



e2r Alert

The Supreme Court of Canada has Weighed In! An Employee's Entitlement to a Bonus during the Reasonable Notice Period

The Supreme Court of Canada ("SCC"), in the *Matthews v. Ocean Nutrition Canada Ltd.* decision, clarified the law respecting an employee's entitlement to a bonus during the reasonable notice period.

The employee, Mr. Matthews, was a senior executive at Ocean Nutrition with 7 years of service. Mr. Matthews participated in the company's long-term incentive plan ("LTIP"), which was attached to his employment contract. The LTIP provided that Mr. Matthews would receive a bonus in the event Ocean Nutrition was sold. Ocean Nutrition, after hiring a new Chief Operating Officer, made efforts to push Mr. Matthews out of the company. Mr. Matthews felt the new work environment was intolerable, and reluctantly resigned. Ocean Nutrition was subsequently sold in the months following his resignation.

The Nova Scotia Supreme Court ("NSSC") found that Mr. Matthews had been constructively dismissed and awarded him a 15-month reasonable notice period. In awarding Mr. Matthews the LTIP bonus, based upon the sale, the NSSC held that the LTIP bonus would have been triggered had Mr. Matthews remained employed throughout the reasonable notice period.

The Nova Scotia Court of Appeal ("NSCA") upheld the lower court's constructive dismissal finding and the 15-month notice period. However, in contrast to the lower court's decision, the NSCA found in favour of the employer, and determined that the language of the LTIP was "plain and unambiguous" in precluding payment to employees who had either resigned or were terminated prior to the sale of the business.

SCC Decision

On appeal to the SCC, the only disagreement between the parties was whether Mr. Matthews was entitled to damages for the lost LTIP payment. The SCC clarified that the answer to the question required a two-part analysis.

First, consider whether the employee is entitled to damages to compensate him for remuneration he would have earned but for the employer's failure to provide reasonable notice.

Second, if the employee is entitled to the remuneration, consider whether the terms of the employment contract or bonus plan unambiguously takes away or limits the employee's common law right.

In answering the first question, the SCC found that because the sale of Ocean Nutrition occurred within Mr. Matthews' 15-month reasonable notice period, Mr. Matthews would have been entitled to the bonus had he worked to the end of the notice period.

On the second question, the SCC determined that the terms of the LTIP did not limit Mr. Matthews' common law right to receive the bonus as part of his claim for reasonable notice damages. Accordingly, the SCC awarded Mr. Matthews' the bonus related to the sale in the amount of \$1,086,893.36.

We encourage employers to review their employment contracts and incentive plans to ensure that the documents are carefully drafted and include language that clearly removes an employee's common law right to claim incentive compensation as part of a wrongful dismissal claim.

If you have any questions about this, please do not hesitate to reach out to speak with an e2r® Advisor.