

e-newsletter e-newsletter

automotive law



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McMillan's E-newsletter Wrap-up

The McMillan e-newsletter is taking a final curtain. We hope that it's been a useful, if not occasionally enjoyable, resource for you over these last three years. Like the finale of any good sitcom, we'll touch on a few reminders from previous newsletters and give you some practical tips going forward. As successful dealers, you don't have legal problems, you have business problems, and we try to frame these issues through that lens.

Employees

You can't have a dealership with having employees. Whether it's lot attendants, your sales force, your parts department or your service mechanics, you need good people to make your business function. You likely have a very good handle on how to attract and retain them. You likely have some experience in the less pleasant side of human resources, too. We

often describe dismissal for cause as being something of a unicorn, in that it can be very difficult to find in real life. But the best way to protect your business, and limit your potential risk, is to have clear policies and consistently enforce them.

Make sure you have an up-to-date employee handbook, including your policies. Make sure your employees have to review and confirm in writing that they've read and understand their obligations. Most importantly, make sure that your policies are being enforced. You create much more risk in dealing with under-performing employees if you are seen to arbitrarily enforce policies.

Contracts

The fine print matters, and usually contains terms and conditions that limit the liability of a party if a breach

of contract or other negligence happens. In some instances you may not have any ability to bargain—if you can find a way to negotiate your very own cell phone contract or internet package, please let *me* know. But even in cases where faced with a standard-form, take it or leave it, contract, there is still risk to be managed. Be aware of what you are agreeing to and what you are not.

When you have the ability to negotiate a contract, think about not only how you want things to unfold, but also how to deal with situations where things did not go as intended. It's useful to be as specific as you can with what each party's rights and obligations are, and how they need to be carried out. Consider whether the contract should have renewal provisions, and ensure that they don't leave any key issues out. For example, a clause that extends the term of an agreement without confirming pricing is likely unenforceable. Do the parties want to limit liability to each other, whether excluding consequential damages, or even capping any possible recovery? If a dispute arises, do the parties want to arbitrate instead of going to court? It's almost always easier to consider these issues and agree on them when the parties aren't in the throes of a dispute.

Administrative Tribunals

While providing an essential framework for modern society, these bodies can create bugaboos for employers and businesses, generally. Unlike civil litigation, where every plaintiff has to advance its own case, once a complaint is made, these bodies typically conduct their own investigations and, where warranted, advance the matter to hearing. Put simply, this means a complainant does not have to share in

the pain of navigating the dispute resolution process. Respondents do not have a similar advocate put in place for them, so they are almost always the only side incurring legal fees. That can have the unintended consequence of making a party less reasonable, not more, because the unfortunately high cost of protracted litigation usually induces parties to reach settlement. If a complainant has only upside by refusing to settle and going to hearing, the respondent's best option may be to go along for the expensive ride.

Resolving Disputes

Approximately 4% of lawsuits in Alberta make it to trial. The other 96% either settle, languish, or are resolved on a summary basis. Economic forces usually drive how disputes unfold: it makes no sense to spend \$100.00 trying to recover \$50.00, unless there are tangential issues at play. But our legal system is equipped to address what parties can *prove* happened. Technology can be a blessing and a curse on that front: there are far more emails, texts and online information than existed even a decade ago. This means far more is documented, but also that there is far more to sift through. However, the underlying point is that you don't know in advance which disputes will blow-up and which will go quietly into the night. Do what you can to document potential disputes, whether they are with service providers, customers or employees.

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Thanks

Thank you for reading, we hope that you have found value in these newsletters. We're always happy to help if you have any questions or concerns in the future.

Questions?

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About this Newsletter

The McMillan Automotive Law e-newsletter is a quarterly publication designed to keep new vehicle Owners, Presidents, Vice-Presidents, Dealer Principals, General Managers and Sales Managers in the know about legislative changes that may affect your business, as well as updates and developments relevant to your industry, and general legal tips associated with running a busy automobile dealership, such as:

- Litigation matters – what to do when legal issues arise or when faced with a lawsuit.
- Legislation or regulatory changes – to avoid legal pitfalls and minimize your risk.
- Other issues affecting your dealership.

I hope you find this e-newsletter useful. To sign up or if you have any feedback, topic suggestions or questions you'd like to submit in a future issue, please feel free to send me an email at: andrew.stead@mcmillan.ca. As well, feel free to forward this to your friends or colleagues that you think this may interest!

Thanks for reading!

Andrew Stead

About the Author



Andrew Stead is a lawyer at McMillan LLP practicing in commercial dispute resolution and regulatory law. He is a member of McMillan's automotive group and has acted for a number of car dealerships and manufacturers, including contractual disputes, product liability claims and employment matters. McMillan is a national business law firm with considerable experience providing the automotive industry with advice on topics from competition, cross-border trade to financial products, and also dispute resolution.

a cautionary note:

This newsletter provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.