



Katie Barnstead

## **Court of Appeal Addresses Contractual Clarity in Incentivized Bonus Plans**

The Nova Scotia Court of Appeal recently reversed an order for damages awarded under a Long Term Incentive Plan (LTIP) for an employee who had been constructively dismissed in the case of *Ocean Nutrition Canada Ltd. v. Matthews, 2018 NSCA 44*.

The employee had 14 years service when he resigned. The hearing judge found that the employee had been constructively dismissed and the appropriate notice period was 15 months.

### **Did the dismissed employee have any entitlement under the terms of the LTIP?**

The LTIP was structured as an incentive in the event of a “realization event” such as the sale of the company. Like many similar incentive plans, its terms required active employment. Under the terms of the LTIP, “active employment” expressly excluded employees terminated with or without cause who were receiving pay in lieu of notice on the date of the realization event.

The issue in this case was whether the employee was entitled to damages under the LTIP given that a realization event occurred during the notice period. The hearing judge found that the employee was entitled to a payout under the LTIP as part of his severance package and he was awarded \$1.085 million in damages for losses under the LTIP.

### **Nova Scotia Court of Appeal reverses \$1.085 million award**

The Nova Scotia Court of Appeal affirmed that the employee had been constructively dismissed but reversed the \$1.085 million damages award under the LTIP. The Nova Scotia Court of Appeal confirmed that the employee’s entitlement to receive damages under the LTIP during the common law notice period is clearly governed by the words of the agreement. The LTIP Agreement outlined that it would be of no force or effect if the employee had ceased to be an employee at the time of the realization event, regardless of whether the employee resigned or was terminated with or without cause.

In this case, the employee had resigned and there was a subsequent finding that he had been dismissed without cause. The Court of Appeal considered the plain language of the LTIP and found there was no ambiguity in the clause: the LTIP ceased to be of any force and effect if an employee resigned or was terminated. Therefore, the Court of Appeal found that the employee was not entitled to any damages under the LTIP.

## Key takeaways for employers in Canada

Incentivized bonus plans can be structured in many ways for many purposes: for granting stock options, as part of a regular commission structure, or to be triggered upon a realization event like the sale of a company or an initial public offering (IPO).

Employers who utilize incentive plans should note the importance of having precisely drafted terms within these agreements. The Nova Scotia Court of Appeal confirmed that clear and unambiguous contractual terms can effectively limit an employee's ability to receive damages under an incentive plan. The approach taken by the Nova Scotia Court of Appeal is similar to the approaches taken by other Courts of Appeal across Canada, including Ontario, Alberta, and British Columbia. It is important for employers to ensure that incentive plans are clear, precise, and comprehensive to clearly define when and how these incentive plans will come to fruition.

For now, the employee in *Ocean Nutrition Canada Ltd. v. Matthews* has applied for leave to appeal to the Supreme Court of Canada. If the application is granted, it will be one that employers across Canada will want to watch carefully.

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[Katie Barnstead](#) is an associate at Barteaux Durnford. Her practice includes all aspects of labour and employment law, including litigation, human rights, arbitrations, and drafting employment agreements and workplace policies.

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Follow us on LinkedIn

1701 Hollis Street, Suite L106  
Halifax, Nova Scotia B3J 3M8

Telephone: (902) 377-2233  
Fax: (902) 377-2234



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