

Ontario Court Rules Allegations of Workplace Sexual Harassment are "Not Connected to Employment," Not Covered by Release

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A recent decision of the Ontario Superior Court highlights the importance of including a comprehensive release in any separation package offered to an employee upon dismissal, particularly in the context of the #metoo movement where workplace sexual harassment has become a top concern for employers.

In *Watson v. the Governing Council of the Salvation Army*, 2018 ONSC 1066, the plaintiff brought an action against both her former employer, the Salvation Army, and her former manager at the Salvation Army alleging that she had been sexually harassed by her manager during her employment. She sought damages for negligence, intentional infliction of emotional harm and breach of fiduciary duty.

Several years earlier, the plaintiff had been dismissed from her employment with the Salvation Army and had received a \$10,000 payment from the Salvation Army in exchange for providing an executed Memorandum of Settlement and Full and Final Release (the Release). The Memorandum of Settlement read as follows:

... The Employer and Employee...have determined that they wish to resolve any and all claims, complaints, actions, disputes etc. between them arising out of the employment relationship or the termination of that employment;...

The Release applied to “any and all claims...past, present or future, known or unknown, which arise out of or which are in any way related to or connected with [the plaintiff’s] employment or the ending of [her] employment.” It further provided:

3. This release of claims shall include any claims against *anyone or any organization in any way associated with The Salvation Army which arise out of or which are in any way related to or connected with my employment or the ending of my employment.* [emphasis added]

The former manager brought a motion for summary judgment, seeking to have the plaintiff’s action dismissed on the basis of the Release.

Despite the expansive language used in the Release, the Court held that the Release was not “all inclusive”

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and that it did not prevent the plaintiff from asserting claims relating to sexual harassment, intimidation or other improper conduct that occurred during her employment with the Salvation Army. The Court acknowledged that “the alleged events occurred at the place of employment and, perhaps, because of the employment,” but maintained that these were “clearly separate matters.” The Court noted that “specific language” would have needed to be included in the Release to bar claims for sexual harassment or related misconduct.

In the result, the Court held that there were genuine issues requiring a trial and dismissed the former manager’s summary judgment motion.

Commentary

The *Watson* decision is a good reminder of the importance of using well-drafted settlement agreements and comprehensive releases whenever an employee is dismissed. A release should identify all potential actions or claims and contain explicit language enabling the employer to raise the release as a bar to any future claim in relation to the employee’s employment or dismissal. Employers should proceed with caution in this regard and consult legal counsel if in doubt.

For more information or for assistance in navigating employee dismissal issues (including drafting settlement agreements and releases), please contact a member of the Cassels Employment & Labour team.

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