

## Court Case

### Pan Wong Kwok Mui, Enoch v Lee Yuen Tim

DCEO 9/1999

#### BACKGROUND FACTS

The Plaintiff was a pupil receiving martial art instructions from the Defendant who was her master. The Plaintiff alleged that over a period of time, the Defendant had sexually harassed her by the following acts:-

- i. deliberately and unnecessarily touched and squeezed the Plaintiff's waist for a few times in a private lesson;
- ii. asked the Plaintiff to be his woman in a private lesson;
- iii. put his arm around the Plaintiff's shoulders inside MTR compartment;
- iv. divulged to the Plaintiff his sex life with his wife and boasted about his sexual prowess in a private lesson;
- v. repeatedly called the Plaintiff and left messages on her pager, telling her about his marital problems and asking for dates.

The Defendant denied any of the alleged acts had ever happened. The Defendant alleged that it could only be accidental touch during practice or a fatherly gesture which was done to other female pupils as well.

The Plaintiff brought legal proceedings against the Defendant under the SDO.

#### COURT'S DECISION

The Court dismissed the Plaintiff's sexual harassment claim.

The Court observed that the Plaintiff was an active, outgoing and strong person. She was a leader both in her career in the media and in her affiliated social club of martial art. She was very conscious of her rights and often tended to be legalistic. On the other hand, she was conservative and highly sensitive to trivial male physical contact.

The Court indicated that given the Plaintiff's character, education, exposure and high sensitivity to male physical contact, it was unlikely that the Plaintiff would have put up with the Defendant for such a protracted period. The Court further observed that it was within the power of the Plaintiff to put a stop to the whole thing but she did not. This was incompatible with her character.

The Court also noted that the subsequent conduct of the Plaintiff could not easily be reconciled with a claim of sexual harassment. For example, after the alleged acts of sexual harassment, the Plaintiff could still travel with the Defendant to see a free-fighting competition in Shenzhen, an act which the Court found unnecessary, avoidable and impossible to comprehend. The Court also indicated the approach of assessing oral evidence where both parties have contradictions and inconsistencies as follows:-

1. It is unhelpful and impracticable to enumerate all such instances;
2. A better approach is to identify one's best matters of scale-tipping significance, whether individually or in conjunction with others, by looking things in the round and in their full contexts;
3. Appropriate weight should be given to events collateral to or which took place after the alleged acts of sexual harassment; and
4. Third parties and other evidence are brought into the picture, which could provide indirect and yet cogent material for the Court's deliberation.

[ [Click to Access the Court Ruling](#) ]

## 法庭案例

## 黃楓梅 訴 李潤添

DCEO 9/1999

## 案情背景

原告人是被告人的武術學生。原告人指稱，被告人曾在一段時間內藉以下行為性騷擾她：

- i. 在一次單獨上課時，蓄意且不必要地數次觸碰及捏原告人的腰部；
- ii. 在一次單獨上課時，要求原告人成為他的女人；
- iii. 在地鐵車廂中把手臂搭在原告人的肩膀上；
- iv. 在一次單獨上課時，向原告人透露他與妻子的性生活，並誇耀其性能力；
- v. 多次致電原告人及在她的傳呼機留言，表示婚姻生活有問題和要求與她約會。

被告人否認曾經發生上述行為。被告人指稱可能曾在練習時意外接觸原告人，或可能是一種出於長輩般的關愛舉止。他亦曾對其他女學生作出這種舉止。原告人根據《性別歧視條例》向被告提出法律程序。

## 法庭的裁決

法庭駁回原告人的性騷擾申索。

法庭觀察到原告人性情活潑、外向及剛烈。她在傳媒事業上及所屬的武術會社都擔當領導角色。她對自己的權益有很強意識，經常顯得重視法律條文。另外，她為人保守，對男性輕微的身體接觸非常敏感。法庭表明，既然已知原告人的性格、教育程度、見識及針對男性所作的身體接觸高度敏感，原告人不太可能可以忍受原告人於一段長時間內對她做出所指稱的行為。法庭又發現，原告人有能力終止一切行為，但她沒有作出行動，與她的性格不符。

法庭亦留意到原告人其後的行為與所提出的性騷擾申索並不相符。例如，在被告人作出所指稱的性騷擾行為後，原告人仍與他一同到深圳觀看自由搏擊比賽。法庭認為這是既不必要，亦可避免，及無法理解的舉動。法庭又指出，證據顯示原告人對被告人有強烈感情，法庭未能判斷此感情的性質。法庭亦無法斷定被告人是否曾作出不受歡迎的性要求，或作出不受歡迎的行徑，或在一個合理的人應會預期有關舉動是不受歡迎的情況下，仍作出了上述舉動。

法庭表明，如雙方提出的口頭證據都有矛盾或前後不一致時，應按以下方法處理：

1. 列舉所有例子既無用而又不切實際；
2. 更好的處理方法是找出最重要的個別事件或與其他事件一起全面地審視其內容；
3. 在被指稱的性騷擾行為發生後，與其有關或隨後發生的事件應具有一定的重要性；及
4. 可採用第三者或其他證據，為法庭提供間接但有力的資料以作考慮。

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## 法庭案例

## 黄帼梅 诉 李润添

DCEO 9/1999

## 案情背景

原告人是被告人的武术学生。原告人指称，被告人曾在一段时间内藉以下行为性骚扰她：

- vi. 在一次单独上课时，蓄意且不必要地数次触碰及捏原告人的腰部；
- vii. 在一次单独上课时，要求原告人成为他的女人；
- viii. 在地铁车厢中把手臂搭在原告人的肩膀上；
- ix. 在一次单独上课时，向原告人透露他与妻子的性生活，并夸耀其性能力；
- x. 多次致电原告人及在她的传呼机留言，表示婚姻生活有问题和要求与她约会。

被告人否认曾经发生上述行为。被告人指称可能曾在练习时意外接触原告人，或可能是一种出于长辈般的关爱举止。他亦曾对其他女学生作出这种举止。原告人根据《性别歧视条例》向被告提出法律程序。

## 法庭的裁决

法庭驳回原告人的性骚扰申索。

法庭观察到原告人性情活泼、外向及刚烈。她在传媒事业上及所属的武术会社都担当领导角色。她对自己的权益有很强意识，经常显得重视法律条文。另外，她为人保守，对男性轻微的身体接触非常敏感。法庭表明，既然已知原告人的性格、教育程度、见识及针对男性所作的身体接触高度敏感，原告人不太可能可以忍受原告人于一段长时间对她做出所指称的行为。法庭又发现，原告人有能力终止一切行为，但她没有作出行动，与她的性格不符。

法庭亦留意到原告人其后的行为与所提出的性骚扰申索并不相符。例如，在被告人作出所指称的性骚扰行为后，原告人仍与他一同到深圳观看自由搏击比赛。法庭认为这是既不必要，亦可避免，及无法理解的举动。法庭又指出，证据显示原告人对被告人有强烈感情，法庭未能判断此感情的性质。法庭亦无法断定被告人是否曾作出不受欢迎的性要求，或作出不受欢迎的行径，或在一个合理的人应会预期有关举动是不受欢迎的情况下，仍作出了上述举动。

法庭表明，如双方提出的口头证据都有矛盾或前后不一致时，应按以下方法处理：

5. 列举所有例子既无用而又不切实际；
6. 更好的处理方法是找出最重要的个别事件或与其他事件一起全面地审视其内容；
7. 在被指称的性骚扰行为发生后，与其有关或随后发生的事件应具有一定的重要性；及
8. 可采用第三者或其他证据，为法庭提供间接但有利的数据以作考虑。

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