

Employee “Profit Sharing” Plans: *Manastersky v Royal Bank of Canada et al.*

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Case Comments

Issues: Is an employer required to compensate a dismissed employee for lost opportunity to earn “profit sharing” during a termination notice period? Must an employee mitigate damages by accepting a lower paying job offered pre-termination?

Key Facts: Manastersky was a Managing Director for RBC Capital Partners (RBC CP) for more than 12 years. His compensation package included a base salary, a discretionary bonus and participation in RBC CP’s profit sharing plan. The plan provided employees involved in investment decisions with respect to RBC CP’s Mezzanine Fund with a portion of the net investment proceeds generated by the Fund every year. In early 2014, Manastersky was advised that RBC CP was restructuring his team and that he was offered a new position with RBC. The new position provided the same base compensation and bonus, but did not include participation in the plan or comparable profit sharing. Manastersky did not accept the offer, based on the lack of a plan. Manastersky was dismissed without cause and offered a termination package consisting of 13 months’ salary continuance of his base salary, bonus and benefits, including plan entitlements for the 13-month period. He rejected the offer and sued for wrongful dismissal.

Key Findings: The Court extended the notice period to 18 months and found that Manastersky’s termination without cause deprived him of the opportunity to continue to earn compensation under the plan, entitling him to damages for that lost opportunity during his notice period. The Court based its decision on these key facts: the plan was a significant, non-discretionary form of compensation that represented more than half of Manastersky’s annual income; there were no provisions in the plan that limited or reduced his entitlements upon termination; and the plan was still in place when he was dismissed, even though it was terminated four months later. The Court also held that had Manastersky still been employed by RBC, the termination of the plan would likely have amounted to constructive dismissal, giving rise to entitlement to damages.

Regarding his duty to mitigate damages, the Court held that Manastersky did not have a duty to accept a new position with a compensation structure that involved a pay cut of over 50%. The Court also considered that, given the close legal and working relationship between RBC and RBC CP, it would have been unreasonable for Manastersky to have accepted the offer from RBC and then commence an action for damages against RBC CP, as employees are not expected to mitigate by working in an atmosphere of hostility, embarrassment or acrimony.

What You Need to Know: Without clear contract language regarding cessation of employee rights upon employment termination, profit sharing plans will be strictly construed against employers and be included in employee termination rights. A wrongfully dismissed employee’s duty to mitigate will be reasonably limited to similarly paying jobs, and the

employee will not be required to mitigate by remaining with an employer who is subject to the employee's wrongful dismissal suit.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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