

The Supreme Court of Canada Rules On The Immunity Of International Organizations And The Management Of Its Employees



On November 29, 2013, the Supreme Court of Canada rendered its decision in [Amaratunga v. Northwest Atlantic Fisheries Organization](#) on the issue surrounding an international organization's immunity as it relates to the management of its employees. In particular, the Supreme Court ruled that international organizations are immune from wrongful dismissal claims from senior employees.

The appellant, Tissa Amaratunga, was employed by the *Northwest Atlantic Fisheries Organization* (NAFO) in a senior management position from 1988 to 2005, when his employment was terminated. The appellant filed a wrongful dismissal suit against NAFO. NAFO claimed immunity, as an international organization, under its [Northwest Atlantic Fisheries Organization Privileges and Immunities Order](#) (NAFO Immunity Order) agreement with Canada, made by the Governor in Council pursuant to the [Foreign Missions and International Organizations Act](#), which grants NAFO the immunities set out in the *Convention on the Privileges and Immunities of the United Nations* "to such extent as may be required for the performance of its functions".

At first instance, the Supreme Court of Nova Scotia rejected NAFO's immunity defense and determined that the appellant's wrongful dismissal suit could proceed to trial, which included a claim for a separation indemnity under NAFO Staff Rules. The Court ruled that NAFO did not demonstrate that immunity from the appellant's claim was "necessary or essential" to the performance of its functions.

NAFO appealed this decision to the Nova Scotia Court of Appeal and the appeal was allowed. The Court ruled that the immunity provided by the NAFO Immunity Order shielded NAFO from the appellant's claim. More specifically, the Court concluded that "*wrongful dismissal actions by their very nature represent critical and far-reaching reviews of the employer-employee relationship*" and that allowing the appellant's claims in the circumstances would inevitably put NAFO's core operations under microscope and would amount to interference into NAFO's autonomy.

The case was heard by the Supreme Court of Canada on March 28, 2013. There were two (2) issues to be addressed by the Supreme Court: first, the main issue was whether or not the immunity granted to NAFO under the NAFO Immunity Order applies in the circumstances. More specifically, the Court analysed the interpretation given to the words "to such extent as may be required for the performance of its functions".

Second, if the Supreme Court was to conclude that NAFO enjoyed immunity from the appellant's claims, the Court had to decide whether or not the immunity also applies to the appellant's claim relating specifically to the separation indemnity due to him under the NAFO Staff Rules.

The Supreme Court allowed the appeal in part, and decided that the immunity from the appellant's claims is required in the circumstances, in order for NAFO to perform its functions. The Supreme Court specifies that NAFO must have the power to manage its employees, especially those in senior positions, if it is to perform its functions efficiently. The Court states:

"To allow employment-related claims of senior officials to proceed in Canadian courts would constitute undue interference with NAFO's autonomy in performing its functions and would amount to submitting its managerial operations to the oversight of its Host State's institutions."

However, with respect to the claim for the separation indemnity under NAFO Staff Rules, the Court concluded that this claim would in no way interfere with NAFO's performance of its functions, as this claim relates solely to the rule contained in the NAFO Staff Rules, which provides that a separation indemnity must be paid to any departing employee, regardless of the reasons for the termination of the employment relationship. The Court found that the enforcement of this rule would not amount to submitting NAFO's managerial operations to the oversight of Canadian courts.

In that context, the Supreme Court decided that although NAFO enjoys immunity from the appellant's claims, the claim concerning the separation indemnity under the NAFO Staff Rules, must be treated separately. This claim was sent back to the Nova Scotia Supreme Court for adjudication.

Accordingly, international organizations subject to the same immunity as NAFO, should not expect to benefit from that immunity as it relates to its internal rules which governs employees entitlement's upon termination of employment. That said, these same organizations can expect that future claims for wrongful dismissal will fall within the scope of an international organization's immunity granted by an order made pursuant to the *Foreign Missions and International Organizations Act*. Finally, although this decision deals specifically with a claim for wrongful dismissal, the principals adopted by the Supreme Court and the immunity granted under this act, is not limited to claims relating to the employment relationship. The Supreme Court has confirmed that one must look to the wording of the grant of immunity to determine whether a claim can be advanced. Based on the reasoning of the Supreme Court in this decision, there is reason to believe that immunity will be granted as it relates to a wide range of legal matters which are essential to the functions of the organization.

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