

1 impacts employee health and efficiency, reduces family incomes
2 and contributes to higher poverty rates among households
3 headed by females and minority households, prevents the
4 maximum utilization of available labor resources, and tends to
5 cause labor disputes, thereby burdening, affecting, and
6 obstructing commerce, and

7 WHEREAS, sections 760.01-760.11, Florida Statutes, the
8 "Florida Civil Rights Act of 1992," states that it is an
9 unlawful employment practice for an employer "to discriminate
10 against any individual with respect to compensation, terms,
11 conditions, or privileges of employment because of such
12 individual's race, color, religion, sex, national origin, age,
13 handicap, or marital status," and

14 WHEREAS, discrimination in wage-setting practices has
15 played a role in depressing wages for women and minorities
16 generally, and

17 WHEREAS, many individuals work in occupations that are
18 dominated by individuals of their same sex, race, or national
19 origin, and discrimination in hiring, job assignments, and
20 promotion has played a role in establishing and maintaining
21 segregated work forces, and

22 WHEREAS, eliminating discrimination in compensation
23 based on sex, race, and national origin would have positive
24 effects, including providing a solution to problems in the
25 economy created by discriminatory wage differentials, reducing
26 the number of working women and people of color earning low
27 wages, thereby lowering their incidence of poverty during
28 normal working years and in retirement, and promoting stable
29 families by raising family incomes, and

30 WHEREAS, it is the purpose of this act to correct and
31 as rapidly as practicable eliminate discriminatory wage

1 | practices based on sex, race, color, religion, national
2 | origin, age, handicap, or marital status, NOW, THEREFORE,

3 |
4 | Be It Enacted by the Legislature of the State of Florida:

5 |
6 | Section 1. Section 760.02, Florida Statutes, is
7 | amended to read:

8 | 760.02 Definitions.--For the purposes of ss.
9 | 760.01-760.11 and 509.092, the term:

10 | (1) "Aggrieved person" means any person who files a
11 | complaint with the Human Relations Commission~~"Florida Civil~~
12 | ~~Rights Act of 1992"~~ means ss. 760.01 760.11 and 509.092.

13 | (2) "Commission" means the Florida Commission on Human
14 | Relations created by s. 760.03.

15 | (3) "Commissioner" or "member" means a member of the
16 | commission.

17 | (4) "Discriminatory practice" means any practice made
18 | unlawful by the Florida Civil Rights Act of 1992.

19 | (5) "Employ" means to suffer or permit to work.

20 | (6) "Employee" means any person employed by an
21 | employer and includes all of an employer's permanent
22 | employees, whether working full-time or part-time, and any
23 | temporary employee employed by an employer for a period of at
24 | least 3 months. The term does not include any individual
25 | employed by his or her parent, spouse, or child.

26 | (7) "Employer" means any person employing 15 or more
27 | employees for each working day in each of 20 or more calendar
28 | weeks in the current or preceding calendar year, and any agent
29 | of such a person.

30 | (8) "Employment agency" means any person regularly
31 | undertaking, with or without compensation, to procure

1 employees for an employer or to procure for employees
2 opportunities to work for an employer, and includes any agent
3 of such a person.

4 (9) "Equivalent jobs" means jobs or occupations that
5 are equal within the meaning of the Equal Pay Act of 1963, 39
6 U.S.C. 206(d), or jobs or occupations that, while dissimilar,
7 have requirements that are equivalent when viewed as a
8 composite of skills, effort, responsibility, and working
9 conditions.

10 (10) "Florida Civil Rights Act of 1992" means ss.
11 760.01-760.11 and s. 509.092.

12 (11) "Labor organization" means any organization that
13 exists for the purpose, in whole or in part, of collective
14 bargaining or of dealing with employers concerning grievances,
15 terms or conditions of employment, or other mutual aid or
16 protection in connection with employment.

17 ~~(12)(5)~~ "National origin" includes ancestry.

18 ~~(13)(6)~~ "Person" includes an individual, association,
19 corporation, joint apprenticeship committee, joint-stock
20 company, labor union, legal representative, mutual company,
21 partnership, receiver, trust, trustee in bankruptcy, or
22 unincorporated organization; any other legal or commercial
23 entity; the state; or any governmental entity or agency.

24 ~~(7)~~ ~~"Employer" means any person employing 15 or more~~
25 ~~employees for each working day in each of 20 or more calendar~~
26 ~~weeks in the current or preceding calendar year, and any agent~~
27 ~~of such a person.~~

28 ~~(8)~~ ~~"Employment agency" means any person regularly~~
29 ~~undertaking, with or without compensation, to procure~~
30 ~~employees for an employer or to procure for employees~~
31

1 ~~opportunities to work for an employer, and includes an agent~~
2 ~~of such a person.~~

3 ~~(9) "Labor organization" means any organization which~~
4 ~~exists for the purpose, in whole or in part, of collective~~
5 ~~bargaining or of dealing with employers concerning grievances,~~
6 ~~terms or conditions of employment, or other mutual aid or~~
7 ~~protection in connection with employment.~~

8 ~~(10) "Aggrieved person" means any person who files a~~
9 ~~complaint with the Human Relations Commission.~~

10 ~~(14)(11)~~ "Public accommodations" means places of
11 public accommodation, lodgings, facilities principally engaged
12 in selling food for consumption on the premises, gasoline
13 stations, places of exhibition or entertainment, and other
14 covered establishments. Each of the following establishments
15 which serves the public is a place of public accommodation
16 within the meaning of this section:

17 (a) Any inn, hotel, motel, or other establishment
18 which provides lodging to transient guests, other than an
19 establishment located within a building which contains not
20 more than four rooms for rent or hire and which is actually
21 occupied by the proprietor of such establishment as his or her
22 residence.

23 (b) Any restaurant, cafeteria, lunchroom, lunch
24 counter, soda fountain, or other facility principally engaged
25 in selling food for consumption on the premises, including,
26 but not limited to, any such facility located on the premises
27 of any retail establishment, or any gasoline station.

28 (c) Any motion picture theater, theater, concert hall,
29 sports arena, stadium, or other place of exhibition or
30 entertainment.

31

1 (d) Any establishment which is physically located
2 within the premises of any establishment otherwise covered by
3 this subsection, or within the premises of which is physically
4 located any such covered establishment, and which holds itself
5 out as serving patrons of such covered establishment.

6 (15) "Wages" and "wage rates" means all compensation
7 in any form that an employer provides to employees in payment
8 for work performed or services rendered, including, but not
9 limited to, base pay, bonuses, commissions, awards, tips, or
10 various forms of nonmonetary compensation if provided in lieu
11 of or in addition to monetary compensation and that has
12 economic value to an employee.

13 Section 2. Subsection (12) of section 760.06, Florida
14 Statutes, is amended to read:

15 760.06 Powers of the commission.--Within the
16 limitations provided by law, the commission shall have the
17 following powers:

18 (12) To adopt, promulgate, amend, and rescind rules
19 pursuant to ss. 120.54 and 120.536(1) to effectuate the
20 purposes and policies of the Florida Civil Rights Act of 1992
21 and govern the proceedings of the commission, in accordance
22 with chapter 120. Such rules shall include the establishment
23 of guidelines that specify the criteria for determining
24 whether a job is dominated by employees of a particular sex,
25 race, or national origin for purposes of the wage disclosure,
26 recordkeeping, and reporting requirements of s. 760.105. Such
27 criteria must include, but need not be limited to, factors
28 such as whether a job was ever formally classified, or
29 traditionally considered as, a "male" or "female" job, or a
30 "white" or "minority" job; whether there is a history of
31 discrimination against women or people of color with regard to

1 wages, assignment or access to jobs, or other terms and
2 conditions of employment; and the demographic composition of
3 the workforce in equivalent jobs, which may include the
4 numbers or percentages of women, men, caucasians, and people
5 of color working in equivalent jobs. The guidelines may not
6 include a list of jobs.

7 Section 3. Subsection (1), paragraph (b) of subsection
8 (3), and subsections (7), (8), and (9) of section 760.10,
9 Florida Statutes, are amended to read:

10 760.10 Unlawful employment practices.--

11 (1) It is an unlawful employment practice for an
12 employer:

13 (a) To discharge or to fail or refuse to hire any
14 individual, or otherwise to discriminate against any
15 individual with respect to compensation, terms, conditions, or
16 privileges of employment, because of such individual's race,
17 color, religion, sex, national origin, age, handicap, or
18 marital status. This includes any discrimination by an
19 employer between employees on the basis of sex, race, color,
20 religion, national origin, age, handicap, or marital status by
21 paying employees a lesser wage rate than that which the
22 employer pays employees of the opposite sex, of a different
23 race, color, religion, national origin, age, or marital
24 status, or without handicap for equal work on equivalent jobs.

25 (b) To limit, segregate, or classify employees or
26 applicants for employment in any way which would deprive or
27 tend to deprive any individual of employment opportunities, or
28 adversely affect any individual's status as an employee,
29 because of such individual's race, color, religion, sex,
30 national origin, age, handicap, or marital status.

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1 (3) It is an unlawful employment practice for a labor
2 organization:

3 (b) To limit, segregate, or classify its membership or
4 applicants for membership, or to classify or fail or refuse to
5 refer for employment any individual, in any way that ~~which~~
6 would deprive or tend to deprive any individual of employment
7 opportunities, or adversely affect any individual's status as
8 an employee or as an applicant for employment, because of such
9 individual's race, color, religion, sex, national origin, age,
10 handicap, or marital status.

11 (7) It is an unlawful employment practice for an
12 employer, an employment agency, a joint labor-management
13 committee, or a labor organization to discriminate against any
14 person because that person has opposed any practice that ~~which~~
15 is an unlawful employment practice under this section, or
16 because that person has made a charge, testified, assisted, or
17 participated in any manner in an investigation, proceeding, or
18 hearing under this section.

19 (8) Notwithstanding any other provision of this
20 section, it is not an unlawful employment practice under ss.
21 760.01-760.10 for an employer, employment agency, labor
22 organization, or joint labor-management committee to:

23 (a) Take or fail to take any action on the basis of
24 religion, sex, national origin, age, handicap, or marital
25 status in those certain instances in which religion, sex,
26 national origin, age, absence of a particular handicap, or
27 marital status is a bona fide occupational qualification
28 reasonably necessary for the performance of the particular
29 employment to which such action or inaction is related.

30 (b) Observe the terms of a bona fide seniority system,
31 a bona fide employee benefit plan such as a retirement,

1 pension, or insurance plan, or a system that ~~which~~ measures
2 earnings by quantity or quality of production, which is not
3 designed, intended, or used to evade the purposes of ss.
4 760.01-760.10. However, no such employee benefit plan or
5 system which measures earnings shall excuse the failure to
6 hire, and no such seniority system, employee benefit plan, or
7 system which measures earnings shall excuse the involuntary
8 retirement of, any individual on the basis of any factor not
9 related to the ability of such individual to perform the
10 particular employment for which such individual has applied or
11 in which such individual is engaged. This subsection shall
12 not be construed to make unlawful the rejection or termination
13 of employment when the individual applicant or employee has
14 failed to meet bona fide requirements for the job or position
15 sought or held or to require any changes in any bona fide
16 retirement or pension programs or existing collective
17 bargaining agreements during the life of the contract, or for
18 2 years after October 1, 1981, whichever occurs first, nor
19 shall this act preclude such physical and medical examinations
20 of applicants and employees as an employer may require of
21 applicants and employees to determine fitness for the job or
22 position sought or held.

23 (c) Take or fail to take any action on the basis of
24 age, pursuant to law or regulation governing any employment or
25 training program designed to benefit persons of a particular
26 age group.

27 (d) Take or fail to take any action on the basis of
28 marital status if that status is prohibited under its
29 antinepotism policy.

30 (9) This section does ~~shall~~ not apply to any religious
31 corporation, association, educational institution, or society

1 ~~that which~~ conditions opportunities in the area of employment
2 or public accommodation to members of that religious
3 corporation, association, educational institution, or society
4 or to persons who subscribe to its tenets or beliefs. This
5 section ~~does shall~~ not prohibit a religious corporation,
6 association, educational institution, or society from giving
7 preference in employment to individuals of a particular
8 religion to perform work connected with the carrying on by
9 such corporations, associations, educational institutions, or
10 societies of its various activities.

11 Section 4. Section 760.105, Florida Statutes, is
12 created to read:

13 760.105 Wage disclosure; recordkeeping and reporting
14 requirements.--

15 (1) Upon commencement of an individual's employment
16 and at least annually thereafter, every employer shall provide
17 to each employee a written statement sufficient to inform the
18 employee of his or her job title, wage rate, and the manner or
19 method in which the wage is calculated. This notice shall be
20 supplemented whenever an employee is promoted or reassigned to
21 a different position with the employer; however, the employer
22 is not required to provide supplemental notifications for
23 temporary reassignments that are no greater than 3 months in
24 duration.

25 (2) Every employer shall make and preserve records
26 that document the wages paid to employees and that document
27 and support the method, system, calculations, and other bases
28 used to establish, adjust, and determine the wage rates paid
29 to its employees. Every employer shall preserve such records
30 for such periods of time and shall make such reports from the
31

1 records as shall be prescribed by rule of the commission as
2 provided in s. 760.06(12).

3 (3) Rules relating to the form of reports required by
4 subsection (2) must provide for protection of the
5 confidentiality of employees, and expressly require that the
6 reports exclude names or other identifying information from
7 which readers could discern the identities of employees. The
8 rules may also identify circumstances that warrant a
9 prohibition on disclosure of reports or information
10 identifying the employee.

11 (4) The commission may use the information and data it
12 preserves pursuant to subsection (2) for statistical and
13 research purposes, and may compile and publish such studies,
14 analyses, reports, and surveys based on the information and
15 data, as it may consider appropriate.

16 (5) A violation of the wage disclosure, recordkeeping,
17 or reporting requirements in this section by any employer
18 gives rise to a cause of action for all relief and damages
19 described in s. 760.11(5), unless greater damages are
20 otherwise expressly provided for.

21 Section 5. Section 760.11, Florida Statutes, is
22 amended to read:

23 760.11 Administrative and civil remedies;
24 construction.--

25 (1) Any person aggrieved by a violation of ss.
26 760.01-760.105 ~~ss. 760.01-760.10~~ may file a complaint with the
27 commission within 365 days of the alleged violation, naming
28 the employer, employment agency, labor organization, or joint
29 labor-management committee, or, in the case of an alleged
30 violation of s. 760.10(5), the person responsible for the
31 violation and describing the violation. Any person aggrieved

1 | by a violation of s. 509.092 may file a complaint with the
2 | commission within 365 days of the alleged violation naming the
3 | person responsible for the violation and describing the
4 | violation. The commission, a commissioner, or the Attorney
5 | General may in like manner file such a complaint. On the same
6 | day the complaint is filed with the commission, the commission
7 | shall clearly stamp on the face of the complaint the date the
8 | complaint was filed with the commission. In lieu of filing the
9 | complaint with the commission, a complaint under this section
10 | may be filed with the federal Equal Employment Opportunity
11 | Commission or with any unit of government of the state which
12 | is a fair-employment-practice agency under 29 C.F.R. ss.
13 | 1601.70-1601.80. If the date the complaint is filed is clearly
14 | stamped on the face of the complaint, that date is the date of
15 | filing. The date the complaint is filed with the commission
16 | for purposes of this section is the earliest date of filing
17 | with the Equal Employment Opportunity Commission, the
18 | fair-employment-practice agency, or the commission. The
19 | complaint shall contain a short and plain statement of the
20 | facts describing the violation and the relief sought. The
21 | commission may require additional information to be in the
22 | complaint. The commission, within 5 days of the complaint
23 | being filed, shall by registered mail send a copy of the
24 | complaint to the person who allegedly committed the violation.
25 | The person who allegedly committed the violation may file an
26 | answer to the complaint within 25 days of the date the
27 | complaint was filed with the commission. Any answer filed
28 | shall be mailed to the aggrieved person by the person filing
29 | the answer. Both the complaint and the answer shall be
30 | verified.

31 |

1 (2) In the event that any other agency of the state or
2 of any other unit of government of the state has jurisdiction
3 of the subject matter of any complaint filed with the
4 commission and has legal authority to investigate the
5 complaint, the commission may refer such complaint to such
6 agency for an investigation. Referral of such a complaint by
7 the commission shall not constitute agency action within the
8 meaning of s. 120.52. In the event of any referral under this
9 subsection, the commission shall accord substantial weight to
10 any findings and conclusions of any such agency. The referral
11 of a complaint by the commission to a local agency does not
12 divest the commission's jurisdiction over the complaint.

13 (3) Except as provided in subsection (2), the
14 commission shall investigate the allegations in the complaint.
15 Within 180 days of the filing of the complaint, the commission
16 shall determine if there is reasonable cause to believe that
17 discriminatory practice has occurred in violation of the
18 Florida Civil Rights Act of 1992. When the commission
19 determines whether or not there is reasonable cause, the
20 commission by registered mail shall promptly notify the
21 aggrieved person and the respondent of the reasonable cause
22 determination, the date of such determination, and the options
23 available under this section.

24 (4) In the event that the commission determines that
25 there is reasonable cause to believe that a discriminatory
26 practice has occurred in violation of the Florida Civil Rights
27 Act of 1992, the aggrieved person may either:

28 (a) Bring a civil action against the person named in
29 the complaint in any court of competent jurisdiction; or

30 (b) Request an administrative hearing under ss.
31 120.569 and 120.57.

1
2 The election by the aggrieved person of filing a civil action
3 or requesting an administrative hearing under this subsection
4 is the exclusive procedure available to the aggrieved person
5 pursuant to this act.

6 (5) In any civil action brought under this section,
7 the court may issue an order prohibiting the discriminatory
8 practice and providing affirmative relief from the effects of
9 the practice, including back pay. The court may also award
10 compensatory damages, including, but not limited to, damages
11 for mental anguish, loss of dignity, and any other intangible
12 injuries, and punitive damages. The provisions of ss. 768.72
13 and 768.73 do not apply to this section. The judgment for the
14 total amount of punitive damages awarded under this section to
15 an aggrieved person shall not exceed \$100,000. In any action
16 or proceeding under this subsection, the court, in its
17 discretion, may allow the prevailing party a reasonable
18 attorney's fee as part of the costs. It is the intent of the
19 Legislature that this provision for attorney's fees be
20 interpreted in a manner consistent with federal case law
21 involving a Title VII action. The right to trial by jury is
22 preserved in any such private right of action in which the
23 aggrieved person is seeking compensatory or punitive damages,
24 and any party may demand a trial by jury. The commission's
25 determination of reasonable cause is not admissible into
26 evidence in any civil proceeding, including any hearing or
27 trial, except to establish for the court the right to maintain
28 the private right of action. A civil action brought under this
29 section shall be commenced no later than 1 year after the date
30 of determination of reasonable cause by the commission. The
31 commencement of such action shall divest the commission of

1 jurisdiction of the complaint, except that the commission may
2 intervene in the civil action as a matter of right.
3 Notwithstanding the above, the state and its agencies and
4 subdivisions shall not be liable for punitive damages. The
5 total amount of recovery against the state and its agencies
6 and subdivisions shall not exceed the limitation as set forth
7 in s. 768.28(5).

8 (6) Any administrative hearing brought pursuant to
9 paragraph (4)(b) shall be conducted under ss. 120.569 and
10 120.57. The commission may hear the case provided that the
11 final order is issued by members of the commission who did not
12 conduct the hearing or the commission may request that it be
13 heard by an administrative law judge pursuant to s.

14 120.569(2)(a). If the commission elects to hear the case, it
15 may be heard by a commissioner. If the commissioner, after
16 the hearing, finds that a violation of the Florida Civil
17 Rights Act of 1992 has occurred, the commissioner shall issue
18 an appropriate proposed order in accordance with chapter 120
19 prohibiting the practice and providing affirmative relief from
20 the effects of the practice, including back pay. If the
21 administrative law judge, after the hearing, finds that a
22 violation of the Florida Civil Rights Act of 1992 has
23 occurred, the administrative law judge shall issue an
24 appropriate recommended order in accordance with chapter 120
25 prohibiting the practice and providing affirmative relief from
26 the effects of the practice, including back pay. Within 90
27 days of the date the recommended or proposed order is
28 rendered, the commission shall issue a final order by
29 adopting, rejecting, or modifying the recommended order as
30 provided under ss. 120.569 and 120.57. The 90-day period may
31 be extended with the consent of all the parties. An

1 administrative hearing pursuant to paragraph (4)(b) must be
2 requested no later than 35 days after the date of
3 determination of reasonable cause by the commission. In any
4 action or proceeding under this subsection, the commission, in
5 its discretion, may allow the prevailing party a reasonable
6 attorney's fee as part of the costs. It is the intent of the
7 Legislature that this provision for attorney's fees be
8 interpreted in a manner consistent with federal case law
9 involving a Title VII action.

10 (7) If the commission determines that there is not
11 reasonable cause to believe that a violation of the Florida
12 Civil Rights Act of 1992 has occurred, the commission shall
13 dismiss the complaint. The aggrieved person may request an
14 administrative hearing under ss. 120.569 and 120.57, but any
15 such request must be made within 35 days of the date of
16 determination of reasonable cause and any such hearing shall
17 be heard by an administrative law judge and not by the
18 commission or a commissioner. If the aggrieved person does
19 not request an administrative hearing within the 35 days, the
20 claim will be barred. If the administrative law judge finds
21 that a violation of the Florida Civil Rights Act of 1992 has
22 occurred, he or she shall issue an appropriate recommended
23 order to the commission prohibiting the practice and
24 recommending affirmative relief from the effects of the
25 practice, including back pay. Within 90 days of the date the
26 recommended order is rendered, the commission shall issue a
27 final order by adopting, rejecting, or modifying the
28 recommended order as provided under ss. 120.569 and 120.57.
29 The 90-day period may be extended with the consent of all the
30 parties. In any action or proceeding under this subsection,
31 the commission, in its discretion, may allow the prevailing

1 party a reasonable attorney's fee as part of the costs. It is
2 the intent of the Legislature that this provision for
3 attorney's fees be interpreted in a manner consistent with
4 federal case law involving a Title VII action. In the event
5 the final order issued by the commission determines that a
6 violation of the Florida Civil Rights Act of 1992 has
7 occurred, the aggrieved person may bring, within 1 year of the
8 date of the final order, a civil action under subsection (5)
9 as if there has been a reasonable cause determination or
10 accept the affirmative relief offered by the commission, but
11 not both.

12 (8) In the event that the commission fails to
13 conciliate or determine whether there is reasonable cause on
14 any complaint under this section within 180 days of the filing
15 of the complaint, an aggrieved person may proceed under
16 subsection (4), as if the commission determined that there was
17 reasonable cause.

18 (9) No liability for back pay shall accrue from a date
19 more than 2 years prior to the filing of a complaint with the
20 commission.

21 (10) A judgment for the amount of damages and costs
22 assessed pursuant to a final order by the commission may be
23 entered in any court having jurisdiction thereof and may be
24 enforced as any other judgment.

25 (11) If a complaint is within the jurisdiction of the
26 commission, the commission shall simultaneously with its other
27 statutory obligations attempt to eliminate or correct the
28 alleged discrimination by informal methods of conference,
29 conciliation, and persuasion. Nothing said or done in the
30 course of such informal endeavors may be made public or used
31 as evidence in a subsequent civil proceeding, trial, or

1 hearing. The commission may initiate dispute resolution
2 procedures, including voluntary arbitration, by special
3 magistrates or mediators. The commission may adopt rules as
4 to the qualifications of persons who may serve as special
5 magistrates and mediators.

6 (12) All complaints filed with the commission and all
7 records and documents in the custody of the commission, which
8 relate to and identify a particular person, including, but not
9 limited to, a complainant, employer, employment agency, labor
10 organization, or joint labor-management committee shall be
11 confidential and shall not be disclosed by the commission,
12 except to the parties or in the course of a hearing or
13 proceeding under this section. The restriction of this
14 subsection shall not apply to any record or document which is
15 part of the record of any hearing or court proceeding.

16 (13) Final orders of the commission are subject to
17 judicial review pursuant to s. 120.68. The commission's
18 determination of reasonable cause is not final agency action
19 that is subject to judicial review. Unless specifically
20 ordered by the court, the commencement of an appeal does not
21 suspend or stay the order of the commission, except as
22 provided in the Rules of Appellate Procedure. In any action
23 or proceeding under this subsection, the court, in its
24 discretion, may allow the prevailing party a reasonable
25 attorney's fee as part of the cost. It is the intent of the
26 Legislature that this provision for attorney's fees be
27 interpreted in a manner consistent with federal case law
28 involving a Title VII action. In the event the order of the
29 court determines that a violation of the Florida Civil Rights
30 Act of 1992 has occurred, the court shall remand the matter to
31 the commission for appropriate relief. The aggrieved party

