

HARASSMENT CASE

A woman complained that her employer subjected her to sexual harassment. She alleged that during the job interview her employer told her that if she did anything wrong he would *'put her over his knee and spank her,'* and that on one occasion when she had a sore throat, he said to her, *'you haven't been doing anything you shouldn't have, have you?'* The woman further alleged that when she thought she might have chickenpox, her employer said to her that he would check her back for her. The woman admitted that, although these comments struck her as odd, she didn't at first take the employer's behaviour too seriously.

One evening after work, the employer invited the woman and her partner to drinks at a bar. The woman alleged that while at the bar, her employer told her that he would like to have a spa with her, and said: *'you're not supposed to wear anything.'* The woman also alleged that her employer suggested that she model so an artist could paint her body onto the walls of his spa pool. She also heard him ask her partner to have a drinking contest, with her as the prize for the night. She also alleged that he stared at her breasts. The woman claimed that the employer, especially in his drunken state, had made her feel very intimidated. As a result, she took the next day off work and considered the possibility of quitting her job. Three employees confirmed that she seemed distant and reserved after she returned to work, and had insisted that other employees accompany her on every occasion she had needed to speak to the employer face-to-face.

The employer admitted most of the allegations (except that he had stared at the woman's breasts), but denied that he had meant any harm by them. He stated that the comments would have been made as a joke, but that at the bar he was too intoxicated to remember exactly what he had said. Three employees testified on the employer's behalf. They indicated that the employer's 'jokes' were part of the normal banter of the workplace, and that they had made similar comments to him without meaning it.

(Developed by: A/Prof. Mark Harcourt, the University of Waikato)

1. Was the employer guilty of sexual harassment at the workplace? Explain.
2. Was the employer guilty of sexual harassment at the bar? Explain.
3. Is the employer's lack of malice relevant to this case? Explain.