

# BACK IN STYLES: CONTROVERSIAL INCENTIVE COMPENSATION DECISION GETS OVERTURNED

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In 2015, we reported on a controversial lower court decision from Alberta that significantly expanded employee rights to receive payment of unvested long-term incentive compensation following termination of employment. In *Styles v Alberta Investment Management Corporation*,<sup>[1]</sup> a decision being hailed as a major victory for employers, the Alberta Court of Appeal overturned the lower court's decision and sent a strong message that the plain language of an employer's plan is not to be meddled with.

## Facts

David Styles was a senior-executive with Alberta Investment Management Corporation (AIMCo). In addition to base salary and benefits, Mr. Styles' employment contract entitled him to participate in various incentive compensation programs, including AIMCo's Long Term Incentive Plan (LTIP).

The LTIP was designed to measure the long-term performance of AIMCo's investments. Under the LTIP, cash-based grants were allocated to Mr. Styles on a yearly basis. The grants were invested by AIMCo for Mr. Styles' benefit, and made payable on vesting dates at the end of four-year, overlapping cycles. However, the terms of the LTIP expressly provided that Mr. Styles must be "actively employed" on the applicable vesting date to be eligible to receive payment of an LTIP grant.

AIMCo allocated LTIP grants to Mr. Styles in 2011, 2012 and 2013 (with vesting dates in 2015, 2016 and 2017, respectively). But when Mr. Styles' employment was terminated without cause in mid-2013, AIMCo refused to provide any compensation on account of the LTIP grants on the basis that Mr. Styles had not made it to any of the vesting dates. Mr. Styles subsequently sued AIMCo for the value of the LTIP grants.

## Trial Decision

The trial judge sided with Mr. Styles, and ordered AIMCo to pay damages for the lost LTIP grants almost to the full value as if he had been employed through to the respective vesting dates (\$444,205). In arriving at this conclusion, the trial judge leaned heavily on the recently established common law duty to act fairly and honestly in the performance of contractual obligations.<sup>[2]</sup>

According to the trial judge, AIMCo's common law duty to Mr. Styles required the company to exercise discretionary contractual powers in a reasonable manner. Apparently, the timing of Mr. Styles' dismissal raised questions about whether his looming entitlements were an unwarranted factor in AIMCo's decision to terminate his employment (even though there was no actual evidence that AIMCo had acted in bad faith). The trial judge concluded that the decision to dismiss Mr. Styles and deny payment of the LTIP grants was unreasonable.

### **Alberta Court of Appeal**

The Alberta Court of Appeal overturned the trial judge's decision, and dismissed Mr. Styles' action. In doing so, the Court vehemently rejected the so-called common law duty of reasonable exercise of discretionary contractual powers, calling it "beguiling heresy" and a "radical extension of the law".

The Court also rejected the trial judge's finding that the non-payment of LTIP grants was "discretionary". The terms of the LTIP were plain and left no doubt as to whether Mr. Styles had to be actively employed on the vesting date; therefore, there was no discretion involved as it was clear there was no right to receive payment unless Mr. Styles was actively employed on the vesting date. Similarly, the decision to dismiss Mr. Styles without cause was not discretionary because employers are not required to provide a reasonable basis for without cause terminations.

Even if the non-payment of LTIP grants had involved some exercise of discretion, the Court was clear that it is not the job of a judge to consider whether the exercise of discretion in contractual performance is "fair" or "reasonable". There is nothing dishonest, capricious or arbitrary about a party to a commercial contract – including an employment contract – acting in its own self-interest.

### **What Employers Should Know**

The Court's decision provides some much-needed clarity for employers, particularly those doing business in Alberta, regarding the rights of employees under long-term incentive plans. Provided that the applicable plan wording is clear and unambiguous, employers need not consider the future interests of their employees under the plan when contemplating dismissal; just their contractual entitlements (if any).

The Alberta Court of Appeal's decision could still be appealed to the Supreme Court of Canada and, even if it is not, there is lower court authority from other jurisdictions (including Ontario) suggesting that there could be a common law duty of reasonable exercise of discretionary contractual powers after all.<sup>[3]</sup> This issue will likely continue to be litigated until the Supreme Court provides clarity.

However, for now employers should continue to review their plans to ensure that the contractual language is clear and unambiguous, and matches the intention with respect to employee entitlements. If you have any

questions regarding this decision, do not hesitate to contact a member of our labour and employment group.

by Dave J.G. McKechnie and Paul Boshyk

[1][ps2id id='1' target=''] 2017 ABCA 1.

[2][ps2id id='2' target=''] For more information, see: [Let's Be Honest: The New Duty of Good Faith in Contractual Performance](#) (Litigation Bulletin).

[3][ps2id id='3' target=''] For example, see: *Data & Scientific Inc. v Oracle Corp.*, 2015 ONSC 4178.

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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