

IN THE MATTER OF THE HUMAN RIGHTS CODE
OF BRITISH COLUMBIA

AND IN THE MATTER OF THE COMPLAINTS BY
FILOMENA LOPETRONE, SURINDER KAUR BILGA
AND MARIA GUARASCIO AGAINST GEORGE
HARRISON AND JUAN DE FUCA HOSPITAL SOCIETY

REASONS FOR DECISION AND ORDER

DATE OF HEARING: February 6, 1976

PLACE OF HEARING: 880 Douglas Street
Victoria, B. C.

MEMBERS OF BOARD OF INQUIRY: Marge Storm
Angus Macdonald
Mohan Jawl (Chairperson)

EFFECTIVE DATE OF DECISION: March 31, 1976

The three complainants, Filomena Lopetrone, Surinder Kaur Bilga and Maria Guarascio, are former employees of Aberdeen Private Hospital Ltd. The company operated a private hospital at 1450 Hillside Avenue in Victoria until June 1, 1975. On that date, the hospital was purchased by the Provincial Government, and at the invitation of the Government, the responsibility for the administration of the hospital was accepted by the Juan De Fuca Hospital Society.

Prior to the takeover and in anticipation of the sale the entire staff at the hospital received formal notice of termination from the former owner. All the employees were invited to submit applications for employment to the Society by George Harrison, the new administrator, and he advised them that their applications would be given full consideration. Most of the former Aberdeen employees who submitted applications were hired by the new administration. The three complainants were amongst those who were not.

The complainants, along with seven other former employees, filed complaints under the Human Rights Code. With one exception, all of the original complainants were of East Indian or Italian origin. Three of the original complainants were subsequently hired by the Society. Four others withdrew their complaints because

they found employment elsewhere or because of other reasons. The complaints filed by the remaining three are the subject matter of this inquiry. Each of the complaints allege a contravention of section 8 of the Code. In particular, the contravention alleged is discrimination on the basis of race or place of origin, and/or refusal of employment without reasonable cause.

Section 8(1) of the Code reads as follows:

Every person has the right of equality of opportunity based upon bona fide qualifications in respect of his occupation or employment, or in respect of an intended occupation, employment, advancement, or promotion; and, without limiting the generality of the foregoing,

(a) no employer shall refuse to employ, or to continue to employ, or to advance or promote that person, or discriminate against that person in respect of employment or a condition of employment; and

(b) no employment agency shall refuse to refer him for employment,

unless reasonable cause exists for such refusal or discrimination.

To consider these allegations it is necessary to review the history of the takeover, particularly as it relates to the procedures adopted by the Society in evaluating the applicants for the positions available under the new administration. Representatives of the Society were permitted to come in prior to the takeover date to familiarize themselves with the operation, the staff and the facilities and to prepare for the transition. It was during this period that Mr. Harrison invited the Aberdeen employees to apply for employment. Application forms were distributed and job descriptions were posted at the hospital. The Aberdeen employees were instructed to apply only for the positions which they held under the old administration. Employees at other hospitals administered by the Society were also invited to submit applications. It would appear that no similar restriction was imposed on them as to the positions for which they could apply. Altogether, the Society received approximately 200

applications (including unsolicited applications from the general public) for approximately 60 positions which needed to be filled. Between 40 and 50 of the Aberdeen employees who applied were hired by the Society. Approximately 10 were not.

The staffing pattern implemented by the Society was similar to the one in effect at its other hospitals, and it differed from the one which characterized the operation of the former owner. Prior to June 1st, 1975, the hospital had operated basically as a nursing home. Under the new administration it was operated as an extended care facility. Consequently, the number of employees involved in direct patient care such as nurses and nurse's aids increased in relation to the number of persons engaged in support functions. In addition, the Society had a policy favouring full-time staff whereas the former owner made extensive use of part-time employees and this also affected the makeup of the staff under the new administration.

The Society was not pleased with the conditions at the hospital prior to the takeover. Mr. Harrison described them as deplorable and attributed much of the responsibility for the situation to the lack of qualifications and to the carelessness of some of the Aberdeen employees. The Society hoped to improve the standard of patient care and, according to Mr. Harrison, one way of doing so was to raise staff qualifications. The qualifications adopted by the new administration were based on the standards prescribed by the B. C. Hospital Insurance Service.

Mrs. Anita Bradshaw, the Society's professional services co-ordinator, was the central figure in evaluating the applicants for employment. All of the applications were forwarded to her and she made herself available from time to time for interviews during the later part of April and early May. The onus was on the individual applicant to arrange for an interview and only those who availed themselves of the opportunity were interviewed. In addition to the applications and

interviews, Mrs. Bradshaw also relied on her personal observations of the Aberdeen staff while engaged in their employment during the period preceding the takeover.

The old administration had maintained employee records and these included periodic formal evaluations made by supervisory personnel. The evaluations were not considered by Mrs. Bradshaw. Neither the former administrator, Mr. De Macedo, nor the matron was asked to express opinions on the Aberdeen employees who applied to the Society, nor did they participate in any other way in the selection process. There was some evidence of informal communications between Mrs. Bradshaw and the former administrator, but it is obvious that he had little influence in the evaluation procedure adopted by the Society.

Mrs. Bradshaw reported to a committee of three persons which included herself, George Harrison and Brian Johnson. The final decisions were made on or about the 10th of May, 1975, and the successful applicants were hired on a three month probation basis. Those who were not hired and did not receive letters soon reacted with agitation and with demands for an explanation. It is quite obvious that many of them interpreted Mr. Harrison's earlier assurance of "full consideration" as a commitment to rehire all former employees of the Aberdeen Hospital. A meeting was convened late in May. It was attended by Mr. Harrison and Mrs. Bradshaw, representing the Society, and a number of the unsuccessful applicants, including the three complainants. The meeting was highly emotional. The explanation offered by the representatives of the Society was simply that those who were not hired were not qualified for the jobs for which they applied. They were told that their names would be put on an "on-call board" and they would then be contacted from time to time if and when they were needed to relieve other full-time employees. The three complainants were never put on the "on-call board"--Mrs. Lopetrone because she told Mr. Harrison during the meeting that in view of what had happened she would not work for him under any circumstances, Mrs. Bilga because Mrs. Bradshaw

felt that she was not even qualified for relief duty and Mrs. Guarancio because her application for employment was lost by the Society and she was simply not considered either for a full-time position or for relief duty.

A number of efforts were made by representatives of the Human Rights Department to settle the dispute, but the Society denied the allegations of discrimination and refused to hire the three complainants.

Filomena Lopetrone was an employee of Aberdeen Private Hospital Ltd. for approximately four years preceding the takeover. She was first employed as a housekeeper and remained in that position for approximately two and one-half years. She was then employed as a nurse's aid for approximately a year, performing various duties including feeding and caring for patients. During the eight or nine months preceding the takeover she was employed as the hospital's cook.

Mrs. Lopetrone completed and submitted her application for employment to the Society on April 7th, 1975. In accordance with the instructions she had received she applied for the position of cook. She had no formal qualifications as a cook, but she had the experience which she acquired prior to the takeover.

Mr. De Macedo, described Mrs. Lopetrone as a "great employee", an assessment which is borne out by a formal evaluation prepared by one of her former supervisors, Ursula Dixon. Mrs. Dixon described her as a hard working, well organized, pleasant, loyal and dedicated employee. This evaluation related to the period when Mrs. Lopetrone was employed as a nurse's aid. Her supervisor during the two months immediately preceding the takeover was Mrs. Coady who gave evidence that she was a good cook, considering the circumstances under which she worked. As mentioned, Mrs. Bradshaw did not, as a general rule, rely on the opinions of Mr. De Macedo, Mrs. Dixon or Mrs. Coady in her evaluation of the applications, and she certainly did not in the case of Mrs. Lopetrone.

Mrs. Bradshaw stated in evidence that she pretty well made up her mind not to hire Mrs. Lopetrone at a relatively early date, following an inspection of the hospital kitchen. She stated that the kitchen was dirty, and in particular, that milk cartons were stored on the floor rather than in the cupboards, the refrigerator was heavily frosted, the drawers used for the storage of eating utensils were not clean, the hood fan filter over the stove was dirty and a number of cooking utensils were broken. She was also unhappy with the food, and particularly with the portions being served to the patients. These matters, according to Mrs. Bradshaw, were the responsibility of the cook and she attached the entire blame to Mrs. Lopetrone.

The Board is of the opinion that Mrs. Bradshaw reacted unfairly. She asked for no explanation from Mrs. Lopetrone. Indeed, she made no further inquiries of any kind beyond her inspection of the kitchen. She apparently did not consider that Mrs. Lopetrone was expected to cook for approximately 75 persons without the aid of an assistant, even though the position of assistant cook was created and presumably considered necessary by the new administration. She apparently did not consider that Mrs. Lopetrone had no control over the planning of menus or the ordering of supplies, and therefore could not be held responsible for the food or the portions being served to the patients. Mrs. Bradshaw found no fault with the food preparation and it would appear that this was the only matter within the exclusive control of Mrs. Lopetrone. The Board agrees with Mrs. Coady's assessment that Mrs. Lopetrone did well under the circumstances, and we are confident that Mrs. Bradshaw would have also agreed had she looked into the matter further.

Mrs. Bradshaw did not interview Mrs. Lopetrone until after she made her decision. Mrs. Lopetrone became upset when she did not receive a letter offering employment and she expressed her concern to Mrs. Coady. Mrs. Coady telephoned Mrs. Bradshaw and asked her to come to the hospital. During the interview which followed, Mrs. Lopetrone

stated that she had some difficulty with the English language. Mrs. Bradshaw treated this admission as an additional factor confirming her earlier decision not to hire Mrs. Lopetrone. She explained at the hearing that a cook was required to read recipes and menus, and that a formal instructional course which the Society required their cooks to complete also required some knowledge of the English language.

Normally it would be incumbent upon the Board to examine the alleged justification for this requirement to ensure that it was not in fact a subtle form of discrimination. In the circumstances of this particular complaint, however, such an inquiry is not necessary because the Board is of the opinion that despite her admission, Mrs. Lopetrone had a sufficient ability to read, understand and communicate in English to satisfy the requirements of the Society. Indeed, we are certain that if Mrs. Bradshaw had tested her, Mrs. Lopetrone would have demonstrated her ability, much in the same way that she did during the hearing. Mrs. Bradshaw did not pursue the matter. Nor did she consider that Mrs. Lopetrone had obviously been reading menus and recipes for the nine months that she was the cook prior to the takeover.

We have considered all of the evidence relating to this complaint, and in particular, we have considered all of the reasons offered by the Society for not hiring Mrs. Lopetrone. The Board is not satisfied that there is sufficient evidence to justify Mrs. Lopetrone's allegation of discrimination on the basis of race or place of origin, but we are satisfied that she was refused employment without reasonable cause contrary to section 8(1)(a) of the Code. Accordingly, we have decided to make an award in her favour.

The obligations imposed by section 8(1)(a) of the Code are imposed upon an employer. Although both George Harrison and the Juan De Fuca Hospital Society are named as respondents in these proceedings, the Society was clearly the employer and no order will be made against Mr. Harrison.

In determining the amount of the award the Board has considered the amount that Mrs. Lopetrone was earning prior to June 1st, 1975, the fact that she has been unemployed since June 1st, 1975, and her obligation to mitigate the loss occasioned by the contravention of the Code by the Society. We have concluded that she is entitled to compensation in the amount of \$750.00. Accordingly, there will be an order that the Juan De Fuca Hospital Society forthwith pay to the complainant, Filomena Lopetrone the sum of \$750.00 by way of compensation.

Surinder Kaur Bilga was employed by Aberdeen Private Hospital Ltd. in 1974. She worked part-time as a kitchen helper and applied for the same position in her application to the Society. Under the new administration, the job was called "Tray Assembler and Dishwasher" but the work was the same--setting up food trays and washing dishes.

Mrs. Bilga said she was given no reason for not being hired. At the hearing Mrs. Bradshaw gave three reasons for the Society's decision. Firstly, there were only three positions available and six applications were received from former employees at Aberdeen. Mrs. Bradshaw stated that she simply selected the best three applicants and this excluded Mrs. Bilga. Secondly, Mrs. Bradshaw stated that she had observed Mrs. Bilga as being untidy and that her clothing was not always clean. Thirdly, she said that Mrs. Bilga had difficulty with the English language, and might have difficulty in following written and oral instructions and procedures.

Mrs. Bradshaw did not interview Mrs. Bilga. Neither Mr. De Macedo nor Mrs. Coady could recall or comment on Mrs. Bilga's performance under the old administration. No formal evaluation sheet for Mrs. Bilga was introduced in evidence.

The Board is satisfied that in rejecting Mrs. Bilga's application, Mrs. Bradshaw was merely selecting those who she thought

to be the best three of the six applicants. The Board has no basis for challenging her choice. Mrs. Bilga gave evidence that she helped to train one of the successful applicants, who incidentally, was of East Indian origin. This is the only evidence that she was more qualified than the successful applicants, and by itself, it is hardly sufficient.

The Board agrees that personal hygiene was a relevant consideration in evaluating the applicants, but we do wish to point out that the only evidence of Mrs. Bilga's questionable personal hygiene were the bare allegations of Mrs. Bradshaw and Mr. Harrison and our decision on Mrs. Bilga's complaint is not to be interpreted as concurrence in this assessment. We also question the relevance of an ability to read and write English in the context of this particular position and the assumption made by Mrs. Bradshaw that Mrs. Bilga would be unable to meet the Society's standards in this respect.

In summary, we are satisfied that Mrs. Bilga may have been an adequate dishwasher, but we are not satisfied that she was more qualified than the three successful applicants. There is insufficient evidence to justify her allegations of discrimination by the Society or refusal of employment without reasonable cause, and the Board accordingly dismisses her complaint.

Maria Guarascio had been employed by Aberdeen Private Hospital Ltd. for two years prior to the takeover. Previously she had worked at other hospitals for a total of approximately seven years as a dishwasher, a clerk, a nurse's aid and in various other positions. She started at Aberdeen as a part-time dishwasher and later she worked part-time as a nurse's aid. In addition to this work experience, she had received some formal training through two courses offered by St. John's Ambulance in 1971 and 1972.

She stated in her evidence that she completed her application for full-time employment as a nurse's aid and submitted it to the Society in April, 1975. When she did not receive a letter

advising acceptance of her application, she made some effort to contact Mrs. Bradshaw, but with no success. She joined the group which complained to the Human Rights Department. She attended the meeting in late May that arose out of the complaints. Mr. Harrison confirms in his evidence that he saw her at the meeting. Mrs. Guarascio was apparently unable to pursue the circumstances of her particular grievance because of the nature of the meeting. Like the others she was simply told that she was not qualified for the position for which she applied.

Mr. Harrison and Mrs. Bradshaw both gave evidence that they have no record of ever having received an application from Mrs. Guarascio although they acknowledged that it was quite possible that the application was lost during the confusion of the takeover. They further acknowledged that based on Mrs. Guarascio's qualifications as recited by her in her evidence at the hearing they would certainly have considered her for a position as nurse's aid. Mrs. Bradshaw gave evidence that all of the nurse's aids who had been employed at Aberdeen prior to the takeover and who submitted applications were hired by the Society. Indeed, an additional number of nurse's aids had to be hired from elsewhere to fill the positions that were available.

The Board finds as a fact that Mrs. Guarascio applied for the position of nurse's aid and that she submitted an application in the required form to the Society in April, 1975. Her application was lost by the Society and she was not considered for the position. We do not attach any particular blame to the Society for the loss of the application, and we would offer as an explanation on the Society's behalf, the confusion and the enormity of their task during the takeover period.

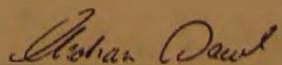
The Board regrets that the unique circumstances of Mrs. Guarascio's complaint were lost in the more general dispute between the Society and the unsuccessful applicants. We are satisfied

that if her application had not been lost she would have been hired. The loss of her application by the Society cannot constitute reasonable cause for refusing her employment. Accordingly, we find that the Society contravened section 8(1)(a) of the Code in their treatment of Mrs. Guarascio and we will make an award in her favour.

In determining the amount of the award the Board is influenced by Mrs. Guarascio's rather limited efforts to follow up her application for employment and its apparent rejection. She made a single attempt to see Mrs. Bradshaw and she attended the meeting in May, but no further efforts were made to pursue the matter. We acknowledge that she had no way of knowing that her application had been lost and we recognize that the Society was also under an obligation to investigate the circumstances of her case, particularly after she made her dissatisfaction known. It is unfortunate that the matter has come to this stage for settlement. The Board has concluded after considering all the circumstances that Maria Guarascio is entitled to compensation in the amount of \$450.00 and we order the Juan De Fuca Hospital Society to pay her this amount forthwith.

This case has occasioned some difficulty for the Board. We are not satisfied that the Society acted in bad faith, although its representatives were clearly careless and hasty in their treatment of the two successful complainants. On the other hand, section 8(1)(a) of the Code is not confined in its application to situations where the employer has acted in bad faith. It applies where the employer refuses employment without reasonable cause.

Since we have concluded that the complaints of Filomena Lopetrone and Maria Guarascio are justified insofar as they allege a refusal on the part of the Society to employ without reasonable cause contrary to section 8(1)(a) of the Code, we are required and hereby order the Juan De Fuca Hospital Society to cease such contravention and to refrain from committing the same or any similar contravention in the future. There will be no order as to costs.


MOHAN JAWL (Chairperson)