When do Workplace Break-ups Spell Trouble for Employers?

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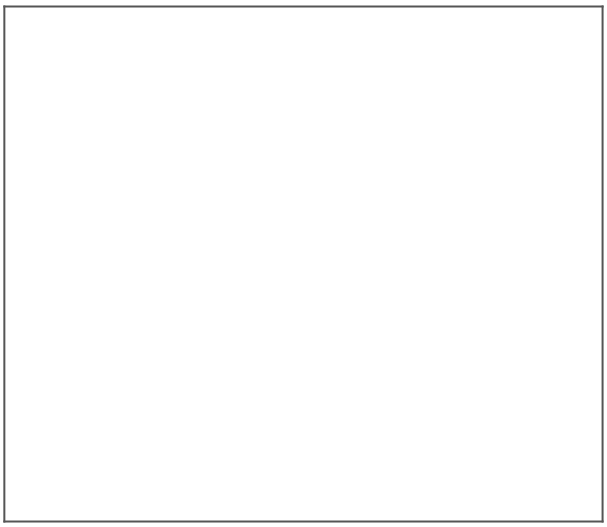
Author Vivian E. Rachlis is no longer with TDS. Please contact us for further assistance.



A recent Manitoba human rights adjudication decision**[1]** raises questions that already strike fear in the hearts of many employers: What are our human resources and legal responsibilities when consensual sexual relationships start up in the workplace? What are our responsibilities when the relationships end?

The complainant male was a lube technician in a Winnipeg auto lube facility. The complainant and his female supervisor embarked on a course of conduct that the adjudicator described as “flirting.” From time to time both parties ingested alcohol and drugs while on duty. Eventually the two had sexual relations (in this case, in the workplace). What happened when the relationship ended was the focus of the complaint, and the decision.

The stories were tangled and the adjudicator faced challenges because both employees came across as less than stellar witnesses. After considerable sifting of evidence described variously as faulty, vague and not particularly truthful, the adjudicator ultimately found that even though the complainant had been a willing participant at the beginning, at some point he decided he wanted to bring the relationship to an end.

The evidence supporting a finding of sexual harassment was based on what the supervisor did next - she sent the complainant a CD containing explicit photos of herself; and stated “don't void me out like the plague” and “I know where to find you”. Outside of the workplace, these steps may have been considered (at best) regrettable, or (at worst) the threatening or potentially criminal actions of a slighted lover. Inside the workplace, these kinds of actions can trigger serious responsibilities on the part of an employer.

Stating “in dealing with sexual harassment cases under the *Code*, 'No' must be taken to mean 'No', and despite his reservations about the complainant’s credibility, the adjudicator made a critical finding that the complainant communicated to his supervisor that he wasn’t

interested. In a further finding impacting all employers, the adjudicator also ruled that the employer representatives did not behave appropriately in the face of these events, and failed to take reasonable steps to terminate the harassment.

In previous articles, we have written about how Canadian Human Rights legislation confers broad powers on adjudicators to make damage awards for wage and other financial loss, for damage to dignity, feelings or self-respect, and for exemplary damages to drive home the heinous nature of impugned conduct; to order employers to institute educational programs; or to do other pro-active things to secure compliance with the *Code.*

In this recent case, the adjudicator faced a dilemma when fashioning suitable remedies. The *supervisor* won no kudos for her conduct and the way she gave evidence. While the supervisor was found to have sexually harassed the complainant, the *complainant* himself was considered a less than stellar witness, even contradicting some of the things he said in his formal (signed) complaint. He was also a less than stellar employee - a finding was made that at some point in the relationship aftermath, the complainant deliberately broke a window at the facility. Describing the *employer's* response as "anemic and inappropriate efforts to address the harassment," the employer was faced with the finding under *The Human Rights Code* that it failed to take reasonable steps to "terminate [the] harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking." The adjudicator made no award for lost wages and made a small award for damages for loss of dignity, feelings and self-respect.

Despite the sexual harassment finding, in the end it was a zero sum game for the complainant. Unimpressed with the way the complainant brought the matter forward and by his lack of truthfulness, the adjudicator made an award of costs against the complainant personally in the same amount as the damage award.

Employers have a legal obligation to provide a workplace free of sexual harassment. This recent case is yet another reminder of this fact. The takeaways from this recent tale of woe include:

- Although human relationships can be personal, awkward and uncomfortable, an employer's act of denial when relationships turn bitter can have lasting human resources consequences and expensive legal consequences.
- Having a respectful workplace policy that is consistently and repeatedly taught, revised, revisited, posted and explained can go a long way to prevent misunderstandings and bad behaviour, communicate expectations and ultimately prevent costly and embarrassing legal proceedings.

[1] Walmsley v. Brousseau Bros Ltd. operating as Super Lube, and Super Lube Ltd., 2014 CanLII 31472 (MB HRC) **http://www.canlii.org/en/mb/mbhrc/doc/2014/2014canlii31472/2014canlii31472.html**

