ENGLISH

Court Case

Ratcliffe v Secretary for Civil Service CACV 57/1999

BACKGROUND FACTS

A policeman was found to have committed sexual harassment acts against a female colleague in an internal disciplinary proceedings. He then challenged the decision in a judicial review.

COURT'S DECISION

Though this case was not brought under the SDO, the internal police rules relating to sexual harassment were in materially the same terms as the SDO. The Court made useful elaboration concerning situations of sexual harassment covered by the SDO:

First, according to s. 2(5)(a)(i), sexual harassment is committed if a person makes an unwelcome sexual advance or request for sexual favours to the complainant. The advance or request must be made to or directed at the complainant.

Second, s. 2(5)(a)(ii) covers unwelcome conduct of a sexual nature engaged in by a person in relation to the complainant. The words "in relation to" cover not only acts in respect of her, but also with her. In other words, take for an example, if a man tells dirty stories to a woman in a partitioned room of a restaurant and such stories are unwelcome to her, then it amounts to sexual harassment. This is because the stories need not be about the complainant. They will suffice to constitute sexual harassment as the man is having the conversation with the complainant. Yet, on the other hand, if the stories are, unknown to the man, overheard by ladies in the adjoining room, it cannot be claimed that those ladies are sexually harassed as they are neither in the room of the story-teller, nor the addressees of the stories.

It should also be noted that what amounts to "unwelcome" in s. 2(5)(a)(i) and (ii) is judged according to an objective standard. The Court will take into account all the circumstances and if a reasonable person will have anticipated that a complainant will be offended, humiliated or intimated in that circumstance, it will be considered as "unwelcome".

Third, s. 2(5)(b) is of a different nature, which covers, for example, situations where a person posts up a lewd picture on the notice board of an office or circulates a lewd picture in the office, which creates a sexually hostile or intimidating work environment for others working in the office.

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法庭案例

Ratcliffe 訴 公務員事務局局長

CACV 57/1999

案情背景

一名警員在內部紀律聆訊中被裁定曾向一名女同事作出性騷擾行為,他繼而透過司法覆核挑戰這項裁決。

法庭的裁決

雖然這宗個案並非根據《性別歧視條例》提出,但警隊內部規則中有關性騷擾的部分與《性別歧視條例》的相關條文大致相同。法庭對於《性別歧視條例》所涵蓋的性騷擾情況作出了有用的闡釋:

首先,根據第 2(5)(a)(i)條,任何人如對投訴人提出不受歡迎的性要求,或提出不受歡迎的獲取性方面 好處的要求,即屬對該人作出性騷擾。有關的要求必須是向投訴人作出或是針對投訴人而作出的。

第二、第 2(5)(a)(ii)條涵蓋由某人就投訴人作出的不受歡迎並涉及性的行徑、「就」不但涵蓋「與她有關」的作為、亦涵蓋「向她作出」的作為。換言之、舉例一名男性在一間餐廳的房間內向一名女性講猥褻的笑話、而這些故事對於她而言是不受歡迎的、便構成性騷擾、因為這些故事不需要一定是關乎投訴人的、只要該男性當時是與投訴人交談、便足以構成性騷擾。然而、另一方面、假如該等故事在該男士不知情的情況下被隔鄰房間的女士無意中聽到、該等女士便不算是受到性騷擾、因為她們既不是在該男性的房中,而該男性亦並非向她們講猥褻的笑話。

此外亦應留意·在第 2(5)(a)(i)及(ii)條之下構成「不受歡迎」的情況·是以客觀標準來裁斷的。法庭會考慮所有情況·而假如一名合理的人會預期投訴人會在該情況下感到受冒犯、侮辱或威嚇·便會被視為「不受歡迎」。

第三·第 2(5)(b)條的性質不同·這條文所涵蓋的情況·包括某人張貼一幅猥褻的照片於辦公室的通告版上·或在辦公室傳閱一幅猥褻的照片·從而對在辦公室工作的其他人構成一個在性方面有敵意或具威嚇性的工作環境。

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法庭案例

Ratcliffe 诉 公务员事务局局长

CACV 57/1999

案情背景

一名警员在内部纪律聆讯中被裁定曾向一名女同事作出性骚扰行为,他继而透过司法复核挑战这项裁决。

法庭的裁决

虽然这宗个案并非根据《性别歧视条例》提出,但警队内部规则中有关性骚扰的部分与《性别歧视条例》的相关条文大致相同。法庭对于《性别歧视条例》所涵盖的性骚扰情况作出了有用的阐释:

首先,根据第 2(5)(a)(i)条,任何人如对投诉人提出不受欢迎的性要求,或提出不受欢迎的获取性方面好处的要求,即属对该人作出性骚扰。有关的要求必须是向投诉人作出或是针对投诉人而作出的。

第二,第 2(5)(a)(ii)条涵盖由某人就投诉人作出的不受欢迎并涉及性的行径,「就」不但涵盖「与她有关」的作为,亦涵盖「向她作出」的作为。换言之,举例一名男性在一间餐厅的房间内向一名女性讲猥亵的笑话,而这些故事对于她而言是不受欢迎的,便构成性骚扰,因为这些故事不需要一定是关乎投诉人的,只要该男性当时是与投诉人交谈,便足以构成性骚扰。然而,另一方面,假如该等故事在该男士不知情的情况下被隔邻房间的女士无意中听到,该等女士便不算是受到性骚扰,因为她们既不是在该男性的房中,而该男性亦并非向她们讲猥亵的笑话。

此外亦应留意·在第 2(5)(a)(i)及(ii)条之下构成「不受欢迎」的情况,是以客观标准来裁断的。法庭会考虑所有情况,而假如一名合理的人会预期投诉人会在该情况下感到受冒犯、侮辱或威吓,便会被视为「不受欢迎」。

第三,第 2(5)(b)条的性质不同,这条文所涵盖的情况,包括某人张贴一幅猥亵的照片于办公室的通告版上,或在办公室传阅一幅猥亵的照片,从而对在办公室工作的其他人构成一个在性方面有敌意或具威吓性的工作环境。

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