

Court Case
A v Chan Wai Tong
DCEO 7/2009

BACKGROUND FACTS

The Plaintiff worked with the Defendant in the Food and Environmental Hygiene Department (FEHD) as an Assistant Hawker Control Officer. In the workplace, the Defendant sexually harassed the Plaintiff by making sexual remarks, physical contacts and other unwelcome conducts of a sexual nature against her. The Plaintiff complained to the FEHD which conducted an internal investigation. However, the Plaintiff's complaint was found to be unsubstantiated.

Despite the result of her internal complaint, the Plaintiff persisted and lodged a complaint with the EOC. The Defendant denied the allegation and claimed that the Plaintiff's complaint was a revenge for his gossiping with other colleagues about her relationship with one of her supervisors. The Plaintiff brought her claim against the Defendant to the Court under the Sex Discrimination Ordinance (SDO).

COURT'S DECISION

The Court accepted the Plaintiff's claims, whose timeline and details were corroborated by witnesses and supported by her own notes of the acts. It found that the Defendant committed unlawful sexual harassment. It rejected his defence that the Plaintiff's claim was in retaliation for his gossiping.

The Court indicated that the result of the internal investigation did not affect its ruling in the present case, because the internal investigation adopted the criminal standard of proof of "beyond all reasonable doubt", which is more stringent than the "balance of probability" standard used by the Court.

The Court made an order that the Defendant should give a written apology to the Plaintiff. It also awarded costs and monetary compensation to the Plaintiff as below:

Injury to feelings	HK\$50,000
Exemplary damages	<u>HK\$10,000</u>
	<u>HK\$60,000</u>

The Court awarded \$50,000 in damages for injury to feelings. The Court further awarded \$10,000 in exemplary damages to punish the Defendant for his conduct in inflicting harm as he completely fabricated his defence that the Plaintiff's claim was in retaliation for his gossiping.

The Court also awarded costs to the Plaintiff because the Defendant refused to attempt conciliation arranged by the EOC and made a totally fabricated defence.

[\[Click to Access the Court Ruling \(Only Available in Traditional Chinese\) \]](#)

法庭案例

A 訴 陳偉棠

DCEO 7/2009

案情背景

原告人與被告人同為食物環境衛生署（食環署）的助理小販管理主任。原告人在工作場所受到被告人騷擾，包括對她講出涉及性的言論、作出身體接觸及其他不受歡迎並涉及性的行徑。原告人向食環署提出投訴，該署進行了內部調查，但調查結果指原告人的投訴不成立。

儘管內部調查投訴得出了上述結果，但原告人堅持向平機會提出投訴。被告人否認所有作為，並指稱原告人作出投訴是為了報復他對其他同事講及她與其中一名上司的閒話。原告人根據《性別歧視條例》，在法院向被告人提出申索。

法庭的裁決

法庭考慮到證人所提出的證據，當中的細節和時序與原告人就被告人對她作出的行為記錄的一致性，於是裁定被告人作出了違法的性騷擾，並駁回被告人指原告人的申索是為報復他說她閒話的抗辯。

法庭表示，內部調查的結果並不影響本個案的裁決，因為內部調查採用了較嚴格的刑事舉證標準，即「無合理疑點」作準則，而法庭採用了「相對可能性的衡量」作為準則。

法庭命令被告人向原告作出書面道歉，法庭亦判原告人可獲得訟費及金錢賠償如下：

感情損害賠償	港幣 50,000 元
懲罰性損害賠償	港幣 10,000 元
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	港幣 60,000 元

法庭判給港幣 50,000 元感情損害賠償，並進一步判給港幣 10,000 元的懲罰性損害賠償以處分被告人所作的傷害行為，因為被告人指原告人提出申索是為了報復他講她的閒話，全屬虛構。

法庭亦判原告人可取回訟費，因為被告人不單拒絕平機會調解的安排，還提出了虛構的抗辯。

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法庭案例

A 诉 陈伟棠

DCEO 7/2009

案情背景

原告人与被告人同为食物环境卫生署（食环署）的助理小贩管理主任。原告人在工作场所受到被告人性骚扰，包括对她讲出涉及性的言论、作出身体接触及其他不受欢迎并涉及性的行径。原告人向食环署提出投诉，该署进行了内部调查，但调查结果指原告人的投诉不成立。

尽管内部调查投诉得出了上述结果，但原告人坚持向平机会提出投诉。被告人否认所有作为，并指称原告人作出投诉是为了报复他对其他同事讲及她与其中一名上司的闲话。原告人根据《性别歧视条例》，在法院向被告人提出申索。

法庭的裁决

法庭考虑到证人所提出的证据，当中的细节和时序与原告人就被告人对她作出的行为记录的一致性，于是裁定被告人作出了违法的性骚扰，并驳回被告人指原告人的申索是为报复他说她闲话的抗辩。

法庭表示，内部调查的结果并不影响本个案的裁决，因为内部调查采用了较严格的刑事举证标准，即「无合理疑点」作准则，而法庭采用了「相对可能性的衡量」作为准则。

法庭命令被告人向原告作出书面道歉，法庭亦判原告人可获得讼费及金钱赔偿如下：

感情损害赔偿	港币 50,000 元
惩罚性损害赔偿	港币 10,000 元
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	港币 60,000 元

法庭判给港币 50,000 元感情损害赔偿，并进一步判给港币 10,000 元的惩罚性损害赔偿以处分被告人所作的伤害行为，因为被告人指原告人提出申索是为了报复他讲她的闲话，全属虚构。

法庭亦判原告人可取回讼费，因为被告人不单拒绝平机会调解的安排，还提出了虚构的抗辩。

[\[按此进入判案书全文 \(只提供繁体中文版 \) \]](#)