



What's New in HR Law

No Plot Twist Here: Court Finds Contractual Ambiguity, Awards Post-Termination Stock Entitlement

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Bottom Line

Written contracts are one of the many tools that enable employers to minimize their legal exposure and potential liabilities. When drafted correctly, a contract can lawfully limit an employee's entitlements including post-termination bonuses and stock options. However, as a recent Court of Appeal decision demonstrates, courts will not lightly deny entitlements to bonuses and stock options during the common law notice period; courts demand language that *unambiguously* alters or removes an employee's rights.

Factual Background

The IMAX Corporation (the "Company") provided working notice of termination to a senior level employee (the "Employee"). Notwithstanding that the Employee had 22 years of service, the Company provided the Employee with only 6 months' notice.

The Company notified the Employee that his Restricted Share Units ("RSUs") would be cancelled and forfeited if they had not vested by the termination date. The Company supported its position by relying on terms and conditions that were set out in its incentive plan

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documentation (the “Plan”). Specifically, the Plan stated that if the Employee’s employment terminated “for any reason other than death, Disability or for Cause”, the RSUs would cease to vest and would be “cancelled immediately without consideration as of the date of termination”.

The Employee sued the Company, asserting wrongful dismissal and an entitlement to 30 months’ notice of termination. The Employee also claimed that his RSUs would only be cancelled and forfeited if they did not vest by the end of the 30-month notice period, as opposed to the end of the 6-month notice period provided by the Company.

Deficiencies in the Plan Language

The Employee’s claims were initially decided by a single judge on a summary judgment motion. The judge found that the Employee was entitled to 24 months’ notice of termination at common law. In addition, the judge rejected the Company’s argument that the RSUs were cancelled and forfeited if they did not vest by the Employee’s last day of active employment. Instead, the judge found that the Employee was entitled to compensation for all RSUs that would have vested as of the end of the 24-month notice period. The judge acknowledged the Plan *attempted* to limit the Employee’s RSU entitlements following his last day of work with the Company. However, the judge found that the Plan was ambiguous and did not contain the level of clarity required to limit or remove the Employee’s common law entitlements.

The judge’s decision was reviewed and upheld by the Court of Appeal for Ontario (the “Court”). The Court noted that, according to the terms and conditions in the Plan, the RSUs would cease to vest and would be “cancelled immediately without consideration as of the date of termination”. The Court explained that the word “termination” was ambiguous. It was unclear whether “termination” referred to the date notice was given or to the end of the reasonable notice period. As a result, it was necessary to interpret “termination” as meaning “termination according to law” and “at the end of the reasonable notice period”.

The Court contrasted the Plan with documentation that was found to be clear and unambiguous in *Kieran v. Ingram Micro Inc.* (2004), 189 O.A.C. 58. In that case, the documentation indicated that the right to exercise stock options would expire on “termination”. However, the documentation also stated that “employment would terminate on the date the employee ceased to perform services, *without regard to whether the employee continued to receive compensatory payments or salary in lieu of notice*”. In other words, the documentation clarified that “termination” did not mean “termination according to law” and “at the end of the reasonable notice period”.

This same level of clarity was missing from Company’s Plan in the instant case and, as a result, the Plan did not effectively remove the Employee’s common law right to exercise RSUs that would vest during the 24-month notice period.

Check the Box

This recent decision highlights the importance of ensuring that bonus, commission, stock option, and other compensation plan documents are precisely drafted to satisfy the courts’ exacting standards for clarity. To avoid the costly consequences of contractual ambiguity, employers wishing to limit employees’ entitlements – and their corresponding organizational liability –

during the common law reasonable notice period are well-advised to have employment contracts and any compensation plan documents reviewed and updated regularly by counsel.

Decision Details

Date: December 17, 2019

Forum: Ontario Court of Appeal

Citation: *O'Reilly v. IMAX Corporation*, 2019 ONCA 991

Need more information?

For additional information or advice relating to employment contracts or executive compensation, please contact [Anthony Panacci](#) at 416-408-5568, or your regular lawyer at the firm.



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