



# Employers Take Notice: An Employee's Entitlement to Benefits Doesn't Necessarily End at Resignation

Insights

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The Supreme Court of Canada recently awarded damages to a senior level executive in an amount equal to the bonus he would have earned had he continued working through to the end of his common law reasonable notice period.

Generally speaking, if a Canadian employee is terminated without a valid legal reason, the employee is entitled to reasonable notice under common law, unless there is an enforceable termination clause in an applicable employment contract that states otherwise. The length of a "reasonable" notice period is fact-specific and can depend on the length of the employee's tenure with the organization, among other factors. In recent case law, one Court of Appeal determined that the reasonable notice period should be no longer than 24 months absent exceptional circumstances.

In *Matthews v. Ocean Nutrition Canada Ltd.*, the plaintiff, David Matthews, was an experienced chemist who had worked for Ocean Nutrition Canada Ltd. ("Ocean") in various senior level positions from 1997 to 2011 when he resigned. As a senior executive, he participated in Ocean's long-term incentive plan ("LTIP"), which provided payments to qualified employees in the event of "Realization Events," such as a sale of the company. In 2007, Ocean hired a new COO, who Matthews alleged began a campaign to marginalize him in the company, by limiting his responsibilities and by lying to him about his status and prospects at Ocean. Notwithstanding this alleged treatment, Matthews claimed that he stayed on with Ocean because he anticipated the company would soon be sold and that he would receive a bonus under the LTIP. Eventually, though, in June 2011, Matthews resigned from Ocean and took a job with a new employer.

Approximately 13 months after Matthews' departure, Ocean was sold for \$540 million – a Realization Event per the LTIP. When Matthews sought his bonus payment, Ocean determined that he was not an active employee on the date of the sale, so he did not satisfy the terms of the LTIP and was not entitled to any payment. Matthews filed an action against Ocean, alleging he had been constructively discharged and that the discharge was in bad faith and a breach of Ocean's duty of good faith.

The trial court agreed with Matthews and determined that Matthews was owed a reasonable notice period of 15 months – which meant he would have been a full-time, active employee at the time Ocean was sold. The trial court also found that constructive discharge and entitlement to damages under common law was not affected by the terms of the LTIP. The Court of Appeal upheld the

decision that Matthews had been constructively dismissed and that the appropriate reasonable notice period was 15 months but found that Matthews was not entitled to any damages related to the LTIP.

On appeal to the Supreme Court, the only disputed issue was Matthews' entitlement to damages with respect to the LTIP payment. The Court affirmed the trial court's characterization of Matthews' departure from Ocean as a constructive discharge and affirmed the decision to award Matthews a 15-month notice period. It ruled that the sale took place within that 15-month period, and that but for Ocean's unlawful termination of Matthews, Matthews would have received his payment under the LTIP as a result of the sale. Finally, it determined that the LTIP did not limit or remove Matthews' common law right to damages because although the LTIP purported to remove common law rights upon termination, it did not address the exact situation in this case – where the otherwise qualified employee was *unlawfully* terminated or constructively discharged without notice.

Canadian employers should be aware of what this decision means for their bonus or profit-sharing plans. We recommend that employers with operations in Canada – or any jurisdiction where notice periods are required – evaluate their policies and practices in light of this decision to ensure that only intended beneficiaries of those plans actually receive the benefits.

If you have questions about any international issues, please contact a member of the International Practice Group, at Fisher Phillips.

### ***Related People***

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