

## LIMIT YOUR LIABILITY TO PAY BONUSES DURING NOTICE PERIOD

By Andrea Marsland, LL.B.

### What's the Issue?

Employers are often surprised to hear they are required to pay their employees bonuses during the notice period. The Court's approach on this issue has been fairly consistent over the years in that if the bonus has become an integral part of the employees' compensation, the bonus will be payable during the notice period. Having said that, there are situations in which employers can contract out of this obligation and a recent decision from the Ontario Court confirms this right.

### What's the Case?

In *Paquette v. TeraGo Networks Inc.*, Mr. Paquette brought a wrongful dismissal action against his former employer, TeraGo. One of the issues to be decided by the Court was whether Mr. Paquette was entitled to be paid his bonus during the notice period despite the fact he was not "*actively employed*" on the date the bonus was paid out. The bonus plan in this case expressly stated that employees were required to be "*actively employed*" on the date of the bonus payout.

In his decision, Justice Perell provided a good summary of the law on this issue:

[40] *Whether a bonus or the benefits of a stock option or incentive plan is payable during the reasonable notice period will depend upon the language of the plan, if any, and upon whether the bonus had become an integral part of the employee's annual salary. If the bonus or benefit formed part of the employee's compensation, then absent contractual terms to the contrary, the employee is entitled to the bonus or benefit [...]*

[41] *If the bonus or benefit formed part of the employee's compensation and the bonus, incentive, or benefit plan is ambiguous about whether the employee is entitled to the bonus or benefit during the reasonable notice period, then the employee will be entitled to the bonus or benefit if the benefit would have been paid during the reasonable notice period [...]*

In this case, Justice Perell ultimately decided that, despite the fact the bonus was an integral part of Mr. Paquette's employment, there was no ambiguity in the plan and, because he was not "*actively employed*" at the time the bonus was paid, he did not qualify for the bonus during the notice period.

### Employer Considerations?

If you are looking to limit your employees' entitlements to receive a bonus during the notice period, the language in your employment agreement and bonus plan are key. You have to make sure your employment agreement and bonus plan contain the necessary language to limit that entitlement. You also have to ensure that the terms are provided to your employees prior to them commencing employment. If you wish to impose these terms after your employees have already started, you have to provide consideration for the change. Lastly, you have to make sure the language in the bonus plan does not conflict with the language in your employment agreement or any rights your employees may have under provincial legislation.



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