

Don't Use Severance As Leverage: Courts Are Not Impressed



The Ontario Superior Court recently reminded employers that employment agreements aren't optional – they're enforceable. In *Timmins v. Artisan Cells*, 2025 CanLII 2387, the employer ignored its own termination provisions and tried to use severance as leverage for a release. It backfired big time.

The Court found the employer repudiated the employment contract and awarded the employee nine months' common law notice, for a total of \$456,908 in damages.

What Happened?

The employee started working for an American gene therapy company, Artisan Development Labs (ADL), in 2019. By 2021, he was Executive VP and leading the launch of a Canadian subsidiary, Artisan Cell Labs (ACL), in Toronto. He had a generous compensation package, including a \$475,782 salary, stock options, and a bonus.

His 2019 agreement said that if he was let go without cause, he'd get the greater of three months' pay or his *Employment Standards Act, 2000* (ESA) minimums. When he was let go in 2023, he was legally entitled to three weeks' ESA notice. But instead, the company offered one week, plus some additional severance, but only if he signed a full and final release.

To complicate things, the employee had been negotiating a licence deal with ADL and ACL for gene-editing tech in exchange for a stake in a new venture. After he was terminated, the company pulled back on those negotiations and offered an inferior licence – again, only if he signed the release.

The Court's Take

The Court found that the employers' failure to pay severance under the agreement, unless the employee signed a release, amounted to repudiation. In other words, their conduct showed they no longer intended to be bound by the contract.

The judge drew on *Perretta v. Rand A Technology Corporation*, where similar tactics also led to a finding of repudiation. Like in that case, the court here said the employer had no right to withhold contractual severance to get a broader release (which included non-disclosure and non-disparagement terms).

The court awarded nine months of common law notice based on the employee's age (44),

senior role, 3.5 years of service, and the niche nature of his work in gene therapy.

No Punitive Damages

The employee also asked for punitive damages, but the court said the common law notice award – triple the contractual amount – was deterrent enough.

Takeaway for Employers

You can't hold severance hostage to get a release. If your contract entitles an employee to severance, you need to pay it – full stop. Trying to squeeze a release in exchange for what's already owed can cost you far more in the end.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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