

EMPLOYMENT ALERT!

FEDERALLY REGULATED EMPLOYERS' RIGHT TO DISMISS EMPLOYEES 'WITHOUT CAUSE' CONFIRMED

By *Ronald M. Snyder*

A Federal Court of Appeal decision has confirmed the right of Federally regulated employers, including private sector companies and crown corporations to dismiss their non-unionized employees on a 'without cause' basis, a right long availed to Provincially regulated employers. The effect of this decision – which has endorsed the applicability of common law termination principles to assess the 'justness' of severance packages - overturns nearly 40 years of arbitral jurisprudence that held that dismissals could only be effected on a 'just cause' basis.

Background

For decades, a convincing majority of Federal adjudicators held that Federal employers who are subject to Part III of the *Canada Labour Code* ("Code") could only terminate their employees for 'just cause'. It was a generally held view that when Parliament introduced the Code's dismissal legislation in 1978, the intent was to provide non-unionized employees with the same protection given to their unionized counterparts.

The Law

In *Wilson v. Atomic Energy of Canada Limited* (A-312-13) (22 January 2015), the Federal Court of Appeal entrenches the right of employers to dismiss employees on a 'without cause' basis. This does not, however, leave these employees with no meaningful right of recourse under the Code. Adjudicators will still have the right to assess if a dismissal was 'unjust', regardless of whether it was 'for' or 'without' cause. In the latter case, the 'justness' of the working notice or severance package provided may be assessed in accordance with the well-established common law employment principles applicable to terminations. The long line of arbitral jurisprudence that ruled against 'without cause' dismissals was rejected as being devoid of 'reasoned explanations' to justify their conclusions. Rather, the text, context and purpose of the Code reveals that such dismissals were indeed contemplated by Parliament.

The Decision's Impact on Employers

- Federal employers may now dismiss employees at will, bypassing the previous requirement to build a 'just cause' case. Common law employment principles concerning terminations can be applied to determine the appropriate working notice or severance pay to be issued;

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- Where an employee views his or her severance package to be 'unjust' and files a complaint under the *Code*, the employer will have to demonstrate the 'justness' of the package;
- Employers cannot dismiss employees contrary to legislation (such as on a prohibited ground pursuant to the *Canadian Human Rights Act*) under the guise of having terminated the employees on a 'without cause' basis. Where such a breach is found to have occurred, adjudicators may exercise their broad remedial powers, including making orders for reinstatement and/or awards for aggravated and/or punitive damages.

*The Appellant has until 23 March 2015 to file for leave to appeal to the Supreme Court of Canada
