

## THE AUSTRALIAN

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# It was an unfortunate email, not bullying

**PIA AKERMAN** THE AUSTRALIAN MAY 24, 2013 12:00AM

**VICTORIA'S appellate court has ruled a judge was right to reject claims that a former Maurice Blackburn Cashman solicitor faced bullying and harassment from colleagues after she returned from maternity leave.**

Fiona Brown's case against the firm has highlighted issues of how caseload is managed when employees take parental leave and deal with the stresses of balancing family and work commitments.

Ms Brown alleged in the County Court she had been systematically undermined, harassed and bullied by colleague Lee Formica on returning to MBC's family law department from maternity leave in 2003.

She unsuccessfully sought damages, claiming the stress had caused an adjustment disorder with severe anxiety and depression that closed any prospect of continuing work as a solicitor.

This week the Court of Appeal refused her appeal against judge John Carmody's finding that MBC (now known as Maurice Blackburn) had not breached its duty of care to Ms Brown and she had not been bullied or harassed by Ms Formica.

In his decision, Judge Carmody said emails between the pair showed Ms Brown and Ms Formica were "under considerable pressure in their lives, both personal and professional".

"It is clear that in law firms such as MBC, employees will suffer from stress," he said.

In the Court of Appeal's reasons, judge Robert Osborn described one email from Ms Formica as an obvious "cry for help".

"I have 2 children who need me as well and are missing me terribly," she said in the email to Ms Brown. "My usual day is 8am to 7.30pm in the office 5 days a week, one or 2 evenings of work at home and part of the weekend working.

"I have a family who are missing me heaps. So get off my back. I'm sorry you're stressed but you'll have to get used to managing kids and work - with or without support - Like all other working mothers. This is the real world."

Ms Formica later apologised to Ms Brown for the email and said she regretted sending it.

Australian Women Lawyers president Kate Ashmor said legal workplaces had improved their practices to become more family-friendly since 2003, with technological advancements allowing for greater flexibility.

"Every law firm is different and some firms do it better than others," she said. "There is a greater willingness these days to invest in staff and invest in flexibility. "When you've got a really excellent member of staff who brings in business, who clients love, who is efficient, you want to keep them."

Tensions between Ms Brown and Ms Formica, who had been friends, erupted when Ms Brown began her maternity leave without leaving detailed file notes for some of her cases. Judge Carmody found it was reasonable for her boss to direct her to come into the office to make the file notes.

Justice Osborn said Ms Brown had failed to prove inappropriate behaviour at the firm, saying at best she established "instances of robust expression of frustration concerning workload made to

a departmental head".

Ms Brown's solicitor declined to comment on behalf of his client, who has since moved to Tasmania.