

## **Ontario Court of Appeal clarifies when Replacement Benefits and Bonus Payments are owing in Wrongful Dismissal Actions**

The Ontario Court of Appeal recently addressed the issue of when replacement benefit coverage and a bonus were payable as part of an award of damages in a wrongful dismissal action. The case of *Singer v. Nordstrong Equipment Limited* 2018 ONCA 364 is a useful reminder of the key legal principles.

Mr. Nordstrong was terminated from his role as President, at age 51 after 11 years of service. He brought a motion for summary judgement and was awarded a 17 month notice period. However, the trial judge denied his claim for the loss of his benefit package on the basis he had not suffered any real loss (i.e. no actual medical benefit claims). The trial judge also denied his entitlement to any bonus on the basis that bonuses were to compensate an individual for their performance, not for the time spent looking for a new job.

The Ontario Court of Appeal held that the trial judge had erred in law in not awarding benefits or a bonus during the common law notice period:

- On the issue of the benefits, the Ontario Court of Appeal rejected to argument that a Plaintiff has to prove an actual loss to secure benefit payment. To the contrary, the Ontario Court of Appeal held that an individual is to be compensated for all losses that could reasonably expected to flow from the wrongful dismissal in an effort to make the employee whole. This would include base salary, benefits, profit sharing and pension payments. Therefore, the Ontario Court of Appeal ordered that Mr. Nordstrong should be reimbursed for the cost he incurred in securing alternate benefit coverage over the common law notice period in the sum of \$9,458.00.
- On the bonus issue, the Ontario Court of Appeal held that the trial judge had failed to follow the two part test for bonus calculation that had been established in 2016 by the Court of Appeal in *Paquette v. TerraGo Networks Inc.*, 2016 ONCA 618 as follows at Para. 21:

**I agree with the appellant that the motion judge erred in law by failing to apply the two-part test set out by this court in *Pacquette v. TeraGo Networks Inc.*, 2016 ONCA 618 (CanLII), 352 O.A.C. 1, at paras. 30-31 for determining whether an employee is entitled to be compensated for the loss of his bonus as part of his damages for wrongful dismissal:**

- 1) **Was the bonus an integral part of his compensation package, triggering a common law entitlement to damages in lieu of bonus?; and**
  - 2) **If so, is there any language in the bonus plan that would restrict his common law entitlement to damages in lieu of a bonus over the notice period?**
- Based on this test, the Court of Appeal held that the bonus was an “integral” aspect of Mr. Nordstrong’s employment. Further, the Court of Appeal held that there was no language in any of the Employer’s bonus policies that would disentitle Mr. Nordstrong to a bonus in the event he was wrongfully dismissed. Consequently, the Court of Appeal awarded Mr. Nordstrong \$166,945 in bonus that should have been earned in the 17 month common law notice period (this amount was calculated by averaging the prior two years of bonus actually earned).

This case is a reminder that all aspects of an employee's compensation must be continued including benefits and bonus unless the employer has prepared a proper contractual language that disentitles the employee to the benefit and that conforms with the minimum requirements of the Ontario *Employment Standards Act, 2000*.