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Supreme Court of Canada decision settles dispute over the proper interpretation of the ³unjust dismissal² provisions of the Canada Labour Code

In its decision in *Wilson v. Atomic Energy of Canada Ltd*., the Supreme Court of Canada (SCC) has ruled that federally-regulated employers subject to the *Canada Labour Code* (*Code*) are not permitted to dismiss employees on a without cause basis, with a few exceptions provided for under the *Code* (discussed below). In doing so, the Court has settled the long-standing debate as to the proper interpretation to be given to the ³unjust dismissal² provisions in Part III of the *Code* .

Following his dismissal from employment by Atomic Energy of Canada Limited (AECL), without cause and without reasons, Mr. Wilson filed a complaint under s. 240(1) of the *Code* alleging that he had been unjustly dismissed contrary to the *Code*. The adjudicator appointed to hear his complaint held that the *Code* did not allow for dismissals on a without cause basis, even where the employer offered a severance package in excess of the minimums required under the *Code*. That decision was overturned by the Federal Court on judicial review and the Federal Court of Appeal agreed on appeal. Unhappy with the result in the Federal Court of Appeal, Mr. Wilson appealed to the Supreme Court of Canada.

In a 6-3 decision, a majority of the Supreme Court of Canada (per Abella J.) held that the only reasonable interpretation of the unjust dismissal provisions in Part III of the *Code* is that they only permit employers to dismiss employees on a ³for cause² basis. The only exceptions would be those specifically spelled out in the *Code* i.e., employees who are managers (s. 167(3)); employees who have been laid off because of a lack of work or the discontinuance of a function (s. 242(3.1)); employees for whom redress is specifically provided under the *Code* or some other piece of legislation (s. 242(3.1); and employees who have been employed by the employer for less than twelve consecutive months (s. 240(1)). For those employees to whom the unjust dismissal provisions of the *Code* apply, the Court held that Parliament¹s intention was to afford non-union employees with the same protections against termination without cause as is enjoyed by unionized employees under collective agreements. In other words, employers subject to the *Code* are required to show ³just cause² for termination, similar to what is required in a unionized environment.

The upshot of this decision is that federally-regulated employers who are subject to the *Canada Labour Code* will no longer be able to terminate employees on a without cause basis by providing them with compensation in lieu of notice, even if their employment contracts would allow it. Following this decision, such termination provisions would be unenforceable as they are inconsistent with the *Code* In order to be in a position to establish just cause for termination for performance-related issues, federally-regulated employers will be required to performance manage employees and to institute progressive discipline prior to proceeding to termination.

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