

JUDGEMENT

**EQUAL OPPORTUNITY TRIBUNAL  
OF WESTERN AUSTRALIA**

No. 16 and 19 of 1990

LUCY SARAC  
Complainant

- against -

CROATIAN HOUSE HRVATSKI  
DOM (INC.)  
Respondent

BEFORE: Mr N P Hasluck QC (President)  
Ms K French (Deputy Member)  
Mr P Deschamp (Deputy Member)

Counsel for the Complainant      Mr G G Innes  
Counsel for the Respondent      Mr N Cugin

HEARD:

REASON FOR JUDGEMENT

Delivered: 10 JUN 1991



### JUDGEMENT

By letter dated 5 October 1989 Lucy Sarac lodged a complaint of unlawful discrimination on the ground of sex in the area of clubs against the Croatian House Hrvatski Dom (Inc). The letter was received by the Equal Opportunity Commissioner on 9 October 1989 and refers to inadequacies in the Constitution of the club and "numerous incidents" involving the Complainant which are said to constitute discrimination.

Subsequently, by a complaint form dated 7 May 1990, the Complainant alleged that since she lodged her original complaint she was ostracised by club members at the instigation of the Committee of the club, that she had charges laid against her and was denied her constitutional rights and that by letter dated 27 April 1990, signed by the secretary of the club, she was suspended from the club for a period of two years as from 3 May 1990. Thus, in essence, by the second complaint she complained of victimisation contrary to provisions of the Equal Opportunity Act 1984 ("the Act").

As a result of directions given during the course of the proceedings the matters the subject of the two complaints were set out in a single pleading, being Points of Claim filed on behalf of the Complainant and dated 4 October 1990, and that pleading was addressed by Points of Defence filed on behalf of solicitors for the Respondent club dated 23 November 1990. The allegations of discrimination on the ground of sex and victimisation were denied. The matter was listed for hearing on the basis that both matters, as defined more exactly by the pleadings filed on behalf of the parties, would be dealt with together.

A copy of the Constitution was submitted to the Tribunal in evidence. By Clause 3 the object of the club shall be the promotion of a social organisation and club composed of Croatian people, their families and friends and friendly persons of other nationalities. Clause 5 deals with membership and provides that a full member shall be any person over the age of 18 years who is entitled to exercise every privilege open to a member of Croatian House. Provision is also made for associate members, social members, junior members and honorary members. By Clause 16 the Annual General Meeting shall be held during the month of August at such time and place as the Committee may determine.

The Constitution provides by Clause 27 that the business and affairs of the club shall be under the management of the Committee which shall consist of the President, Secretary, Treasurer and 12 Committeemen, with this Committee being elected annually at the Annual General Meeting.

The Constitution also contains provisions concerning disciplinary action. By Clause 44 a charge shall be made either by a member or by resolution of the Committee stating the nature of the offence of which the member is accused. The member is then entitled to seven days clear notice of the Committee meeting at which the charge will be dealt with. After hearing the charge the Committee is entitled to inflict such penalty as it thinks fit, either by fine, suspension from the privileges of membership for a certain time or by expulsion. By Clause 45 the Committee shall have full power to suspend or expel any member of the club who shall fail in the observance of any rule or who shall in the sole and absolute judgement and discretion of the Committee have been guilty of any act calculated to prejudicially affect the reputation of the club or calculated to affect the

enjoyment of the premises or to cause any ill feeling or friction between or among the members.

The club premises are situated at Lot 2 Wishart Street, Gwelup. At the hearing a sketch of the premises was admitted by consent and it appears from the sketch that the premises consist of a Front Bar and office together with accompanying toilet facilities to the right of the main entrance and to the left of the main entrance there is a dining room serviced by a kitchen and a function hall. The dining room was referred to by a number of witnesses as the Lounge Room and the Tribunal will adopt that term.

The Complainant by her Points of Claim pleads that she became a member of the club in or around 1983 and is one of a small number of women who are members in their own right as opposed to those women who are members as a result of the membership of their husband. The Complainant's case was presented on the basis that the atmosphere of the club generally is discriminatory against women or female members and it seems that evidence was given to that effect with a view to setting the scene or explaining the background to particular incidents involving the Complainant. It will therefore be useful to begin by looking at the way in which the club was conducted as described by a number of witnesses.

The Complainant said that for some time before she became a member she attended club functions and general socialising on weekends, mainly Sundays, and involved herself in nothing more than playing cards and pool with a community that was known to her since 1968 being the year that she came to Australia. It emerged during the course of evidence

that cards were played in the Front Bar area and pool tables were also to be found in the Front Bar which was the place where alcoholic beverages were served. A number of witnesses confirmed that the Lounge Room was mostly used by female members of the club.

When asked about the membership of the club at the time she joined in 1983, the Complainant said that most female members were accepted as members on the husband's membership so that only one fee was payable for the whole family. She said that a couple of years after that two other females joined as full members. As at 1989 there were roughly 130 - 140 members with about 90% of the members being married and with their wives attending at the club on the basis of their husband's membership. She went on to say that women attended the club mostly on weekends with their children and husbands, but the women would congregate in the Lounge Room adjoining the kitchen, and they would mostly sit at tables in that area. She said that she personally did not participate in those gatherings as she went to the club *"to free my mind and just play cards and pool"*.

The Complainant described the importance of the club to her in this way:

*"This is the only place we ever went since my daughter was born. When she was very little I didn't go there as I thought the child under the adults' feet would be an inconvenience but when she was approximately three years of age and didn't understand English she should be where she should be and we've been going there every weekend ever since. That was the only outlet that we mixed. I don't have any other social life and I don't go anywhere. All the outings we had is through the community, people's christenings and the parties of the community. We were good friends with all the people and we were not short of entertainment or socialising at this time and we both were quite happy with it."*

Before turning to the Complainant's allegations concerning the way in which the club was conducted the Tribunal pauses to refer to the evidence of some other female members of the club. The Tribunal was impressed by the evidence by Mrs Catherine Cosic who was Scottish by origin but had married a member of the Croatian club ten years ago. Mrs Cosic had been active in the Hospital Employees' Federation in Melbourne and had taken an interest in women's affairs being a national delegate of the union and involved in making submissions concerning equal pay for women. She was a woman of mature years and obviously accustomed to exercising an independent judgement. She confirmed the layout of the premises as described above and agreed that women tended to congregate in the Lounge Room rather than in the Front Bar but said firmly that there was no social pressure for women not to go into the Front Bar. She personally had attended the Front Bar on a regular basis and had never experienced any adverse reaction to being there. She went on to say that as far as she was concerned women were treated with respect in every way and that in her estimation there was no question of women being regarded as second class citizens in the club. In her view she was a full member in her own right and in her view she had the same rights as a man in every way.

Maria Tadic also gave evidence. She said that women could sit wherever they wanted to but usually they gathered in the Lounge or Dining Room. She said that women preferred to sit together so that they could talk and joke together and this was done more often in the Lounge Room because there was less smoking and the air-conditioning was always on in that area. She described herself as a full member but as a pensioner, that is to say, she paid half a full member's fee.

Mrs Sofia Gavranic was also a full member in her own right and it was clear that she was quite accustomed to going to the Front Bar to have a drink in that area without worrying about any adverse reaction. She was a friend of the Complainant's and accompanied the Complainant into the Front Bar from time to time.

The Complainant herself agreed that she spent a good deal of her time in the Front Bar in the company of male members of the club because she like to play cards and pool. She agreed that bad language was often used by the male members of the club, and ribald jokes were made in her presence from time to time, but she did not take offence at this, at least in the period prior to the incidents to be described in a moment. She thought that this was merely part of the good humoured atmosphere of the club. Her evidence was that she herself did not use bad language but it is apparent that a number of witnesses, including the female members just mentioned, did not agree with her in that respect.

Ilija Jurkovic was a senior member of the club and in his view Lucy was *"a sort of happy-go-lucky person, always cheerful and laughing"*. He said that she enjoyed her drink in the bar and sometimes *"even excessive"*. He suggested that she was not averse to rude jokes being told in her presence. The Tribunal was impressed by Jurkovic and attaches some importance to his evidence as to how Lucy Sarac conducted herself. His evidence is also corroborated by Catherine Cosic who said that Lucy's behaviour in the club was *"not always the best"* and that *"she wasn't slow at swearing"*. She confirmed that Lucy *"used to enjoy playing pool, playing cards and having a few beers"* mostly in the Front Bar. It was apparent that Mrs Cosic, with her experience in union affairs, knew the ways of the world and was not censorious in uttering these remarks but simply



describing what she observed in a matter-of-fact way. Maria Tadic was a friend of Lucy Sarac's prior to the controversial events but even so she was inclined to say that Lucy didn't "*talk very nice*" and sometimes drank too much so that she didn't speak very nicely.

A picture emerges, then, and this portrait was confirmed by the Complainant's demeanour at the hearing, that Lucy Sarac was a good looking and energetic woman, younger than many of the women at the club, and unattached. She was intelligent and articulate. In the environment of the club she was bound to seem high spirited to many of her fellow members and it was probably not surprising, given her wish to play cards and pool, that she spent most of her time in the Front Bar with the men and was regarded as "*one of the boys*", as reflected in the evidence of Jurkovic. Prior to the controversy, she seems to have been generally popular, but it seems also that this created a risk that some members of the club would take a censorious view of her conduct. Familiarity has a cunning of disenchantment, and her happy-go-lucky style may well have contributed to her fall from grace once she became embroiled in the controversial events which are about to be described.

Before turning to those events it will be useful to identify some of the office bearers of the club. Although the Constitution provided for the election of a management Committee in strict form, it was apparent that this was accompanied by a degree of informality which is not at all surprising in the case of a social club. The tradition was that positions on the Committee were filled in rotation with members being expected to take a turn in office when time and commitments permitted. At the Annual General

Meeting in August 1988 Mr Vranjes was elected as President of the club and the Secretary was Ante Matic. Although not formally a member of the Committee it seems that Sofia Gavranic had a responsibility for supervising takings at the bar. In February 1989 Hector Cosic became Bar Manager. At the August 1989 Annual General Meeting Jure Srsen assumed the Presidency and Ante Matic continued as Secretary. In September 1989 Dimitrija Racanovic replaced Srsen as President. It follows that Racanovic was President during the controversial period the subject of these proceedings. In August 1990 Ante Majic became president and he was the principal representative of the club at the hearing.

Against this background the Tribunal now turns to the allegations contained in paragraphs 2-5 of the Points of Claim. Reference is made to the small number of women who are members in their own right and it was submitted that women were treated less favourably than men. The Tribunal will call this "*the membership issue*". It was pleaded also that during 1989 at general meetings jokes containing sexual connotations were made by male members of the Committee and of the club if a woman spoke and the making of such jokes was not discouraged by the members of the Committee conducting the club. Meetings would not be called to order when a woman was speaking although they would be called to order when a man was speaking. Mr Sismis (or otherwise known as Stanko Coric) often made statements in the presence of the Complainant to the effect that he hated women and that all women were prostitutes. The Tribunal will call this "*the sexual connotations issue*".

The controversy involving the Complainant was set in motion at the February 1989

meeting. At that meeting, it seems, complaints were made concerning Sofia Gavranic, the bar manager. The Complainant spoke up for her friend. The meeting, like many others apparently, was unruly and the President did not enforce strict order of debate. The Complainant said in evidence that when she took part in the debate there was some suggestion as to where she could be "used" in dealing with the matter and she took this to be a reference with a sexual connotation. She was able to make her point, however, that it seemed unreasonable to criticise Mrs Gavranic when a number of other people had keys to the facilities including the safe and storage room where the liquor was kept.

It may be that the stance adopted by Lucy Sarac at that meeting, having regard to the fact that she was a forceful and articulate speaker, and also a well known figure in the club, struck some of those present as being unduly assertive. The Complainant's evidence was that thereafter attitudes towards her began to change.

It is pleaded that in early August 1989, at the Annual General meeting of the club, when the Complainant was nominated to a position on the Committee of the club, comments were made by Frank Gavaran, a member of the club, regarding the Complainant, using words to the effect *"Where are we going to use Lucy. I suppose if there's something to be held upright Lucy's there"*. The Complainant's nomination was then laughed off and not accepted or dealt with seriously by members of the Committee of the club who were conducting the meeting. The Tribunal will call this allegation *"the August meeting issue"*.

The evidence given by the Complainant did not entirely correspond with the pleading. The allegation as pleaded suggests that the Committee either expressly refused to accept

the Complainant's nomination, or, alternatively, by allowing her nomination to be accompanied by sexual badinage, acted in such a way that she was deterred from becoming a member of the Committee. However, it seems that at this meeting, as with other meetings, there was a good deal of horseplay going on. The Complainant said in evidence that there was a lot of laughter and a lot of jokes and with nominations for the Committee flying round the room. When her name was mentioned as a possible Committee member Gavaran asked jokingly "*Where are we going to use and what are we going to do with Lucy?*", but she said in evidence that she never really took these jokes seriously till they got to a point of being abusive.

She conceded that her nomination was accepted. She then left the members area and took a seat on the stage with the other nominees. According to her the jokes continued and it was at this point that she began to assume that the speakers' meant what they said and they were trying to insult her in a provocative manner. The Complainant agreed however, that shortly after the nominations had been received, and the Committee of Management had been constituted, a proposal was made to set up a Supervisory Committee to monitor the work of the Management Committee. The Complainant immediately commented on the illogicality of this proposal and she conceded in evidence that it was this factor, rather than the abuse, which caused her to leave the Committee to which she had just been appointed.

Dimitrija Racanovic said that Lucy was elected to the Management Committee. He wasn't quite sure if somebody nominated her or whether she volunteered to come in, because the practice was usually to ask for volunteers. However, to the best of his

recollection, there was a question of the Supervisory Committee being constituted so as to have three men to control the work of the Management Committee and to do the bar stocktakings. It was quite apparent that Lucy did not agree with that, or for the need for any such Committee, whereupon she walked out. As far as he was concerned, that was the only reason why she failed to take her place on the Management Committee and he personally did not hear any derogatory remarks or jokes with sexual connotations about Lucy.

A number of other witnesses confirmed the sequence of events as described by Racanovic. The Tribunal also notes that in a letter dated 6 April 1990 the Complainant put the matter in this way:

*" Regarding their explanation of my nomination for the Committee it is an absolute lie. I was nominated by Mile Conjugia seconded by Mr Dizdar. As I took the position Mr Matic feared the Committee would not be to his liking. Mr Matic chaired the meeting, he was Secretary, the previous year and self elected for the current year. Mr Matic whilst in possession of the microphone, and using his self appointed authority then proceeded to announce ten names that he would like to join him on the Committee, six responded favourably, one of Matic's nominations was not even present at the meeting, Mr Mrso, but was made a Committee member and still is. The completion of the Committee ended with four volunteers. Then Mr Jurkovic stated we should have Supervising Committee of three, himself in control. I immediately voiced my disapproval as such a Committee was outside the rules of the Constitution. I was loudly told by Jurkovic and Matic to forget the Constitution, if I didn't agree with them I should immediately leave, which I did."*

To this point, although it seems that relations between the Complainant and fellow members of the club may have soured to some degree, as a result of differences concerning the way in which the club should be managed, it is nonetheless difficult to

pinpoint any particular event indicating that the Complainant was being singled out for detrimental treatment. It was not an entirely new experience for jokes with sexual connotations to be made in her presence. Her letter shows that she left the Committee on a matter of principle, not because she was discomforted by the tone of the meeting. However, on Sunday 24 September 1989, a more significant event took place.

In paragraph 7 of the Points of Claim it is pleaded that on Sunday 24 September 1989, the Complainant was setting up a pool table in the Front Bar. Bozo Vrlic's son approached the table and claimed that it was his turn to play. The Complainant claimed priority and sent him away. As the Complainant was leaving the club premises later that evening Vrlic accused the Complainant of hitting his child and physically assaulted her. The Tribunal will call this "*the Vrlic issue*".

The Complainant said in evidence that she had consumed three or four cans during the course of the afternoon. She described the encounter with Vrlic's son and said that she left the club premises at about 7.00 p.m. in the company of her friend Sofia Gavranic. She said that just as she was about to step into Mrs Gavranic's car Bozo Vrlic challenged her. There was a brief verbal exchange in which he called her a bitch and she denied touching his child. She said in evidence:

" *As he walked towards me he grabbed me by my jumper, it was a close necked jumper. He grabbed me by that and pushed his fist into my chest and I was bruised for weeks afterwards ... he pushed me against the car threatening to smash me and I kept saying "let go of me", "let go of me" and Mrs Gavranic at that time was standing right next to me ... at this point of time Mrs Gavranic intervened pushing him away and at the same time his missus stepped out of the door which was not too distant from where they were and jumped on him ... as he let go of me Mrs Gavranic*

*hassled me and pushed me and I approached the car. I got in the car and that was the end of it."*

Vrlic was not called to give evidence before the Tribunal. Mrs Gavranic confirmed that a clash had occurred but described it in different terms, saying that she backed her car to the door and when Lucy came out and went to sit in the car Vrlic approached her and said "*Lucy, why did you hit my kid?*". Her recollection was that Lucy got out of the car, the two parties involved in the quarrel exchanged words "*and a few pushings*" but she didn't see clearly what was happening because she was in the car and anxious about the damage that might be caused should one of the parties fall on the car. The Complainant's daughter was crying out "*Sofie, don't let him hurt my mummy*". Mrs Gavranic said it wasn't a fight, it was just a movement of hands pushing and shoving. She said that when Lucy got back into the car she couldn't recall any marks on her face and body.

The Tribunal was left with an impression that Mrs Gavranic was conscious that there could be adverse repercussions if she supported the Complainant's case, and viewed her evidence with caution. The Complainant, on the other hand, was quite specific in her description of the encounter. Either way, it is clear, on both versions, that Vrlic initiated the encounter, and in a pugnacious style. It seems likely that the Complainant did try to fend him off and that there was a degree of pushing and shoving but the weight of the evidence supports a finding that Vrlic physically assaulted the Complainant and in a manner that gave rise to indignation and an apprehension by the Complainant as to her safety. Her version is supported by the fact that a few days later on 29 September 1989 she took out a complaint against Vrlic pursuant to the Justices Act alleging assault and thereby obtaining an interim restraining order.

It is pleaded that on Saturday 30 September 1989, Mr Hector Cosic, a member of the Committee of the club who was serving behind the bar, accused the Complainant of making trouble when she said that she wanted to obtain a copy of the Constitution of the club from the President of the club Mr Jure Srsen. Mr Cosic appeared to be further annoyed when the Complainant drew to his attention the uncleanliness and messiness of the ladies' toilet. When Mr Srsen arrived the Complainant had a drink with him and Mr Cosic refused to give the Complainant ice to put in Mr Srsen's drink. When she reached across the bar to get the ice herself Mr Cosic abused her and threw the ice bucket and other bar accessories at the wall. Later that day he refused to allow her to use the telephone, told her that she had had her last drink at the club and that she should get out. The Tribunal will call this "*the Cosic issue*".

The Complainant gave evidence supporting the details of this allegation and in the course of doing so said:

" *I put two blocks of ice in Mr Srsen's drink. Mr Cosic was standing at the till, he was actually putting money in the till from other person's drinks. As he saw me doing that he picked up the ice bucket and it was thrown against the wall. He called me a slut and bitch and whore and mole and that this is the end of me in this place and never again will I have a drink there and I should get out immediately and said for the rest of his life I will not ever drink in their club.*"

The Complainant went on to say:

" *"Come on mate, you're kidding. What have I done?" He says "You f'ing get out of here". He got physical too, sort of and Mr Srsen goes "Leave her, leave her" and then Mr Cosic got to the point of - he said "Get out of this place. I'm not Bozo Vrlc. What do you think I am? I'll show you how its done" and all these kinds of things. I thought to myself "He'll calm down" so I finished my drink even though he was saying to me "Get out".*



*Even though I wasn't staying for drinks I decided I was going to order another drink. I thought he had no right to say this is my last drink or what. I purposely, just for that reason, stayed and ordered another drink. He said to me "You f'ing bitch, you slut, and you this, you that. Get out of here" he says. I said "Could you please, give us the drinks, Mr Srsen's and mine?" and Mr Srsen said to me "Don't worry Lucy, just don't worry about the drinks". I said "No, No. I'd like to buy you a drink because you bought me one." That is exactly what I do on every occasion. Obviously, I was refused and as I was refused and I realised he was serious I asked him to use the phone."*

Although the Complainant was a highly intelligent and articulate woman, and probably more nimble-witted than many of those around her in the club, this testimony was characteristic of her, and sheds some light upon her approach to confrontations. She did not seem to fully appreciate to what extent her actions aroused antagonism and to what extent her bantering manner might leave a lingering sense of resentment. She had a blind spot in that regard, and the blind spot may well have contributed to the unfortunate series of events that followed.

Mr Cosic was not a happy-go-lucky type. He was a fastidious man, and he had been appointed bar manager at a time when there was some controversy as to how the bar should be managed. He said that she took ice from the bucket with her hand and he reprimanded her. He denied that his reaction was as extreme as the passage above would suggest. He denies that he threw the ice bucket and says that, in a gesture of disgust, he threw the contents of the bucket into the sink and made it clear that he would not serve her.

Mr Cosic, was not large of stature or physically intimidating and the Tribunal doubts that his reaction was as extreme as the Complainant suggests. However, even if his reaction

was extreme, it is surprising, and provocative to some degree, for the Complainant to have persisted in her request for another drink without having allowed the bar manager an opportunity to calm down. It was this kind of assertive conduct which seems to have estranged a number of the Complainant's former friends in the club during the period of the controversy and to have contributed to the penalties which were eventually visited upon her.

As a consequence of the Vrlic and Cosic incidents, the Complainant lodged a complaint with the Committee and requested the Committee to take disciplinary action. She said that she asked the Committee "*in the most polite way*" to somehow discipline Vrlic as he was a physical threat to her.

It is pleaded in paragraph 10 of the Points of Claim that at the meeting of the Committee of the club on Sunday 1 October 1989, the Vrlic and the Cosic incidents were discussed. The Complainant attended part of this meeting. During the discussions which took place the Complainant indicated that if the Committee did not act to penalise Vrlic and Cosic in some way she would take her own legal action. She was told by Mr Frane Klaric, the Treasurer of the club, that if she took legal action against any Croatian she would be thrown out of the club. This statement was strongly supported by Mr Victor Racanovic, the President of the club.

It is pleaded also that at the meeting Cosic was directed to apologise to the Complainant for his actions the previous day, but this apology was not received and the Committee has not acted to penalise Cosic for not following its direction.

It is also pleaded that on Tuesday 3 October 1989, the Complainant received a letter from the Secretary of the club advising her that she had been suspended from the club for one year because she had caused the Vrlic incident whilst under the influence of alcohol. The Complainant was not given notice of the Committee's intention to act in this way as is required by the Constitution of the club. Further, male members who have been involved in much more serious incidents have either received much shorter suspension or have not received suspensions at all.

In paragraph 13 of the Points of Claim it is pleaded that on or about 2 October 1989 the letter referred to in the above paragraph, that is to say the letter of 3 October 1989, was placed on the notice board of the club and left there for approximately two months.

The Tribunal will refer to these matters collectively as "*the October meeting issue*".

The Complainant gave evidence confirming the October meeting allegations. It is clear that the Committee did not proceed in accordance with the process contemplated by Clauses 43 and 44 of the Constitution concerning disciplinary action and it is from this serious omission on the Committee's part that much of the subsequent trouble stems. Had the proper procedures been followed so that immediately following the laying of complaints against Vrlic and Cosic by the Complainant seven days notice was given to the two men in question, the Committee might have focussed its attention upon the incidents the subject of the complaints. However, as matters developed, although the Complainant and Vrlic and Cosic all attended before the Committee and some enquiries were made as to the facts and circumstances giving rise to the complaint, discussion veered off

erratically into side issues in a way which the Tribunal will come to in a moment and, as a result, a controversy erupted which had little to do with the subject matter of the Complainant's initial reference to the Committee.

According to the Complainant, having made some cursory enquiries into the circumstances of the incident, the Committee asked the Complainant to shake hands with Bozo Vrljic so that all could be forgotten. In response to that suggestion she said in evidence:

*" This is the way I put it to them. "I don't want Bozo Vrljic to have nothing to do with me. And if you guys don't take some disciplinary action to make sure that takes place I'm going to take legal action myself." And then Klaric lost his control and says "You f'ing bitch. Nobody takes action against any Croatian. Not you, not nobody. Not even each member. Anybody that does this will be thrown out of this club for life." ... and at the same time Mr Racanovic lost his control and they were all shaking and shivering and got, you know, really abusive ... and these are the exact words that I used "The law of this country provides me with rights outside of this club. If Mr Vrljic thinks he's going to punch me up every weekend and then shake hands with me the following weekend," I said "that's not on, and I leave it with you guys. Can I leave now please?"*

In regard to the Cosic issue she said that the Committee ruled that Cosic should apologise for what he has done so as to settle the matter, and on the basis that she would apologise for her behaviour also. She said that she gave her apology, there and then, but she contends, as her pleading indicates, that he did not apologise. Her evidence on that point was as follows:

*" The Committee President asked him (Cosic) if he was prepared to apologise, as they pointed out to him that he had no right to refuse me, and he says "Okay I was upset and just lost control". And the President says "Are you prepared to apologise?" He says "Yes I am". The Complainant then went on to say that she did not regard that as an apology. It would be different if he had said "Look Lucy I'm sorry that I abused you*

*yesterday."*

The Tribunal digresses briefly to say that in the Tribunal's view what Cosic said amounted to an apology. It was not effusive, but it was sufficient. He was only obliged to provide a formal apology.

In dealing with the October issue it is material to look at the evidence of Racanovic who was presiding at the meeting in question. He said that the decision of the Committee was that Bozo Vrljic wasn't guilty and she was the guilty party. When asked why it was decided that she was the guilty party, he said, illogically, but in a way that was corroborated by others present, that it was because she demanded that the Committee suspend Vrljic and went on to say that if the Committee didn't suspend him she would take action outside the club, namely, she would bring in the Corporate Affairs Department to investigate the club for misappropriation of money and if necessary she would sell her house, in order to finance legal action so that Vrljic was brought to justice.

The evidence bearing on the Committee's line of reasoning is extremely confused but it seems that once the Complainant adopted the stance indicated by the passages quoted above, the Committee ceased inquiring into the rights and wrongs of the Vrljic issue and immediately closed ranks against the Complainant on the basis that her statements were in the nature of blackmail. Thus, it was decided to suspend her for twelve months. When asked whether the Committee reached any conclusion as to whether Vrljic had used his hands or fists, or anything of that kind, Racanovic answered in the negative and said that

what she had said amounted to blackmail and the twelve months suspension had to be imposed.

Thus, as a consequence of the Vrlic and Cosic issues being referred to the Committee, at the end of the day, a joint apology had been proposed in respect of the Cosic issue, but the deliberations of the Committee concerning the Vrlic issue had resulted in the Complainant herself being subjected to a severe penalty, a strange outcome to say the least.

That penalty was referred to in a letter from Ante Matic as Secretary to the Complainant dated 3 October 1989 ("the first suspension") which reads as follows"

*" Respected Madam Sarac, the Management of the Committee of the Croatian House, Gwelup, on its special meeting of 1st October 1989 discussed the incident which happened on the 24th September 1989 in the House, between you and Bozo Vrlic, and the incident of 30th September 1989 between you and Hector Cosic. After the participants in the incident had been heard, the Management Committee came to the conclusion that you were guilty of causing incidents, and unanimously brought down the following decision: Lucy Sarac, because of the disturbance of 24 September 1989 which she caused under the influence of alcohol, and as she is inclined to cause such incidents, is punished by being forbidden admission to the Croatian House, Gwelup for the duration of 1 year i.e. until 1st October 1990. Management Committee. We believe that this punishment will influence you positively, and that after the expiry of the punishment - with your exemplary behaviour - you will be an inspiration to others to behave in the same manner. "*

It follows from the Tribunal's view of the Vrlic incident, in which a conclusion was reached that Vrlic had assaulted the Complainant, that the decision by the Committee reflected in its letter of 3 October 1989 was unreasonable. On the Tribunal's view of the matter the Complainant had requested that disciplinary action be taken against Vrlic in

circumstances where disciplinary action was warranted but in the event she herself was disciplined and Vrlic went scot free. It was probably unwise of the Complainant, in pressing her claim against Vrlic, to demand disciplinary action in a peremptory way, coupling that demand with a suggestion that she might be obliged to go beyond the internal procedures of the club and seek relief from the courts of law, but her lack of discretion in that regard was caused presumably by the depth of her grievance, and her sense that the Committee, in its attempt to be even handed, was insensitive to the justice of the case. Instead of dealing with her threat to take the matter further in a balanced way, and attempting to address the real subject matter of the dispute, the Committee over-reacted and proceeded to characterise the Complainant as an enemy of the club. The swiftness of this reaction was probably linked to the differences that had emerged at the February and August meetings, and a perception that the Complainant had become a consistent critic of the Management Committee. Nonetheless, it is clear that after the October meeting, the Committee and members close to the Committee regarded the Complainant as a threat, and a factor in the Committee's thinking was the reference to outside legal action. A number of witnesses referred to the fact that she had threatened to bring the club to its knees by legal action and had threatened to sell her house in order to do so if necessary, while as her evidence as set out above was that she indicated simply that if disciplinary action was not taken against Vrlic then she would take legal action herself, a reasonable stance to adopt in the circumstances, if one accepts, as the Tribunal does, that she had been the subject of an unprovoked assault.

It is material to note that the letter of 3 October purporting to set out the findings of the Committee and acquainting her with the fact of the 12 month suspension disguises the

true reason for her suspension. The letter suggests that a finding was made concerning the Vrlic issue but it is apparent that the true reason for the suspension was the threat of legal action which was elevated by those present into the category of "*blackmail*". Mr Racanovic agreed under cross-examination that the letter did not reveal the true basis of the suspension and likewise the signatory to the letter, the club Secretary, Mr Ante Matic, agreed that the threat of legal action, or threats to the club, were the basic cause of the suspension. He said that he had made a mistake in not mentioning that aspect of the matter in the letter he wrote.

In dealing with the October issue it will be recalled that one element of the complaint is the allegation that male members who have been involved in much more serious incidents than the Vrlic issue and the Cosic issue have either received much shorter suspensions or have not received suspensions at all. This forms part of the case advanced by the Complainant that she was discriminated against on the ground of her sex. This aspect of the matter will be called "*the comparative penalties issue*".

Evidence concerning penalties imposed in the years preceding the controversy involving the Complainant is to be found largely in the Minute Book of the club. Answers given to a request for information prepared by Counsel representing the Complainant and served on the solicitors for the club consisted largely of an extract from these records. These answers were put in evidence as Exhibit 12. The Tribunal will not review the entirety of Exhibit 12 because many of the answers given are ambiguous or do not assist the Tribunal to draw any inferences as to what kind of penalties have been imposed on previous occasions. However, a number of instances cited in Exhibit 12 give some



indication as to how the club dealt with infringements of its rules. Fights between members tended to produce a suspension of one to three months and from time to time the suspension initially imposed would be reduced. On some occasions good behaviour bonds were imposed in respect of fights between members and it is material to note that in respect of an incident on 19 April 1987, when Mr D. Mrso caused damage to the members' bar and damage to furniture and fittings and threw a cash register through the glass door of a refrigerator, he was placed on a good behaviour bond for six months and was required to pay the costs associated with the incident. There are also a number of instances where the two parties involved in a fight were required to apologise to each other.

It emerges that a suspension of 12 months would be an extremely severe penalty and a suspension of two years is apparently unprecedented. There is no instance recorded in Exhibit 12, or referred to in any of the verbal testimony given by club members concerning the comparative penalties issue, of penalties being inflicted in a situation where a female member of the club was involved in a fight with a male member. One of the Complainant's witnesses, Nick Markovic, a former Committee member, said that to the best of his recollection where fights occurred people were suspended for three to six months. The Tribunal is, however, cautious about accepting that the suspension of twelve months imposed upon the Complainant, being a suspension of greater than the normal length, was imposed because of her sex. Although an adverse finding against her in respect of the Vrlic issue was the ostensible reason for the suspension referred to in the letter of 3 October 1989, the Tribunal finds that the real reason for a suspension of that length was because of the Committee's perception that she had threatened to disrupt the

club by resorting to legal action. This is not a matter which of itself points to discrimination on the ground of sex. As Klaric's remark at the time indicated any member of the club who was thought to be an adversary would probably have been treated in the same way.

Having failed to obtain satisfaction in respect of the Vrlic issue from the Committee, the Complainant did go elsewhere. It has already been noted that she obtained a restraining order on 29 September (although this fact does not appear to have been known to the Committee at the time of its deliberations). More importantly, however, on 5 October 1989 she lodged a complaint with the Equal Opportunity Commission. She also instructed a firm of solicitors, namely, Ilbery Barblett & O'Dea to act for her in the matter. By letter dated 17 November 1989 that firm challenged the validity of the Committee's decision to suspend on the ground that the procedures for laying charges prescribed by the Constitution had not been followed. The Committee took advice from their solicitors, Downing and Downing, and as a consequence the suspension was lifted.

In paragraph 14 of the Points of Claim the matter is pleaded in this way. At the meeting of the Committee of the club held on 26 November 1989, the suspension placed on the Complainant was lifted and it was resolved by the Committee to remove the letter effecting the suspension from the notice board. However, on 3 December 1989, a letter from the Committee was sent to all members of the club advising them that a General Meeting of members would be held on 7 January 1990 to discuss disciplinary action to be taken against the Complainant. The Tribunal will call this issue "*the December issue*".

On 8 December 1989 the Commissioner for Equal Opportunity wrote to the club setting out details of the complaint lodged by the Complainant and referring specifically to the various matters outlined above including the membership issue, the Vrlic issue, the Cosic issue and the October issue. It was said that due to her sex Lucy Sarac had had limited access to benefits provided by the club and had been deprived of her membership and consequently a valuable social outlet for herself and her daughter.

The Complainant returned to the club premises with her daughter but the atmosphere was no longer friendly. In paragraph 15 of the Points of Claim it is pleaded that at a General Meeting of 7 January 1990 the Complainant was allowed to speak once and was then told by the members of the Committee of the club conducting the meeting that if she spoke again she would be thrown out. At the same meeting members of the club were advised by members of the Committee of the club that if they were seen associating with the Complainant their membership would be revoked or they would be disadvantaged in some other way. This advice continued to be given to members of the club by members of the Committee of the club for many months after the meeting. It is also pleaded that the Complainant was ostracised by members of the club when she attended club functions and when she attended the club on Sunday. Announcements critical of her were made over the public address system installed at the club by members of the Committee of the club although she was not named in these announcements. Children of members of the club were discouraged by their parents from playing with the daughter of the Complainant in the Complainant's presence. Friends and members of the Committee of the club were rude and aggressive towards the Complainant, in an attempt to provoke her into argument with them for the sole purpose of providing a basis for the Complainant's membership to

be suspended. The Tribunal will call to this as *"the ostracism issue"*.

There was a conflict of evidence concerning the ostracism issue. The Complainant gave evidence supporting her plea. Ilija Jurkovic, a witness that the Tribunal generally found convincing, said that he was not conscious of an appreciable change in the atmosphere of the club and said that in his belief *"There was no indication that Lucy was treated any differently than what she was before"*. Maria Tadic said also that she did not hear any announcements made over the public address system.

The Complainant referred specifically to Ilija Jurkovic making announcements, her evidence on this point being as follows:

*" Ilija Jurkovic used to take the microphone while announcing activities regarding the Croatian events and Croatian movement ... while he was making those announcements, on the end of this, he would make the members present aware that there is a person in club who is doing a hell of damage to the community, the club and the whole Croatian nationality as such and "this person is an enemy of all of us and we should not associate with her" or "keep as far a distance as possible".*

She said that these announcements were made mostly on Sundays and that Mr Ante Matic, Mr Ante Majic and Mr Frank Klaric were also involved in announcements of that kind. She went on to describe a general situation of ostracism in which her daughter felt the pressure of being excluded from her normal play activities. There is an evidentiary issue as to what steps were taken by the Committee or members of the Committee in a public way to single out and ostracise the Complainant, but the Tribunal finds that during the period between the lifting of the first suspension and the imposition of the second suspension which the Tribunal will come to in a moment, the Complainant was

undoubtedly ill at ease while visiting the club and both she and her daughter suffered acutely.

It is apparent from the evidence that although the Committee was prepared to lift the first suspension on the basis of the legal advice received from its lawyers it did not regard the matter as having been completed. By letter dated 6 January 1990 from the Committee to the Complainant it was said that although disciplinary action brought against the Complainant on 1 October 1989 could not be discussed at a General Meeting the Management Committee had resolved to discuss the incident with Bozo Vrljic and "*Your behaviour towards the Management Committee*" at a meeting to be held on 17 January. She was invited to bring witnesses to support her case.

In paragraph 18 of the Points of Claim it is pleaded that at a meeting of the Committee of the club on 17 January 1990, attended by the Complainant and a solicitor whom she had employed to represent her, vague and general allegations against the Complainant, of which she was not given notice, were discussed. The Complainant was not provided with an opportunity to call witnesses in her defence, and was not given a fair hearing by the Committee. This meeting was adjourned with no decision regarding the membership of the Complainant having been made until a date to be fixed. The Tribunal will call this "*the January meeting issue*".

The solicitor in question, Brent Meertens, gave evidence in support of the Complainant's case. He said the proceedings at the meeting on 17 January were confused and reached no clear result. Much of the discussion taking place in his presence was conducted in

Croatian but in his view an atmosphere of hostility towards the Complainant was manifested. A note he made at the time reads:

*" The President constantly berates Mrs Sarac for not wanting to give evidence. In fact the words are spoken more as a challenge to her. I keep reminding him that he has misunderstood the position and that she will give evidence if we know what the charges are. "*

The Tribunal considered that Meertens was a reliable witness and accepts his account of what transpired at the meeting. It is important to note, however, that in regard to the January meeting issue, as with the October issue, there are no explicit references to the sex of the Complainant or any statements suggesting directly that the hostility directed towards her was because she was a woman.

Ilbery Barblett & O'Dea by its representative Brent Meertens had some success in persuading the Committee and its legal advisers that allegations of misconduct against the Complainant could only proceed if the procedure prescribed by the Constitution was followed. The next step in the matter was the preparation of a document which purported to set out the charges levelled at the Complainant.

Paragraph 19 of the Points of Claim states that allegations against the Complainant were provided to her subsequently to the meeting of 17 January in two documents headed "*Charges against Lucy Sarac pursuant to Clause 44 of the Constitution*". The principal document is in these terms:

*" 1. Pursuant to her distasteful outburst at the Committee Meeting on 1*

*October 1989, Ms Sarac announced her intention to do all that was within her power to publicly embarrass and financially incapacitate the Hrvatski Dom ("the House") in the event that the Committee should refuse to punish Mr Bozo Vrlc who was involved in an incident with Ms Sarac on 24 September 1989. The Committee is of the affirmative view that any club member, be it male or female who openly provokes and deliberately coerces members of the Committee, by means of any form of verbal abuse, unfounded rumours, and innuendos, concerning particularly Committee members is not fit and proper to hold membership within the house. Accordingly the Committee is of a view that pursuant to Clause 44(c) of the Constitution of the Croatian House it is empowered to inflict such penalty as it considers fit, either by fine, suspension from privileges of membership for a certain time or by expulsion. Pursuant to Clause 45(c) the Committee is empowered to fully suspend or expel any member of the House who shall in the sole and absolute judgement and discretion of the Committee have been guilty either in or out of the House premises of any act, practice, conduct, matter or thing calculated to bring discredit on or in any way prejudicially affect the reputation of the house or calculated in any manner to impair or affect the enjoyment of the premises of the House by the members thereof or to cause any ill feeling or friction between or among the members".*

*The Committee considers that the actions of Ms Sarac over the past several months fall well within the ambit of Clause 45(c) and accordingly her status as a member of the House must be reviewed. Particulars of the charge will be made known to her at the time of the hearing.*

- 2. By virtue of particular unfounded allegations made by Ms Sarac to the Equal Opportunity Commission whereby she alleges the two particular Committee members had called her the local prostitute who had slept with 90% of the male club members, she has disrupted the lives of many male club members and their wives as a result of the untrue rumours. The Committee considers that Ms Sarac has effectively succeeded in disturbing the peace within the House as well as damage to the reputation of its male members, by virtue of her grossly defamatory and slanderous accusations.*
- 3. Other specific charges against Ms Sarac will be made known to her at the time of the hearing itself."*

The Tribunal will call this "The Clause 44 issue".

By letter dated 9 April 1990, Ilbery Barblett & O'Dea on behalf of the Complainant advised the solicitors for the club that the Complainant would not attend a meeting proposed to deal with the charges or allegations being advanced against the Complainant on the basis that there was no possibility of her obtaining a fair hearing of the charges preferred against her. The Complainant's solicitors referred to the fact that the particulars foreshadowed by the Clause 44 document had not been provided and said that Charge 3 in that document was nothing more than a vague assertion that the Complainant was involved in some allegedly disorderly conduct on an unspecified date. A suggestion was made that an arbitrator be appointed to deal with the matter.

It appears that the Committee then proceeded to deal with the matter in the Complainant's absence and decided that she should be suspended ("the second suspension") for a period of two years. When Mr Racanovic was asked why a twelve month suspension had been increased to twenty-four months he replied: *"We believed all her threats had been carried out"*. It was apparent from his evidence that the view taken by the Committee was that at the October meeting she had threatened to take legal action outside the club and to bring the club to its knees. This threat was regarded as blackmail. Since the threat had been made the club had received letters from her solicitors, had been obliged to respond to a Complaint lodged with the Commissioner for Equal Opportunity and had been visited by officials from the Taxation Department and Corporate Affairs Department. There was no direct evidence that the visit by these officials was as the result of any information or action instigated by the Complainant but it was clear that certain Committee members were prepared to conclude the Complainant was responsible for what had happened.



In paragraph 20 of the Points of Claim the Complainant pleads that in a letter to the Complainant from the Secretary of the Club dated 27 April 1990 she was advised that she had been suspended from membership of the club for two years following consideration of the charges referred to in the Clause 44 document. Male members who have been involved in much more serious incidents have either received much shorter suspensions or have not been suspended at all. The Tribunal will refer to this as "*the second suspension issue*".

In regard to the second suspension issue the Points of Defence pleads that the Committee used its authority in a fair and unbiased way. The club denies that male members have been involved in more serious incidents and have received shorter suspensions.

The letter dated 27 April 1990 refers to the Committee having heard evidence in respect of Charges 1 and 3 on the Clause 44 document. It imposes a suspension of two years effective as from Thursday 3 May 1990 and purports to give the Committee's reasons for its decision. The Committee said that at the October meeting it had intended to preside over a peaceful resolution of the matter as between the Complainant and Vrlic but as the Complainant made comments to the effect that she would do all that was within her power to publicly embarrass and financially incapacitate the Croatian House in the event that the Committee would refuse to punish Vrlic and would bring to club to its knees the Committee concluded that the Complainant was not a fit and proper person to assist in promotion of the club. Further, the Committee was of the view that a failure to attend the disciplinary meetings of 9 and 17 April 1990 constituted an infringement of the Constitution. The letter states that "*In making its decision the Committee took into*

*consideration your overall record within the club house".*

Paragraph 21 of the Points of Claim alleges that from the beginning of 1989 the club, and certain members of the Committee of the club, treated the Complainant less favourably than in the same circumstances, or in circumstances that were not materially different, they would have treated a person of a different sex:

- (a) In the terms or conditions of membership that were afforded to the Complainant;
- (b) By denying the Complainant access, or limiting the Complainant's access, to benefits provided them;
- (c) By depriving the Complainant of membership or varying the terms of the Complainant's membership; and
- (d) By subjecting the Complainant to other detriments.

In paragraph 22 of the Points of Claim the Complainant alleges that from early October 1989, the time that members of the Committee of the club became aware that the Complainant had lodged her complaint with the Equal Opportunity Commission the club, and certain members of the Committee of the club threatened to and did in fact subject the Complainant to detriment contrary to Section 67(1) of the Act. The Tribunal will call this *"the victimisation issue"*.

In paragraph 23 of the Points of Claim it is pleaded that the Complainant has, by reason of the matters set out in the pleading, suffered embarrassment, stress, hurt, humiliation and economic loss and claims compensation and such other orders as the Tribunal deems fit. The Tribunal pauses to note that the Complainant led evidence that she had incurred

legal costs amounting to \$2,812.57 in the course of attempting to obtain relief in respect of the matters she complained of and this evidence was not challenged.

In its Points of Defence, in response to the sex discrimination issue and the victimisation issue, the club denies that any members of the Committee of the club treated the Complainant less favourably because of her sex. It is pleaded that the Complainant enjoyed the same terms and conditions of membership as any member and that the Committee pursuant to the Constitution had the authority and the power to suspend the Complainant for a breach of Clause 44 of the Constitution. The club denies that any members of the Committee threatened the Complainant as a consequence of her lodging a complaint with the Equal Opportunity Commission. It is also denied that the Complainant has suffered, embarrassment, stress, hurt, humiliation and economic loss.

In respect of the sex discrimination the Complainant relies principally upon Section 8 of the Act which provides:

*(1) For the purposes of this Act, a person (in this subsection referred to as the "discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the sex of the aggrieved person if, by reason of-*

*(a) the sex of the aggrieved person;*

*(b) a characteristic that appertains generally to the persons of the sex of the aggrieved person; or*

*(c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,*

*the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.*

- (2) *For the purposes of this Act, a person (in this subsection referred to as the "discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition-*
- (a) *with which a substantially higher proportion of persons of the opposite sex to the aggrieved person comply or are able to comply;*
  - (b) *which is not reasonable having regard to the circumstances of the case; and*
  - (c) *with which the aggrieved person does not or is not able to comply.*

The Complainant also relies on Section 22 of the Act which provides that:

- (1) *It is unlawful for a club, the Committee of management of a club or a member of the Committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sex, marital status or pregnancy -*
- (a) *by refusing or failing to accept the person's application for membership; or*
  - (b) *in the terms or conditions on which the club is prepared to admit the person to membership.*
- (2) *It is unlawful for a club, the Committee of management of a club or a member of the Committee of management of a club on the ground of the member's sex, marital status or pregnancy -*
- (a) *in the terms or conditions of membership that are afforded to the member;*
  - (b) *by refusing or failing to accept the member's application for a particular class or type of membership;*
  - (c) *by denying the member access, or limiting the member's access, to any benefit provided by the club;*
  - (d) *by depriving the member of membership or varying the terms of membership; or*
  - (e) *by subjecting the member to any other detriment.*

In regard to the victimisation issue the Complainant relies upon Section 67 of the Act which provides that:

(1) *It is unlawful for a person (in this section referred to as the "victimiser") to subject, or threaten to subject, another person (in this subsection referred to as the "person victimised") to any detriment on the ground that the person victimised-*

- (a) *has made, or proposes to make, a complaint under this Act;*
- (b) *has brought, or proposes to bring, proceedings against the victimiser or any other person under this Act;*
- (c) *has furnished, or proposes to furnish, any information, or has produced or proposes to produce, any documents to a person exercising or performing any function under this Act;*
- (d) *has appeared, or proposes to appear, as a witness before the Tribunal in a proceeding under this Act;*
- (e) *has reasonably asserted, or proposes to assert, any rights of the person victimised or the rights of any other person under this Act; or*
- (f) *has made an allegation that a person has done an act that is unlawful by reason of a provision of part II, III or IV,*  
*or on the ground that the victimiser believes that the person victimised has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (f).*

(2) *Subsection (1) (f) does not apply if it is proved that the allegation was false and was not made in good faith.*

(3) *Subject to subsection (2), the application or continued application of subsection (1) in particular case shall not be affected by-*

- (a) *the failure of the person victimised to do any proposed act or thing referred to in any of the paragraphs of subsection (1);*  
*or*
- (b) *the withdrawal, failure to pursue, or determination of any complaint, proceeding or allegation under this Act.*

Before proceeding to the application of the statutory provisions to the circumstances of

the present case it will be useful to refer to a number of previously decided cases.

It is now generally accepted that in regard to a claim pursuant to such provisions the burden of proof is upon the Complainant to establish her claim to the satisfaction of the Tribunal on the balance of probabilities. O'Callaghan v Loder (1984) EOC 92-204. In the absence of direct evidence the Complainant may use in support inferences drawn from the primary facts, although discrimination cannot be inferred when more probable and innocent explanations are available on the evidence. Fenwick v Beveridge Building Product Pty Ltd (1985) 62 ALR 275; Erbs v Overseas Corporation Pty Ltd (1986) EOC 92-181; Department of Health v Arumugam (1988) VR 319. Accordingly, the Complainant must satisfy the Tribunal in the circumstances of this case that the detriments of which she complains were by reason of discrimination on the ground of her sex and that she was the subject of victimisation.

In Bhattacharya v Department of Public Works (1984) EOC 92-117 a Complainant whose country of origin was India sought relief against the Department of Works on the ground of unlawful racial discrimination. He then lodged a second complaint alleging victimisation. The complaints were ultimately dismissed on the basis that the evidence before the Tribunal did not justify an inference that the Complainant was unfairly denied prospects of promotion because of racial considerations. The Tribunal in that case indicated that the real question for determination in the victimisation matter was whether the department subjected the Complainant to detriment on the ground that the Complainant had lodged his discrimination complaint. The word "*subjected*" carries with it a requirement that the Department intended to cause detrimental consequences to flow

to the Complainant. The Complainant must prove the necessary causal connection between the department's conduct and the detrimental consequence alleged.

The Tribunal also pauses to note that by Section 5 of the Act the doing of an act by reason of a particular matter includes a reference to the doing of an act by reason of two or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act. However, as was noted in Lyons v Godley (1990) EOC 92-287, Section 5 is specifically expressed to apply only to Part II, III, IV and IVA of the Act. Section 67 (which makes victimisation unlawful) is in Part V. In that case the Tribunal said:

*" The ordinary cannons of statutory construction would therefore suggest that it would not be sufficient to establish that for example the making of a complaint was only one of a number of reasons for subjecting a person to a detriment if the others were not unlawful."*

In that case it was considered not necessary to resolve that particular question given the Tribunal's finding that in fact the Complainant was dismissed because she had made a complaint of sexual harassment to the Commission. The act of victimisation (by the dismissal) was something quite separate from, and in addition to the prior sexual harassment of the Complainant. In that case damages of \$2,000 were allowed in respect of the victimisation. The Tribunal in the present case, however, considers that the reasoning reflected in the passage just quoted should be followed.

As to damages generally, previously decided cases indicate that discrimination cases should be treated as a species of tort and hurt feelings may be a factor in the assessment

of damages. Allders International Pty Ltd v Anstey (1986) 5 NSW 47. One should compare the position in which the Complainant might have been expected to be if the discriminatory conduct had not occurred with the situation which he or she was placed by reason of the conduct of the Respondent. Awards aimed at compensating for injured feelings should not be minimal because this would tend to trivialise or diminish the respect for public policy. See Hall and Ors v A & A Sheiban & Ors (1989) EOC 92-250. Also see Alexander v Home Office (1988) 1 WLR 968.

Against this background, the Tribunal now returns to the various issues, commencing with the membership issue. A review of the provisions of the constitution reveals that there is no discrimination on the grounds of sex in regard to the various categories of membership and as a matter of practice it appears that all members, including women, were entitled to be admitted to the club on an equal basis even though many women, as a matter of preference, attended the club on the basis that their husbands had paid the membership fee. The evidence shows that women tended to gather in the Lounge Room but this also was the result of their own choice. There was no interference with the right of any female member to spend time in the Front Bar of the club or in any other portion of the premises. Indeed, the Complainant's own habits as a club member clearly evidence that fact. She was accustomed to spend her time in the Front Bar playing cards or pool or having a drink with the male members of the club. The Tribunal therefore finds that the complaint of discrimination on this ground is not made out.

As to the sexual connotations issue reflected in paragraphs 2-5 inclusive of the Points of Claim, the Tribunal finds that jokes containing sexual connotations were made in the



presence of the Complainant as a frequent visitor to the Front Bar and this was largely because she had become accepted as "*one of the boys*". She acquiesced in the making of such jokes in her presence, and the Tribunal can find no evidence that she discouraged ribald behaviour. The weight of the evidence establishes that at times her own style of speech and demeanour were likely to give rise to an assumption amongst the male members of the club that she had no objection to a familiar style of speech being adopted in her presence.

The complaint is, however, that the jokes containing sexual connotations went too far, and further that the joking style and statements with sexual connotations were continued at general meetings of the club in a way which made it difficult for the Complainant and other female members of the club to be taken seriously. There is a conflict of evidence in this regard. However, the Tribunal considers that the style in which meetings were conducted was generally informal, and at times unruly, and that if the Complainant had difficulty making herself heard this was not because she was being identified as a female member of the club but simply because that was the nature of the meeting. Having acquiesced in the free and easy style which prevailed in the Front Bar generally, it was almost inevitable that some degree of bantering might surround her participation in discussion at the general meeting. However, the Tribunal considers that any antipathy shown towards her at the general meetings of the club, and especially at the February and August 1989 meetings, was because of the views that she was advancing rather than because she was a female member of the club. Her defence of Mrs Gavranic was not well received but it emerges from her own evidence that the Complainant was able to make her point. Similarly, at the August meeting, her own evidence shows that there was

no objection to her being nominated as a member of the Management Committee.

The evidence concerning the Sismis statement is equivocal. However, even if the Complainant's evidence in that regard were accepted, the Tribunal finds that this was simply an isolated incident and cannot be taken as demonstrating a discriminatory attitude within the Committee towards women. The Tribunal is not prepared to find discrimination on the ground of sex in respect of this matter.

In regard to the August meeting issue the Tribunal finds that Frank Gavarán, on the balance of probabilities, did make a statement of the kind pleaded in paragraph 6, but this should be characterised simply as a misjudgment by that individual as to what was an acceptable standard of behaviour and did not represent any declared or official attitude of the Committee. The fact that the Complainant's nomination to the Management Committee was received and that she actually took her seat on the Committee demonstrates the equality of her position. The Tribunal finds that she left the Committee not because her *"nomination was then laughed off"* but because she took objection to the appointment of a supervisory Committee and decided to withdraw voluntarily.

As to the Vrlic issue, it follows from earlier observation that the Tribunal finds that Vrlic did initiate the altercation and that the physical scuffle probably resulted in the Complainant expecting the disciplinary Committee to take action and impose a penalty upon Vrlic. The Complainant considered that there was an injustice in the fact that the disciplinary Committee did not proceed against him but this was due to the circumstances which the Tribunal will come to in a moment and was not as a result of any

discrimination. The fact that Vrlic assaulted the Complainant cannot be taken to be representative of a discriminatory attitude by that member or as a style of behaviour condoned or encouraged by the Committee and arose out of the particular circumstances of the case and the incident involving Vrlic's child. Thus, the Vrlic issue of itself does not provide a basis for a complaint of discrimination.

As to the Cosic incident, it follows from earlier observations that the Tribunal considers that the circumstances were not as extreme as alleged by the Complainant and Cosic's actions, even though he held office within the club, was not representative of the Committee's policy or attitude. Cosic's actions were an isolated incident arising out of the differences of opinion between the two individuals concerned. As has already been noted the Complainant was partly responsible for the extremity of his reaction.

The Tribunal recognises that the October meeting issue lies at the heart of the case. If the decision taken by the Committee at that meeting is as set out in the letter of 3rd October 1989, in which it was said that the Complainant was responsible for the Vrlic incident and should be suspended for 12 months, then this would suggest that the Committee had taken an unduly severe attitude towards the Complainant, having regard to the lesser penalties imposed in the cases of other physical altercations, and would lend some substance to the complaint that she was discriminated on the grounds of her sex. However, it follows from earlier observations, that the Tribunal finds that at the October meeting the factual issues concerning the Vrlic and Cosic incidents became irretrievably conflated with the Complainant's threat to take legal action. The Committee overreacted to the statement made by the Complainant during the course of the meeting that if

disciplinary action was not taken against Vrlic then she would seek relief outside the club. The evidence is unclear as to whether she said she would bring the club to its knees, but it is clear that she threatened to take outside action and that this threat angered the Committee. Paragraph 10 of the Points of Claim supports the view that she indicated that she would take her own legal action if the Committee did not act to penalise Vrlic. It was this that caused the Committee to impose the 12 months suspension rather than her involvement in the Vrlic incident and the Tribunal was satisfied on the balance of probabilities that this strong reaction by the Committee was not influenced by the fact that she was a female member of the club but was largely due to a desire, perhaps an excessive desire, to protect what were perceived to be the best interests of the club and of the Croatian community.

In that respect the Complainant's own evidence confirms that Mr Frank Klaric indicated quite clearly that "anybody" who acted against the interests of the club would be censured and it was apparent that these remarks, made in the heat of the moment, would have applied to any member of the club, either male or female. Therefore, the Tribunal finds that there is no basis for sustaining the discrimination complaint in respect of this matter.

The Tribunal finds as a fact that the letter reflecting the first suspension was indeed placed upon the notice board of the club and left there for approximately 2 months as pleaded in paragraph 13, but the Tribunal is not prepared to accept that there was anything sufficiently unusual or untoward about this step to suggest that the Complainant was being singled out for special treatment in a way that constituted discrimination on the grounds of her sex.

As to the December issue, it is clear that the lifting of the suspension was due to the Complainant having obtained legal advice from Ilbery Barblett & O'Dea. That firm challenged the validity of the first suspension on the grounds that the procedures for disciplining a member had not been followed. The Tribunal finds that there is no aspect of the events constituting the December issue which can be regarded as sufficient to sustain a plea of discrimination.

The Tribunal turns now to the ostracism issue. In light of the evidence of Mrs Cosic, the Tribunal is not prepared to hold on the balance of probabilities that announcements were made over the public address system as alleged by the Complainant. The Tribunal accepts that when the Complainant returned to the club, pursuant to her belief that the first suspension was invalid, a belief which was subsequently confirmed by the lifting of the suspension, she was made to feel uncomfortable and that tragically her daughter was involved in the affair. However, the Tribunal considers that the ostracism, such as it was, flowed from the Committee's belief that the Complainant represented a threat to the smooth functioning of the club because she had taken issue with the Committee on financial matters and had threatened to take outside legal action. The Tribunal considers that much the same result would have flowed had she been a male member and does not consider that the facts and matters constituting the ostracism issue amount to discrimination on the ground of her sex.

As to the January meeting issue, the Tribunal finds that there were undoubtedly heated exchanges at this meeting and that the Committee and the office bearers of the club behaved in an unseemly and unreasonable way. The Tribunal also finds that the request

made by the Complainant via her lawyer, Brent Meertens, for a fair hearing with witnesses being examined was a reasonable position to adopt. However, although tempers ran high, the Tribunal is unable to find on the balance of probabilities that there was anything in the heated circumstances of the meeting which constituted a determination by the Committee or the office bearers of the club to treat the Complainant, as a female member, in a manner less favourably than would have been accorded to a male member of the club. Once again, it was the fact that she was perceived as a threat to the smooth running of the club which gave rise to the antipathy.

As to the clause 44 issue, the first point of reference must be to the clause 44 charges document itself. That document on its face does not reveal any indication that the Complainant was being discriminated on the grounds that she was a female or that she was being treated differently to any other member of the club. This document simply reflects the perception formed at the October meeting that she was hostile to the club and likely to cause trouble. Thus, this issue does not provide a basis for a finding of discrimination on the ground of sex.

In regard to the second suspension, it follows from earlier observations that the 2 year suspension was imposed because the Committee was genuinely of the view that, having made threats to take outside legal action and act in manner adverse to the interests of the club, the Complainant had, some months later, made the position even worse by carrying those threats into effect in that the club had received letters from her lawyer and also from the Equal Opportunity Commission.

The Tribunal regards it as unreasonable for the Committee to have adopted this attitude in view of the fact that the Committee appears to have acted unfairly in respect of the Vrljic issue and that it should in any event be open to any member of the club to take legal action to protect their legal rights should that be necessary. The Committee clearly had not followed the appropriate procedure concerning disciplinary action in October and, as they refused to acknowledge that fact at the time, it was open to the Complainant and appropriate that she should have lawyers challenge the validity of what had occurred on her behalf. However, unfair and unreasonable as the conduct of the Committee may have been, the Tribunal cannot find that the second suspension was imposed as a form of discrimination against her on the ground of sex but rather that it resulted from a belief which might have been applied to any member of the club that she should be disciplined severely for acting in what was thought to be a subversive manner. Disciplinary action on this basis was contemplated by Section 44(c) of the Constitution. The Tribunal makes no finding of discrimination on the ground of sex in respect of this issue.

Before proceeding to the victimisation issue, the Tribunal pauses briefly to look at the situation as a whole. In some circumstances it might be inappropriate to look only at each of the events and incidents said to constitute the discrimination on an individual basis. It was submitted on behalf of the Complainant that the Tribunal should also take an overview and reach a conclusion that the totality of events represented a consistent attitude by the Committee to discriminate against the Complainant on the ground of her sex because she refused to conform to what was thought to be an appropriate style of female behaviour within the club. The Tribunal has looked at the totality of the evidence in that light but nonetheless considers that even when all the incidents are considered

collectively there is no discrimination against the Complainant on the ground of her sex. Over a period of 12 months or so from February 1989 until April 1990 the Complainant was undoubtedly conscious of a degree of animosity and opposition to her within the club. However, the Tribunal considers that this animosity was a consequence of the views she had expressed and the fact that she was seen to be a trouble maker rather than because it was thought that she should be singled out for a special action as a female member of the club. Most of the office bearers of the club who gave evidence, and other witnesses called on behalf of the club, seem to have no deeply entrenched hostility to the Complainant, and appeared to regret the dispute had reached the point where the various issues had to be dealt with by a Tribunal. The Tribunal hopes that the parties are able to patch up their differences and that the Complainant can be welcomed into the club once more and prior to the 2 year suspension running its course.

As to the victimisation issue, the Tribunal considers that in a general sense the Complainant was subject to victimisation in that it emerges clearly from the evidence that because she sought outside legal assistance she was punished. The original suspension of 12 months was lifted to 2 years and this clearly was a consequence of a perception by the Committee that the threats she had foreshadowed at the October meeting of taking legal action had been carried into effect. The Tribunal does not accept that the Complainant was responsible for visits to the club by officials from the Tax Department and the Corporate Affairs Department because there is no sufficient evidence to support any such finding. However, the Committee obviously took those visits into account and considered that the imposition of a more severe penalty was warranted.



The difficulty is, however, that for an infringement of Section 67 to be established, it must be established that the laying of the complaint with the Commissioner for Equal Opportunity was a dominant or substantial reason for the victimisation. In the present case, the receipt of correspondence from the Equal Opportunity Commission was undoubtedly one factor in the Committee's perception that the Complainant had carried her threats into effect. This is corroborated by explicit reference to the Equal Opportunity Commission in paragraph 2 of the clause 44 document. However, in reviewing the evidence as a whole, it appears that the decision made in April to impose a 2 year suspension as a result of her supposed threats having been carried into existence was due to a combination of factors and the complaint laid with the Equal Opportunity Commission cannot be characterised as a dominant or substantial reason for the imposition of the penalty. It follows that the complaint of victimisation contrary to Section 67 of the Act has not been made out.

It follows from the observations set out above that the complaint of the Complainant is dismissed. However, it also follows from a review of the evidence, that the Committee and various individual members of the Committee, acted unreasonably during the course of the dispute and that the Complainant, as a member of the club, undoubtedly felt a genuine and justifiable sense of grievance as a consequence of which these proceedings were commenced and persisted with in the face of considerable opposition. The Tribunal is firmly of the belief that had the Committee exercised a more balanced judgment at an earlier stage, and had it been prepared to adopt a conciliatory attitude when the depth of the Complainant's grievance became apparent, then this matter could have been sorted out between the parties by agreement. The Tribunal considers that the way is still open for

the club to reconsider its position and that, in light of the anguish the Complainant has undoubtedly experienced in having to press this claim before an outside body such as the Tribunal, the Committee should give careful consideration as to whether the 2 year suspension imposed should be modified or lifted so that the parties can put this unfortunate series of events behind them and resume the amicable life of the club which should be the first priority of all parties in any way associated with this regrettable dispute.