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Should Pension Benefits be Deducted from Damages for Wrongful Dismissal? The Supreme Court of Canada Rules

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On December 13, 2013, the Supreme Court of Canada rendered its judgment in the case of *IBM Canada Limited* v. *Waterman* (2013 SCC 70). In this case, IBM wrongly dismissed Mr. Waterman, a long-time employee. Mr. Waterman had to begin collecting his pension under IBM's defined benefit pension plan. The trial judge concluded that 20 months notice should have been given to Mr. Waterman. In calculating the damages for wrongful dismissal, the trial judge refused to deduct the pension benefits received by Mr. Waterman during the notice period. This decision was confirmed by the Court of Appeal of British Columbia.

The Supreme Court was called upon to determine whether the pension benefits received by Mr. Waterman had to be deducted from the damages for wrongful dismissal which were to be paid by IBM.

In a split decision (7 against 2), the majority held that they should not. According to the majority, the pension benefits paid to an employee constitute a type of benefit which generally should not serve to reduce damages that are otherwise payable for wrongful dismissal. Such benefits are of the nature of retirement savings and cannot be considered to be a compensation for loss of salary as a result of the termination of the employment contract. They further added that the parties cannot have wanted such retirement savings to be used to finance the unjust dismissal of the employee. The general compensation principle did not apply in the case under review.

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