

**CITATION:** Watson v. The Governing Council of the Salvation Army of Canada, 2018 ONSC 1066  
**COURT FILE NO.:** C-891-16  
**DATE:** 2018-02-26

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** EMMA WATSON, STEPHEN WATSON, CARTER OLIVIERA,  
an infant under the age of eighteen years by his Litigation Guardian,  
EMMA WATSON and ABIGAIL OLIVIERA, an infant under the  
age of eighteen years, by her Litigation Guardian, EMMA WATSON,  
Plaintiffs

**AND:**

THE GOVERNING COUNCIL OF THE SALVATION ARMY OF  
CANADA and DAVID COURT

**BEFORE:** The Honourable Mr. Justice D.J. Gordon

**COUNSEL:** Richard Campbell, Counsel for the Plaintiffs

Adrian Miedema, Counsel for the Defendant, The Governing  
Council of the Salvation Army of Canada

Albert Campea, Counsel for the Defendant, David Court

Miranda Serravalle, for the Defendant in companion action,  
Investigative Risk Management Inc.

**HEARD:** February 1, 2018

**ENDORSEMENT**

[1] Several motions were initially presented:

- (i) the plaintiffs sought an order for consolidation with Toronto proceeding CV-15-535684 and that the deemed undertaking rule does not apply; and
- (ii) the defendants separately sought summary judgment dismissing the action.

**Overview**

[2] Emma Watson was employed by The Governing Council of The Salvation Army of Canada (“Salvation Army”) as manager of its Thrift Store in Cambridge from April 2011 to August 2011. David Court was also employed by the Salvation Army, before and after that period, as the National Director of Operations for its National Recycling Operations Division.

[3] Ms. Watson commenced this action by statement of claim, issued August 16, 2016, seeking a damage award for negligence, intention infliction of emotional harm and breach of fiduciary duty.

[4] She alleges acts of sexual harassment perpetrated by Mr. Court. In their statements of defence, both defendants deny Ms. Watson’s allegations. They also crossclaim against each other.

[5] On August 8, 2011, Ms. Watson signed a Memorandum of Settlement and a Release. She received a payment from the Salvation Army for \$10,000.

[6] On January 13, 2015, the Salvation Army received a written sexual harassment complaint from another individual and pertaining to the conduct of Mr. Court. Investigative Risk Management Inc. was retained to investigate this complaint. As a result of this investigation, there are said to be eight complaints by former and current employees, in addition to Ms. Watson, of sexual harassment by Mr. Court. On June 4, 2015, the Salvation Army terminated Mr. Court’s employment, said to be for cause.

[7] Mr. Court commenced an action against the Salvation Army and Investigative Risk Management Inc. by statement of claim, issued on September 3, 2015 (Toronto file CV-15-

535684). He seeks a damage award for wrongful dismissal, breach of employment contract, negligent investigation and bad faith in the manner of his dismissal. In their statements of defence, both defendants deny Mr. Court's allegations.

### **Status of Motions**

[8] At the commencement of the hearing, Mr. Campbell and Mr. Miedema reported a settlement of the action as it involved their clients. In result, the Salvation Army withdrew its motion. The plaintiff is still pursuing her claims against Mr. Court.

[9] During submissions on the plaintiff's motion, counsel reached an agreement regarding documentary disclosure, in part pertaining to Ms. Watson, but in the Toronto proceeding. The plaintiff's motion was then withdrawn.

[10] Only the summary judgment motion of Mr. Court requires determination.

### **Summary Judgment**

[11] Mr. Court seeks summary judgment dismissing the action on the following grounds:

- (i) Ms. Watson executed a Full and Final Release;
- (ii) The Ontario Human Rights Tribunal has exclusive jurisdiction; and
- (iii) the evidence does not support the claims.

(a) **Procedure**

[12] Mr. Campbell objected to reliance on the second and third grounds as neither were identified in the notice of motion of Mr. Court, dated September 14, 2017. Rather, they were presented in Mr. Campea's factum, dated January 16, 2018. As the hearing was already

scheduled, Mr. Campbell argues his client was prevented the opportunity to respond to the fresh issues raised on behalf of Mr. Court. Mr. Campea submits that grounds for a motion may be raised in a factum as all of the allegations were raised in the evidence.

[13] Rule 37.06 is clear, “every notice of motion shall ... state the grounds to be argued ...”. It is not proper to raise new grounds shortly before the hearing. The appropriate procedure is to seek leave to amend the motion and adjourn the hearing to allow responding material and, perhaps, further cross-examination. Whether the request would have been granted given the passage of time is unknown.

[14] Mr. Campbell submits that these motion grounds must fail in these circumstances. While his argument, in my view, is persuasive, the grounds raised can be disposed of on their merits so as to avoid further motions.

(b) **Test Under Rule 20**

[15] Rule 20.04(2) provides “The Court shall grant summary judgment if, (a) the court is satisfied that there is no genuine issue requiring a trial ...”.

[16] Karakatsanis J. in, *Hyrniak v. Mauldin*, 2014 SCC 7, at para. 49, described the test as follows:

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

(c) **Release**

[17] On August 9, 2011, Ms. Watson executed a Memorandum of Settlement and a Full and Final Release. The documents were prepared by Salvation Army employees. The Salvation Army subsequently paid a lump sum to Ms. Watson of \$10,000, less statutory deductions. Group insurance benefits were continued to December 31, 2011.

[18] In the Memorandum of Settlement, Ms. Watson and the Salvation Army acknowledged "... the mutual agreement of separation of employment effective August 8, 2011". The document went on to say:

... The Employer and Employee having regard to their respective rights, duties and obligations, 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; ...

[19] The Full and Final Release provides as follows;

1. This Release is given by Emma Oliveira Watson with respect to her employment at The Salvation Army and the ending of her employment.
2. 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.
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.
4. I acknowledge that this settlement does not constitute an admission of liability on the part of The Salvation Army.
5. I agree to maintain confidential the existence of this settlement, and the contents of this settlement, and I will not divulge the details to any persons except professional advisors and immediate family, for any reason whatsoever, except as required by law.

6. I agree that I will not say or communicate anything disparaging regarding The Salvation Army or its past and present clergy, officers, members, employees and representatives.
7. I acknowledge that I have had the opportunity to seek any advice I felt necessary with respect to the terms of settlement as well as this document.
8. This release shall bind me, and all persons claiming through me, to the benefit of The Salvation Army and all persons and organizations associated with it.
9. I declare that I have read over and fully understand this document and I voluntarily accept the terms of this document for the purpose of making a full and final settlement of all claims as set out above.

Signed at Kitchener, Ontario this 9 day of Aug , 2011

[20] It is not disputed, a third party, such as Mr. Court, may, in certain circumstances, enforce a contractual benefit. Here, the language of the Release is important. Was it intended to cover all possible matters? Is the claim here based on employment?

[21] Both counsel say the Release is unambiguous. I agree. The words “ ... arise out of ... my employment” define the scope.

[22] I conclude the Release cannot be considered all inclusive, including the claims herein, as 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.

[23] The Salvation Army, quite properly, acknowledges that sexual misconduct does not arise from the employment relationship. Here, the settlement was negotiated by the Human Resources manager. Cases involving sexual misconduct are handled by the Director of Employee Relations. The settlement pertains to severance only. As the alleged conduct falls outside of the

employment relationship, specific language to such claims would need to be added to the Release to bar the present claim.

(d) **Jurisdiction**

[24] Claims based on sexual harassment are said to be within the exclusive jurisdiction of the Ontario Human Rights Tribunal. I am not persuaded such applies in this case. First, the claim is not based on sexual harassment, although that may be the phrase commonly used. Second, the events alleged were not part of the employment relationship. Intentional infliction of emotional harm is a common law claim. The court has jurisdiction.

(e) **Evidence to Support Claim**

[25] This action was commenced after Ms. Watson was contacted in the 2015 investigation of Mr. Court. She did make reference to Mr. Court's conduct when negotiating her severance in August 2011 with the Salvation Army's Human Resources Manager.

[26] On this ground, the submission focuses on:

- (a) the suggestion Ms. Watson was not performing her job and termination had been recommended;
- (b) she did not report Mr. Court's conduct prior to termination, she did not document the events, and she has not produced phone records or medical records in support of her allegations.

[27] This argument ignores the evidence Ms. Watson did present, a detailed account of multiple events. The argument also ignores the reality of the impact of such conduct, only now being recognized.

[28] Victims of sexual misconduct and harassment often do not report such events. The psychological or emotional damage is frequently hidden. Ms. Watson's evidence addresses those concerns. It would be premature to assess her evidence.

(f) **Conclusion**

[29] For the above reasons, the motion for summary judgment must fail. There are genuine issues requiring a trial.

[30] Mr. Court's motion is dismissed. I expect counsel will be able to resolve the issue of costs; failing which written submissions are to be delivered to my chambers within 30 days of the release of this decision. If submissions are not received in that time frame, the issue of costs will be considered settled.

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D.J. Gordon J.

**Released:** February 26, 2018