

Conciliation Case

Newsletter Jul 2008 Issue No. 46

Case on Sexual Harassment

THE COMPLAINT

Mary was a student of a local educational establishment. She lodged a complaint with the Equal Opportunities Commission (EOC), stating that she had been sexually harassed and victimized by her Caucasian teacher, Mr. X.

"I felt very uneasy every time I met Mr. X. He always stared at me and commented on my appearance. One day, he suddenly lifted up my skirt and said I've got a pair of sexy legs. I escaped from him immediately and avoided him afterwards." Mary later reported the incident to Mr. X's supervisor but no follow-up action was taken. "My classmates said that the school management trivialized the matter as they believed that physical contact such as hugging is part of the western culture. However, I believe that cultural differences are no excuse for inappropriate or offensive behavior," said Mary.

After graduation, Mary applied for a job in the same educational establishment, but was not granted an interview. "Mr. X refused to recommend me for the job. Mr. X might have victimized me because I had refused his sexual advances and reported the matter to his boss."

WHAT THE EOC DID

Mary lodged a complaint with the EOC against (1) Mr. X for sexually harassing her; (2) Mr. X for victimizing her and not recommending her for a job vacancy in the educational establishment; (3) the educational establishment for vicariously liable for the act of Mr. X.

The EOC investigated into the complaint. Mr. X denied that he had lifted up Mary's skirt. He only recalled he had comforted Mary by saying that she was a nice and good looking girl when she grumbled about her appearance. He did not recommend Mary for the job only because there was another candidate who was far more suitable. The educational establishment replied that it had not received any formal complaint from Mary. Besides, they had organized training courses on the prevention of sexual harassment for all staff six years ago.

While Mary and Mr. X had presented different stories, all parties concerned agreed to resolve the matter by conciliation. Mr. X provided a verbal apology to Mary and a written apology to related parties of the educational establishment for their time and effort in handling the matter. Mr. X and Mary both agreed to treat each other respectfully if they meet again in future.

The educational establishment undertook to formulate an equal opportunities policy and codes of conduct for both the employees and students. A new complaint handling mechanism would also be in place and that all complaints would be properly recorded. Besides, anti-discrimination training to staff and students would be organized annually.

WHAT THE LAW SAYS

Under the Sex Discrimination Ordinance, it is unlawful for a teacher to sexually harass a student. Sexual harassment refers to any unwelcome conduct of a sexual nature, which a reasonable person regards as offensive, humiliating or intimidating. It is important to be sensitive to cultural differences. Behaviour and speech that may seem innocuous to you may be offensive or uncomfortable to someone else.

和解案例

通訊 2008 年 7 月 第 46 期

性騷擾個案

投訴內容

阿麗曾是本地一所教育機構的學生。她向平機會投訴，指受到她的白人老師 X 先生的性騷擾及「使人受害」的歧視。阿麗說：「每次遇見 X 先生我便很不自在。他經常盯著我，又評論我的外表。一天，他突然掀起我的裙子數寸，說我的雙腿性感。我立即走開，更在往後的日子避開他。」

後來，阿麗將此事向 X 先生的上司報告，但他並沒有跟進。她說：「我聽同學說學校管理層認為某些身體接觸，例如摟抱只屬西方文化，故想將此事淡然處理。但是我認為文化差異並非行為不當及冒犯他人的藉口。」

畢業後，阿麗應徵該教育機構的職位，但得不到面試機會。阿麗說：「X 先生不肯推薦我，他可能基於我曾拒絕他的性要求，並把此事告訴他的上司，因而對我作出『使人受害』的歧視。」

平機會的行動

阿麗向平機會投訴的事項包括：(1) 投訴 X 先生性騷擾；(2) 投訴 X 先生對她作出「使人受害」的歧視——即拒絕推薦她到該教育機構工作；(3) 要求該教育機構為 X 先生的行為負上轉承責任。

平機會就有關投訴進行調查，X 先生否認他曾掀起阿麗的裙子。他只記得曾因阿麗嫌棄自己的外表而加以安慰，說她親和貌端。另外，X 先生說因為另一位應徵者更適合該教育機構的空缺，才沒有推薦阿麗。該教育機構則回覆，從來沒有收過阿麗的正式投訴。此外，該機構在六年前已為所有教職員提供關於防止性騷擾的培訓課程。

阿麗與 X 先生雖各執一詞，但雙方均同意以調解解決問題。X 先生向阿麗作出口頭道歉，並向教育機構的有關人士就處理投訴付出的時間及努力致函道歉。X 先生及阿麗均同意，若在未來日子有機會再碰面，會互相尊重。

該教育機構亦承諾為員工及學生制定平等機會政策及守則，同時設立新的投訴機制，日後所有投訴都會清楚記錄。此外，亦會每年為職員及學生提供反歧視培訓。

法理依據

根據《性別歧視條例》，教師性騷擾學生屬違法行為。性騷擾指任涉及性而不受歡迎的行徑，而在一名合理的人眼裡，會預期這些行為令人感到被冒犯、侮辱及受威嚇。我們應必須提高對文化差異的敏感度——一些你認為無傷大雅的行為及言語，於文化及習慣不同，可能會令人覺得不自在，甚至冒犯他人。

和解案例

通讯 2008 年 7 月 第 46 期

性骚扰个案

投诉内容

阿丽曾是本地一所教育机构的学生。她向平机会投诉，指受到她的白人老师 X 先生的性骚扰及「使人受害」的歧视。阿丽说：「每次遇见 X 先生我便很不自在。他经常盯着我，又评论我的外表。一天，他突然掀起我的裙子数寸，说我的双腿性感。我立即走开，更在往后的日子避开他。」

后来，阿丽将此事向 X 先生的上司报告，但他并没有跟进。她说：「我听同学说学校管理层认为某些身体接触，例如搂抱只属西方文化，故想将此事淡然处理。但是我认为文化差异并非行为不当及冒犯他人的借口。」

毕业后，阿丽应征该教育机构的职位，但得不到面试机会。阿丽说：「X 先生不肯推荐我，他可能基于我曾拒绝他的性要求，并把此事告诉他的上司，因而对我作出『使人受害』的歧视。」

平机会的行动

阿丽向平机会投诉的事项包括：(1) 投诉 X 先生性骚扰；(2) 投诉 X 先生对她作出「使人受害」的歧视——即拒绝推荐她到该教育机构工作；(3) 要求该教育机构为 X 先生的行为负上转承责任。

平机会就有关投诉进行调查，X 先生否认他曾掀起阿丽的裙子。他只记得曾因阿丽嫌弃自己的外表而加以安慰，说她亲和貌端。另外，X 先生说因为另一位应征者更适合该教育机构的空缺，才没有推荐阿丽。该教育机构则回复，从来没有收过阿丽的正式投诉。此外，该机构在六年前已为所有教职员提供关于防止性骚扰的培训课程。

阿丽与 X 先生虽各执一词，但双方均同意以调解解决问题。X 先生向阿丽作出口头道歉，并向教育机构的有关人士就处理投诉付出的时间及努力致函道歉。X 先生及阿丽均同意，若在未来日子有机会再碰面，会互相尊重。

该教育机构亦承诺为员工及学生制定平等机会政策及守则，同时设立新的投诉机制，日后所有投诉都会清楚记录。此外，亦会每年为职员及学生提供反歧视培训。

法理依据

根据《性别歧视条例》，教师性骚扰学生属违法行为。性骚扰指任涉及性而不受欢迎的行径，而在一名合理的人眼里，会预期这些行为令人感到被冒犯、侮辱及受威吓。我们应必须提高对文化差异的敏感度——一些你认为无伤大雅的行为及言语，于文化及习惯不同，可能会令人觉得不自在，甚至冒犯他人。