Workplace Romances – what to do when love turns sour?

By Justin M. Jakubiak & Sheryl L. Johnson

Given the current climate and the #MeToo movement in general, many clients and other dealers reached out to me further to my article, "Sexual Harassment in Ontario's Dealerships", printed in the Fall 2017 edition of The Ontario Dealer. Dealer principals, managers and salespersons each had various concerns and questions about their respective workplaces and how to protect themselves from potential claims.

A recurring topic in several of my conversations was workplace romances – What is my potential exposure? Can they be prevented? What are love contracts?

In order to answer some of these questions, I turned to my law partner, Sheryl L. Johnson. Sheryl is a highly respected employment lawyer and the author of the recently published Sexual Harassment in Canada, a Guide for Understanding and Prevention.

What's the big deal if romance occurs between consenting adults?

Dealers and their management are right to identify these relationships as hot topics and a major cause for concern. There is a great potential for employer liability and general workplace distraction - both when the romance is in full bloom and when it sours. It is therefore very important for dealers to stay on top of the issue and to proactively put policies into place that address potential conflicts of interest and harassment. Dealers require a plan to ensure that all workplace parties are trained on what the policies mean, what "consent" is and isn't, how to report issues, concerns or complaints and how such issues will be addressed and potentially investigated.

Workplace romances can be distracting; not only to the individuals involved, but also to co-workers, to the point that they may negatively impact on the dealership's morale during the relationship's duration, and long after it ends. Employers are often left picking up the pieces in relation to complaints of sexual harassment arising out of the relationship, claims of sexual favouritism by co-workers and/or a volatile workplace culture during the relationship fraught with suspicion and distrust.

Workplace romances can cause losses in productivity. While a relationship is thriving, it can impact an employee's
judgment, cause inattentiveness and loss of productive work time due to the employee focusing primarily on their romantic interest. It can also cause co-workers to be jealous or suspicious, which often results in speculation, gossip and rumour spreading.

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Unfortunately, the negative side-effects of employee romances don't end with the relationship's end; in fact in such circumstances they are often exacerbated.

In many cases an employee dealing with a workplace breakup will call in sick, skip meetings or do just about anything to avoid having to interact with their ex-lover, including quitting their employment.

Additional issues arise where the breakup is not mutual and the jilted partner becomes disruptive inside the dealership. This can impact other employees and sometimes customers. Even worse is the potential for violence both inside and outside of the dealership.

Can't I just ban all office romance?

While a ban, like a non-fraternization policy, is certainly appealing, they are impractical as they are nearly impossible to enforce, ineffective and possibly illegal.

Added to the quagmire, bans don't guarantee that sexual relationships will not occur, or that sexual harassment will not be present. The negative consequence of a ban is that it may drive the prohibited conduct underground and discourage the parties from reporting consensual relationships and agreeing to execute love contracts (explained below) that are in all of the parties' best interests.

There is also the issue of potential vulnerable employees who may be coerced into a relationship with a superior. She or he may shy away from reporting the relationship for fear of termination or another form of workplace reprisal.

Employees' feelings of being unable to report a relationship, or an incident of sexual harassment, will likely aggravate the seriousness of, and liability of, any legal claim by an employee down the road.

Put simply, there is no avoiding office romances. People often spend more time with their co-workers in the workplace than at home. Employees socialize together, share similar experiences and interests and share the ups and downs of success. It is therefore only natural that people turn to their office colleagues to find prospective mates.

What can I do to protect my staff?

The real question is "How far should management go to provide protections to its employees?" A middle ground needs to be reached where the employees are not prohibited from all consensual romantic relationships, and yet the dealer is not left vulnerable to sexual harassment, sexual favouritism and sexual violence claims.

The best approach to minimize risk while balancing the realities of the modern workplace is to educate, warn and encourage your dealer team.

Meaning:

EDUCATE – dealers should ensure that all staff are aware of what sexual harassment and consent are, and what the dealer's policy on workplace relationships, anti-discrimination and
engaging in office romances, especially with subordinates (regardless if there is not a direct reporting relationship). Relationships between superiors and subordinates are prime candidates for sexual harassment claims and often include allegations that the relationship was never consensual.

**ENCOURAGE** – encourage professional workplace behaviour. In addition to the implementation and education of employees on clear policies, management needs to lead by example. Senior dealer management need to be especially trained on the policies and well versed on what constitutes sexual harassment and consent.

Workplace behaviours often trickle down from the very top, and it is therefore vital that the apex of every dealership is trained to spot inappropriate behaviours and is armed with the tools to address and correct such behaviour so it both ceases in the short-term under the current set of facts and in the long-term in future circumstances. This will result in greater employee morale and likely less employee distraction and turnover.

**Love Contracts???

Accepting that an outright ban on office relationships is nearly impossible to enforce, many of our clients are instead asking employees to sign love contracts. Love contracts are, in effect, a legal agreement that acknowledges the consensual nature of the relationship, spells out the parameters of the relationship and its potential impact on the dealer.

The purpose of a love contract is to protect a dealer from a sexual harassment claim in the event a consensual relationship ends.

They are particularly important in the cases of a supervisor-subordinate relationship, where consent can be both difficult to prove and withdrawn at any time.

A typical love contract includes: (i) a declaration that the relationship is consensual, (ii) an acknowledgment that neither party can bring a sexual harassment complaint or action against the dealer or manager/supervisor, as applicable, arising out of the relationship or its termination, (iii) rules for acceptable romantic behaviour in the workplace; and (iv) repetition of the workplace anti-sexual harassment policy.

**Conclusion**

While a recent CareerBuilder survey reports that only 36% of workers said they have dated a co-worker, which is down from 41% last year, this still means that over 1/3 of a dealership’s employees may be engaging in activity that exposes the dealership to the potential for employer liability, general workplace distraction and loss of productivity.

As I always say to my clients, being proactive is the best medicine. It is a great time to speak to your professional advisors and put into place policies and tools to ensure that your dealership and staff are protected.

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