

Case In Point

Supreme Court of Canada Grants Appeal in Case Which Considered Constructive Dismissal, Long-Term Incentive Plan Entitlements and Duty of Good Faith

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The Supreme Court of Canada has granted leave to appeal from a decision which considered long-term incentive plan entitlements as part of a constructive dismissal claim, and, in the dissent, the duty of good faith and honesty in the performance of employment contracts.

In [Ocean Nutrition Canada Ltd. v. Matthews](#), an employee resigned from employment after approximately 14 years and sued his former employer. The judge at first instance determined that the employee had been constructively dismissed and set the notice period at 15 months. The majority of the damages awarded related to a long-term incentive plan (LTIP), which the judge found the employee would have been entitled to payment under had he been employed during the notice period.

The employer appealed and a majority of the Nova Scotia Court of Appeal (Court) allowed the appeal in part.

Although the Court upheld the findings that the employee had been constructively dismissed and that the appropriate notice period was 15 months, it disagreed that the employee was entitled to damages in respect of the LTIP. The Court held that the LTIP was ineffective on the employee's resignation or termination. It disagreed with the judge's inclusion of LTIP in the amount of severance, which it stated "ignores the plain and unambiguous language of the [LTIP]."

The Court also found that the employee was not able to prove and recover any losses under the short-term incentive plan (STIP) since the amount he received from his new employer exceeded the amount payable under the STIP.

Finally, the appeal was allowed in respect of the amount of taxes withheld and remitted on the damages award. The Court noted that the parties were not given an opportunity to make submissions on this issue and the judge's decision was made "on his own merit without regard to the *Income Tax Act*."

Scanlan J.A., dissenting, noted that the actions of a "rogue" manager in the dismissal were sufficient to support the employee's entitlement to common law damages. The dissenting justice discussed at length the duty of good faith and honesty in the performance of a contract (*Bhasin v. Hrynew*) in noting that neither the LTIP nor the employment contract permitted the employee's termination "based on lies and deception. The common law duty of honesty is implicit in both the LTIP and the employment contract". Accordingly, he found that the employee should be entitled to damages in respect of the loss of the LTIP.

We will continue to monitor this case.