



## A Full and Final Release May Not Protect Your Company from Future Sexual Harassment Claims

Most employers who terminate employees on a without cause basis offer a severance package to the terminated employee in exchange for the former employee signing a Full and Final Release of all potential legal claims stemming from the employment relationship. This is especially true if any there has been any complaints and/or threatened litigation. However, the Ontario Superior Court recently determined that a Full and Final Release may not protect employers from all future claims after all.

In *Watson v. The Governing Council of the Salvation Army of Canada* 2018 ONSC 1066, the Court ruled that a Full and Final Release did not protect the employer from claims of sexual harassment. In that case, Ms. Watson left her employment in 2011, having negotiated a severance package in exchange for a Full and Final Release. In January 2015, the Salvation Army received a complaint of sexual harassment from another employee against the National Director which resulted in an investigation. The investigation inquired into 8 separate complaints, including Ms. Watson's. Later that year, Ms. Watson brought an action against her former employer for negligence, intentional infliction of emotional harm and breach of fiduciary duty. She brought an action against the National Director of the organization for sexual harassment which she alleged took place while she was employed.

The National Director brought a summary judgment motion seeking dismissal of Ms. Watson's action in part due to the fact that she had signed a release at termination. The relevant portions of the release read as follows:

- In accordance with the terms of settlement outlined in the attached letter dated August 8, 2011, I, Emma Oliveira Watson, agree to release any and all claims I have or may have against The Salvation Army, past, present or future, known or unknown, which arise out of or which are in any way related to or connected with my employment or the ending of my employment.*
- 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.*

The court accepted that a third party, such as the National Director, may in certain circumstances enforce a contractual benefit from a release. Also, all parties agreed that "...arise out of ... my employment" defined the scope of the release. However, the court concluded that the release did not include the sexual harassment allegations at issue because the scope was the employment relationship. "While many of the alleged events occurred at the place of employment, and, perhaps because of the employment, sexual harassment, intimidation and other improper conduct are not connected to employment. They are clearly separate matters". In order for the claim at issue to be banned by the release, specific language to such claims would need to be included in the release. While the court refrained from providing direction on the exact language necessary to achieve this, it suggested that an employer would be able to include language properly limiting future sexual harassment claims.

This decision comes as a reminder to employers to use specific language in all Full and Final Releases in order to properly protect themselves. If you have any questions about the contents of your company's Full and Final Release document and its ability to protect against all future claims, including sexual harassment, please contact one of the lawyers at Robinson Heene LLP.