

PROVINCE OF NEW BRUNSWICK



Labour and Employment Board

**HR-003-05**

**IN THE MATTER OF THE HUMAN RIGHTS ACT, R.S.N.B. 1973, c. H-11**

**AND IN THE MATTER OF A COMPLAINT**

**BETWEEN:**

Paula Hooper  
Rothesay, New Brunswick

**Complainant**

- and -

Dante's Dance Club Inc. and Dante Foriere  
Saint John, New Brunswick

**Respondents**

**BEFORE:** George P. L. Filliter, Chairperson

**APPEARANCES:**

For the Complainant Paula Hooper and  
the New Brunswick Human Rights Commission:

*Kelly VanBuskirk and Ella Jane Loomis*

For the Respondents Dante Foriere and  
Dante's Dance Club Inc.:

*Richard A. Northrup*

**DATE OF HEARING:**

October 31, November 1 and 2, 2006

**DATE OF DECISION:**

November 16, 2006

## DECISION OF THE BOARD

### I. INTRODUCTION

1. On October 7, 2005, the then Minister of Training and Employment Development referred the matter of a complaint of Paula Hooper to the Labour and Employment Board to act as a Board of Inquiry, pursuant to section 20(1) of the *Human Rights Act*. The original complaint was filed with the Human Rights Commission by Paula Hooper on June 18, 2003 and alleged that she had been subject to discrimination by Dante Foriere or Dante's Dance Club Inc. on the basis of sex and sexual harassment, contrary to section 3 and 7.1 of the *Act*.

### II. FACTS

2. Paula Hooper has a high school education and is a single mother of two teenage children. She suffers from epilepsy, which prohibits her from working in an office as the combination of fluorescent lights and computer screens apparently cause her to have seizures. As a result, Ms. Hooper has earned her living by working in an establishment called the Back Door Bar from 1998 to December 2002. The evidence confirms that Ms. Hooper was receiving a net weekly pay in the amount of \$182.20 from November 22, 2002 until December 27, 2002 plus an undefined amount in tips and gratuities. She was only working 32 hours a week during this period of time.

3. In December 2002, she was approached by Dante Foriere, a local businessman to whom she was introduced by Brian Hersey, a customer of the Back Door Bar. Mr. Foriere has a grade 5 education from Italy, yet by all accounts has been very successful since emigrating to Saint John. Mr. Foriere told Ms. Hooper that he was in the process of constructing a dance club at the civic address of 10 Tim Street in Saint John, a building that he owned and which was often referred to in testimony as "The old Kwik Pik building".

4. During one of the conversations that occurred during the month of December 2002, Mr. Foriere advised Ms. Hooper that he intended to have Brian Hersey manage the bar and he wanted to hire Ms. Hooper as the head bartender. He offered to pay her \$7.00 per hour and guaranteed her 40

hours a week plus tips and gratuities and her pick of shifts. The uncontested evidence of Ms. Hooper was that it was important to her to have a pick of shifts for two reasons: so that she could look after her children and get them to their activities, and so that she could increase her earnings by picking shifts which traditionally yield larger tips (i.e. Friday and Saturday nights). In any event, after visiting the premises which were still under construction, Ms. Hooper accepted the offer, gave a two-week notice to her employer and commenced work in the early part of January 2003.

5. The first week that Ms. Hooper worked she received \$180.00 from a company known as Diesel Power Service Ltd., of which Mr. Foriere was a named director, and \$100.00 in cash from Mr. Foriere himself. The amount represented her hourly wages of \$7.00 for 40 hours of work. It was at this time that Ms. Hooper realized that the bar was not as close to being opened as she first thought. She was asked to do and in fact did all types of work, from painting, carpentry and cleaning the premises at 10 Tim Street, to shovelling snow at apartment buildings owned by Mr. Foriere on the west side of Saint John.

6. In the middle of January the furnace in the building malfunctioned. Although Ms. Hooper showed up to work every morning, her number of hours fell below the 40 per week guaranteed by Mr. Foriere. This was of some concern to Ms. Hooper who had left a job on the understanding that she would be receiving a higher hourly wage and more hours of work each week.

7. During this period of time, she was usually alone with Mr. Foriere who did a lot, if not most of the physical work around the bar. However, on many occasions there were contractors who came to the premises. Additionally, Mr. Hersey would come to the location at 10 Tim Street most week days where he would meet with sales personnel and representatives of various brewery, liquor and soft drink companies in order to secure contracts.

8. The above findings of fact are based upon uncontradicted evidence of the four witnesses called to testify. However, the evidence of Paula Hooper and Dante Foriere with respect to the allegations of discrimination are in conflict, so the Board is required to assess the credibility of the witnesses in order to draw conclusions of fact. The Board takes heed to the oft quoted guidelines of

O'Halloran, J.A. of the British Columbia Court of Appeal in the case of *Faryna v. Chorny* [1952] 2 D.L.R. 354:

“If a trial Judge’s finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and *cf. Raymond v. Bosanquet* (1919), 50 D.L.R. 560 at p. 566, 59 S.C.R. 452 at p. 460, 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanours of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say ‘I believe him because I judge him to be telling the truth’, is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge’s finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.”

9. Essentially Ms. Hooper testified as to the allegations set forth in her complaint, whereas Mr. Foriere denied that the incidents referred to by Ms. Hooper occurred. As is not unusual in situations involving allegations of sexual harassment and particularly in this case where Ms. Hooper and Mr. Foriere worked together for the most part, there were no independent witnesses to confirm the testimony of either. Except that Mr. Hersey did recall hearing Mr. Foriere introduce Ms. Hooper to contractors and representatives as “going to be the stripper” and as “his girlfriend”.

10. After reviewing the evidence in its entirety, the Board is left with the conclusion that the testimony of Ms. Hooper should be believed over that of Mr. Foriere. The reasons for this conclusion are as follows:

- a) According to the unwavering testimony of Mr. Foriere, he terminated the employment relationship with Ms. Hooper on a Monday, whereas Ms. Hooper was clear that this occurred on a Friday. Ms. Angela England, a bartender at the Back Door Bar who knows Ms. Hooper, recalled that Ms. Hooper came to the bar on a Friday morning when Ms. England was working. She recalled that Ms. Hooper was visibly upset and eventually explained that she had been fired that day. Ms. England was an impartial witness and had nothing to gain or lose by being untruthful. This impartial evidence of course supports Ms. Hooper's version of the facts.
- b) Mr. Foriere testified that on the day that he terminated Ms. Hooper, he drove her in his truck to the Back Door Bar. Again, this position is not what Ms. Hooper recalled, as her evidence was that she called a taxi to go to this place after she was fired. The testimony of Ms. Hooper was again corroborated by Ms. England who states that she lent Ms. Hooper \$10.00 in order to pay for the cab.
- c) Also, Mr. Foriere in his testimony stated that he was not offensive to anyone, that his jokes "were not dirty" and that he was not "crude" with women. These statements were made both in direct and cross-examination. However, when asked by counsel for the Commission, over the objections of Mr. Northrup, Mr. Foriere did eventually acknowledge that he has been and still is the subject of "many" complaints of sexual harassment before the Police and the Commission. The details of these complaints were not pursued, nor would they have been relevant to the Board in this instance. But the Board concludes that Mr. Foriere was less than forthright when he first testified and

attempted to suggest that he was an individual who has never caused any problems. Clearly this is not the case and the Board concludes Mr. Foriere was not being forthright in his responses.

For the reasons that Mr. Foriere was not clear in his recollection of the day he terminated Ms. Hooper, and whether or not he drove Ms. Hooper to the Back Door Bar; as well as the finding of the Board that he was less than forthright, the Board concludes that the evidence of Ms. Hooper, where it varies from the evidence of Mr. Foriere, should be preferred.

11. Consequently, the Board finds as a matter of fact that from the early part of January 2003 until Friday, February 7, 2003, Ms. Hooper was employed to work with and for Mr. Foriere. Her job was to assist in any way possible with the opening of a dance club located at the civic address of 10 Tim Street in the city of Saint John. The name of the club was going to be Dante's Dance Club and it was to be owned but not operated by Mr. Foriere. It was the intention of Mr. Foriere that once the club opened, Ms. Hooper would become the head bartender. Ms. Hooper performed any and all tasks assigned to her during this period of time and there was no evidence adduced to suggest that she was anything but a good employer.

12. During the course of her employment, Mr. Foriere on various occasions introduced Ms. Hooper to various contractors and representatives as either the "stripper" or his "girlfriend". Although Mr. Foriere attempted to laugh this off, Ms. Hooper was upset by this behaviour and this was confirmed by Mr. Hersey who witnessed a few of these occasions and observed that Ms. Hooper was indeed upset and nervous. Ms. Hooper testified and the Board accepts the fact that she, although in a difficult position, did raise her concerns to Mr. Foriere on more than one occasion, but that Mr. Foriere did not change his behaviour.

13. It is of interest to note that when Mr. Foriere was asked whether he had introduced Ms. Hooper as a "stripper", he did not deny this. Rather, his answer was simply that he did not think that the word "stripper" was a very nice description of a woman and that he respected women because he had been married to his wife for over 50 years.

14. In addition to the introductions of Ms. Hooper noted above, she testified that on occasions she would be alone with Mr. Foriere. During these occasions, Mr. Hooper testified and the Board accepts that Mr. Foriere would speak about personal matters such as his intimacy with his wife. During these occasions, Mr. Foriere would suggest that he needed “to be taken care of a little bit”. The tenor of these conversations made Ms. Hooper very uncomfortable and when Mr. Foriere would then voice his concerns about Ms. Hooper’s boyfriend not making the necessary repairs to her mobile home, Ms. Hooper was equally concerned. In these discussions, Mr. Foriere would suggest that she could have someone much better than her boyfriend. Ms. Hooper inferred that Mr. Foriere was referring to himself. All of the aforementioned incidents occurred during the period between the first week of January 2003 and the 7<sup>th</sup> of February, 2003.

15. On February 7, 2003, Ms. Hooper arrived at 10 Tim Street as she always did, to see if there might be work to do. Mr. Foriere suggested that the two go to breakfast to which Ms. Hooper stated that she wanted to work. Mr. Foriere gave her the key to an adjoining room in the same building that the bar was being built and asked her to go in to do some cleaning. It was in this adjacent room that a lot of material for the new bar such as paints, tools, cleaning material and pool tables were stored. In any event, Ms. Hooper took the key and entered the room. As she did so, she heard Mr. Foriere start his truck and move it somewhere.

16. After a short period of time, Mr. Foriere entered the room and locked the door saying, “I moved the truck so no one would bother us”. The evidence is that Mr. Foriere leaned against a pool table that was in the room and removed two layers of clothing. After observing Ms. Hooper work for a period of time he asked her to come over to him. Ms. Hooper did not respond to the first request, but did come closer to him when Mr. Foriere asked again. As she approached Mr. Foriere, he extended his arms and said, “Just hug and kiss me. That is all I need”. Mr. Foriere then put his arms around Ms. Hooper and pulled her towards him. Ms. Hooper reacted by pushing herself away and saying “No”.

17. At this point in time Mr. Foriere put his coats back on and said in a very angry voice, “Come on let’s go.” Ms. Hooper was concerned and asked, “Are you saying I cannot work for you anymore”, to which Mr. Foriere responded, “Yes.” Mr. Foriere asked Ms. Hooper if she

wanted to gather her personal belongings from the bar and as she did so he retrieved his truck. Ms. Hooper was unable to contact anyone on her cell phone but got into the truck that Mr. Foriere had driven to the door. Ms. Hooper explained, and the Board accepts, that she got in the truck because she needed this job and hoped that Mr. Foriere would apologize. When there was no apology forthcoming, Ms. Hooper got out of the truck and arranged for a taxi to pick her up and take her to the Back Door Bar. It was there that Ms. Hooper borrowed money from Ms. England to pay the taxi.

### **III. ISSUES**

18. The issues in this matter are twofold and can be stated as follows:

- a) Has Ms. Hooper been the subject of discrimination on the basis of sex, more particularly the victim of sexual harassment at the hands of Dante Foriere or Dante's Dance Club Inc., in contravention of section 3(1) and 7.1 of the *Act*?  
- and -
- b) If Ms. Hooper has established the claim of discrimination, what is the appropriate remedy that this Board should order pursuant to section 20(6.2) of the *Act*?

### **IV. RELEVANT LEGISLATION AND CASE LAW AS IT RELATES TO THE ALLEGATIONS OF DISCRIMINATION BY PAULA HOOPER.**

19 In order to put this decision in context it is useful at this stage to set forth the relevant statutory provisions to be considered. They are:

- 3(1)** No employer, employers' organization or other person acting on behalf of an employer shall
- (a) refuse to employ or continue to employ any person, or
  - (b) discriminate against any person in respect of employment or any term or condition of employment,



because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.

**7.1(1)** In this section

"association" means an employers' organization, a trade union, a professional association or a business or trade association;

"representative" means a person who acts on behalf of an association or another person;

"sexually harass" means engage in vexatious comment or conduct of a sexual nature that is known or ought reasonably to be known to be unwelcome.

**7.1(2)** No employer, representative of the employer or person employed by the employer shall sexually harass a person employed by the employer or a person seeking employment with the employer.

**7.1(6)** For the purposes of this section

- (a) any act committed by an employee or representative of a person shall be deemed to be an act committed by the person if the person did not exercise the diligence appropriate in the circumstances to prevent the commission of the act;
- (b) any act committed by an employee or representative of an association shall be deemed to be an act committed by the association if an officer or director of the association did not exercise the diligence appropriate in the circumstances to prevent the commission of the act;
- (c) any act committed by an officer or director of an association shall be deemed to be an act committed by the association.

20. Both parties agreed that the definition of sexual harassment was set forth in the Supreme Court of Canada decision *Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252, where the court concluded that conduct of the perpetrator may be blatant or subtle. The court stated:

“Harassment behaviour may manifest itself blatantly in forms such as leering, grabbing, and even sexual assault. More subtle forms of sexual harassment may include sexual innuendos, and propositions for dates or sexual favours.”

In 1995, a Nova Scotia Board of Inquiry, in the case of *Miller v. Sam's Pizza House* (1995), 23 C.H.R.R. D/433 at page 446, concluded that there was a wide range of comments and conduct

that may constitute sexual harassment, and that these comments do not necessarily have to be directed at the complainant.

21 In considering this claim, the Board must conclude on a balance of probabilities (see *Ontario Human Rights Commission et al v. The Borough of Etobicoke*, [1982] 1 S.C.R. 202) that the behaviour is unwelcome, of a sexual nature, and has a detrimental effect on the work environment (see generally *Janzen v. Platy Enterprises Inc.*, *supra*).

22 The complainant need only establish that the conduct or comment “is known or ought reasonably to be known” to be unwelcome (see section 7.1 of the *Act*). There is no requirement that the complainant explicitly reject the conduct or comment of the perpetrator (see *MacBain v. Canada (Human Rights Commission)* (No 2) (1984), 5 C.H.R.R. D/2285 and *Penner v. Gabriele* (1987), 8 C.H.R.R. D/4126).

23. The Board is required to assess the allegations of sexual harassment taking into consideration various factors which include the nature of the allegations, the intensity of the conduct or comment, and the recurrence of the unwelcome acts or gestures (see *Mopega v. Université de Moncton* [2001] N.B.J. No 246 (N.B.C.A.))

## **V. CONCLUSION ON THE MERITS**

24. Based upon the findings of fact, the Board has no difficulty in concluding that on a balance of probabilities, Ms. Hooper was the subject of sexual harassment and therefore discrimination. This discrimination was as a result of the behaviour of Mr. Foriere, one of the named Respondents. However, insofar as the other named Respondent, Dante’s Dance Club Inc. is concerned, there was no evidence to support the allegations that this entity at any time employed Ms. Hooper. In fact, in final submission, counsel for the Respondents informed the Board that Dante’s Dance Club Inc. still does not employ anyone. Based upon the evidence, the Board is of the view that Ms. Hooper was employed by Mr. Foriere himself. Accordingly, in the view of the Board, sections 3(1) and 7.1(2) of the *Act* have been violated by Mr. Foriere.

25. In drawing this conclusion, the Board is cognizant of the elements of the offence as enunciated in *Re The Borough of Etobicoke, supra*. In this case, the Commission has established to the satisfaction of the Board that the behaviour of Mr. Foriere was unwelcome to Ms. Hooper and certainly of a sexual nature. It is hard to imagine that referring to any employee as the “stripper” or my “girlfriend” connotes anything but a sexual innuendo. In addition, the comments about Mr. Foriere’s intimacy with his wife were also of a sexual nature. And, of course, the event of February 7, 2003 as found by this Board to have unfolded, is also very much of a sexual nature. The effect of this behaviour was most certainly detrimental to the employment relationship of Ms. Hooper, who in the final analysis was fired on that day.

26. For all of these reasons, the Board reiterates its conclusion that Ms. Hooper was the subject of discrimination on the basis of sex or sexual harassment by Mr. Foriere. Thus, sections 3(1) and 7.1(2) of the *Act* have been violated.

## **VI. WHAT REMEDY SHOULD BE GRANTED?**

27. The remedial power of this Board, in its capacity of a Board of Inquiry under the *Human Rights Act*, is found in section 20(6.2), which states:

**20(6.2)** Where, at the conclusion of an inquiry, the Board finds, on a balance of probabilities, that a violation of this Act has occurred, it may order any party found to have violated the Act

- (a) to do, or refrain from doing, any act or acts so as to effect compliance with the Act,
- (b) to rectify any harm caused by the violation,
- (c) to restore any party adversely affected by the violation to the position he would have been in but for the violation,
- (d) to reinstate any party who has been removed from a position of employment in violation of the Act,
- (e) to compensate any party adversely affected by the violation for any consequent expenditure, financial loss or deprivation of benefit, in such amount as the Board considers just and appropriate, and

- (f) to compensate any party adversely affected by the violation for any consequent emotional suffering, including that resulting from injury to dignity, feelings or self-respect, in such amount as the Board considers just and appropriate.

28. The Complainant seeks special damages for loss of wages in the amount of \$7,831.00, general damages in the amount of \$7,000.00, a letter of apology, an order that the respondents receive Human Rights training from a staff member of the Human Rights Commission and costs. In the view of the Board it is best to deal with each of these remedies separately.

**i) Special Damages for loss of Wages**

29. In making this claim the Commission submits that Ms. Hooper should receive the equivalent of 40 hours a week at \$7.00 an hour for an arbitrary time period of 71 weeks less money earned by Ms. Hooper during this period of time. When asked, counsel for the Commission was unable to rationalize the 71-week period. Furthermore, upon review of the written submission of the Commission filed as a pre-hearing brief and which calculates the amount claimed, it is evident that no evidence was adduced to establish the earnings of Ms. Hooper during this time frame.

30. However, what is evident is that Ms. Hooper left a job that she had held for a lengthy period of time upon the understanding that she would be paid for 40 hours a week at an hourly rate of \$7.00. The evidence confirms that in the first week of January 2003 she in fact did receive \$280.00, but for the period between then and February 7, 2003 she appears to have only received \$390.00 rather than the \$1,120.00 she should have received in this four week period of time. Although Counsel for Mr. Foriere submits that this was due to the malfunctioning of a furnace, the Board concludes that Ms. Hooper, relying upon the commitment of Mr. Foriere, left a stable job for a guarantee of 40 hour week at \$7.00 an hour and there was work to perform. Ms. Hooper showed up to work during this period of time every morning and her employer did not assign her sufficient tasks, while at the same time subjecting her to behaviour which has been found to be discriminatory in nature. For these reasons the Board concludes that Ms. Hooper is entitled to \$730.00 being the difference of what she should have been paid and that which she actually received.

31. It was undisputed that after February 7, 2003, when Ms. Hooper was terminated by Mr. Foriere following conduct that was clearly discriminatory, Ms. Hooper was out of work for a period of 5 weeks and therefore is entitled to receive \$1,400.00 less any money received from Employment Insurance.

32. After March 13, 2003, Ms. Hooper apparently was employed, initially with Fundy Linen and then as a bartender/waiter at Chuckles Restaurant. Because no clear evidence was adduced as to the level of earnings during this time, the Board concludes that it has no ability to calculate and thus award any special damages during this period. In addition there was no evidence adduced to establish that Ms. Hooper earned less than \$280.00/week during any period of time after March 13, 2003. Therefore, the Board will issue an Order that Mr. Foriere pay special damages to Ms. Hooper in the amount of \$2,130.00 less any Employment Insurance benefits received by her between February 7, 2003 and March 13, 2003.

**ii) General Damages**

33. The Complainant referred the Board to a number of cases in support of their claim for \$7,000.00 in general damages. These cases are: *Nova Scotia Construction Safety Association v. Nova Scotia (Human Rights Commission)* [2006] N.S.J. No 210; *Mowat v. Canadian Armed Forces* [2005] C.H.R.D. No 14; *Miller v. Sam's Pizza House, supra* and *Dillman v. IMP Group Ltd* (1995) 24 C.H.R.R. D/329 (N.S.C.A.).

34. The Board is of the view that section 20(6.2) of the *Act* is broad enough to allow the awarding of general damages in appropriate circumstances. In this case the Board is not inclined to award any general damage for mental anguish as there is a requirement that the act be wilful or reckless (see *York Condominium No 216 Corp v. Dadnik* (1991) 79 D.L.R. (4<sup>th</sup>) 161). In the case at bar there is insufficient evidence to conclude that the conduct of Mr. Foriere was reckless. Furthermore, it is the position of the Board that for a claim for general damages for mental anguish to succeed, there is a requirement that medical evidence be produced (see *Chacko v. Transpharm Canada Inc* [2002] O.H.R.B.I.D. No 17). There was no such evidence adduced in this matter.

35. However, the complainant also submitted that the Board should award general damages for loss of dignity and self-respect. In making this claim, counsel reminded the Board of the significance attached to employment in our society, a submission which this Board accepts. It is the view of this Board that the law is unclear as to whether or not such a claim requires proof of wilful or reckless conduct. However, under the circumstances of this case, the Board is of the view that the fact situation cries out for remedial action. Accordingly, the Board is prepared to order that Dante Foriere pay to Paula Hooper general damages in the amount of \$5,000.00. In coming to this conclusion, the Board has taken into account the plethora of cases across the country dealing with the issue of quantum of damages. In the view of the Board, this fact situation is not in the higher end of the spectrum, but rather falls somewhere in the middle range.

**iii) Letter of Apology**

36. The Board is of the view that section 20(6.2)(b) of the *Act* would allow the Board to order that a respondent issue a letter of apology. It was pointed out both in evidence and submission, that Mr. Foriere is illiterate. In fact, Ms. Hooper, during her employment with him, testified that she was asked to write out checks for his signature. However, Mr. Foriere is a successful businessman who by his own admission had entered into written contracts. Therefore, the Board concludes that somehow he is able to understand written documents. The Board is of the view that Mr. Foriere should send a letter of apology to Ms. Hooper which admits his transgressions.

**iv. Human Rights Training**

37. Once again, the Board is of the view that section 20(6.2) of the *Act* is broad enough to, under the appropriate circumstances, make such an order. The request of the Commission in this case is that Mr. Foriere “receive Human Rights training from a staff member of the New Brunswick Human Rights Commission”. In the view of the Board, the remedy should address the actual violations of the *Act*. Therefore, in this case the Board is prepared to order that the Human Rights Commission set up a specific training program for Mr. Foriere, within two months of this award. The program will specifically address issues of discrimination on the basis of sexual harassment and

will last no more than two days. Once the specific program is designed, Mr. Foriere is ordered to participate in the program within one month of being informed of its completion.

**v. Costs**

38. The Commission requested that the Board order costs. In making this submission the Board was provided with no case law to support these submissions. Furthermore, the request was for the benefit of the Commission who indicated that they had incurred significant costs over a long period of time. Although the Board is not prepared to conclude that costs will never be granted, under the circumstances of this case the Board will not make such an order. This complaint was in the hands of the Human Rights Commission for about two and a half years before being referred to a Board of Inquiry. The nature of the complaint is not complicated and there was no explanation as to why it took so long to be referred.

**VI. CONCLUSION**

39. The Board therefore finds that Dante Foriere has violated sections 3(1) and 7.1(2) of the *Human Rights Act* by sexually harassing Paula Hooper. As a consequence, Mr. Foriere is ordered to pay Ms. Hooper special damages in the amount of \$2,130.00, less any Employment Insurance Benefits received between February 7 and March 13, 2003, and general damages in the amount of \$5,000.00 for loss of dignity and self-respect. Mr. Foriere is also ordered to write a letter of apology and undergo a training program on sexual harassment designed by the Human Rights Commission that will not exceed two days in length.

Issued at Fredericton, New Brunswick, this \_\_\_\_\_ day of November 2006.

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**GEORGE P. L. FILLITER**  
**CHAIRPERSON**  
**LABOUR AND EMPLOYMENT BOARD**