

**OFFICE OF THE NORTHERN TERRITORY  
ANTI-DISCRIMINATION COMMISSIONER**

**COMPLAINANT:** MRS ROSEMARY FORNARO

**RESPONDENT:** MR RON STRACHAN

**NUMBER:** 1998/3

**TRIBUNAL:** MS DAWN LAWRIE  
HEARING COMMISSIONER

**COUNSEL ASSISTING:** PATRICK McINTYRE

**GROUNDS OF COMPLAINT:** DISCRIMINATION ON THE GROUNDS OF  
SEX (*SECTION 19(1)(b)*) AND SEXUAL  
HARASSMENT (*SECTION 22*) OF THE NT  
*ANTI-DISCRIMINATION ACT.*

**DATE OF DECISION:** 20 July 1998

## **Introduction**

On 11 April 1997 a delegate of the Anti-Discrimination Commissioner accepted a complaint from Mrs Rosemary Fornaro against Mr Ron Strachan, the operator of a business known as National Flags. The complaint alleged discrimination in the area of work on the grounds of sex and sexual harassment contrary to *Section 19(1)(b)* and *Section 22* of the NT *Anti-Discrimination Act 1992*.

Following investigation and an unsuccessful attempt to conciliate the matter, the complaint was referred to the NT Anti-Discrimination Commissioner for Hearing pursuant to *Section 83* of the Act on 28 January 1998.

A copy of the referral report was sent to the parties and the matter was heard in Darwin 20/21 April 1998.

## **Background**

Mrs Fornaro has lived in the Northern Territory for approximately 5.5 years, having come here with her (then) husband who is a serving member of the Armed forces.

Mrs Fornaro and her husband were divorced four years ago, and when he was posted interstate Mrs Fornaro remained in Darwin, living on her own and by her own resources.

Mrs Fornaro is a dressmaker and designer, and pursued that employment from home during her husbands postings around Australia.

Since arriving in the NT Mrs Fornaro has also worked as a home carer for a quadriplegic and a house carer for Red Cross.

Early 1995 Mrs Fornaro attended a Skillshare course in commercial lettering and arts, during which the tutor encouraged students to accept some outside work. Mrs Fornaro fabricated some banners and flags, and was then approached by Mr Strachan to perform similar work on a contract basis for him.

Although Mrs Fornaro was keen to develop her artwork, the work performed for Mr Strachan was essentially sewing of flags and banners, with some artwork.

Mrs Fornaro sewed the flags at her home, and charged a fixed fee. Mr Strachan would deliver and pick up work from Mrs Fornaro, and this arrangement was in place for eighteen months, during which time Mrs Fornaro sewed some hundreds of flags involving artwork from international insignia, company logos, joke flags, company flags and personalised designs.

Mrs Fornaro had been the victim of sexual physical and mental abuse in her childhood and had endured two abusive and violent marriages. Mrs Fornaro had confided in Mr Strachan, advising him of some this history of abuse and making it clear their relationship was a business relationship only.

Mrs Fornaro became increasingly concerned at Mr Strachan's behaviour which included remarks made in her presence which she alleged were of a sexual nature and the presence of others, and became stressed. She terminated her "piece work" with Mr Strachan, and lodged a complaint with the Office of the Anti-Discrimination Commissioner alleging discrimination in the area of work on the grounds of sex, and sexual harassment.

Mr Strachan advised he was aware of Mrs Fornaro's traumatic past, and that at no time was there any deliberate attempt to cause Mrs Fornaro any harm.

## **The Legislation**

The NT *Anti-Discrimination Act 1992* came into operation 1 August 1993, and makes discrimination based on sex in the area of work unlawful, unless a specific exemption applies.

"Discrimination" is defined in the following terms:

### *"SECTION 20 - DISCRIMINATION*

- (1) For the purpose of this Act, discrimination includes -
  - (a) any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity;  
and
  - (b) harassment on the basis of an attribute,  
  
in area of activity referred in Part 4.
- (2) Without limiting the generality of subsection (1), discrimination takes place if a person treats or proposes to treat another person who has or had, or is believed to have or had -
  - (a) an attribute;
  - (b) a characteristic imputed to appertain to an attribute; or
  - (c) a characteristic imputed to appertain generally to persons with an attribute,  
  
less favourably than a person who has not, or is believed not to have such an attribute
- (3) For discrimination to take place, it is not necessary that -
  - (a) the attribute is the sole or dominant ground for the less favourable treatment; or

- (b) the person who discriminates regards the treatment as less favourable.
- (4) The motive of a person alleged to have discriminated against another is, for the purposes of this Act, irrelevant."

"Sexual harassment" is prohibited conduct and is outlined in the Act as follows:

*"SECTION 22 - PROHIBITION OF SEXUAL HARASSMENT"*

- (1) A person shall not, in an area of activity referred to in Part 4, sexually harass another person.
- (2) Sexual harassment takes place if a person -
  - (a) subjects another person to an unwelcome act of physical intimacy;
  - (b) makes an unwelcome demand or request (whether directly or by implication) for sexual favours from the other person;
  - (c) makes an unwelcome remark with sexual connotations; or
  - (d) engages in any other unwelcome conduct of a sexual nature, and
  - (e) that person does so -
    - (i) with the intention of offending, humiliating or intimidating the other; or
    - (ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct; or
  - (f) that other person is, or reasonably believes that he or she is likely to be, subjected to some detriment if he or she objects to the act, demand, request, remark or conduct.
- (3) For the purposes of subsection (2)(e)(ii), circumstances that are relevant in determining whether a reasonable person would have anticipated that possibility that the other person would be offended, humiliated or intimidated by the conduct include -
  - (a) the sex, age or race of the other person;
  - (b) any impairment that the other person has;

- (c) the relationship between the other and the person engaging in the conduct; and

(d) any other circumstances of the other person."

## The Evidence

Mrs Fornaro gave evidence relating to her employment status with Mr Strachan. It is undisputed that Mrs Fornaro worked for Mr Strachan on a part-time basis, the majority of the work being the preparation and the sewing of flags. This work commenced around May 1995.

Mr Strachan would either visit Mrs Fornaro at her home or telephone her to ask if she could do certain work, which she carried out at her home in Jingili (a Suburb of Darwin). Mrs Fornaro would then invoice Mr Strachan for the completed work.

Mrs Fornaro was initially receiving an unemployment benefit, which in December 1996 was changed to a Disability pension. Mrs Fornaro was required to advise the Department of Social Security on a monthly basis of the extra income earned, and her pension was adjusted accordingly.

Mrs Fornaro described her initial relationship with Mr Strachan as "friendly, in as much as we were extremely pleasant with each other - we'd pass the time of day.....basically it was a business relationship, a small business relationship"

In December 1996 Mrs Fornaro advised Mr Strachan that due to arthritis in her spine she did not wish to continue sewing but was happy to continue doing artwork. Mrs Fornaro stated that she had to explain this several times over a three month period as Mr Strachan continued to bring her sewing work. Mrs Fornaro described the relationship between them at that time as "friendly".

Mrs Fornaro then gave evidence as to the events of 20 January 1997.

On that day she had not been expecting Mr Strachan, and was talking to a Mr Bill Rolfe, vice president of "Toastmasters" who had come to her house to give her a revised schedule of meetings. Mrs Fornaro described the sequence of events as follows:

"We were standing in the carport, just chatting, just - he was - I think he was sitting on his motor bike or leaning up against it, it was just prior to him leaving and Mr Strachan drove up and into the other carport. Mr Strachan got out of the van - ah - came over, I introduced them. There was some small talk and I think he returned to the van and picked up a large box which contained flags. He then put it on the ground again and completely out of the blue, he made a remark that I found excessively offensive and very, very hurtful....."

"And I suppose you know where her bed is' and this was to Mr Rolfe."

Counsel assisting asked if Mrs Fornaro was shocked by that comment, to which she replied " I was horrified, quite honestly. These were relatively - relative strangers to me, both of them. I had hoped to - to become a permanent member of Toastmasters. I am not, never

have been and never will be promiscuous and I

object strongly to an employer - um - just sort of throwing it up in the air in front of strangers. It was inappropriate to the situation and quite frankly, I don't know - I don't understand where it came from or why it came."

Mrs Fornaro found that comment embarrassing -

"To the extent that I felt that I could no longer go back to Toastmasters and so I'd lost out on a very positive move on my behalf - on my part to get myself back into a community environment and to a community group. I thoroughly enjoyed it. I loved going there. The people there were terrific. They knew nothing - none of them knew about my background. The basis of Toastmasters is to learn about public speaking which I enjoy very much. It was - as gaining confidence, I was gaining skills that I hadn't had before and I'm afraid that remark to the vice president, in particular, it shook me to such an extent that I've never been able to back again and face them. It was devastating thing to do."

Mrs Fornaro outlined her reasons for wishing to join "Toastmasters" - the last five years of her marriage had been extremely abusive - Mrs Fornaro had low self esteem and confidence and experienced extreme anxiety and depression. She sought professional help from the Tamarind Centre, as a result of which she decided to try something on her own, and her choice was public speaking. With encouragement from her counsellor, Vicki Telfor, Mrs Fornaro attended Toastmasters, and had hoped to become a member.

Mrs Fornaro described the full effect Mr Strachan's remark had on her -

"I went into immediate shock. Because of the - there was just no reason for a remark like this and I did go into shock. Later - later on, it developed into a huge emotional uprising. I recognised a great deal of these emotions as being ones that I had felt before when abused by both my step-father and my husband, my husband in particular, in this case, because he often used to throw remarks at me that implied that I was of loose morals, his actual word was a 'slut' and it - yeah, he had limited vocabulary but he certainly knew that word and whatever circumstances he felt justified, he just continuously called me a slut. There was no basis for it. The sheer fact that Mr Strachan felt that he was able to do this, to make a remark like that, brought back abuse from my step-father who used a great many controlling mechanisms on me as a child, one of which was to denigrate me in front of people, make me feel as if I'm worthless and make me feel as though I had to depend on him for my existence. He used a great many controlling mechanism and being allowed to remake - to make inappropriate remarks of those sort of things is a controlling mechanism and I ended up with a migraine. I didn't sleep for several weeks and the migraine was so bad I had to go to Royal Darwin to get an injection to calm it down.

Mrs Fornaro then outlined earlier incidents which had distressed and embarrassed her

At a time when she was very emotionally disturbed about her divorce and feeling very shaky Mrs Fornaro asked Mr Strachan if he would mind giving her a hug.

Mrs Fornaro agreed to this, and as Mrs Fornaro described the incident "as I said, it was just a hug of compassion, if you like. It was just a contact with another human being. Mr Strachan stated pelvic thrusting, I broke immediately and told him it was not necessary to do that and he immediately whipped around and said, 'Don't you dare criticise my hug'".

Mrs Fornaro referred to conversations and random remarks which she described as 'tiresome'. On one occasion Mr Strachan came into Mrs Fornaro's house when there was an exercise program on TV, and Mrs Fornaro alleged Mr Strachan said "Can't you imagine those tits and twats bouncing up and down?" a remark Mrs Fornaro found offensive.

Early in 1996, after inspecting some industrial sewing machines at the Tiwi annexe of the Northern Territory University Mr Strachan and Mrs Fornaro went to a fast food outlet for coffee. Mrs Fornaro believed the outlet to be Hungry Jacks. Mrs Fornaro was explaining her objections to sewing with an industrial machine to Mr Strachan when Mr Strachan allegedly broke off the conversation and started talking to a person she described as a cleaner. Mrs Fornaro stated -

"The conversation covered women in fairly derogatory terms, sexual exploits of them between, you know, that they'd experienced. It - they sort of came to a conclusion when they were talking about women who did not perform for the - did not perform as expected by men and I sort of ended the conversation by saying that, 'There are some women nowadays who choose not to have sex at particular times' and that I was one of them."

Mrs Fornaro stated that she found such remarks in a public place extremely embarrassing and felt degraded by them. In her evidence Mrs Fornaro went on to say -

"I felt that - um - somebody needed to stop this conversation - um - get through to Mr Strachan that I was just not interested in any way, shape or form, any sexual advance, any sexual behaviour or anything to do with sex and it was my choice to do it."

Mrs Fornaro then gave evidence as to why these remarks affected her so badly, outlining a history of sexual abuse and her subsequent sensitivity to such remarks which she found unnecessary and hurtful. Mrs Fornaro said -

"I thought that we had a business relationship. I had never made any encouragement whatsoever towards anything like a sexual relationship. Mr Strachan was told right from the start it would be a relation - a business relationship only. It - um - my sensitivity is mine. It is acute under circumstances like this and I thought I'd given out enough information for Mr Strachan as - or any reasonable person to know without really thinking that nay remark like this is going to hurt me, it's going to upset me, it's - I just find it totally inappropriate."

Mrs Fornaro referred to another incident which occurred on Anzac Day 1996. Mrs Fornaro accepted Mr Strachan's offer of a lift to the Dawn Service and Mr Strachan had a male friend with him. After the service Mr Strachan asked if Mrs Fornaro would like to have a drink but she said she wanted to go home. The two

men then discussed their plans for the day, which Mrs Fornaro alleged included references to a woman and "what he hoped she would do with him" towards the end of a day.

Mrs Fornaro said she told Mr Strachan the remarks were totally inappropriate for ANZAC day, and asked to be taken home.

On a couple of occasions Mr Strachan took Mrs Fornaro out to dinner, which she understood to be a reward for her good work - on the way to one restaurant Mrs Fornaro told Mr Strachan about the abuse she had suffered from her step-father and her husband which had caused her to seek psychiatric assistance - Mrs Fornaro hoped that when Mr Strachan understood what she had gone through, Mr Strachan would understand that she would find any sexual advances from him horrifying.

These conversations took place before the incident of 20 January 1997.

Mrs Fornaro also outlined the difficulties she experienced with Mr Strachan arriving at her house at unscheduled times to either drop off or collect work. Although Mrs Fornaro had asked Mr Strachan to phone first he would arrive unexpectedly. Twice she was in the shower, which caused her distress.

Mrs Fornaro referred to Mr Strachan placing his arm around her shoulders if he met someone else while they were going for a cup of coffee - Mrs Fornaro would remove his arm as she found it offensive and indicative of "ownership".

Mrs Fornaro stated she found Mr Strachan's behaviour extremely difficult to deal with - she felt he was not capable of conducting himself in a business like manner.

Three witnesses gave evidence at the Hearing, Vicki Telfor, Jeff Dewar, and Bill Rolfe.

Vicki Telfor is a registered general and psychiatric nurse, working at the Tamarind Centre, (Darwin community mental health service).

Ms Telfor was one of Mrs Fornaro's case managers, and encouraged and supported Mrs Fornaro in her decision to become involved with Toastmasters.

Ms Telfor referred to Mrs Fornaro's distress following the incident of 20 January 1997, and stated Mrs Fornaro's sought counselling in relation to other earlier incidents with her employer (Mr Strachan) which Mrs Fornaro found difficult to deal with.

The evidence of Vicki Telfor (Territory Health Services) was not disputed and is accepted.

Jeff Dewar has been employed at the fast food outlet known as Hungry Jacks for some eight years, attending to stores, maintenance and cleaning. Mr Dewar has known Mr Strachan for nine years and for a time assisted him in his business at the markets.

Mr Dewar's evidence was that the conversation with Mr Strachan which took

place at Hungry Jacks was of brief duration, approximately two minutes, and was confined to normal greetings.

Bill Rolfe is the president of Toastmasters and has been involved with the organisation for over three years. In 1997 he was Vice-President (education).

A letter Mr Rolfe had written to the Anti-Discrimination's Conciliator during the investigation of the complaint was tendered as evidence, and is reproduced in full here:

"2/6114 Richards Court  
Malak NT 0812

11/6/97

Anti-Discrimination Commissioner  
LMB 22, GPO Darwin NT 0801.

Trudi Jobberns

As I have said to Ms Fornaro, If she can name three people that have had a similar incident as she has from Mr R. Strachan, in other words, been discriminated against, then I have no problems in saying what happen that day. Ms Fornaro has not been able to present these people for me to talk to, which she said she could, so I only have her word.

The reason I'm hesitant to say anything is that day in question, the way I took it was that it was just a joke. So what she has probably told you was correct but unless someone can show me or tell me that he discriminates al the time, as Ms Fornaro has told me, I will have to decline. This may seem unfair to Ms Fornaro but unless there is more evidence I cannot help her or unless you can prove to me he has had complaints against him before.

Bill Rolfe.

In his evidence, Mr Rolfe remembered attending Mrs Fornaro's residence to deliver documents relating to the Toastmasters and at first stated he vaguely remembered a remark "Bill's shoes under the bed" which he agreed probably referred to him.

Mr Rolfe later changed his testimony to hearing something to the effect of "Bill" and "shoes".

Despite persistent questioning Mr Rolfe was unable to clarify why he would write a letter in the terms outlined above and specifically why he would need any advice or assistance as to whether Mr Strachan had been the subject of other

complaints before saying what happened on the day in question.

During the course of the Hearing, a rough plan or diagram of Mrs Fornaro's home was tendered in evidence, which showed the relative position of the shower.

In giving his evidence Mr Strachan stated he was astounded with "this" and that it had been twisted and warped. By ""this" I understood Mr Strachan to be referring to the proceedings and the evidence presented to the Tribunal.

Mr Strachan stated that when he met Mrs Fornaro at Skillshare he believed her bag had been stolen, was sorry for her and offered her work.

Mr Strachan denied having entered the house while Mrs Fornaro was in the shower, and declined to comment on the conversation which was alleged to have taken place at Hungry Jacks.

Mr Strachan agreed that he had, on occasions, given Mrs Fornaro a hug, but refuted any suggestion of a pelvic thrust during the hug.

In relation to the incident of 20 January 1997 Mr Strachan stated he was aware there was to be a party at her landlord Mr Fry's residence that night and that his inference was -

"Why don't you have a sleep while you're here. No doubt you'll have a sleep while you're here".

Mr Strachan said that until he received a letter from Ms Jobberns, the conciliator, he was unaware that Mrs Fornaro objected to his conduct.

Mr Strachan agreed that Mrs Fornaro discussed her emotional circumstances, and stated he was shocked and mortified at hearing of what had happened to her. He was not aware of any distress he may have caused Mrs Fornaro, other than that associated with the pressure of work.

Mr Strachan recalled having placed his arm around Mrs Fornaro's shoulders, but did not recall any occasions when Mrs Fornaro removed his arm.

Mr Strachan described himself as a "touchy feely kind of person" and classified his relationship with Mrs Fornaro as "excellent".

In agreeing that he regarded himself as a "jocular, flamboyant, touching person" with no hesitation approaching anybody with a hand around the shoulder, Mr Strachan described this behaviour as "giving encouragement and confidence".

Mr Strachan produced a teddy bear, described as a "door-knob" bear which Mrs Fornaro had given him at Christmas. Mrs Fornaro described the gift as a joke.

## **Submissions**

In her final submission, Mrs Fornaro spoke in some detail of the alleged events of 20 January 1997 when, in her opinion Mr Strachan made a derogatory remark implying she

was of a promiscuous nature, to Mr Rolfe. Mrs Fornaro stated she

did not sleep at night because her thoughts were crowded with memories of this incident and past abuses by her step-father and ex husband.

Mrs Fornaro referred to her efforts to overcome the effects of this past abuse, and the way in which the various incidents referred to in her earlier evidence had effected her, expressing "disgust' at Mr Strachan's conduct. She described how as a result of Mr Strachan's behaviour her ability to interact with men had altered -

"Anxiety and depression have been problems that have developed in early childhood and developed because of the conflict I felt because of my inner feelings and my reactions to what my step-father said and did, and the fact that my mother showed reluctance to comfort me. I've never lost that sensitivity. However, I have learnt to keep it reasonable context in everyday life. The big difference I've noticed is that because of the way Mr Strachan behaved with me as a relative stranger, I now see all men with suspicion, anxiety and fear, whereas before I met him I gave each one a chance to be different.....I'm not comfortable with this reaction and I seem unable to overcome it.

Mrs Fornaro outlined her loss of income as a result of no longer working for Mr Strachan and the deterioration in her health.

Mrs Fornaro asked for an apology and a reference from Mr Strachan, and appropriate compensation.

In a brief final submission, Mr Strachan said -

"I dispute the comments and body movements that has been alleged against me. The stories appear to have been twisted to suit Mrs Fornaro."

Mr Strachan stated that although Mrs Fornaro had indicated her skills lay in working with canvas, he always used plastic, and that the coffee at Hungry Jacks was in the outside area.

In response to Mrs Fornaro's submission, Mr Strachan stated -

"I'm sorry for the three divorces Mrs Fornaro suffered. One is one too many. However, I wonder if she has filed sexual abuse charges against her ex husbands an yet I'm being attacked here on an alleged case of words, no violence - or words and no violence - of words and - and no violence. I'm loath to give an apology, written or otherwise, and I cannot substantiate a work reference other than hemming, overlocking or heading, of which she's been extremely capable of doing. Mrs Fornaro, being self-employed, with the parameters of the pension, must push her own barrow like any self-employed person because without pain there's no gain."

Mr Strachan then said he would prefer that the orders sought by Mrs Fornaro "not proceed".

Mr Strachan made no further submission.

Mr McIntyre's submission first referred to the relevant provisions of the NT *Anti-Discrimination Act 1992*, addressing the relationship between the parties in the area of work, and then outlined relevant case law relating to harassment and discrimination, and the award of compensation.

## **Finding**

Mrs Fornaro's complaint is of discrimination on the grounds of sex and sexual harassment in the area of work pursuant to *Sections 19(1)(b) and 22* of the Northern Territory *Anti-Discrimination Act*.

The respondent is Mr Ron Strachan who is the operator of a business known as Territory Flags.

It is undisputed that in May 1995 Mrs Fornaro commenced working for Mr Strachan on a part time basis, sewing flags and preparing some associated art work.

Mrs Fornaro worked from home, and Mr Strachan would deliver materials and pick up completed work, being invoiced by Mrs Fornaro for the work performed.

"work" as defined in the *Anti-Discrimination Act* includes -

Work

- (a) in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment);
- (b) under a contract for services;
- (c) remunerated in whole or in part on a commission basis;
- (d) ...
- (e) ...
- (f) ...

and I find that the relevant relationship in the area of work has been established.

Some of the evidence placed before me referred to events which allegedly occurred in the first half of 1996, and I have taken that evidence into account in arriving at my finding in this matter.

Mrs Fornaro's evidence was clear and unambiguous. She outlined in some detail the events which caused her considerable humiliation and distress, resulting in her seeking medical treatment.

While Mr Strachan refuted the claim of pelvic thrusting when giving Mrs Fornaro a "friendly hug", and I make no finding on that allegation, his evidence relating to other alleged incidents was less convincing.

With regard to the alleged remark made by Mr Strachan on 20 January 1997 in the presence of Mr Bill Rolfe "I suppose you know where her bed is". I have carefully considered the evidence of Mrs Fornaro, Mr Strachan and Mr Rolfe, and prefer the evidence of Mrs Fornaro, which was in part corroborated by Mr Rolfe.

There was undisputed evidence that Mr Strachan would from time to time place his arm around Mrs Fornaro's shoulders, indeed Mr Strachan described himself as an "extroverted touchy - feely person".

I accept that Mrs Fornaro found this distasteful, and removed his arm from her shoulders.

While Mr Strachan stated that he did not make remarks about women's breasts, crotches, "boobs" and his sexual prowess, as outlined in the original complaint, Mr Strachan did not dispute Mrs Fornaro's evidence as to the events alleged to have occurred on Anzac Day 1996.

On the evidence before me, I accept that during the course of her employment, remarks of a sexual nature were made which Mrs Fornaro found unwelcome, totally inappropriate and which caused her embarrassment.

I find that Mrs Fornaro suffered severe distress as a result of Mr Strachan's behaviour, her distress being exacerbated because of her history of sexual and physical abuse.

Further on her undisputed evidence I find that Mrs Fornaro feared that if she objected to Mr Strachan's sexual remarks her work for him, her income would be in jeopardy. I take this into account under *Section 22(3)*.

Having regard to the particular circumstances of Mrs Fornaro, I find that, pursuant to *S.22(1)(e)(ii)* of the *Act* a reasonable person would have anticipated the possibility that the other person (Mrs Fornaro) would be offended, humiliated or intimidated by this conduct. For these reasons I find the requirements of *S.22* of the *Anti-Discrimination Act 1992*, have been met and consequently that Mrs Fornaro was subjected to sexual harassment by Mr Strachan in the area of her work, and that this harassment constituted discrimination on the grounds of her sex.

## Orders

### *"SECTION 88 - ORDERS AFTER HEARING*

- (1) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is substantiated, the Commissioner may make one or more of the following orders:
  - (a) an order requiring the respondent not to repeat or continue the prohibited conduct;
  - (b) an order requiring the respondent to pay to the complainant or another person within a specified period, an amount, being an

amount not more than that prescribed, that the

Commissioner considers appropriate as compensation for loss or damage caused by the prohibited conduct;

- (c) an order requiring the respondent to do specified things to redress loss or damage suffered by the complainant or any other person because of the prohibited conduct;
  - (d) an order declaring void all or part of an agreement made in connection with the prohibited conduct, either from the time the agreement was made or subsequently.
- (2) In this section, the specified things a respondent may be required to do, include, but are not limited to the following:
- (a) employing, reinstating or re-employing a person;
  - (b) promoting a person;
  - (c) moving a person to a specified position within a specified time.
- (3) In this section, "damage", in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.
- (4) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is not substantiated the Commissioner shall make an order dismissing the complaint."

In her Statement of Claim Mrs Fornaro sought

- an order requiring the Respondent Mr Strachan not to repeat or continue the prohibited conduct;
- financial compensation for loss of income, (a minimum of \$1000.00);
- a sincere letter of apology and an unbiased reference based on Mrs Fornaro's work performance over all;
- for damage to her general well being including hurt, humiliation, stress, intimidation, depression, loss of trust dealing with men, and loss of faith in herself, an amount of \$3000 minimum.

Based on the demeanour of the parties and the evidence before me, I conclude that Mrs Fornaro holds a genuine belief that Mr Strachan will continue to engage in unwelcome conduct towards her.

I note that her income has dropped and that it is unlikely that she would be re-engaged by the respondent Mr Strachan on similar financial terms. I also note that she had herself requested less sewing work from the respondent, which would have most likely produced a lower income.

I do not consider an order to produce a sincere letter of apology to be appropriate - sincerity cannot be ordered. That being said, I believe it would be entirely appropriate for Mr Strachan to offer a written apology to Mrs Fornaro for the distress caused by his conduct.

I am in no doubt that Mrs Fornaro suffered damage as a result of the prohibited conduct, and pursuant to S.88 of the *Anti-Discrimination Act 1992* I make the following orders -

- THAT THE RESPONDENT, RON STRACHAN, REFRAIN FROM ENGAGING IN PROHIBITED CONDUCT TOWARDS THE COMPLAINANT ROSEMARY FORNARO.
- THAT WITHIN FOURTEEN (14) DAYS, THE RESPONDENT RON STRACHAN PROVIDE THE COMPLAINANT ROSEMARY FORNARO WITH A WRITTEN REFERENCE ATTESTING TO HER OVERALL WORK PERFORMANCE.
- THAT WITHIN TWENTY-EIGHT (28) DAYS THE RESPONDENT RON STRACHAN PAY THE COMPLAINANT ROSEMARY FORNARO THE SUM OF \$4500,

being	\$1000	loss of income, actual and potential.	
	\$3500	hurt, humiliation and distress.	—
Total	<b>\$4500</b>		

DAWN LAWRIE  
Commissioner

July 1998