



e2r Alert

Shares are governed by the Shareholder Agreement – NOT the Employment Agreement

The Ontario Court of Appeal has issued an important decision regarding the treatment of shares upon the termination of employment.

In *Mikelsteins v. Morrison Hershfield Limited*, the employee worked as the Director of Business Development for thirty-one years prior to the termination of his employment without cause.

During his employment, the employee was entitled to purchase shares of the Company. The shares were governed by the terms and conditions of a shareholders' agreement. Under the terms of the shareholders' agreement, shareholders were eligible to receive annual "share bonuses" payable in respect of each share purchased and determined by an objective calculation based on the Company's financial results (similar to a dividend). The shareholders' agreement also provided for a deemed transfer of the shares back to the Company within thirty days after the date on which the employee is notified of his/her termination.

The employee claimed that the valuation of the shares should be determined at the end of the reasonable notice period. Furthermore, he claimed that he was also entitled to any share bonuses issued over the entirety of the reasonable notice period.

The Court of Appeal was very clear that damages for reasonable notice arising out of an employment contract are **separate and apart** from an employee's entitlement regarding shares. In particular, an employee's entitlement regarding shares is solely governed by the applicable shareholders' agreement. Therefore, in this particular case, reading the plain language of the agreement, the value of the shares should be determined based on the value thirty (30) days from the date of termination and the employee would not be entitled to any share bonuses after thirty (30) days from the date of termination.

Also of note, the employee argued the specific shareholders' agreement provision violated section 60(1) of the *Ontario Employment Standards Act, 2000*, which requires an employer to maintain all wages and benefits through the statutory notice period and was, therefore, void. The Court of Appeal disagreed, once again, reiterating that Mr. Mikelsteins' entitlements as an employee were **separate and apart** from his entitlements under the shareholders agreement.

Given the recent trend, this decision finally provides some good news to Ontario employers. However, despite this decision, employers should ensure that if the employer offers employees the ability to purchase shares in the Company, the employment agreement clearly states that the shares are governed by the terms and conditions as outlined in the applicable shareholders' agreement.

If you have any questions regarding an employee's entitlements upon termination, please feel free to reach out to e2r® to speak with an Advisor.