

## ***Bonus Bonanza for Terminated Employees***

Employers often provide an employment agreement or a bonus plan that places limitations on an employee's bonus eligibility if that employee is no longer employed at the time the bonus is paid out. This often becomes a contentious issue, especially in instances where the bonus is a significant portion of the employee's compensation.

While the courts have conflicting approaches to bonus eligibility upon termination, in the recent decision *Lin v. Ontario Teachers' Pension Plan*, the Ontario Court of Appeal held that a dismissed investment professional is entitled to his substantial bonus during the reasonable notice period despite the presence of limiting language in the bonus plan.

In the lower court Mr. Lin was awarded a reasonable notice period of fifteen (15) months. Under the terms of the bonus plan no bonus would be paid if an employee departed, whether for cause or not, before the payment date. The employer relied on this limiting language and took the position that Lin was not eligible for any bonus paid out after his employment was terminated.

In holding that Mr. Lin was entitled to his bonus over the fifteen (15) month reasonable notice period the trial judge stated that to deny payment of the bonus was in the nature of a "penalty" and therefore the limiting bonus language was not enforceable (applying a legal principle that the court will refuse to enforce a punitive provision in a contract).

The employer appealed to the Ontario Court of Appeal but was unsuccessful.

### **What does this mean for employers?**

Although some bonus plans are structured specifically to apply only to "active" employees who are still present at work during the time when the bonus is paid, this case demonstrates that the courts do not always agree. This case highlights that employees may be entitled to any bonus



monies that could have been earned during the reasonable notice period, regardless of an employment agreement or bonus plan which states otherwise - particularly where the result is considered oppressive.

If you have any questions about this topic or anything else related to bonus plans and their interpretation, please do not hesitate to contact e2r.

