

 **Employment News**

This is a summary of employment matters of interest to the business community, from a litigator's point of view.

We welcome your questions and comments.

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LONG-TERM DISABILITY BENEFITS NOT NECESSARILY PAYABLE DURING NOTICE PERIOD

The Honourable Mr. Justice Panet of the Ontario Superior Court of Justice recently held that a wrongfully dismissed employee was not entitled to damages for long-term disability benefits accruing after becoming totally disabled during the notice period.

The Plaintiff's job as manufacturing manager was terminated without cause and without notice, following 19 years of employment. Under the terms of his group insurance policy, long-term disability coverage ended upon the termination of employment. Less than a year later the Plaintiff became, what the Court determined to be, "totally disabled". At trial it was determined that the appropriate notice period was 22 months. The issue then became whether the employer was liable for disability benefits the Plaintiff would have received if employed at that time of disability.

The Plaintiff contended that the employer could have purchased insurance which would continue after termination, but having elected not to, provided no defence to the Plaintiff's claim in this regard.

The Court concluded that the insurance purchased by the employer was consistent with both the employment agreement and industry standards. Additionally, the Court found that the insurance policy did not provide for continued coverage even in the event the employer had continued to make payments to the Plaintiff during the notice period without requiring the Plaintiff to report to work.

Accordingly, the Court held that there was no basis upon which to find the employer liable for long-term disability benefits during the notice period.