



# What's New in HR Law

## Incentive Plan Entitlements During Notice Period: *Matthews v. Ocean Nutrition Canada Limited*

October 26, 2020

### Bottom Line

Recently, in [\*Matthews v. Ocean Nutrition Canada Limited\*](#) the Supreme Court of Canada ruled that a wrongfully dismissed employee will be entitled to incentive plan and/or bonus payments during the reasonable notice period unless there is clear and unambiguous contractual language that removes or limits the employee's common law rights. In addition, the Supreme Court confirmed that claims in respect of bad faith on the part of the employer are separate and apart from the assessment of damages for wrongful dismissal.

### Background

Beginning in 1997, Mr. David Matthews, an experienced chemist, occupied several senior management positions with his employer, Ocean Nutrition Canada Limited ("Ocean"). As a senior executive, Mr. Matthews' compensation included participation in Ocean's long term

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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incentive plan (“LTIP”). Under the LTIP, a “Realization Event”, such as the sale of the company, would trigger a payout. Relevant in the case of a dismissal, the LTIP had two limiting clauses:

#### 2.03 CONDITIONS PRECEDENT:

ONC shall have no obligation under this Agreement to the Employee unless on the date of a Realization Event the Employee is a full-time employee of ONC. For greater certainty, this Agreement shall be of no force and effect if the employee ceases to be an employee of ONC, regardless of whether the Employee resigns or is terminated, with or without cause.

#### 2.05 GENERAL:

The Long Term Value Creation Bonus Plan does not have any current or future value other than on the date of a Realization Event and shall not be calculated as part of the Employee’s compensation for any purpose, including in connection with the Employee’s resignation or in any severance calculation.

In 2007, Ocean hired a new Chief Operating Officer (“COO”) and there was resulting workplace tension between the COO and Mr. Matthews, involving a reduction of Mr. Matthews’ work responsibilities and a “campaign” to marginalize him by the COO. As a result of the workplace tension with the COO, Mr. Matthews resigned from his employment despite his anticipation that Ocean would soon be sold triggering the “Realization Event” under the LTIP.

Thirteen months after Mr. Matthews’ departure, Ocean was sold. As he was not employed on the date of sale, Mr. Matthews did not satisfy the terms of the LTIP and he did not receive payment due to the “Realization Event”. Mr. Matthews subsequently brought an application against Ocean for damages, alleging that he had been constructively dismissed and that the constructive dismissal was carried out in breach of Ocean’s duty of good faith.

The trial judge concluded that Ocean had constructively dismissed Mr. Matthews and awarded him a reasonable notice period of fifteen months. The trial judge also held that Mr. Matthews was entitled to the loss of his payout under the LTIP because he would have been a full-time employee at the time of sale had he not been constructively dismissed.

Ocean appealed. The Court of Appeal unanimously upheld the decision that Mr. Matthews had been constructively dismissed and that the appropriate notice period was fifteen months. However, the Court of Appeal found that Mr. Matthews was not entitled to damages on account of the lost LTIP payment as the contractual provisions disentitled him from further participation following the end of the employment relationship.

The case was appealed to the Supreme Court of Canada.

## Supreme Court Restores the Trial Judge’s Decision

The Supreme Court identified two pivotal questions in addressing an employee’s bonus or incentive plan entitlements upon dismissal:

1. Would the employee have been entitled to the bonus or benefit as part of their compensation during the reasonable notice period?
2. If so, do the terms of the employment contract or bonus plan unambiguously take away or limit that common law right?

Addressing the first question, the Supreme Court rejected Ocean’s argument that, since the LTIP was not “integral” to Mr. Matthews’ compensation, it was not properly part of the damages to which he was entitled. Because there was no question that Mr. Matthews would have received an LTIP payment had he remained employed through the notice period, the Supreme Court held there was no need to determine whether such payment was “integral” to his compensation. Rather, the Supreme Court noted that the “integral” issue only arises when the realization of a bonus payment during the notice period is uncertain (e.g. in the case of a discretionary bonus).

Addressing the second question, the Supreme Court considered the LTIP clauses which purportedly limited Mr. Matthews’ entitlements after his employment ceased. The Court affirmed that contractual language must be “absolutely clear and unambiguous” to remove an employee’s common law right to damages. Based on the language of the relevant clauses, the Supreme Court determined that the LTIP plan did not unambiguously limit or remove Mr. Matthews’ common law rights. The Court agreed with the trial judge that an “active employment” clause was not sufficient to limit an employee’s entitlements, nor was the reference in the plan to “termination without cause”.

The Supreme Court also addressed the alleged breach of good faith by Ocean, and commented, in particular, on Ocean’s treatment of Mr. Matthews. The Court noted that it was clear from the findings at trial that Mr. Matthews was mistreated and lied to about the security of his future with his employer. The Court considered the possibility that the “duty of good faith will one day bind the employer based on a mutual obligation of loyalty in a non-fiduciary sense during the life of the employment contract, owed reciprocally by both the employer and employee.” However, given that Mr. Matthews did not seek to recover damages for mental distress, and did not press his claim for punitive damages on appeal, the only bad faith damages sought were in respect of the employer’s duty to provide reasonable notice. To that end, the Supreme Court held that a contractual breach of good faith is wholly distinct from a failure to provide reasonable notice. On this basis, the Supreme Court declined to award any damages in respect of Mr. Matthews’ bad faith allegations.

Consequently, the Supreme Court restored the trial judge’s decision and awarded Mr. Matthews lost earnings and damages for his losses under the LTIP. The total amount awarded under the LTIP was \$1,086,893.36 (with some deduction for mitigation).

## Check the Box

This decision confirms contractual language that attempts to exclude bonus or incentive payments during the common law reasonable notice period will be held to a high standard. In light of this outcome, employers should review the terms of their contracts, and bonus and incentive plans carefully to assess whether any limiting language is drafted with sufficient clarity to achieve its intended purpose, while also ensuring compliance with applicable minimum employment standards.

**Date:** October 9, 2020

**Forum:** Supreme Court of Canada

**Citation:** *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26

## Need more information?

For more information about employment agreements, incentive payment plans, or employment litigation, please contact [Lucas Mapplebeck](#) at 905.972.6875 or your regular lawyer at the firm.



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