

## Labour And Employment Law Bulletin

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### Disability Benefits During Reasonable Notice - What Every Employer Should Know

Many clients have consulted us on decisions to terminate or lay off employees at one time or another. A difficult aspect of every employment termination is how long to continue the employee's disability benefits. Now the case of *Egan v. Alcatel Canada Inc.* has made that issue even more problematic.

#### Background

Mary Egan had been employed with Bell Canada for twenty years and joined Alcatel Canada Inc. on October 16, 2000. Two Alcatel employees who formerly worked at Bell encouraged Mary to leave her previous employment. She was provided a \$5,000.00 signing bonus when she joined Alcatel. After 21 months of employment, on July 3, 2002, Mary's contract of employment was ended as part of a mass termination, the result of restructuring at Alcatel. She was 40 years old and earning \$125,000.00 a year. The Court of Appeal determined that in light of the fact that she had been induced to leave relatively secure employment, she had properly been awarded nine months notice of termination by the Trial Judge despite her relatively short service with Alcatel.

A more interesting aspect of the case surrounds the issue of Ms. Egan's disability benefits. When her employment was terminated, Alcatel advised Mary Egan that her disability benefits would end September 25, 2002. She was diagnosed with "major depressive disorder" and became disabled within the meaning of Alcatel's disability insurance policies on October 1, 2002. However, she was denied disability benefits by the Insurer on the basis that her disability benefits had already been discontinued at the time of disability onset.

#### Ruling

The Court found, and the Court of Appeal approved the finding, that the insurance policies for both STD and LTD benefits provided that Alcatel and not the Insurer "determined" when coverage was terminated. It was therefore held:

*"Where an employee would otherwise have qualified for disability benefits during the reasonable notice period, but the application is denied on the basis that coverage was*

*wrongfully discontinued by the employer, the employer must be liable for the value of the disability benefits that would otherwise have been payable."*

#### Damages

It was therefore held that Ms. Egan was entitled to a calculation of damages throughout the period of disability which, in her case, was approximately one year. Further, because disability benefits are not taxable and damages awarded by a Court are taxable, a gross-up of the award was also made.

The Court of Appeal agreed with the Trial Judge that double recovery was not possible: Ms. Egan could only obtain disability benefits or common law damages and not both. However, the calculation of damages based on loss of disability benefits, despite having been notified that disability benefits would discontinue, was clearly greater than nine months pay in lieu of notice.

Alcatel Canada Inc. brought an application for leave to appeal to the Supreme Court of Canada, but leave to appeal the Court of Appeal decision was recently denied.

#### Recommendation

In light of this case, employers may want to review their benefits agreement with their insurers and their disability policies. Clearly, employers should revisit their standard practices with respect to benefits continuation when terminating the employment of any employee. The Alcatel decision makes it very clear that dismissed employees are entitled to continuation of all forms of compensation, and will be compensated for losses resulting from terminating of short and long term disability benefits during the reasonable notice period.

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We provide support to management in drafting employment contracts and company policies, collective bargaining, collective agreement administration and grievance arbitration. We work for a diverse range of employers in the private and public sectors, and have specialized expertise in the construction industry.

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Our seminars focus on providing employers, managers and supervisors with practical information and pro-active strategies. If you are interested, you can contact any of the lawyers in the **Labour & Employment Law Group**:

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