

# THE COMMON LAWYER

## Sexual Harassment in Ontario's Dealerships



**By Justin M. Jakubiak**

**THE WEEKEND HAS COME TO AN END**, and Mary, your lead receptionist, is ready to get a start on the busy week ahead. Shortly after being dropped off by her husband and four children, she is asked by James, her supervisor:

“When is the last time you got any? You have four kids, you must really enjoy sex!”

Mary ignores James and proceeds to hang her jacket and place her lunch in the fridge when, for the sixth time this month, she feels James touching her buttocks. Mary decides not to report this unwanted touching to management. She knows from past experience it will be quickly downplayed as harmless office banter.

The next day Mary arrives at her desk to find a lewd note with what looks like pubic hair. Hitting a breaking point, Mary makes a complaint to management. Management fails to conduct an investigation, as is required by law, and tells Mary to lighten up, “boys will be boys.”

Mary is not satisfied with this response and makes a complaint to the Ministry of Labour. The Ministry conducts an investigation and concludes it by laying charges against the dealership and the dealer principal for fostering a poisoned work environment. The dealership is ultimately fined \$25,000. Mary also commences a civil suit claiming \$250,000 in damages.

The above is made up of real life examples of the types of sexual harassment that takes place in some dealerships and businesses throughout Ontario. Harassment is suffered by both men and woman and may often start out casually; often dismissed as friendly workplace banter. However, it can quickly turn ugly and can severely impact employee morale, your reputation and your pocketbook.

### **The Risks**

In today's rapidly evolving economy, dealers are fighting more than ever to stay competitive and manage costs wherever possible. Shouldering the costs of not taking sexual harassment claims seriously is something most dealers cannot afford to do.

Every worker, customer, and stranger has the right to equal and fair treatment when they enter your dealership - regardless if they are purchasing a brand new vehicle or simply using the washroom. The same standard of treatment must be shown to both. By allowing any form of harassment to persist and eventually become the norm, dealers run the risk of exposing customers to a toxic work environment and losing potential sales and referrals.

Dealers who ignore their legal obligations risk various forms of legal liability. Such liability includes:

1. Significant fines of up to \$25,000 for an individual, and \$500,000 for a corporation, for failing to comply with the statutory requirements of the Occupational Health and Safety Act and other provincial legislation; and,
2. Civil lawsuits by sexual harassment victims against the dealer, the perpetrator of the harassment, the dealer principal and possibly other supervisors/managers.

In addition, there is a real risk that dealers who permit a poisoned environment to persist will grapple with increased rates of employee absenteeism and decreased work productivity.

### **Should you Worry? What are the chances this could happen to you...**

High. The Ontario government and the Human Rights Commission have taken strong stances against workplace sexual harassment. This is evident in the government's recent enactment of the Sexual Violence and Action Plan Act (the “Act”), which came into force on September 26, 2016. Among other things, the Act makes it clear that employers must investigate and address all complaints of workplace harassment as soon as possible.

In the last few years alone, there has been several dealers who have refused to meet their obligations, and as a result, were ordered to pay fines ranging from \$8,000 to \$25,000. For the purposes of

this article, we need only to consider three recent examples to understand the seriousness of this issue:

1. **SMITH V. [DEALER NAME REDACTED]** In this case, the dealer was ordered to pay Smith, a former worker, damages in the amount of \$25,000. The dealer had allowed a co-worker to engage in the following behaviour and dismissed it as “just fun... [and] horseplay”:

- Exposing himself to Smith on numerous occasions while simultaneously “thrusting and gyrating his hips”;
- Watching pornography during working hours and allowing “loud grunting noises... to be heard coming from [his] desk”. This sound was so loud that it angered customers and resulted in many leaving the dealership in disgust; and
- Leaving a bottle full of urine on Smith’s desk and labelling it as a gift.

In this case, although it was the co-worker who engaged in the misconduct, the dealer was held to be fully liable for all of Smith’s damages.

2. **GUBRENKO V. [DEALER]** - In this case, a co-owner of the dealer was ordered to pay a former employee, Ms. Gubrenko,

\$2,000 for “informing” Ms. Gubrenko that she owned “nothing in the office but her own “twat”.

3. **MITCHELL V. [DEALER]** – The applicant, and 6 other female receptionists, complained to the dealer’s management that they were sexually harassed on a consistent basis by the sales manager. This harassment included:

- The Sales Manager asking the applicant if she wanted to sit on his lap;
- Asking the applicant if the “K” on her necklace referred to the word cleavage; and,
- Asking the applicant what she would do to receive a raise.

The Dealer was ordered to pay the applicant \$10,000. It should be noted that the offending conduct occurred despite the dealer having a robust workplace harassment policy in place. Clearly it is not enough to just have a policy in place, but the Dealer must be prepared to train its staff on the policy and to enforce it.

#### **What to do?**

- Get advice and develop a comprehensive workplace violence and harassment policy
- Provide training on how to identify

and prevent sexual harassment in the workplace

- Outline what steps need to be taken to file a complaint
- Be proactive and investigate all complaints thoroughly and quickly
- Be aware that sexual harassment can be initiated by someone who is external to the workplace and who may not be an actual employee
- Regularly revisit, and revise when needed, your policy and program to ensure that all sections are up-to-date

#### **Conclusion**

All parties lose when acts of sexual harassment occur. However, as the employer, the dealer will automatically shoulder most of the consequences.

From a bad name to a poisoned work environment, making the decision not to address harassment claims swiftly will likely cost you significantly in the long run.

A well-organized and thought out workplace violence and harassment policy will reap several benefits, including happy employees and clients.