

# HR and Workplace Romance: An Interview with Attorney Cedric Lamarche



Knowing how to address workplace romance can be as confusing as, well, love itself. So *HR Insider* asked Cédric Lamarche, Senior Associate at Whitten & Lublin, Employment Lawyers, for insight. Here's what he told us.

## **HRI: Why does workplace romance make employers nervous?**

CL: There is nothing illegal with a consensual relationship between co-workers; no statutes or laws prohibit this type of conduct in the workplace.

Notwithstanding the legality of romantic relationships between employees, these types of dealings promote problems, fuel litigation, and can even lead to extortion. Therefore, they invariably enhance the risk of legitimate and spurious claims against employers for, among other things, sexual harassment, discrimination, and constructive dismissal. We commonly see these types of allegations from disgruntled employees who believe that they have been unfairly disciplined or terminated as a direct result of their romantic dalliances at work. An accusation of sexual harassment, whether it be a cash grab, an emotional response, or a legitimate complaint, will often lead to costly legal proceedings, substantial damages, and public relations nightmares.

Aside from the potential for both real and threatened liability that workplace relationships can set off, they can also have an impact on employee productivity and moral. Individuals who are romantically involved with colleagues can become inattentive and unproductive, focusing on their relationships rather than their work. Also, these relationships can have a negative impact on other co-workers, especially if there is actual or perceived preferential treatment towards a staff member who is sleeping with the boss.

## **HRI: If there are legal concerns, why don't more employers have dating policies?**

CL: Many employers are reluctant to be in their employees' bedrooms. The concern is that they could be viewed as imposing an unreasonable level of control over their workers' personal dealings. While the concern is well-founded, if an employee's behaviour follows them at work, the employer is legally entitled to impose workplace rules as they see fit, even as it relates to policies against dating.

Some employers may also be discouraged from developing and implementing dating policies due to the costs associated with this process. However, the cost of prevention is insignificant compared to the considerable costs of legal proceedings, settlements, damages awards, not to mention the reputational harm that almost always accompany sexual harassment claims. Preventive work with an employment lawyer or with experienced human resources personnel will alleviate future costs, both tangible and intangible.

**HRI: Do managers, directors, and other key employees have a duty to disclose personal relationships at work, even if the company doesn't have a formal policy?**

CL: Employees in positions of authority and influence over other employees may have a duty to voluntarily disclose relationships at work, even in the absence of a policy. However, the case law is not clear on this point. Accordingly, employers are advised to eliminate the uncertainty by proactively implementing policies that require the disclosure of relationships at work.

**HRI: Is there a greater potential for legal liability when a boss and a subordinate engage in a personal relationship as opposed to two coworkers dating?**

CL: Absolutely. Human rights laws have been carefully designed to protect employees who are particularly vulnerable to workplace abuse and harassment. Canadian courts are very intolerant of employees in positions of power and authority who engage in sexual relationships with individuals who are prone to be influenced, manipulated, or pressured. The highest awards of damages against employers found vicariously culpable for the acts of their senior employees were handed down in cases where an imbalance of power between harasser and victim existed.

**HRI: What about a situation where an employee becomes romantically involved with one of the company's product or service providers? Obviously, the potential for conflict of interest exists. Yet it begs the question, where does an employer draw the line?**

CL: A relationship between an employee and a third party who has an interest in the business of the employer could result in a serious conflict of interest, as well as a perceived conflict. Employers can help prevent these types of conflicts or perceived conflicts by simply implementing universal conflict of interest policies. Beyond conflicts, relationships with third parties could also give rise to harassment claims against employers, especially if they condoned the misconduct towards their employees or failed to take appropriate steps to ward it off. Fact is that employers have a legal obligation to provide a safe and harassment-free workplace to their staff. This responsibility is very broad and extends to dealings with third parties, including suppliers, clients, or anyone who has dealings with workers in the course of doing business. Some Canadian jurisdictions require employers to regularly conduct risk assessments and implement policies and procedures specifically tailored to the work environment.

**HRI: Workplace, by today's definition, means more than a physical place. What kinds of challenges do the Internet and social media present for employers in terms of workplace romance and its potential risks?**

CL: With the advent of the Internet, wireless communication devices, and social media, it has become very difficult and often impossible to police and regulate the conduct of employees at work. Rigid policies delineating proper workplace conduct and forbidding the use of personal devices, social media, Internet surfing, and personal email reduce the ambit of communications that need to be controlled and monitored. Employers must, however, be wary that their workers have a reasonable expectation of privacy over their private affairs. Consequently, employers who are over zealous in the monitoring of their employees' private communications could be violating privacy rights. Clear policies detailing what types of activities and communications employers reserve the right to monitor will help prevent claims for intrusion upon seclusion.

**HRI: What one piece of advice would you offer HR departments grappling with these issues?**

CL: Implement workplace policies and provide training and education to staff. A policy will only be effective if it is clear, comprehensive, communicated to staff, and enforced consistently. Eliminating uncertainty is the key to prevention.