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Employment Alert!

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

By Ronald M. Snyder

The Supreme Court of Canada has held that Federally regulated employers, including private sector companies and crown corporations, may only dismiss their non-unionized employees on a 'just cause' basis - matching the dismissal rights secured by unionized employees.

Fogler Rubinoff Partner Ronald Snyder was counsel to Atomic Energy of Canada Ltd. in the proceedings. The case garnered attention from corporate decision-makers across Canada for its potential impact on federally-regulated enterprises.

Background

For decades, a 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 their 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. In the Decision of *Atomic Energy of Canada Limited v. Wilson*, the Federal Court (2013 FC 733) disagreed, holding that there was no restriction under the Code from employees being dismissed 'without cause', a decision that was unanimously upheld at the Federal Court of Appeal (2015 FCA 17).

The Law

In *Wilson v. Atomic Energy of Canada Limited* (2016 SCC 29) (19 July 2016), the Supreme Court of Canada, in a 6 to 3 split decision, held that employees may only be dismissed for 'just cause'. The Court rejected the proposition that the Code also permitted employees to be terminated 'without cause' with an appropriate severance package.

In a strongly worded dissent, the minority judges viewed the Majority's decision as being founded on, among other things, illogic, 'circular reasoning', 'frail' evidence, a misrepresentation of statistics that was in any event irrelevant to the issue to be determined and an improper cherry-picking of facts to support its conclusion.

The Decision's Impact on Employers

- Federal employers are restricted to dismissing employees solely on a 'just cause' basis unless a legitimate layoff due to a lack of work or discontinuance of a function can be demonstrated.
- The absence of an ability to terminate 'without cause' will reduce the flexibility of employers to manage their human resource complement in a manner that promotes efficiency and effectiveness.
- To dismiss on a 'just cause' basis, employers will generally need to 'build a record' against an employee over time to establish that the high threshold of 'just cause' has been met. Failure to meet that high threshold could result in the employee's reinstatement.

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