

**CITATION:** Johnstone v. Loblaw, 2025 ONSC 4755  
**COURT FILE NO.:** CV-23-00698470-0000  
**DATE:** 20250818

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
SCOTT JOHNSTONE ) *Jozef Hadlaw-Murray*, for the Plaintiff  
 ) (Responding party)  
Plaintiff/ Responding Party )  
- and - )  
 )  
LOBLAW COMPANIES LIMITED ) *Thomas J. Gorsky*, for the Defendant  
 ) (Moving Party)  
Defendant/Moving Party )  
 ) **HEARD: May 13, 2025**

**L. BROWNSTONE J.**

**Introduction**

[1] The defendant, Loblaw Companies Limited, (“Loblaws”) brings a motion for summary judgment in which it seeks to enforce a settlement and dismiss Mr. Johnstone’s action against it.

[2] Mr. Johnstone was an employee of Loblaws for just over seven years. In 2022, Mr. Johnstone relocated from Winnipeg to Ottawa. Shortly after relocating, and prior to closing an agreement of purchase and sale for his new home in Ottawa, Loblaws terminated his employment without cause. Settlement discussions ensued.

[3] Loblaws says a settlement was reached and moves to enforce it. It seeks summary judgment dismissing Mr. Johnstone’s action, and a declaration that the settlement constitutes a full and final settlement between the parties in relation to the termination of Mr. Johnstone’s employment, including any claims related to his failure to complete the purchase of his home in Ottawa. Mr. Johnstone says the parties were not in agreement on essential terms, so there was no settlement and Loblaws’s motion should be dismissed.

[4] Each party also advances an alternative argument. Loblaws argues that if the court does not find that a settlement was reached, it should grant summary judgment dismissing the claim because i) the proposed settlement constitutes reasonable notice at common law, ii) Loblaws has

paid out all the monies agreed upon in the settlement, and iii) Mr. Johnstone has not led any evidence or valid damages claim to support any other outcome, or additional damages. Mr. Johnstone argues that if the court finds any settlement was reached, the court should find it was a partial settlement only, and should permit Mr. Johnstone to continue litigation against Loblaws in respect of damages he sustained regarding the residence he had planned to, but did not, purchase in Ottawa.

[5] For the reasons that follow, I grant Loblaws's motion. I do not grant Mr. Johnstone's alternative relief. If I am wrong in granting Loblaws's motion, I would not grant Loblaws's alternative request for relief.

### **Summary judgment is an appropriate procedure for this dispute**

[6] Under r. 20.04 of the *Rules of Civil Procedure*, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence, or if the parties agree to have all or part of the claim determined by summary judgment and the court is satisfied that it is appropriate to grant it. Rules 20.04(2.1) and (2.2) provide the court with expanded fact-finding powers to make this determination.

[7] In accordance with *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 57, in order to be appropriate for summary judgment, the evidence before the court must be such that a judge is confident that she can fairly resolve the dispute.

[8] The court must first determine if there is a genuine issue requiring trial based only on the evidence before it, without using the extended fact-finding powers in r. 20.04. There is no genuine issue requiring trial if the evidence allows the court to fairly and justly adjudicate the dispute through this proportionate procedure: *Hryniak*, at para. 66.

[9] If there appears to be a genuine issue requiring a trial, the court must determine if the need for a trial can be avoided by using the powers in rr. 20.04(2.1) and (2.2). These powers may be used if it would not be against the interests of justice to do so: *Hryniak*, at para. 66.

[10] The moving party bears the evidentiary burden of showing there is no genuine issue requiring a trial. Parties are required to put their best foot forward: *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11.

[11] The facts about the settlement negotiations contained in documentation between the parties are clear and uncontentious. The parties agree that the summary judgment procedure is appropriate for determination of the settlement issue. I agree. I am confident that I am able to find the facts on the materials before me, and that I am able to fairly and justly adjudicate this dispute using this proportionate procedure. I find that the summary judgment procedure is appropriate for this case.

### **Was there a settlement?**

*Mr. Wolfenden's affidavit*

[12] Mr. Johnstone swore no affidavit on this motion. His evidence comes solely from the affidavit of Mr. Wolfenden, Mr. Johnstone's employment law counsel. Loblaws objects to the portion of Mr. Wolfenden's affidavit that purports to set out facts relating to Mr. Johnstone's move to Ontario and purchase of a house in Ontario. Loblaws argues the affidavit is improper as it contains information and belief on contentious facts that are clearly not in Mr. Wolfenden's direct knowledge and specifies no source for the information and belief. Loblaws asks that the court place no weight on this affidavit or draw an adverse inference on the basis that the facts were not provided by the person who had personal knowledge of contested facts.

[13] The relevant rules state:

Rule 39.01(4): An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

Rule 20.02(1): An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01 (4), but, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

[14] Mr. Johnstone argues that background facts may be placed in a lawyer's affidavit without being struck out: *Garrick v. Dalzine*, 2015 ONSC 2175 at para. 7. He argues the affidavit is proper because the facts are not contentious and are not being put forward to shield him from cross-examination. Even if some of the facts are contentious, they are permissible if they are not being tendered for the truth of their contents or if their source is revealed elsewhere in the materials. Finally, if parts of the affidavit should be struck, the remainder of the affidavit remains unaffected.

[15] *Garrick v. Dalzine* refers to the decision of Myers J. in *Ferreira v. Cardenas*, 2014 ONSC 7119. There, the court noted that information and belief affidavits from counsel raise a concern that the person with first-hand knowledge is being shielded from cross examination. Further, Myers J. refers to the decision of the Supreme Court of Canada in *R. v. Boucher*, [1995] S.C.R. 16 at para. 41, in which that court described the prohibition on lawyers expressing their personal opinions in court as an "inflexible rule of forensic pleading". Myers J. concludes his review of this issue by stating at para. 24: "In all, given the increase in summary judgment motions in the wake of *Hryniak v. Mauldin*, 2014 SCC 7, counsel should bear in mind rule 20.02 and avoid reliance upon lawyers' affidavits on summary judgment motions. The use of a lawyer's affidavit will likely attract an adverse inference."

[16] Despite opening with the statement "[w]here I do not have direct knowledge, I have indicated the source of my information", Mr. Wolfenden never identifies matters that are based on information and belief, nor does he indicate a source for any such information and belief. When asked on cross examination to identify which parts of the affidavit were based on information and

belief, he answered “I cannot”. When specific paragraphs were put to him, he identified Mr. Johnstone as the source of his information and belief.

[17] There are clearly contentious facts, which are denied by Loblaws, and improper opinion contained in Mr. Wolfenden’s affidavit. For example, Mr. Wolfenden deposes that:

- a. Mr. Johnstone relocated from Toronto to Winnipeg in 2020 “at the behest of Loblaws” and that he was “requested and/or encouraged to relocate back to Ontario” by Mr. Binns, a Loblaws’ group director;
- b. “Johnstone advised Binns that he had no imminent plans of returning to Ontario, and that he was enjoying his life in Manitoba. However, as a result of Binn’s persistence and undue pressure, Johnston ultimately accepted Loblaws’ request to relocate to Ottawa, Ontario”;
- c. “As a result of the unprecedented state of the Ontario housing market, and at the recommendations of their real estate agent, the Johnstones made an over-asking and non-conditional offer to purchase” a house; and
- d. “As a result of Loblaws’ decision to terminate Johnstone immediately, and their refusal to provide him with any working notice that extended beyond the July 14, 2022 closing date, the Johnstones were ultimately denied the mortgage needed to purchase the Property. In addition to failing to close the transaction, the Johnstones lost their downpayment and were sued by the Property’s owners. These losses and/or damages suffered by the Johnstones were a foreseeable consequence of Loblaws’ breach of contract and callousness towards Johnstone.”

[18] This is not the case of a lawyer swearing an affidavit that sets forth uncontentious background facts in a neutral manner to provide the court with relevant context. A simple recitation of background facts that would not be contentious might state that Mr. Johnstone relocated to Ottawa, committed to the purchase of a house, then obtained a mortgage pre-approval, and very shortly thereafter had his employment terminated without cause. However, Mr. Wolfenden’s affidavit goes considerably further in factual assertions, tone, and argument. There can only be three reasons to include these “facts” in the manner they have been put forward. The first is to lead the court to infer the housing issue was so important to Mr. Johnstone he would not have agreed to the settlement if the housing issue were not addressed in a specific way. The second is to support Mr. Johnstone’s argument, set out in more detail below, that Mr. Shaw was wrong when he suggested that the bank should require only Mr. Johnstone’s pay stubs to honour its mortgage commitment. The third is to lead the court to believe Loblaws acted harshly toward Mr. Johnstone.

[19] If this characterisation of the facts or these inferences were important to his case, Mr. Johnstone ought to have sworn the affidavit, deposed to the truth of the facts so characterised, and submitted to cross-examination. He did none of those things.

[20] Mr. Johnstone also argues the affidavit is proper because the facts referred to above are not being tendered for the truth of their contents. I can think of no other basis on which they were sought to be tendered. Most of the facts set out above could be relevant if, and only if, they are admitted for the truth of their contents.

[21] I therefore consider the bare background facts only, namely, that Mr. Johnstone relocated to Ottawa, entered into an agreement to purchase a house, and had his employment terminated very shortly thereafter. I do not admit into evidence and will not consider the remainder of paragraphs 2-13 of Mr. Wolfenden's affidavit.

[22] I agree with the parties that the remainder of the affidavit that sets out the settlement negotiations is appropriate, and the court is able to rely on it, other than those portions which contain argument. For example, I disregard improper statements such as "It is apparent based on the substantive issues that remained outstanding that there was no meeting of the minds, nor a mutual intention and/or understanding to form a legally binding agreement, between Johnstone and Loblaws. Loblaws' claim that a settlement has been reached is unfounded and legally incorrect."

*The settlement negotiations*

[23] When Loblaws terminated Mr. Johnstone's employment on April 11, 2022, it offered him a severance package, the main portions of which included:

- a. 7 months' salary continuance, including continued participation in Loblaws's short term incentive plan, and continued enrolment in Loblaw's group health and dental benefits plan, pension plan and employee/family assistance plan; and
- b. in the event Mr. Johnstone found alternate employment or became self-employed during the seven-month salary continuance period, Mr. Johnstone would only receive 50% of the base salary remaining to be paid.

[24] Mr. Johnstone was provided seven days to accept the severance proposal. He did not accept it. On April 29, 2022, Mr. Wolfenden sent a demand letter containing a counteroffer to Mr. Shaw, Loblaws' inhouse counsel who handled the negotiations on its behalf. Mr. Wolfenden's April 29, 2022, offer contained six headings: Notice, Benefits, Letter of Reference, Minutes of Settlement and Release, the Housing Dilemma, and Legal Fees. The contents included:

- a. 12 months' salary continuance, with continued participation in, "all benefits, bonuses, stock awards, pension/RRSP contributions, lease payments on the vehicle and compensation increases" during the twelve-month notice period;
- b. A letter of reference;
- c. \$10,000.00, as a contribution towards Mr. Johnstone's legal fees; and

- d. Loblaws was to agree to guarantee Mr. Johnstone's mortgage payments until he became re-employed.

[25] Loblaws did not accept the counteroffer but advised it would re-extend its initial offer of seven months' pay and benefits. This offer was contained in a letter of May 5, 2022, from Mr. Shaw. Mr. Shaw used the same six headings, although rephrased the Housing Dilemma as the Housing Issue. Mr. Shaw advised that Loblaws does not provide letters of reference, but would provide a letter confirming employment, "the language of which will be determined at the sole discretion of Loblaws." Mr. Shaw advised Loblaws had never guaranteed an employee's mortgage and would not do so for Mr. Johnstone, but it would provide a letter confirming Mr. Johnstone would receive his regular salary until November 14, 2022, or until he became employed, whichever occurred first. The benefits, including bonuses, pension, and stock awards, would be continued and/or paid out in accordance with the terms in the April 11, 2022, termination letter. Loblaws would also not agree to pay legal fees.

[26] In that same May 5, 2022, correspondence, Mr. Shaw set out Mr. Johnstone's relocation entitlements as follows:

- a. Household goods including storage costs - up to \$25,000.00;
- b. Temporary accommodation - up to \$20,000.00;
- c. Home purchase closing costs - up to \$8,000.00; and
- d. Mortgage subsidy - up to \$5,910.00 over a period of five (5) years.

[27] Mr. Shaw also stated in the same letter:

I assume for the purposes of this letter that Mr. Johnstone was pre-approved for his mortgage. Traditionally, lenders only require proof, via paystubs, that the borrower continues to receive employment income. Mr. Johnstone will continue to receive bi-weekly paystubs during this period that he can use to confirm employment income with his lender.

[28] Mr. Johnstone complains that Mr. Shaw had no expertise on which to base such a representation, and notes that Mr. Shaw agreed in cross-examination that this statement was based on an assumption.

[29] This complaint has no merit. First, Mr. Shaw was corresponding with Mr. Wolfenden, counsel for Mr. Johnstone. There is no argument made, nor could one credibly have been put forth, that Loblaws's counsel was providing advice to Mr. Johnstone or that Mr. Johnstone somehow relied on his advice. I do not accept Mr. Johnstone's argument that Mr. Shaw's statement was an "improper representation". Mr. Shaw was providing his understanding in an effort to move the negotiation forward. Mr. Johnstone and his counsel were free to treat this statement in whatever

way they wished. I find there was nothing wrong with the statement, and that the statement had no effect on the settlement discussions.

[30] The parties engaged in further discussion and on May 19, 2022, Loblaws extended a further offer with four headings, Housing Issue, Letter of Reference, Notice Period, and Legal Fees, comprising:

- a. Eight months of notice expiring the earlier of December 14, 2022, or when Mr. Johnstone attains alternate employment or becomes self-employed;
- b. A contribution of \$500.00 towards Mr. Johnstone's legal fees; and
- c. A detailed employment letter.

[31] Under the heading "Housing Issue", the May 19, 2022, offer states: "Loblaws confirms its commitment to provide your client with a letter as described in our correspondence of May 5. Loblaws will provide the contact information of a member of HR who can take a call from a mortgage broker or lender to confirm the content of the letter."

[32] Mr. Wolfenden responded on May 23, 2022, using the same four headings. Under the heading "Housing Issue", he stated: "This will need to be more specific, but is likely acceptable in principal [*sic*] now." He also asked for a draft letter of reference, eight months of salary continuance, and "a further amount as damages that would be the equivalent of 2 months of compensation within 10 days of the execution of the MOS and release". Mr. Wolfenden also sought \$3,000 in legal fees.

[33] In response, on May 26, 2022, Mr. Shaw replied with two headings, Notice Period and Legal Fees, which were the two remaining issues being negotiated. Its notice offer remained at eight months, and its legal fee contribution was increased to \$1,500. A draft letter of employment was enclosed in response to Mr. Wolfenden's request for a draft reference letter.

[34] On May 28, 2022, Mr. Wolfenden replied: "I can confirm receipt of instructions to accept your most recent proposal, subject to mutual agreement on the supporting documentation that I would suggest you prepare for our review."

[35] Loblaws provided the confirmation of employment and reference letters on May 30, 2022, and the minutes of settlement on May 31, 2022. The minutes of settlement contain 12 paragraphs that reflected the parties' discussions on salary continuance, legal fees, letters confirming employment, and the provision of a release. The minutes contained standard clauses specifying that Loblaws did not admit liability, the settlement terms are confidential, Mr. Johnstone will not disparage Loblaws, and Mr. Johnstone is voluntarily entering into the settlement, the terms of which he understands.

[36] On June 6, 2022, Mr. Wolfenden responded as follows:

I have now had an opportunity to review your recent proposed MOS and Release with Mr. Johnstone and would offer the following suggested changes:

1. There needs to be something in the agreement that a fundamental term is the successful completion of the house purchase for Mr. Johnstone.
2. There is nothing that I can see guaranteeing that all relocation costs will continue to be covered by Loblaw.
3. Loblaw will need to reach out with a request to Sirva for an additional 2 weeks of short-term living needs to cover the gap until the expected closing of the house in July.
4. Finally, Mr. Johnstone will require a commitment that his excellent performance rating will remain at the same level as in prior years so that the bonus that is owing will not be affected in a negative way.

Otherwise, I think we are in agreement.

[37] On June 13, 2022, Loblaws responded. In respect of relocation costs, Mr. Shaw referred to his letter of May 5, 2022, which specified which costs are covered, and agreed to incorporate those terms into the minutes of settlement. Mr. Shaw advised that the remaining items, 1,3, and 4, were new items that were never raised in settlement discussions, nor were they items that were related to supporting documentation. Mr. Shaw expressed his view that the settlement agreement was evidenced by Mr. Wolfenden's May 28, 2022, email, accepting Loblaws' most recent proposal, subject only to supporting documentation. Items 1, 3, and 4 were not included in the agreement reached and did not belong in the documentation.

[38] Mr. Johnstone did not sign the minutes of settlement. Loblaws made the payments contemplated in the minutes of settlement, other than the legal fees payment as no invoice was submitted to it, as was required by the agreement.

[39] On April 25, 2023, Mr. Johnstone issued his statement of claim seeking, among other things, damages for breach of contract and wrongful dismissal, contribution and indemnity for any amounts Mr. Johnstone is found to owe in the litigation against him arising out of the failed house purchase, and punitive damages.

*Was there a binding settlement between the parties?*

[40] To constitute a binding settlement, the parties must have intended to create a legally binding relationship and must have agreed on all essential terms: *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, [1995] O.J. No.1535 A.C.W.S. (3d) 1183 at para. 17; aff;d [1995] O.J. No. 3773, 59 A.C.W.S. (3d) 401 (C.A.).

[41] The parties must have had a meeting of the minds, which is clear to an objective reasonable bystander. Where an agreement is not reduced to a single document, but is as a result of a series of negotiations, the court should consider in combination what the parties have said, done, or written. The agreement on essential terms must be clear, able to be determined with reasonable certainty, and not too vague to be enforced: *Kode Contracting Ltd. v. B.K. Industrial Power Inc.*, 2020 ONSC 7354 at para. 23.

[42] The agreement cannot be an “agreement to later agree” on an essential provision: *Cole v. Cole*, 2011 ONSC 4794 at para. 36.

[43] However, the documentation does not have to be completed in order to have a binding settlement. Both Chapnik J. in *Cellular Rental Systems Inc* and Hoy J. (as she then was) in *Ferron v. Avotus Corp.* 2005 CarswellOnt 3786, aff'd 2007 ONCA 73, 154 A.C.W.S. (3d) 1063, 37 C.P.C. (6th) 284, rely on McEachern C.J.B.C.’s conclusion in *Fieguth v. Acklands Ltd.* (1989), 59 D.L.R. (4th) 114 (B.C. C.A.), at page 121 regarding settlement documentation. He stated:

The first question is whether the parties have reached an agreement on all essential terms.

.....

The next stage is the completion of the agreement. If there are no specific terms in this connection either party is entitled to submit whatever releases or other documentation he thinks appropriate. Ordinary business and professional practice cannot be equated to a game of checkers where a player is conclusively presumed to have made his move the moment he removes his hand from the piece. One can tender whatever documents he thinks appropriate without rescinding the settlement agreement. If such documents are accepted and executed and returned the then contract, which has been executory, becomes executed. If the documents are not accepted then there must be further discussion but neither is released or discharged unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances

[44] That is, failure to accept settlement documentation does not release a party from the settlement; the party is required to engage in further discussion about the documentation.

[45] Mr. Johnstone argues the parties had merely agreed to the framework of an agreement. I do not agree. Having reviewed all the correspondence between the parties, I find that the parties agreed upon all the essential terms of the contract.

[46] The parties agreed on an eight month notice period, \$1500 of legal fees, and agreed that the remaining terms of the original termination offer applied in respect of benefits. They agreed that a standard form release would be provided. All these essential terms were captured in the draft minutes of settlement Mr. Shaw sent to Mr. Wolfenden.

[47] As set out in paragraph 36 above, Mr. Wolfenden's response to the minutes claimed four items were outstanding.

[48] The second item related to the inclusion of relocation expenses in the minutes of settlement. In this respect, the negotiations were clear that Loblaws would provide the relocation expenses to which Mr. Johnstone was entitled, which were reiterated in Mr. Shaw's May 5 correspondence. Loblaws was willing to incorporate these into the minutes at Mr. Johnstone's request. This is precisely the kind of discussion and negotiation to which McEachern C.J.B.C. was referring. It was a term that had been discussed and agreed to by the parties, that Mr. Shaw had not seen the necessity of including but Mr. Wolfenden wished included. Mr. Shaw explained its omission from the minutes of settlement as resulting from his view that Loblaws was required to pay those entitlements with or without a settlement. He was, however, willing to revise the minutes to include that term at Mr. Johnstone's request.

[49] The first item in Mr. Wolfenden's response to the minutes of settlement related to Mr. Johnstone's mortgage payments and house purchase. The correspondence between the parties clearly establishes that Loblaws was in no way guaranteeing or making its settlement conditional on Mr. Johnstone's mortgage or house closing. The parties never agreed that the settlement with Loblaws was in any way tied to, much less conditional upon, Mr. Johnstone's house purchase. In fact, they came to a different agreement. The most Loblaws was prepared to do on the housing issue was provide a letter, the draft of which it had provided, confirming that Mr. Johnstone remained actively employed with Loblaws and outlining his annual salary. Mr. Johnstone knew this when Mr. Wolfenden sent his May 28 email advising he had instructions to accept Loblaws's most recent proposal.

[50] The third item raised by Mr. Wolfenden was a request for additional short-term living expenses. This was never discussed between the parties. Rather, the relocation entitlements were set out by Mr. Shaw in his May 5, 2022, correspondence, and accepted by Mr. Wolfenden.

[51] The fourth item, related to Mr. Johnstone's performance rating, was not raised during the negotiations. Mr. Johnstone had been provided a reference letter. He knew what Loblaws would say about his performance. The parties did not agree to a specific performance rating and such a term formed no part of their settlement.

[52] I agree with Loblaws that these three "changes" are not changes to the supporting documentation. Rather, they are attempts to change the essential terms of the agreement. Nor is this a case where Mr. Johnstone may have misunderstood the terms to which he had agreed. Housing costs and relocation were front and centre in the negotiations. Loblaws was clear and unwavering in its position on both issues. Mr. Johnstone's re-raising of these issues can only be seen as an attempt to revisit an issue and gain a better deal than the one he had agreed to. Buyer's remorse, a change of heart, or even growing concern about his ability to close his house purchase do not entitle him to renege on a settlement.

[53] Nor do I find the parties had agreed only to a framework for an agreement, as Mr. Johnstone argues. The case of *Wilson v. Bkk Enterprises Inc.*, 2015 ONSC 4394, 256 A.C.W.S. (3d) 306, 76 C.P.C. (7th) 155, on which Mr. Johnstone relies, is significantly different. There, the parties had agreed to a framework for potential resolution that required other events to occur, including approval from a third party. There was no such uncertainty or possible future changes in the agreement between the parties in the case before me.

[54] Counsel must be able to rely on other counsel's emails advising that a settlement proposal is accepted. They must be able to conclude that counsel's advice that he has instructions to accept an offer evidences an intention to create a binding legal agreement.

[55] I find the essential terms of the settlement were agreed to between the parties, who intended to enter into a binding legal agreement.

## The Alternative Arguments

[56] Mr. Johnstone argues in the alternative that, if the court finds a binding agreement was reached by the parties, the court should find that the release does not bar Mr. Johnstone from pursuing his action against Loblaws related to the damages he sustained when he failed to close his house purchase. Rather, he argues, the release was intended to govern only the employment relationship between the parties and pertains to severance only.

[57] Mr. Johnstone relies on *Watson v. The Governing Council of the Salvation Army of Canada*, 2018 ONSC 1066 in support of his argument.

[58] There, the plaintiff's employment had been terminated by the Salvation Army. The parties settled that dispute, and the plaintiff provided a release. The memorandum of settlement stated that "[t]he 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...". The release covered "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."

[59] The plaintiff later sued an employee of the Salvation Army for, among other things, intentional infliction of emotional harm from sexual harassment. The defendant employee sought to rely on the release the plaintiff had provided to the Salvation Army to prohibit the action against him. Gordon, J. determined that the scope of the release was the employment relationship, and stated that "sexual harassment, intimidation and other improper conduct are not connected to employment. They are clearly separate matters."

[60] Mr. Johnstone claims that Loblaws has pleaded that his relocation was unrelated to his employment. Therefore, the release does not cover his claims for damages arising from the failed house purchase. In fact, Loblaws pleaded that it did not force Mr. Johnstone to relocate, but that Mr. Johnstone had expressed a desire to return to Ontario. It then pleaded that Mr. Johnstone was the author of his own misfortune with respect to the terms on which he made the offer to purchase the house.

[61] I do not accept Mr. Johnstone's argument that Loblaws's pleading, or any other evidence, renders the housing damages unrelated to his employment and not covered by the release. Mr. Johnstone sought to achieve a guarantee on the mortgage payments he would owe from the house purchase as part of his negotiations regarding his employment termination. He claimed entitlement to various housing-related benefits as part of Loblaws's relocation policy in his negotiations. Loblaws repeatedly explained its position on these issues. Counsel discussed and negotiated these issues in their correspondence under the heading "housing dilemma" or "housing issue". I find that the matter of Loblaws's potential responsibility for Mr. Johnstone's housing expenses was settled between the parties and is covered by the release.

[62] Similarly, I would reject Loblaw's alternative argument. That is, if I am incorrect that there is a binding settlement, I would not give effect to Loblaw's argument that the claim should be dismissed because reasonable notice has been paid and provided. This relief was not sought in its notice of motion and therefore not responded to by Mr. Johnstone. It would be procedurally unfair for the court to consider that argument.

**Disposition**

[63] Loblaw's motion is granted. The claim against it is dismissed on the basis of the settlement agreed to between the parties. If the parties are unable to agree on costs, they may make submissions of no more than three pages, plus any offers to settle, by emailing my judicial assistant at linda.bunoza@ontario.ca. Loblaw shall provide its submissions by August 27, 2025 and Mr. Johnstone by September 5, 2025. There will be no reply submissions.

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L. Brownstone J.

**Released:** August 18, 2025

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**COURT FILE NO.:** CV-23-00698470-0000  
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2025 ONSC 4755 (CanLII)

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

SCOTT JOHNSTONE

Plaintiff/ Responding Party

– and –

LOBLAW COMPANIES LIMITED

Defendant/Moving Party

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**REASONS FOR JUDGMENT**

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**L. Brownstone, J.**

**Released:** August 18, 2025