etc., it is my view that such an assessment, whether or not a Board of Inquiry would agree that it was the correct assessment, is not subject to review under the terms of the Human Rights Code. The decision of another Board of Inquiry in a case involving a complaint made by Filomena Lopetrone et al against George Harrison et al was relied upon by counsel for the Director of the Human Rights Code. If that case stands for the proposition that the Human Rights Code does impose some absolute standard of fairness irrespective of whether a decision was or was not motivated by prejudice or bias in the nature I have described, then in my view the decision is incorrect in law.

Rod Germaine

Dated this 27th day of August, 1976 at the City of Vancouver, Province of British Columbia.

RG/jk

O R D E R

WHEREAS Vancouver Vocational Institute has been found to have contravened Section 3 of the Human Rights Code of B.C.;

AND WHEREAS Carol Joy Felstad Wilson has been found to have been discriminated against by reason of the said contravention;

IT IS THEREFORE HEREBY ORDERED that Vancouver Vocational Institute provide to Carol Joy Felstad Wilson 18 three hour lessons on the use and operation of a printing press of Carol Joy Felstad Wilson's choice by an instructor satisfactory to Carol Joy Felstad Wilson;

AND IT IS FURTHER HEREBY ORDERED that Vancouver Vocational Institute provide to Carol Joy Felstad Wilson 18 three hour lessons on the use and operation of a camera of Carol Joy Felstad Wilson's choice by an instructor satisfactory to Carol Joy Felstad Wilson;

AND IT IS FURTHER HEREBY ORDERED that Vancouver Vocational Institute refrain from committing the same or a similar contravention.

Rod Holman

Chairperson
Board of Inquiry

Dated this 27th day of August, 1976 at the City of Vancouver, Province of British Columbia.