



THE WAY WE WORK

AFTER A RECENT MUCH-PUBLICISED CASE BROUGHT **SEXUAL HARASSMENT BACK INTO THE SPOTLIGHT**, *NESTOR LAIVIERA PEERS INSIDE THE HIDDEN WORLD OF OFFICE LIFE*

A sweltering summer day at the office; the air-conditioner is out of action. As the entire office gripes about the temperature a female worker remarks how she is simply dying of heat. "Strip off then. We sure won't complain," smirks a male co-worker.

An uneasy silence descends as the young woman squirms uncomfortably in her seat and everyone ponders the one question on their minds: "Did he step over the line, or is she being overly sensitive?"

Following a sexual harassment case where Doris Bonello, a former General Soft Drinks Ltd. employee, was awarded €2,000 in

compensation from her former employer, the question was asked by many. Reactions nationwide differed – ranging from wholehearted approval to outright indignation.

What if a joke was simply taken the wrong way, many asked, claiming that in Ms Bonello's case, the remark uttered by one of the managers ("sit between my legs") during a board meeting could easily have been dismissed.

The dispute, one of only three sexual harassment cases to reach the industrial tribunal in the last three years, starkly highlighted the lack of consistency in what is perceived as sexual harassment. ►



Dr Romina Bartolo, Commissioner for the Promotion of Equality (NCPE), lays down the facts. According to law, unwelcome sexually explicit conduct qualifies as sexual harassment. This ranges from gestures to words (verbal or written – like emails or text messages), to images like posters or screensavers. “People need to be aware of this. Every case that hits the headlines raises awareness,” she says.

“Sexual harassment is not necessarily directly linked to sexual ‘intent,’” she adds. “Like many instances of domestic violence and rape, sexual harassment at the workplace is often all about power – the urge of one individual to psychologically and emotionally dominate another,” she says.

Drawn out over time, harassment can become habitual. “It’s a slippery slope. Today someone might say ‘how nice you’re looking.’ Tomorrow, he or she might adjust your hair or clothes. The next day, a hug might last a bit longer than usual. A week later, things may have escalated even further. Where does one draw the line?” she asks.

“Most reports don’t stem from one-off comments,” she explains, “but after months of harassment.” However, sexual harassment does not have to be repeated or continuous to be against the law. “One has the right to complain after the first episode.”

In the recent case, the manager in question got off with a verbal warning, but abroad, penalties are often not so lenient. In

August, a sexual harassment scandal led to the surprise resignation of American multinational I.T. giant Hewlett Packard chief Mark Hurd following claims of sexual harassment and fiddling expenses to hide a secret relationship with a former contractor.

How widespread is sexual harassment? While a comprehensive picture is impossible due to a lack of local statistics, it is a serious problem, although it is a minority of people, both men and women, who experience it.

“Sexual harassment is not an issue only for women but also for men,” she points out, explaining that the NCPE has received complaints in this regard from both men and women. “However, the occurrence of sexual harassment seems to be more prominent against women,” she says.

“Unless we have more cases where people speak up, things won’t change. We are far removed from a culture where victims can report incidents without fear of reprisal.” To this end, the NCPE is working to raise awareness through campaigns and educating local employers and companies of the importance of having sexual harassment policies in place and implemented.

Are local companies equipped to deal with these incidents? “Many claim to be Equal Opportunities employers,” she explains, “but reality often proves otherwise.” Through the Equality Mark – a process by which the NCPE examines companies to determine whether they qualify – the commission is cracking down on who qualifies and who doesn’t.

A sexual harassment policy is one of the criteria to obtain such standards, she affirms, something many companies sadly don’t know about. “Even just having a policy is not enough: personnel who are properly trained in its implementation are needed.”

Shouldn’t sexual harassment policies be required by law? “It would be an improvement, but enforcement to make sure that policy is adhered to and implemented is always a different story,” says Dr Bartolo.

Maltese law only specifies that sexual harassment can incur fines of not more than €2,329, imprisonment of not more than six months, or both. Disciplinary action against offenders by their employer is not mandated by law. Additionally, the law places the onus of proving that less favourable treatment has occurred squarely on the defendant. ►



- According to a 1998 EU Commission study conducted across 11 northern member states, between 40 and 50 per cent of female employees were exposed to some form of sexual harassment or unwanted sexual behaviour at the workplace between 1987 and 1997.
- According to the NCPE, 20 reports of sexual harassment were investigated locally over the past three years. Seven were reported in 2007, five in 2008, six in 2009 and, so far, two were reported this year. Of these, 17 were lodged by females, and three by males. Four remain open and none of the reports specifically investigated by the NCPE have so far reached the industrial tribunal.
- During the last three years, the Department for Industrial and Employment Relations investigated four sexual harassment allegations. One was investigated in 2007 and resolved amicably. Two were investigated in 2008 – one yielding insufficient evidence, the other being referred to court. The third, investigated in 2009, was dropped when the complainant withdrew the claim.
- Between January 2007 and August 2010, the Industrial Tribunal heard three cases. Two of these have been closed: one in July 2009 and one in July 2010. One is still being heard.

Contrastingly, US federal law states that for employers found guilty of failing to stop sexual harassment, penalties can range from compensation of lost wages to compensatory damages, punitive damages, legal costs and fees, and reinstatement or promotion for the victim.

Furthermore, employers may take disciplinary action against an employee found guilty of sexual harassment, such as warnings or reprimands, transfers or demotions, salary reductions, suspensions or terminations – proportionate to the gravity of the behaviour.

Some claim that such policies are liable to abuse or misapplication, enabling unscrupulous individuals to abuse the system for personal gain or even vendettas. But can well-meaning policies actually be so crassly perverted?

While they happen infrequently, such cases have occurred. In 2006, a Californian federal court judge ordered the U.S. Equal Employment Opportunity Commission to pay more than \$1 million to a law firm that the agency unsuccessfully sued for sexual harassment and pregnancy discrimination – an award believed to be the largest of its kind issued against the EEOC.

In a strongly worded ruling, the judge described the EEOC's lawsuit as frivolous

and without foundation. The judge found that the two women (a former receptionist and ex-girlfriend) involved schemed to elicit the EEOC to expand what was a originally pregnancy discrimination allegation to include alleged sexual harassment, even though the receptionist's claim eventually proved to be so baseless that the EEOC did not even appeal the judge's summary dismissal of the claim.

Dr Bartolo's stand on current penalties is that "it takes time to determine what is an effective penalty. However, this and other penalties affecting other forms of discrimination need to be discussed and revised if found not to be sufficiently effective. The NCPE is already lobbying for this," she explains. "Larger companies are more wary of bad publicity through naming and shaming." She affirms that companies need to be encouraged to work harder to ensure that sexual harassment is eliminated once and for all.

Employment Minister Dolores Cristina acknowledges the need for sexual harassment policies as a preventive measure, describing them as fundamental to ensure that it is not tolerated – safeguarding the dignity of men and women.

She points out that although employers are not legally bound to formulate policies on sexual harassment, they acknowledge the need to have them in place. She is however reticent on why such policies are not mandatory.

She also affirms that government acknowledges the importance of harsher penalties in relation to discriminatory treatment and sexual harassment. "In effect, the equality legislation and the respective sanctions and remedies are currently being reviewed." However she does not say whether penalties will be increased, whether disciplinary action will be required by law, or when these reviews will take place.

As things stand, many victims blame themselves, thinking that they did something to provoke the harassment. Dr Bartolo's message is clear: "You can put a stop to this behaviour and even remedy the situation."

It is not always easy, she concedes, particularly when harassment is perpetrated by a superior, or even a company owner or director. "How could you ever go back to something like that the next day?" she asks.

"It will never be easy, and progress is gradual, but victims of sexual harassment, male or female, should never feel abandoned. There is always someone out there willing to help." **C**