

## ***Bonus Entitlements Upon Termination - Court Upholds the Written Intention of the Parties!***

It's been awhile since our courts have issued a decision on contract interpretation that has favoured employers. Thankfully, the Court of Queen's Bench of Alberta in *Jivraj v. Strategic Maintenance Ltd.* has broken that trend.

In *Strategic Maintenance Ltd.*, the Court had to determine three issues arising out of the termination of Mr. Jivraj's employment with the Company: the amount of reasonable notice of termination, mitigation and, for our purposes, entitlement to bonus payments. Focusing on the issue of bonus payments, the Court was asked to interpret the following provision contained in an amended employment agreement Mr. Jivraj entered into (with valid consideration) during his employment:

*"[Employee] understands that all Bonus payments are conditional upon the Employee remaining in the employment of Strategic at the time any portion of the Bonus is actually payable to the Employee...and if...the Employee ceases[d] employment with Strategic, regardless of the circumstances, then no further Bonus amounts are payable to the Employee."*

As you can imagine, Mr. Jivraj was not pleased to learn that he would not be paid the remaining portion of his bonuses (there were two delayed payments under the terms of his employment) upon termination. He argued that he had earned the entire \$80,000.00 amount, even though it was payable in three time delayed installments. Mr. Jivraj argued that his notice period, which the Court found to be 6 months, would have brought him to one of the payment dates (i.e. September 30, 2012). In finding against Mr. Jivraj, the Court primarily relied on the fact that the language disentitling Mr. Jivraj to the bonus was clear - *he was disentitled to a bonus because he was no longer employed by the employer at the time of payment.* The Court noted that while Mr. Jivraj may not have liked the clause, it was satisfied that he understood its implications and was prepared to accept employment with the employer on that condition. The Court provided the following strong statement supporting the idea that parties will (usually) be held to the bargains they strike:

*"However unfair or one-sided it may seem in retrospect, SML and Mr. Jivraj agreed to an arrangement which required him to be reporting to work if he was to receive bonus installments. The cases set forth above make it very clear that parties may agree to forfeiture of accrued employment benefits, provided*

*they do in clear, unambiguous language. This they did and Mr. Jivraj is obliged to abide by the terms of that agreement.”*

The *Strategic Maintenance Ltd.* decision is a breath of fresh air for employers, especially since the recent trend seems to have been to put the intentions of the parties off to the side and interpret provisions in a manner that favours the employee. This decision also highlights the importance of entering into legally enforceable agreements, with clear and straightforward language. Had this agreement been entered into during employment without valid consideration (i.e. something new of value to the employee) it would not have been upheld. Further, absent clear language respecting the qualifying criteria for payment of the bonus, the employer would likely not have been successful denying Mr. Jivraj the full bonus. Ultimately, if an employer wishes to establish conditions surrounding the payment of bonuses (or other forms of remuneration such as stock options, LTIPs, etc.) the conditions need to be drafted with the utmost care and diligence. Therefore, it is always advisable to talk with an e2r Service Provider before presenting such conditions to an employee (or prospective employee) as part of an employment agreement or otherwise.

If you have any questions about this topic or anything else related to employment agreements and their interpretation please do not hesitate to contact e2r Solutions®.

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