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GRIST

Employee entitled to bonus after termination, Canada court rules

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Employees may be entitled to bonuses they would have received during their reasonable notice period of termination, had they not been terminated, Canada's Supreme Court has ruled. An employee alleging constructive dismissal from his senior management job claimed he was entitled to, among other things, a \$1.1 million bonus tied to a long-term incentive program (LTIP) payout triggered by the sale of the company 13 months after he left the company.

The court agreed that the employee had been constructively dismissed and consequently had not been given a reasonable notice period of termination — which, in his case, was 15 months. In a two-step test, the court determined that 1) but for the termination, the employee would have been entitled to the LTIP payment during his reasonable notice period, and 2) the terms of the LTIP plan did not clearly and unambiguously limit or remove the employee's common law right to damages. As a result, the court ruled that had the employee "been given proper notice, he would have been "full-time" or "actively employed" throughout the reasonable notice period" and entitled to the LTIP payment.

The judgment could have widespread ramifications and be interpreted broadly to apply to different types of compensation such as bonuses, incentives or commission payments. Employers should review their employment agreements, policies and procedures relating to these types of compensation in light of this ruling.

Related resource

- [Matthews v. Ocean Nutrition Canada Ltd., 2020 SCC 26 \(Supreme Court of Canada, 9 Oct 2020\)](#)

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