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Unjust Dismissal Under the Canada Labour Code: New Law, Old Statute

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> Mr. Sigloy to DHL: "The termination of my employment was an 'unjust dismissal' because you cannot show 'just cause.'"
>
> DHL to Mr. Sigloy: "The termination was 'not an unjust dismissal' because we are not asserting 'just cause.'"

As a result of the illogical outcome described above, it is not surprising that Mr. Sigloy filed a Notice of Application for judicial review of Adjudicator Rose's decision with the Federal Court on April 14, 2014.

CONCLUSION

The *Wilson* decision was supposed to provide clarity to the issue of whether an employer may terminate an employee on a without-cause basis, as long as the employer is prepared to give notice per s. 230, severance per s. 235, or common law reasonable notice. *Wilson* has created no clarity—it has only created confusion.

The *Wilson* decision defies the majority of the jurisprudence regarding "unjust dismissal" under the *Code*. The Federal Court's decision ignores the object and spirit of the legislation. Out of the three reported adjudications rendered post-*Wilson*, two have held that a termination on a without-cause basis coupled with payment of notice and severance under the *Code* cannot be used as a shield to the unjust dismissal provisions of the *Code*. Supporters of the without-cause school may argue that the recent decision of *Sigloy* can be factually distinguished on the basis that it involved specific contractual terms agreed to in advance by the employer and employee in the event of a termination without cause. Whether this distinction fosters further clarity in the law remains questionable. Post-*Wilson*, one can reasonably expect terminated employees and their lawyers to raise allegations of discrimination, reprisal, or bad faith when raising a complaint of unjust dismissal, regardless of whether there are factual bases to support such allegations. Gratuitous allegations of discrimination, reprisal, or bad faith will only add to the length, complexity, and costs of future adjudications, and this further undermines the integrity of the unjust dismissal provisions.

This paper remains steadfast in its view that the *Wilson* decision is erroneous and not helpful. The decision ignores the legislative intent underpinning ss. 240 to 246 of the *Code*, which was clearly expressed by the Minister of Labour when these sections were introduced. *Wilson* unduly and unnecessarily restricts the broad and remedial powers granted to adjudicators under the *Code*. It artificially limits the exercise of these powers to termination involving "discrimination," "reprisal," and now, according to *Sigloy*, "bad faith." Neither the Court in *Wilson* nor its subsequent adjudications have explained fully how these three terms affect or inform the notion of unjust dismissal under the *Code*. The decision in *Wilson* also fails to acknowledge that the unjust dismissal provisions of the *Code* were introduced to address the shortfalls of the common law. Instead, these sections can now be used to perpetuate these shortfalls. Finally, *Wilson* shifts the evidentiary burden from the employer to the employee. As demonstrated in *Sigloy*, this shift can lead to absurd and unjust results.

It will be interesting to see whether the judicial review of *Sigloy* or the appeal in *Wilson* will return the law to the proper interpretation of the *Code*, as exemplified in Adjudicator Roach's decision in *Champagne*. In the meantime, it appears that the unjust dismissal provisions of the *Code* remain open to novel interpretation post-*Wilson*. Given that ss. 240 to 246 of the *Code* have been in existence for over 35 years, and have been subject to over 1,740 adjudications and decisions before *Wilson*,[66] it is hard to believe that such new and novel law can be created from an old statute.

[66] Per Westlaw "cite up" function of section 242 on August 7, 2014.