Court File No.

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

JOSEPH WILSON

Applicant

(Appellant)

- and -

ATOMIC ENERGY OF CANADA LIMITED

Respondent

(Respondent)

APPLICATION FOR LEAVE TO APPEAL OF THE APPLICANT, JOSEPH WILSON

(Pursuant to Section 40(1) of the *Supreme Court Act* and Rule 25 of the *Rules of the Supreme Court of Canada*)

VOLUME I of II

LENOURY LAW
Barristers & Solicitors
199 Bay Street, Ste. 4410
P.O. Box 372
Toronto, Ontario M5L 1G9

James A. LeNoury
Tel: (416) 926-1107
Fax: (416) 926-1108
E: jalenoury@lenourylaw.com

Solicitors for the Applicant

Champ & Associates
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Paul Champ
Tel: (613) 237-4740
Fax: (613) 232-2680
Email:pchamp@champlaw.ca

Agents for the Applicant

ORIGINAL TO:

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

COPY TO:

FOGLER, RUBINOFF LLP
Barristers and Solicitors
46 Elgin Street
Suite 410
Ottawa, Ontario K1P 5K6

Ronald M. Snyder
Phone: (613) 842-7440
Fax: (613) 842-7445
E: rsnyder@foglers.com

Solicitors for the Respondent

S.C.C. File No:

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APPLICANT'S MEMORANDUM OF ARGUMENT
(ON APPLICATION FOR LEAVE TO APPEAL)

PART I - STATEMENT OF FACTS

A. OVERVIEW

1. In 1978 the Minister of Labour introduced amendments to the *Canada Labour Code* for the purpose of extending to approximately 500,000 non-unionized, federally regulated employees the type of job security enjoyed by their unionized counterparts.

Over the next 35 years, these unjust dismissal provisions[1] served that purpose: it was widely accepted by industry, workers and the legal community that, with the exception of lay-offs for legitimate business reasons, workers could only be dismissed for just cause. However, with the decision in this case, the Federal Court of Appeal has now radically altered the meaning of unjust dismissal.

2. Drawing upon the common law for its interpretation, the Court of Appeal concluded that the *Code* allows employers to dismiss workers without just cause. This sudden shift, from a clear meaning of unjust dismissal to a lesser yet undefined standard, raises issues of national importance. Hundreds of thousands of workers across Canada now suffer drastically reduced job protection.

3. At the same time, the Court below stopped short of prescribing a definition of "unjust dismissal", relegating that interpretive development to adjudicators. The failure to specify in what circumstances dismissal without just cause is lawful or unlawful creates uncertainty that invites years of litigation as employers test the boundaries of what is a legally permissible basis for dismissal.

4. A second issue of public importance arises from the Court of Appeal's unjustifiable intrusion into the administrative sphere. The Court acknowledged that the underlying administrative decision in this case would "normally" be subject to a reasonableness standard of review, however long-standing disagreement among adjudicators as to whether the *Code* permits dismissals without just cause warranted review on a higher correctness standard.[2]

5. Opposing schools of thought and inconsistent application of the law affects arbitrators, tribunals and courts alike. Yet, without evidence of a valid imperative, intervention simply amounts to imposition of the Court's will in place of the specialized decision-makers appointed by Parliament. This rationale raises the spectre of future encroachment on any occasion review courts perceive decision-makers deadlocked.

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[1] Currently ss. 240-246, comprising Div. XIV of Part III, *Canada Labour Code* RSC 1985, c.L-2.
[2] Reasons for Judgment of the Federal Court of Appeal, January 22, 2015 ["Appeal Decision"], Applicant's Application for Leave to Appeal ["ALA"], Tab 5 at 40, para. 46.

B. FACTS

6. The facts are uncontested.[3] The Applicant, Joseph Wilson, was terminated from his employment with the Respondent, Atomic Energy Canada Limited ("AECL"), without just cause and without reasons on November 19, 2009. He was eventually provided 24 weeks' severance pay and benefits.

7. Mr. Wilson filed a complaint that he was unjustly dismissed within the meaning of s. 240(1) of the *Code*. Moreover, he asserted that AECL fired him in reprisal for complaints he'd made about corrupt workplace procurement practices.

8. At the outset of the hearing into the complaint, AECL sought a ruling as to whether the dismissal without allegation of just cause, together with the severance package, amounted to a dismissal that was not "unjust" under the *Code*.[4]

9. In ruling on the preliminary argument, the Adjudicator noted that among adjudicators there were two opposing lines of authority on this issue. However, he declined to make his own analysis, concluding he was bound by the Federal Court decision in *Redlon*.[5] That case held that an employer could not avoid a determination of whether the dismissal without just cause was unjust within the meaning of the *Code* by resorting to severance payments that exceeded the statutory minimum. Accordingly the Adjudicator ruled the *Code* did not allow dismissals without cause.[6]

10. The Adjudicator's decision concluded by stating that if the parties could not reach a settlement they should contact him for a hearing on remedies.[7]

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[3] The parties proceeded upon a written statement of facts for purposes of the Respondent's preliminary argument that the *Code* allows dismissals without cause: Appeal Decision, ALA, Tab 5 at 31, para. 16. See Agreed Statement of Facts, ALA Tab 7 at 91.
[4] The Respondent's preliminary argument before the Adjudicator differed from the one made on appeal. The Respondent originally contended that if the *Code* allowed dismissal without cause, then the absence of cause in this case meant the Adjudicator's jurisdiction was limited to assessing the "unjustness" of dismissal by the sufficiency of severance payment made.
[5] *Redlon Agencies Ltd. v. Norgren*, [2005] FCJ 992, Applicant's Book of Authorities ["ABA"], Tab 11.
[6] Decision and Reasons on Preliminary Issues of Adjudicator Stanley Schiff, July 10, 2012 ["Adjudicator's Decision"], ALA, Tab 2 at 5-6.
[7] Adjudicator's Decision, ALA, Tab 2 at 6.

11. Instead of seeking a resumption of the hearing, AECL filed for judicial review.[8]

12. The Federal Court judge allowed the application. Ruling that the Adjudicator erred in his conclusion that he was bound by *Redlon*, the Federal Court judge undertook his own interpretation of the unjust dismissal provisions.

13. Justice O'Reilly determined that federal employers may lawfully dismiss an employee without just cause, provided they fulfill their obligations under the *Code's* severance pay provisions.[9] Pursuant to that finding, the Federal Court judge remitted the matter back to the adjudicator for only the remedial portion of the hearing.

14. Mr. Wilson appealed to the Federal Court of Appeal. His appeal was dismissed.

15. On standard of review, the Court of Appeal noted that a labour adjudicator's interpretation of his or her home statute was normally reviewable on the basis of reasonableness.[10] However Justice Stratas held that "for some questions in unusual circumstances, rule of law concerns predominate"[11] and pursuant to *Dunsmuir*[12] they attract a standard of correctness. In this case, the absence of a uniform statutory interpretation and "persistent discord" among adjudicators signaled the correctness standard was appropriate.[13]

16. In terms of statutory interpretation, relying largely on the Federal Court judge's reasons and a recent adjudication case[14], Justice Stratas found the *Code* did not displace the common law of employment or prohibit dismissals without cause.[15] The Court declined to provide further guidance on the meaning of "unjust dismissal," stating this would be ascertained through future arbitral awards.[16]

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[8] Appeal Decision, ALA, Tab 5 at 33, para. 21.
[9] Reasons for Judgment and Judgment of the Federal Court, ALA, Tab 3.
[10] Appeal Decision, ALA, Tab 5 at 40, para. 46.
[11] Appeal Decision, ALA, Tab 5 at 43, para. 56.
[12] *Dunsmuir v. New Brunswick*, [2008] S.C.R. 190, 2008 SCC 9, ABA, Tab 6.
[13] Appeal Decision, ALA, Tab 5 at 43, para. 57.
[14] *Klein v. Royal Canadian Mint*, [2012] C.L.A.D. No. 358, ABA, Tab 8.
[15] Appeal Decision, ALA, Tab 5 at 51, para. 83 and 55-56, paras. 95-100.
[16] Appeal Decision, Application Record, Tab 6, para. 83, para. 100.

PART II - QUESTIONS IN ISSUE

17. The proposed appeal raises the following questions of law, which are issues of public importance:

(i) Do the *Canada Labour Code's* unjust dismissal provisions (ss. 240-246) allow dismissals without just cause?

(ii) When administrative decision-makers conflict in their interpretation of their home statute, is that a sufficient basis to shift the presumptive standard of review from reasonableness to correctness?

PART III - ARGUMENT

Issue (i): Court of Appeal Reduced Job Security for Federal Workers

Background to Unjust Dismissal Provisions

18. Approximately one half-million non-unionized, federally regulated employees rely on the protection of the *Code's* unjust dismissal provisions.[17] The clauses have been part of the *Code* since September 1, 1978.[18] At the time of their introduction, the Minister of Labour, John Munro, described these provisions as extending protections normally found in collective agreements to non-unionized employees:

> The intent of this provision is to provide employees not represented by a union, including managers and professionals, with the right to appeal against arbitrary dismissal – protection the government believes to be a fundamental right of workers and already a part of all collective agreements.[19]

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[17] According to the most recent federal survey (2008), about 12,000 businesses and 480,000 workers fall within the jurisdiction of the *Code's* unjust dismissal provisions. See: Human Resources and Skills Development Canada, *A Profile of Federal Labour Jurisdiction Workplace – Results from the 2008 Federal Jurisdiction Workplace Survey*, ALA, Tab 9 at 174.

[18] R.S.C. 1970, c. L-1, as am. Bill C-8 was tabled on October 27, 1977. See H.C. Deb., 30th Parl., 3rd Sess., (1977) v.1, p. 325. It was given Royal Assent on April 20, 1978, see *Act to amend the Canada Labour Code*, S.C. 1977-78 c. 27.

[19] *Minutes of Proceedings and Evidence of the Standing Committee on Labour, Manpower and Immigration* respecting Bill C-8, an Act to amend the *Canada Labour Code* (16 March 1978) at 11:46 (Hon. John Munro), ALA, Tab 9 at 221.

19. In 1979, Labour Canada commissioned and published a book entitled "*Meaning of Dismissal.*"[20] Author, Professor Gordon Simmons wrote that while each case was to be determined on its facts, the meaning of unjust dismissal under the *Code* was to develop in a manner consistent with the meaning of just cause as developed by labour arbitrators under collective agreements.[21]

20. For over 35 years, federally appointed adjudicators developed a body of case law defining and applying the *Code's* unjust dismissal provisions. In keeping with the goal of Parliament, these adjudicators took their guidance and precedent from the closest and richest source: the jurisprudence of just cause dismissal in the organized sector.

21. As Parliament intended, this system of adjudications has worked well. More than a generation of federally regulated employers and their non-unionized employees managed their relationships and operations under broad consensus that pursuant to the *Code*, "termination of employment at the initiative should not occur without good and sufficient cause."[22]

22. This consensus approach has been recently conceded by Respondent's counsel:

> 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.[23]

23. There have been many adjudications invoking the unjust dismissal provisions.[24] Yet despite the longevity of these provisions, prior to the case at bar, only eight

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[20] Gordon C. Simmons, *Meaning of dismissal: the meaning of dismissals under Division V.7 of part III of the Canada Labour Code* (Canada Department of Labour, 1979), ALA, Tab 9 at 233.
[21] *Ibid*., ALA, Tab 9 at 236, page 1.
[22] Gordon C. Simmons, "Unjust Dismissal of the Unorganized Workers in Canada" (1984) 20 Stan. J. Int'l L. 473, ALA, Tab 9 at 270, page 474.
[23] Ronald Snyder, "Federally regulated employers' right to dismiss employees 'without cause' confirmed" *Fogler Rubinoff Employment Alert* (Feb. 3, 2015), ALA, Tab 9 at 299.
[24] WestLaw reveals over 1,800 adjudication decisions in which the phrase "unjust dismissal" was considered. There are also earlier unpublished decisions. However, to the Applicant's knowledge there is no collated database of all the unjust dismissal cases.

adjudication decisions concluded that the *Code* allowed dismissals on a without cause basis. Moreover, only upon the application for judicial review in this case was the Federal Court called upon for the first time to squarely consider whether employers under the *Code* could dismiss employees without just cause.

24. That history attests both to the large consensus among adjudicators interpreting the provisions and the consensus in the broader community over the intent and effect of the protections. Put another way, if Parliament had not intended a regime that protected non-unionized federal workers from dismissal without just cause, confronted by that consistent practice over 35 years, it could have intervened. However, Parliament did not. And significantly, labour peace prevailed.

Implications of Court of Appeal's Decision

25. Rather than paying deference to the functional case law that had developed since the unjust dismissal provisions came into force, the Federal Court of Appeal rendered its own unique interpretation. The implications of that interpretation are immediate and wide-ranging. One well-respected labour arbitrator and *Code* adjudicator observed:

> The decision in *Wilson v. Atomic Energy of Canada* will radically change the legal effect of the *Code* on the dismissal of non-unionized employees in the federal sector.[25]

26. Other commentators in the legal community agree. There is uniform agreement about how the Court of Appeal's decision has altered the generally held view that, subject to expressly stipulated exemptions, just cause was required for a lawful dismissal under the *Code*.[26]

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[25] *Julius Melnitzer* "Employers can dismiss workers without cause, Federal Court of Appeal Rules," *The National Post* (February 2, 2015), ALA, Tab 9 at 302.
[26] See, e.g.: "Federal Court of Appeal Considers "Without Cause" Dismissals under the *Canada Labour Code*" *Matthews Dinsdale: In a Flash* (Feb. 18, 2015), ALA, Tab 9 at 305; Laura Cassiani and Hugh R. Dyer, "Unjust Dismissal Clarified: Without cause terminations not prohibited by the *Canada Labour Code*" *Miller Thomson: Labour and Employment Communiqué* (Feb. 4, 2015), ALA, Tab 9 at 308.

27. It is only a matter of time for the effect to be realized in practice. AECL itself has indicated it was awaiting the outcome of this case in order to make planning decisions.[27]

28. Given that the Court of Appeal's decision has been widely interpreted by legal commentators as granting more latitude to employers for dismissal, job security for federally regulated non-unionized workers has diminished. The immediate effect may be seen given how legal analysis and strategy on dismissal has already changed. For example:

- Fasken Martineau DuMoulin, *Employment & Benefits-Canada*: "The decision will likely alter the way in which federally regulated employers make decisions about the dismissal of employees, particularly where the case for cause is less than certain."[28]

- Miller Thomson, *Labour and Employment Communiqué*: "From a risk management perspective, and in light of the recent clarification in the law, federally regulated employers should consider including "termination without cause" provisions in all offers of employment and employment contracts."[29]

- Borden Ladner Gervais, blog: "This judgment represents a very significant development for federally-regulated employers. It clarifies the protections afforded to non-unionized employees under Part III of the *Code*. Employers can now clearly dismiss non-unionized employees in the absence of "just cause", such as misconduct or incompetence. Adjudicators will now presumably be called to assess the "justness" of the severance offered by the employer. Although the full impact of this judgment will become clearer over time, it is to be presumed that, absent any other "unjustness" allegations, the application of consensually defined terms of a valid and enforceable contract of employment should attract a finding of "justness"."[30]

- Nelligan O'Brien Payne, *The Workplace Matters*: "While the advantage to this ruling is that it provides some clarity, with this Federal Court of Appeal ruling in place employees are now going to have a harder time accessing the unjust dismissal provisions of the *Code*, as they will have to prove the unjustness of

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[27] Affidavit of Patrick Murphy Jan. 15, 2013, ALA, Tab 8 at 114-115, para. 13: "This is a fundamental issue of great import to the Applicant [AECL on judicial review] the determination of which will affect the way in which it conducts its future business."
[28] Bonny Mak Waterfall, "Federal sector employers' right to dismiss employees without cause affirmed" *Fasken Martineau DuMoulin* (Mar. 4, 2015), ALA, Tab 312.
[29] *Miller Thomson*, *supra* note 26, ALA, Tab 9 at 309.
[30] Maryse Tremblay, "Federal Court of Appeal Confirms Federally-Regulated Employers' Right to Dismiss Non-Unionized Employees Without Cause" *Borden Ladner Gervais* (Jan. 28, 2015), ALA, Tab 9 at 318.

> the dismissal. Instead, an employee whose employment is governed by the *Code* can now be dismissed and simply provided with a severance package, unless there is evidence that the dismissal was unjust."[31]

- McMillan, *Employment and Labour Bulletin*: "Federally regulated employers can finally relax, as the Wilson decision has breathed considerable latitude into the running of day-to-day operations of an employer's business."[32]

- Ronald Snyder quoted in *Canadian Lawyer Magazine*: "It is transformational in that employers will now have the necessary flexibility."[33]

29. For at least one commentator, notably a Human Resources forum for employers, the view is that employers are now free to dismiss without cause provided they furnish "appropriate" notice of termination or severance pay.[34] For yet another legal commentator, confusion has been sown for both employers and employees:

> The decision, if anything, creates more questions than answers. All we know is that a termination without cause where sufficient reasonable notice of that termination is provided is not *automatically* unjust. What we do not know is what would make a termination without cause unjust, nor what the appropriate remedy in such a case would be.[35]

30. The uncertainty created by the Court of Appeal acts at the most fundamental level: termination of employment. It is now unclear which dismissals without just cause are lawful and which are not. And if a lawful dismissal without just cause must be accompanied by appropriate severance pay, how will that quantum be determined? And if severance pay falls short of what is appropriate will that trigger the full arsenal of statutory remedies, including reinstatement? Will reinstatement be curtailed in any way as a result of the Court of Appeal's determination that workers are not entitled to the

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[31] Alison McEwen, "Federal Court of Appeal Decision on Canada Labour Code Unjust Dismissal" *Nelligan O'Brien Payne: The Workplace Matters* (Mar. 6, 2015), ALA, Tab 9 at 321.
[32] Paul Boshyk, "Up and Atom" Victory for Federally Regulated Employers as Court Okays Without Cause Dismissal" *McMillan Employment and Labour Bulletin* (Feb. 2015), ALA, Tab 9 at 325.
[33] Jennifer Brown, "Court releases 'game-changing' decision on federally regulated employees", *Canadian Lawyer* (Feb. 2, 2015), ALA, Tab 9 at 327.
[34] Stuart Rudner, "Dismissal without cause not necessarily unjust" *Canadian HR Reporter* (Feb. 9, 2015), ALA, Tab 9 at 333.
[35] Sean Bawden, "Terminations without Cause are not Automatically Unjust" *Kelly Santini: Labour Pains* (Feb. 22, 2015), ALA, Tab 9 at 338.

same job protection as unionized employees?[36] These are some of the many glaring uncertainties created in the wake of this decision.

31. That uncertainty over job security will weigh heavily upon individual employees. In *Reference Re Public Service Employee Relations Act* (Alta.), Dickson, C.J. emphasized the importance of work:

> Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.[37]

32. In *McKinley* this Court stated that legal decisions impacting upon termination of employment ought to be undertaken with great care:

> Given this recognition of the integral nature of work to the lives and identities of individuals in our society, care must be taken in fashioning rules and principles of law which would enable the employment relationship to be terminated without notice. The importance of this is underscored by the power imbalance that this Court has recognized as ingrained in most facets of the employment relationship. In *Wallace*, both the majority and dissenting opinions recognized that such relationships are typically characterized by unequal bargaining power, which places employees in a vulnerable position *vis-à-vis* their employers. It was further acknowledged that such vulnerability remains in place, and becomes especially acute, at the time of dismissal.[38]

33. Given the anticipated upheaval wrought by the Court of Appeal's decision for such a key aspect of so many people's lives,[39] it is therefore submitted as of vital public importance to ensure that the interpretation of the Court below is the right one.

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[36] Appeal Decision, ALA, Tab 5 at 47-48, paras. 70-71.
[37] *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, ABA, Tab 13 at 368.
[38] *McKinley v. BC Tel*, [2001] 2 SCR 161, ABA, Tab 9 at para. 54.
[39] Notably, the Court of Appeal itself called the question "an important legal issue beyond this particular dispute": Appeal Decision, ALA, Tab 5 at 57, para. 102.

Proper Statutory Interpretation Yields Robust Protection for Employees

34. The Applicant submits there is good reason to doubt the correctness of the decisions below. The proper and accepted means of statutory interpretation is to take a textual, contextual and purposive approach to the enactment. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[40]

35. When interpreting federal legislation, the foregoing approach is "buttressed" by section 12 of the *Interpretation Act*:

> Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.[41]

36. Interpreting a provincial counterpart to the *Code*, Ontario's *Employment Standards Act*,[42] this Court has observed that legislation intended to provide minimum benefits and standards that protect the interests of employees can be characterized as benefits-conferring legislation. Such statutes should be interpreted in a broad and generous manner, and ambiguities should be resolved in favour of the employee.[43]

37. In terms of legislative purpose, additional to the evidence cited above (at paragraphs 18-23), the Minister of Labour provided unmistakable clarity about Parliament's purpose in enacting these provisions. In *The Labour Gazette* the Minister wrote of a desire to provide unorganized workers under the *Code* the same type of job protection as those conferred to organized workers under collective agreements:

> The proposed protection against unjust dismissal will be breaking new ground in Canada. It will give the unorganized worker a procedure for appealing against a dismissal he believes to be unjust. Several other

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[40] *Bell ExpressVu Limited Partnership v. Rex,* 2002 SCC 42, ABA, Tab 2 at para. 26.
[41] *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12, ALA, Tab 6 at 89-90.
[42] *Employment Standards Act* (Ontario) R.S.O. 1980, c.137.
[43] See *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, ABA, Tab 12 at para. 36.

> countries, including Britain, West Germany, India and Australia, have enacted such legislation. So far it has been omitted from our federal and provincial labour laws. I think the time has come to extend this elementary right to non-union workers.
>
> It will simply give them a mechanism for appealing alleged unjust dismissal which will be the equivalent of the protection unionized workers now enjoy under their collective agreements. All agreements under Part V of the Labour Code make it mandatory for contracts to contain a means of settling grievances over dismissal. It is only fair that we demonstrate the same concern for the unorganized worker.
>
> I realize that the terms "just" or "unjust" are sometimes difficult to define. However, we have a vast body of arbitral jurisprudence on dismissals in the organized sector. They contain precedents that will enable arbitrators to determine whether a firing is warranted or not. Each case has to be decided according to its circumstances, but the application of the principles of fairness and common sense have established pretty clearly what constitutes just or unjust dismissal."[44]

38. The Minister's reference to the experiences of Britain, West Germany, India and Australia is telling. Each of these countries provided substantive just cause protections which prohibit "without cause" or "non-cause" terminations.[45] [46]

Requirement to Provide Reasons for Dismissal

39. Turning from purpose to a contextual understanding of the provisions, at the core of the provisions, and what was ignored by the Court of Appeal, is the employer's duty to provide reasons for dismissal:

> **241.**(1) Where an employer dismisses a person described in subsection 240(1), the person who was dismissed or any inspector may make a request in writing to the employer to provide a written statement giving the reasons for the dismissal, and any employer who receives such a request shall provide the person who made the request with such a statement within fifteen days after the request is made.

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[44] Hon. John Munro, "A Better Deal for Canada's Unorganized Workers" *The Labour Gazette* 77:8 (August 1977) 347 at 349, ALA, Tab 9 at 347 [emphasis added].

[45] See Organisation for Economic Co-operation and Development, "Detailed Description of Employment Protections in OECD and Selected Non-OECD Countries" (2009), ALA, Tab 9 at 359-363.

[46] See also: Samuel Estereicher, "Unjust Dismissal Laws: Some Cautionary Notes" (1985) 33 Am. J. Comp. L. 310, ALA, Tab 9 at 391-395.

40. The significance of this section is two-fold. First, the substantive right to reasons means any interpretation whereby an employer can circumvent this obligation through dismissal without just cause and payment of severance (as was done in this case), makes this provision superfluous. This offends the presumption against tautology whereby the words in a statute are generally not considered to be redundant.[47]

41. More importantly, this legislated requirement that an employer provide reasons for dismissal does not exist at common law. At common law, an employer can dismiss an employee without any reasons, as long as they furnish reasonable notice or pay in lieu thereof. With this departure from common law, the reasons obligation stands at the heart of Parliament's reform in moving to a just cause standard for dismissal under the *Code*. Reasons allow measurement for the justification behind the dismissal. That is their specific utility. And by enacting this obligation, Parliament has ensured employers must justify their dismissal.

Discontinuance of a Function: s. 242(3.1)

42. It is also significant that pursuant to s. 242(3.1), and similarly ignored by the courts below, that lay-offs for lack of work or discontinuance of a function are expressly excluded from findings of unjust dismissal. This means Parliament turned their minds to circumstances where the employer's reasons disclose legitimate business reasons for the dismissal and in those limited situations, deems them not "unjust." By necessary implication, all other dismissals without just cause are unjust.

43. Therefore Parliament's plain intention and the *Code's* text and context confirm that in order for an employer to avoid a finding of "unjust dismissal" it had to justify its decision by showing the existence of "just cause".

44. Despite the foregoing, the Court of Appeal found Parliament failed to enact any reform under the unjust dismissal provisions that bestowed a benefit to employees

[47] Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Scarborough: Carswell, 2000), ABA, Tab 14 at 275, 277.

beyond the remedial.[48] Justice Stratas concluded that the *Code* did not "oust" the common law of employment.[49] The court determined that the main intent of Parliament was not to protect federal employees against dismissal without just cause, but merely to supplement remedies available at common law.[50]

45. The Court of Appeal's interpretive approach has therefore steered into the realm of unexpressed legislative intention which this Court has warned against:

> […] this Court has held on a number of occasions that unexpressed legislative intention under the guise of purposive interpretation is to be avoided. [51]

46. As a result of its erroneous approach, the Court of Appeal has significantly eroded job security provided by the *Code* and produced a climate of uncertainty about precisely what protections are now afforded against dismissal. As submitted above, the effect of that error extends well beyond the immediate parties, and includes a national dimension. Therefore it is submitted that this previously undecided point of statutory interpretation raises an issue of public importance.

Issue (ii): Lowering the Bar Against Judicial Intrusion

The Court's Decision to Heighten the Standard of Review

47. The labour adjudicator in this case was asked to interpret his home statute. The Court of Appeal described the adjudicator as a "knowledgeable and experienced participant in the regulated sector."[52] Decisions of the adjudicator are protected by a strong privative clause (s. 243). And yet, instead of reviewing the adjudicator's decision on a standard of reasonableness, the Court below proceeded to invoke the standard of correctness.[53]

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[48] Appeal Decision, ALA, Tab 5 at 49, para. 76 and 52, para. 86.
[49] Appeal Decision, ALA, Tab 5 at 49, para. 73.
[50] Appeal Decision, ALA, Tab 5 at 49, para. 76.
[51] *Canada v. Craig*, 2012 SCC 43, ABA, Tab 3 at para. 30.
[52] Appeal Decision, ALA, Tab 5 at 38, para. 39.
[53] Appeal Decision, Application Record, ALA, Tab 5 at 43, para. 57.

48. The Court of Appeal explained that it was resorting to the higher standard in order to settle what it characterized as a long-standing dispute among adjudicators over whether the *Code* allows dismissals without just cause.[54]

49. The Applicant submits that the approach to judicial review taken by the Court below was not only erroneous, but signals a dangerous precedent for unprincipled encroachment against administrative decision-makers.

50. In relation to interpretation of home statutes, this Court has already stated that:

> […] unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of "its own statute or statutes closely connected to its function, with which it will have particular familiarity" should be presumed to be a question of statutory interpretation subject to deference on judicial review.[55]

51. In particular, with reference to labour arbitrators, this Court has more recently expressed this deferential approach as follows:

> It cannot be seriously challenged, particularly since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, that the applicable standard for reviewing the decision of a labour arbitrator is reasonableness."[56]

52. While the issue of whether the *Code* permits dismissals without just cause is a "nuts and bolts" question of statutory interpretation in the labour relations context, to justify its intervention the Court of Appeal characterizes the question as one of central importance such that "rule of law concerns predominate."[57]

53. The suggestion that rule of law concerns predominate is little beyond a bald assertion. There was no evidence of, or attempt to quantify, the level of division

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[54] *Ibid*.
[55] *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, ABA, Tab 1 at para. 34.
[56] *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd*., 2013 SCC 34, [2013] 2 S.C.R. 458, ABA, Tab 4 at para. 7.
[57] *Ibid*.

amongst adjudicators.[58] Beyond that, given the general presumption of deference on a level of reasonableness, it is submitted that before such a presumption can be displaced a review court must at minimum identify the specific harm that has been created and particularize the extent to which it undermines the legal process. This is an essential aspect of deference in the case of a specialized decision-maker because this Court has concluded that interpretation of a home statute signifies an entitlement to reach differing conclusions, provided they fall within a range of reasonable outcomes:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.[59]

54. The Court of Appeal omits this approach. Instead, it starts with the proposition that differing outcomes raise rule of law concerns. Yet there is no analysis of the magnitude of the problem. Presumably if the problem were of sufficient magnitude it would have attracted the attention of Parliament, or the decision-makers themselves would have sought guidance from the courts, well before the case. Without such indications, judicial intervention creates its own rule of law problems whereby neither the elected legislators nor the experts in that particular field are making the decision. Those concerns have previously been noted by this Court:

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[58] The Applicant takes the position that both courts below acted upon an exaggerated schism among labour adjudicators. Instead of the "persistent discord" characterized by Justice Stratas, there has been a broad consensus in the legal community that a convincing majority of adjudicators accept that the unjust dismissal provisions preclude dismissal without just cause. This is corroborated by the comparatively rare number of decisions which accept that the *Code* allows dismissal without just cause. See in particular paragraph 23 above.

[59] *Dunsmuir*, supra note 12, at para. 47.

> In plain terms, because legislatures do not always speak clearly and because the tools of statutory interpretation do not always guarantee a single clear answer, legislative provisions will on occasion be susceptible to multiple *reasonable* interpretations (*Dunsmuir*, at para. 47; see also *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405). Indeed, that is the case here, as I will explain in a moment. The question that arises, then, is who gets to decide among these competing reasonable interpretations?
>
> The answer, as this Court has repeatedly indicated since *Dunsmuir*, is that the resolution of unclear language in an administrative decision maker's home statute is usually best left to the decision maker. That is so because the choice between multiple reasonable interpretations will often involve policy considerations that we presume the legislature desired *the administrative decision maker* — not the courts — to make. Indeed, the exercise of that interpretative discretion is part of an administrative decision maker's "expertise".[60]

55. The Court below seeks to overcome this by downplaying the level of expertise an adjudicator can bring to bear on the question:

> […] the statutory interpretation point before us involves relatively little specialized labour insight beyond the regular means the courts have at hand when interpreting a statutory provision.[61]

56. The foregoing statement runs directly against this Court's approach that a specialized decision-maker brings a depth of understanding to its home statute that courts cannot. Indeed, it is also a mistake to portray matters as simple exercises of statutory interpretation that bear no expertise when the decision-maker holds an inherent appreciation of the broader policy context at play. This was a point made in the *VIA Rail* case where the Canadian Transportation Agency was confronted with making decisions that held human rights implications:

> A tribunal with the power to decide questions of law is a tribunal with the power to decide questions involving the statutory interpretation of its enabling legislation, whether or not the questions also engage human rights issues. Bastarache J.'s dissenting reasons note in *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 S.C.R. 476, 2003 SCC 28, at para. 86, that "the broad policy context of a specialized agency infuses the

[60] *McLean v. British Columbia (Securities Commission)* 2013 SCC 67, ABA, Tab 10 at paras. 32-33.
[61] Appeal Decision, ALA, Tab 5 at 44, para. 58.

> exercise of statutory interpretation such that application of the enabling statute is no longer a matter of 'pure statutory interpretation'. When its enabling legislation is in issue, a specialized agency will be better equipped than a court".[62]

57. The Applicant submits that the approach taken by Justice Stratas in raising the standard of review to correctness is, in the end, merely a pretext that allows the Court of Appeal to impose its own view in place of Parliament's appointed decision-maker. In addition to depriving parties of a decision that is more likely to reflect the nuances of the particular industry experience and expertise which the adjudicator brings to bear, it undercuts the policy considerations that confer advantage to administrative decision-making over courts, such as efficiency, costs and ease of access.

58. This approach is especially troubling since the Court of Appeal's rationale for reduced deference would, if accepted, apply well beyond labour adjudicators under the *Code*. Nor is it limited to administrative decision-makers operating outside institutional auspices. Unremitting conflicts in interpretation extend to both other arbitrators and tribunals. To permit the Court of Appeal's intervention through an exception to the reasonableness review standard in such circumstances invites a never-ending line of intercession.

59. In that regard, it is submitted that there is much to commend the view of Federal Court Justice Mosley in *Hao v. (Canada) Minister of Citizenship and Immigration*.[63] The Court conceded the existence of a truly intractable difference in interpretation among Citizenship Judges on residency requirements under citizenship legislation. There were three differing lines of interpretation. The oldest authority traced back to 1978 while the two newer precedents arose in the 1990s. An attempt to judicially "settle" the law in 2009 had failed. Mosley J. observed that after *Dunsmuir*, several courts have suggested there should be a different approach to deference when administrative decision-makers differ in their interpretations of the applicable legal principles. Ultimately, he states:

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[62] *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, 2007 SCC 15, ABA, Tab 5 at para. 92.
[63] *Hao v. Canada (Citizenship and Immigration)* 2011 FC 46, ABA Tab 7.

> While the inconsistent application of the law is unfortunate, it can not be said that every example of that inconsistency in this context is unreasonable. If the situation is "scandalous" as Justice Muldoon suggested many years ago in *Harry*, it remains for Parliament to correct the problem.[64]

60. Without indication from the adjudicators, tribunals or legislators themselves that they require judicial assistance to resolve a conflict, intervention simply amounts to imposition of the court's will in place of the specialized decision-makers appointed by Parliament.

61. In those limited cases where evidence of a measurable harm makes the situation "scandalous," the courts are not without their power: they can loudly signal to Parliament the need for reform. As Justice Mosley points out, that is where the proper responsibility lies. In all other cases, and this is one of them, intervention runs afoul of the fundamental administrative law principles of deference this Court has taken pains to develop.

62. The Court of Appeal's decision therefore raises an issue of public importance: whether rule of law concerns over consistent interpretation and application of a statute should trump fundamental principles of administrative deference. The Applicant submits that the Court of Appeal's positive answer to that question creates an undesirable and dangerous avenue for review courts to intercede whenever they perceive decision-makers to be deadlocked.

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[64] *Ibid*., at para. 50.

PART IV - SUBMISSIONS AS TO COSTS

63. The Applicant requests costs on this application, and ultimately of the appeal and throughout the courts below.

PART V - ORDER SOUGHT

64. The Applicant seeks an Order granting leave to appeal, with costs in any event of the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, Ontario on March 20th, 2015.

LENOURY LAW
Barristers & Solicitors
199 Bay Street, Ste 4410, P.O. Box 372
Toronto, Ontario M5L 1G9

James A. LeNoury
Tel: 416-926-1107
Fax: 416-926-1108
Solicitors for the Applicant

TO:
FOGLER, RUBINOFF LLP
Barristers and Solicitors
46 Elgin Street
Suite 410
Ottawa, Ontario
K1P 5K6

Ronald M. Snyder
Phone: (613) 842-7440
Fax: (613) 842-7445
Solicitors for the Respondent

PART V - TABLE OF AUTHORITIES

PART VII - STATUTES

CANADA

CONSOLIDATION

CODIFICATION

Canada Labour Code

Code canadien du travail

R.S.C., 1985, c. L-2

L.R.C. (1985), ch. L-2

Current to February 16, 2015

À jour au 16 février 2015

Last amended on February 11, 2015

Dernière modification le 11 février 2015

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

lished by this Division or that provision, as the case may be, have been established by collective agreement or otherwise.

R.S., c. 17(2nd Supp.), s. 16; 1980-81-82-83, c. 89, s. 33.

vus par la présente section ou l'une de ses dispositions ou qui visent les mêmes effets.

S.R., ch. 17(2e suppl.), art. 16; 1980-81-82-83, ch. 89, art. 33.

Application of sections 214 to 226

229. (1) Sections 214 to 226 do not apply in respect of any redundant employees who are represented by a trade union if the trade union and the employer are bound by a collective agreement containing

(*a*) provisions that

(i) specify procedures by which any matters relating to the termination of employment in the industrial establishment at which those employees are employed may be negotiated and finally settled, or

(ii) are intended to minimize the impact of termination of employment on the employees represented by the trade union and to assist those employees in obtaining other employment; and

(*b*) provisions that specify that those sections do not apply in respect of the employees represented by the trade union.

Non-application des art. 214 à 226

229. (1) Les articles 214 à 226 ne s'appliquent pas aux surnuméraires qui sont représentés par un syndicat signataire d'une convention collective qui :

a) d'une part, prévoit :

(i) soit des mécanismes de négociation et de règlement définitif en matière de licenciement dans l'établissement où ces employés travaillent,

(ii) soit des mesures visant à minimiser les conséquences du licenciement pour ces employés et à les aider à trouver un autre travail;

b) d'autre part, soustrait ces employés à leur application.

Idem

(2) Sections 214 to 226 do not apply in respect of any redundant employees who are represented by a trade union if the termination of the employment of those employees is the result of technological change as defined in subsection 51(1) and sections 52, 54 and 55 apply or would, but for subsection 51(2), apply to the trade union and the employer.

1980-81-82-83, c. 89, s. 33.

Idem

(2) Les articles 214 à 226 ne s'appliquent pas aux surnuméraires représentés par un syndicat dans le cas où les licenciements sont provoqués par des changements technologiques — au sens du paragraphe 51(1) — et où le syndicat et l'employeur sont assujettis à l'application des articles 52, 54 et 55, ou le seraient en l'absence du paragraphe 51(2).

1980-81-82-83, ch. 89, art. 33.

Division X

Individual Terminations of Employment

Section X

Licenciements individuels

Notice or wages in lieu of notice

230. (1) Except where subsection (2) applies, an employer who terminates the employment of an employee who has completed three consecutive months of continuous employment by the employer shall, except where the termination is by way of dismissal for just cause, give the employee either

(*a*) notice in writing, at least two weeks before a date specified in the notice, of the employer's intention to terminate his employment on that date, or

Préavis ou indemnité

230. (1) Sauf cas prévu au paragraphe (2) et sauf s'il s'agit d'un congédiement justifié, l'employeur qui licencie un employé qui travaille pour lui sans interruption depuis au moins trois mois est tenu :

a) soit de donner à l'employé un préavis de licenciement écrit d'au moins deux semaines;

b) soit de verser, en guise et lieu de préavis, une indemnité égale à deux semaines de salaire au taux régulier pour le nombre d'heures de travail normal.

(*b*) two weeks wages at his regular rate of wages for his regular hours of work, in lieu of the notice.

Notice to trade union in certain circumstances

(2) Where an employer is bound by a collective agreement that contains a provision authorizing an employee who is bound by the collective agreement and whose position becomes redundant to displace another employee on the basis of seniority, and the position of an employee who is so authorized becomes redundant, the employer shall

(*a*) give at least two weeks notice in writing to the trade union that is a party to the collective agreement and to the employee that the position of the employee has become redundant and post a copy of the notice in a conspicuous place within the industrial establishment in which the employee is employed; or

(*b*) pay to any employee whose employment is terminated as a result of the redundancy of the position two weeks wages at his regular rate of wages.

Where employer deemed to terminate employment

(3) Except where otherwise prescribed by regulation, an employer shall, for the purposes of this Division, be deemed to have terminated the employment of an employee when the employer lays off that employee.

R.S., c. 17(2nd Supp.), s. 16.

Conditions of employment

231. Where notice is given by an employer pursuant to subsection 230(1), the employer

(*a*) shall not thereafter reduce the rate of wages or alter any other term or condition of employment of the employee to whom the notice was given except with the written consent of the employee; and

(*b*) shall, between the time when the notice is given and the date specified therein, pay to the employee his regular rate of wages for his regular hours of work.

R.S., c. 17(2nd Supp.), s. 16.

Expiration of notice

232. Where an employee to whom notice is given by his employer pursuant to subsection 230(1) continues to be employed by the employer for more than two weeks after the date specified in the notice, his employment shall not, except with the written consent of the employee, be terminated except by way of dismissal for just cause unless the employer again

(2) En cas de suppression d'un poste, l'employeur lié par une convention collective autorisant un employé ainsi devenu surnuméraire à supplanter un autre employé ayant moins d'ancienneté que lui est tenu :

Préavis au syndicat

a) soit de donner au syndicat signataire de la convention collective et à l'employé un préavis de suppression de poste, d'au moins deux semaines, et de placer une copie du préavis dans un endroit bien en vue à l'intérieur de l'établissement où l'employé travaille;

b) soit de verser à l'employé licencié en raison de la suppression du poste deux semaines de salaire au taux régulier.

(3) Sauf disposition contraire d'un règlement, la mise à pied est, pour l'application de la présente section, assimilée au licenciement.

Assimilation

S.R., ch. 17(2e suppl.), art. 16.

231. L'employeur qui donne le préavis prévu au paragraphe 230(1) :

Conditions d'emploi

a) ne peut, par la suite, diminuer le taux de salaire ni modifier une autre condition d'emploi de l'employé en cause qu'avec le consentement écrit de celui-ci;

b) continue, dans l'intervalle qui sépare la date du préavis de celle qui y est fixée pour le licenciement, à payer à l'employé son salaire régulier pour le nombre d'heures de travail normal.

S.R., ch. 17(2e suppl.), art. 16.

232. Si l'employé reste à son service plus de deux semaines après la date de licenciement fixée dans le préavis visé au paragraphe 230(1), l'employeur ne peut le licencier qu'en se conformant de nouveau à ce paragraphe, sauf consentement écrit de l'employé à l'effet contraire ou cas de congédiement justifié.

Expiration du délai de préavis

S.R., ch. 17(2e suppl.), art. 16.

complies with subsection 230(1) in respect of the employee.

R.S., c. 17(2nd Supp.), s. 16.

Regulations

233. The Governor in Council may make regulations

(*a*) prescribing circumstances in which a lay-off of an employee shall not be deemed to be a termination of his employment by his employer; and

(*b*) [Repealed, R.S., 1985, c. 9 (1st Supp.), s. 11]

(*c*) defining for the purposes of this Division the absences from employment that shall be deemed not to have interrupted continuity of employment and the expression "regular hours of work".

R.S., 1985, c. L-2, s. 233; R.S., 1985, c. 9 (1st Supp.), s. 11.

Règlements

233. Le gouverneur en conseil peut, par règlement :

a) préciser les cas où la mise à pied n'est pas assimilée au licenciement;

b) [Abrogé, L.R. (1985), ch. 9 (1er suppl.), art. 11]

c) préciser, pour l'application de la présente section, les cas d'absence qui n'ont pas pour effet d'interrompre le service chez un employeur et le sens de « nombre d'heures de travail normal ».

L.R. (1985), ch. L-2, art. 233; L.R. (1985), ch. 9 (1er suppl.), art. 11.

Application of section 189

234. Section 189 applies for the purposes of this Division.

R.S., c. 17(2nd Supp.), s. 16.

Application de l'art. 189

234. L'article 189 s'applique dans le cadre de la présente section.

S.R., ch. 17(2e suppl.), art. 16.

Division XI

Severance Pay

Section XI

Indemnité de départ

Minimum rate

235. (1) An employer who terminates the employment of an employee who has completed twelve consecutive months of continuous employment by the employer shall, except where the termination is by way of dismissal for just cause, pay to the employee the greater of

(*a*) two days wages at the employee's regular rate of wages for his regular hours of work in respect of each completed year of employment that is within the term of the employee's continuous employment by the employer, and

(*b*) five days wages at the employee's regular rate of wages for his regular hours of work.

Minimum

235. (1) L'employeur qui licencie un employé qui travaille pour lui sans interruption depuis au moins douze mois est tenu, sauf en cas de congédiement justifié, de verser à celui-ci le plus élevé des montants suivants :

a) deux jours de salaire, au taux régulier et pour le nombre d'heures de travail normal, pour chaque année de service;

b) cinq jours de salaire, au taux régulier et pour le nombre d'heures de travail normal.

Circumstances deemed to be termination and deemed not to be termination

(2) For the purposes of this Division,

(*a*) except where otherwise provided by regulation, an employer shall be deemed to have terminated the employment of an employee when the employer lays off that employee.

(*b*) [Repealed, 2011, c. 24, s. 167]

R.S., 1985, c. L-2, s. 235; R.S., 1985, c. 32 (2nd Supp.), s. 41; 2011, c. 24, s. 167.

Présomptions

(2) Pour l'application de la présente section :

a) sauf disposition contraire d'un règlement, la mise à pied est assimilée au licenciement.

b) [Abrogé, 2011, ch. 24, art. 167]

L.R. (1985), ch. L-2, art. 235; L.R. (1985), ch. 32 (2e suppl.), art. 41; 2011, ch. 24, art. 167.

(*c*) providing for any other terms and conditions respecting the application of subsection (3).

Application of section 189

(11) Section 189 applies for the purposes of this Division.

1993, c. 42, s. 33; 2001, c. 34, s. 23(F).

c) prévoir toutes autres modalités concernant le rappel de l'employé au travail.

Application de l'article 189

(11) L'article 189 s'applique dans le cadre de la présente section.

1993, ch. 42, art. 33; 2001, ch. 34, art. 23(F).

Division XIII.2

Long-term Disability Plans

Section XIII.2

Régimes d'invalidité de longue durée

Employer's obligation

239.2 (1) Every employer that provides benefits to its employees under a long-term disability plan must insure the plan with an entity that is licensed to provide insurance under the laws of a province.

Obligation de l'employeur

239.2 (1) L'employeur qui offre à ses employés des avantages au titre d'un régime d'invalidité de longue durée est tenu d'assurer celui-ci par l'entremise d'une entité qui est, en vertu du droit provincial, titulaire d'un permis ou d'une licence d'assurance.

Exception

(2) However, an employer may provide those benefits under a long-term disability plan that is not insured, in the circumstances and subject to the conditions provided for in the regulations.

2012, c. 19, s. 434.

Exception

(2) Il peut toutefois, dans les circonstances et aux conditions prévues par règlement, offrir ces avantages au titre d'un régime d'invalidité de longue durée qui n'est pas assuré.

2012, ch. 19, art. 434.

Regulations

239.3 The Governor in Council may make regulations respecting long-term disability plans, including regulations

(*a*) specifying what constitutes a long-term disability plan; and

(*b*) specifying the circumstances and conditions referred to in subsection 239.2(2).

2012, c. 19, s. 434.

Règlements

239.3 Le gouverneur en conseil peut prendre des règlements concernant les régimes d'invalidité de longue durée, notamment pour :

a) préciser ce qui constitue un régime d'invalidité de longue durée;

b) préciser les circonstances et les conditions visées au paragraphe 239.2(2).

2012, ch. 19, art. 434.

Division XIV

Unjust Dismissal

Section XIV

Congédiement injuste

Complaint to inspector for unjust dismissal

240. (1) Subject to subsections (2) and 242(3.1), any person

(*a*) who has completed twelve consecutive months of continuous employment by an employer, and

(*b*) who is not a member of a group of employees subject to a collective agreement,

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

Plainte

240. (1) Sous réserve des paragraphes (2) et 242(3.1), toute personne qui se croit injustement congédiée peut déposer une plainte écrite auprès d'un inspecteur si :

a) d'une part, elle travaille sans interruption depuis au moins douze mois pour le même employeur;

b) d'autre part, elle ne fait pas partie d'un groupe d'employés régis par une convention collective.

Time for making complaint

(2) Subject to subsection (3), a complaint under subsection (1) shall be made within ninety days from the date on which the person making the complaint was dismissed.

Délai

(2) Sous réserve du paragraphe (3), la plainte doit être déposée dans les quatre-vingt-dix jours qui suivent la date du congédiement.

Extension of time

(3) The Minister may extend the period of time referred to in subsection (2) where the Minister is satisfied that a complaint was made in that period to a government official who had no authority to deal with the complaint but that the person making the complaint believed the official had that authority.

R.S., 1985, c. L-2, s. 240; R.S., 1985, c. 9 (1st Supp.), s. 15.

Prorogation du délai

(3) Le ministre peut proroger le délai fixé au paragraphe (2) dans les cas où il est convaincu que l'intéressé a déposé sa plainte à temps mais auprès d'un fonctionnaire qu'il croyait, à tort, habilité à la recevoir.

L.R. (1985), ch. L-2, art. 240; L.R. (1985), ch. 9 (1er suppl.), art. 15.

Reasons for dismissal

241. (1) Where an employer dismisses a person described in subsection 240(1), the person who was dismissed or any inspector may make a request in writing to the employer to provide a written statement giving the reasons for the dismissal, and any employer who receives such a request shall provide the person who made the request with such a statement within fifteen days after the request is made.

Motifs du congédiement

241. (1) La personne congédiée visée au paragraphe 240(1) ou tout inspecteur peut demander par écrit à l'employeur de lui faire connaître les motifs du congédiement; le cas échéant, l'employeur est tenu de lui fournir une déclaration écrite à cet effet dans les quinze jours qui suivent la demande.

Inspector to assist parties

(2) On receipt of a complaint made under subsection 240(1), an inspector shall endeavour to assist the parties to the complaint to settle the complaint or cause another inspector to do so.

Conciliation par l'inspecteur

(2) Dès réception de la plainte, l'inspecteur s'efforce de concilier les parties ou confie cette tâche à un autre inspecteur.

Where complaint not settled within reasonable time

(3) Where a complaint is not settled under subsection (2) within such period as the inspector endeavouring to assist the parties pursuant to that subsection considers to be reasonable in the circumstances, the inspector shall, on the written request of the person who made the complaint that the complaint be referred to an adjudicator under subsection 242(1),

(*a*) report to the Minister that the endeavour to assist the parties to settle the complaint has not succeeded; and

(*b*) deliver to the Minister the complaint made under subsection 240(1), any written statement giving the reasons for the dismissal provided pursuant to subsection (1) and any other statements or documents the inspector has that relate to the complaint.

1977-78, c. 27, s. 21.

Cas d'échec

(3) Si la conciliation n'aboutit pas dans un délai qu'il estime raisonnable en l'occurrence, l'inspecteur, sur demande écrite du plaignant à l'effet de saisir un arbitre du cas :

a) fait rapport au ministre de l'échec de son intervention;

b) transmet au ministre la plainte, l'éventuelle déclaration de l'employeur sur les motifs du congédiement et tous autres déclarations ou documents relatifs à la plainte.

1977-78, ch. 27, art. 21.

Reference to adjudicator

242. (1) The Minister may, on receipt of a report pursuant to subsection 241(3), appoint any person that the Minister considers appropriate as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator along with any statement provided pursuant to subsection 241(1).

Renvoi à un arbitre

242. (1) Sur réception du rapport visé au paragraphe 241(3), le ministre peut désigner en qualité d'arbitre la personne qu'il juge qualifiée pour entendre et trancher l'affaire et lui transmettre la plainte ainsi que l'éventuelle déclaration de l'employeur sur les motifs du congédiement.

Powers of adjudicator

(2) An adjudicator to whom a complaint has been referred under subsection (1)

Pouvoirs de l'arbitre

(2) Pour l'examen du cas dont il est saisi, l'arbitre :

(*a*) shall consider the complaint within such time as the Governor in Council may by regulation prescribe;

(*b*) shall determine the procedure to be followed, but shall give full opportunity to the parties to the complaint to present evidence and make submissions to the adjudicator and shall consider the information relating to the complaint; and

(*c*) has, in relation to any complaint before the adjudicator, the powers conferred on the Canada Industrial Relations Board, in relation to any proceeding before the Board, under paragraphs 16(*a*), (*b*) and (*c*).

a) dispose du délai fixé par règlement du gouverneur en conseil;

b) fixe lui-même sa procédure, sous réserve de la double obligation de donner à chaque partie toute possibilité de lui présenter des éléments de preuve et des observations, d'une part, et de tenir compte de l'information contenue dans le dossier, d'autre part;

c) est investi des pouvoirs conférés au Conseil canadien des relations industrielles par les alinéas 16*a*), *b*) et *c*).

Decision of adjudicator

(3) Subject to subsection (3.1), an adjudicator to whom a complaint has been referred under subsection (1) shall

(*a*) consider whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and

(*b*) send a copy of the decision with the reasons therefor to each party to the complaint and to the Minister.

Décision de l'arbitre

(3) Sous réserve du paragraphe (3.1), l'arbitre :

a) décide si le congédiement était injuste;

b) transmet une copie de sa décision, motifs à l'appui, à chaque partie ainsi qu'au ministre.

Limitation on complaints

(3.1) No complaint shall be considered by an adjudicator under subsection (3) in respect of a person where

(*a*) that person has been laid off because of lack of work or because of the discontinuance of a function; or

(*b*) a procedure for redress has been provided elsewhere in or under this or any other Act of Parliament.

Restriction

(3.1) L'arbitre ne peut procéder à l'instruction de la plainte dans l'un ou l'autre des cas suivants :

a) le plaignant a été licencié en raison du manque de travail ou de la suppression d'un poste;

b) la présente loi ou une autre loi fédérale prévoit un autre recours.

Where unjust dismissal

(4) Where an adjudicator decides pursuant to subsection (3) that a person has been unjustly dismissed, the adjudicator may, by order, require the employer who dismissed the person to

(*a*) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;

(*b*) reinstate the person in his employ; and

(*c*) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.

R.S., 1985, c. L-2, s. 242; R.S., 1985, c. 9 (1st Supp.), s. 16; 1998, c. 26, s. 58.

Cas de congédiement injuste

(4) S'il décide que le congédiement était injuste, l'arbitre peut, par ordonnance, enjoindre à l'employeur :

a) de payer au plaignant une indemnité équivalant, au maximum, au salaire qu'il aurait normalement gagné s'il n'avait pas été congédié;

b) de réintégrer le plaignant dans son emploi;

c) de prendre toute autre mesure qu'il juge équitable de lui imposer et de nature à contrebalancer les effets du congédiement ou à y remédier.

L.R. (1985), ch. L-2, art. 242; L.R. (1985), ch. 9 (1er suppl.), art. 16; 1998, ch. 26, art. 58.

Decisions not to be reviewed by court

243. (1) Every order of an adjudicator appointed under subsection 242(1) is final and shall not be questioned or reviewed in any court.

Caractère définitif des décisions

243. (1) Les ordonnances de l'arbitre désigné en vertu du paragraphe 242(1) sont définitives et non susceptibles de recours judiciaires.

No review by *certiorari*, etc.

(2) No order shall be made, process entered or proceeding taken in any court, whether by way of injunction, *certiorari*, prohibition, *quo warranto* or otherwise, to question, review, prohibit or restrain an adjudicator in any proceedings of the adjudicator under section 242.

Interdiction de recours extraordinaires

(2) Il n'est admis aucun recours ou décision judiciaire — notamment par voie d'injonction, de *certiorari*, de prohibition ou de *quo warranto* — visant à contester, réviser, empêcher ou limiter l'action d'un arbitre exercée dans le cadre de l'article 242.

1977-78, c. 27, s. 21.

1977-78, ch. 27, art. 21.

Enforcement of orders

244. (1) Any person affected by an order of an adjudicator under subsection 242(4), or the Minister on the request of any such person, may, after fourteen days from the date on which the order is made, or from the date provided in it for compliance, whichever is the later date, file in the Federal Court a copy of the order, exclusive of the reasons therefor.

Exécution des ordonnances

244. (1) La personne intéressée par l'ordonnance d'un arbitre visée au paragraphe 242(4), ou le ministre, sur demande de celle-ci, peut, après l'expiration d'un délai de quatorze jours suivant la date de l'ordonnance ou la date d'exécution qui y est fixée, si celle-ci est postérieure, déposer à la Cour fédérale une copie du dispositif de l'ordonnance.

Idem

(2) On filing in the Federal Court under subsection (1), an order of an adjudicator shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order were a judgment obtained in that Court.

Enregistrement

(2) Dès le dépôt de l'ordonnance de l'arbitre, la Cour fédérale procède à l'enregistrement de celle-ci; l'enregistrement confère à l'ordonnance valeur de jugement de ce tribunal et, dès lors, toutes les procédures d'exécution applicables à un tel jugement peuvent être engagées à son égard.

R.S., 1985, c. L-2, s. 244; 1993, c. 42, s. 34(F).

L.R. (1985), ch. L-2, art. 244; 1993, ch. 42, art. 34(F).

Regulations

245. The Governor in Council may make regulations for the purposes of this Division defining the absences from employment that shall be deemed not to have interrupted continuity of employment.

Règlements

245. Le gouverneur en conseil peut, par règlement, préciser, pour l'application de la présente section, les cas d'absence qui n'ont pas pour effet d'interrompre le service chez l'employeur.

1980-81-82-83, c. 47, s. 27.

1980-81-82-83, ch. 47, art. 27.

Civil remedy

246. (1) No civil remedy of an employee against his employer is suspended or affected by sections 240 to 245.

Recours

246. (1) Les articles 240 à 245 n'ont pas pour effet de suspendre ou de modifier le recours civil que l'employé peut exercer contre son employeur.

Application of section 189

(2) Section 189 applies for the purposes of this Division.

Application de l'art. 189

(2) L'article 189 s'applique dans le cadre de la présente section.

1977-78, c. 27, s. 21.

1977-78, ch. 27, art. 21.

Division XV

Payment of Wages

Section XV

Paiement du salaire

Payment of wages

247. Except as otherwise provided by or under this Part, an employer shall

(*a*) pay to any employee any wages to which the employee is entitled on the regular payday of the employee as established by the practice of the employer; and

Jour de paye

247. Sauf disposition contraire de la présente partie, l'employeur est tenu :

a) de verser à l'employé le salaire qui lui est dû, aux jours de paye réguliers correspondant à l'usage établi par lui-même;

CANADA

CONSOLIDATION

CODIFICATION

Interpretation Act

Loi d’interprétation

R.S.C., 1985, c. I-21

L.R.C. (1985), ch. I-21

Current to February 16, 2015

À jour au 16 février 2015

Last amended on April 1, 2014

Dernière modification le 1 avril 2014

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l’adresse suivante :
http://lois-laws.justice.gc.ca

in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

2001, c. 4, s. 8.

au Canada et, s'il est nécessaire de recourir à des règles, principes ou notions appartenant au domaine de la propriété et des droits civils en vue d'assurer l'application d'un texte dans une province, il faut, sauf règle de droit s'y opposant, avoir recours aux règles, principes et notions en vigueur dans cette province au moment de l'application du texte.

2001, ch. 4, art. 8.

Terminology

8.2 Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.

2001, c. 4, s. 8.

Terminologie

8.2 Sauf règle de droit s'y opposant, est entendu dans un sens compatible avec le système juridique de la province d'application le texte qui emploie à la fois des termes propres au droit civil de la province de Québec et des termes propres à la common law des autres provinces, ou qui emploie des termes qui ont un sens différent dans l'un et l'autre de ces systèmes.

2001, ch. 4, art. 8.

Private Acts

Provisions in private Acts

9. No provision in a private Act affects the rights of any person, except as therein mentioned or referred to.

R.S., c. I-23, s. 9.

Lois d'intérêt privé

Effets

9. Les lois d'intérêt privé n'ont d'effet sur les droits subjectifs que dans la mesure qui y est prévue.

S.R., ch. I-23, art. 9.

Law Always Speaking

Law always speaking

10. The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.

R.S., c. I-23, s. 10.

Permanence de la règle de droit

Principe général

10. La règle de droit a vocation permanente; exprimée dans un texte au présent intemporel, elle s'applique à la situation du moment de façon que le texte produise ses effets selon son esprit, son sens et son objet.

S.R., ch. I-23, art. 10.

Imperative and Permissive Construction

"Shall" and "may"

11. The expression "shall" is to be construed as imperative and the expression "may" as permissive.

R.S., c. I-23, s. 28.

Obligation et pouvoirs

Expression des notions

11. L'obligation s'exprime essentiellement par l'indicatif présent du verbe porteur de sens principal et, à l'occasion, par des verbes ou expressions comportant cette notion. L'octroi de pouvoirs, de droits, d'autorisations ou de facultés s'exprime essentiellement par le verbe « pouvoir » et, à l'occasion, par des expressions comportant ces notions.

S.R., ch. I-23, art. 28.

Enactments Remedial

Enactments deemed remedial

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal

Solution de droit

Principe et interprétation

12. Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus

construction and interpretation as best ensures the attainment of its objects.

R.S., c. I-23, s. 11.

équitable et la plus large qui soit compatible avec la réalisation de son objet.

S.R., ch. I-23, art. 11.

Preambles and Marginal Notes

Preamble

13. The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

R.S., c. I-23, s. 12.

Marginal notes and historical references

14. Marginal notes and references to former enactments that appear after the end of a section or other division in an enactment form no part of the enactment, but are inserted for convenience of reference only.

R.S., c. I-23, s. 13.

Application of Interpretation Provisions

Application of definitions and interpretation rules

15. (1) Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.

Interpretation sections subject to exceptions

(2) Where an enactment contains an interpretation section or provision, it shall be read and construed

(*a*) as being applicable only if a contrary intention does not appear; and

(*b*) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.

R.S., c. I-23, s. 14.

Words in regulations

16. Where an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power.

R.S., c. I-23, s. 15.

Her Majesty

Her Majesty not bound or affected unless stated

17. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.

R.S., c. I-23, s. 16.

Proclamations

Proclamation

18. (1) Where an enactment authorizes the issue of a proclamation, the proclamation shall be understood to be a proclamation of the Governor in Council.

Préambules et notes marginales

Préambule

13. Le préambule fait partie du texte et en constitue l'exposé des motifs.

S.R., ch. I-23, art. 12.

Notes marginales

14. Les notes marginales ainsi que les mentions de textes antérieurs apparaissant à la fin des articles ou autres éléments du texte ne font pas partie de celui-ci, n'y figurant qu'à titre de repère ou d'information.

S.R., ch. I-23, art. 13.

Dispositions interprétatives

Application

15. (1) Les définitions ou les règles d'interprétation d'un texte s'appliquent tant aux dispositions où elles figurent qu'au reste du texte.

Restriction

(2) Les dispositions définitoires ou interprétatives d'un texte :

a) n'ont d'application qu'à défaut d'indication contraire;

b) s'appliquent, sauf indication contraire, aux autres textes portant sur un domaine identique.

S.R., ch. I-23, art. 14.

Terminologie des règlements

16. Les termes figurant dans les règlements d'application d'un texte ont le même sens que dans celui-ci.

S.R., ch. I-23, art. 15.

Sa Majesté

Non-obligation, sauf indication contraire

17. Sauf indication contraire y figurant, nul texte ne lie Sa Majesté ni n'a d'effet sur ses droits et prérogatives.

S.R., ch. I-23, art. 16.

Proclamations

Auteur

18. (1) Les proclamations dont la prise est autorisée par un texte émanent du gouverneur en conseil.