

# Pay What You Promise – A Termination Gone Wrong



The recent Ontario Superior Court decision of *Timmins v. Artisan Cells*, [2024 ONSC 7123](#) highlights the importance of employers fulfilling their contractual obligations upon termination.

In this case, the Plaintiff alleged that the Defendants had repudiated his employment agreement through their conduct when they failed to pay him his contractually mandated severance upon termination. Repudiation of a contract occurs when one party to a contract clearly demonstrates, through words or actions, that they do not intend to fulfill their obligations under the agreement, essentially refusing to perform the contract. As such, the plaintiff argued that he was no longer subject to the termination provisions in his Employment Agreement and was entitled to common law notice.

## **Background**

The Plaintiff, Dr. Nicholas Timmins, joined Artisan Development Labs Inc. (ADL) in November 2019 as its Vice-President, Cell Technologies, and Entrepreneur in Residence. In March 2021, ADL promoted Dr. Timmins to Executive Vice-President, wherein he initiated the company's Toronto-based team and built out their Canadian operation, which resulted in the formation of Artisan Cell Labs Inc. ("ACL"), a subsidiary of ADL. In August 2021, ADL promoted Timmins to Chief Development Officer, responsible for their Canadian operation.

Dr. Timmins' compensation package included a base salary of \$475,782, plus stock options, an annual bonus, and comprehensive benefits.

## **The Employment Agreement**

Dr. Timmins was employed pursuant to an employment agreement that included a termination provision which provided him the greater of his minimum statutory entitlements under the *Employment Standards Act* or three months notice or pay in lieu of notice.

## **The Termination**

Dr. Timmins' employment was terminated on March 3, 2023, on a without cause basis. Despite the fact that he was continuously employed for more than three years, the

termination letter provided for only one week of ESA termination pay, rather than 3 weeks which would be the statutory entitlement or the remainder of the contractual 3 months. The termination letter stated that further severance amounts were conditional upon Timmins signing a broad release containing non-disclosure and non-disparagement provisions.

## **The Decision**

Justice Callaghan determined that, by failing to provide Dr. Timmins with his contractual severance entitlements and by attempting to impose additional release conditions, the Defendants had demonstrated an intention not to be bound by the severance provisions in the Employment Agreement. The Defendants sought a benefit from the release which they were not entitled to under the Employment Agreement. As such, the Defendants had repudiated the Employment Agreement.

In the absence of a governing contractual termination provision, the plaintiff was entitled to common law notice. In determining the appropriate common law notice period, Justice Callaghan considered Dr. Timmins' age, length of service, senior position, and the specialized nature of gene therapy work. Given the limited employment opportunities in his field, Dr. Timmins was awarded the much higher amount of nine months of common law notice, amounting to a total award of damages of \$456,908. He was also awarded a further \$27,900 in substantial indemnity costs.

## **Takeaways for Employers**

This decision highlights the importance of complying with all contractual obligations when terminating an employment relationship. Deviating from contractual commitments and attempting to unilaterally impose additional conditions can amount to repudiation of the employment agreement, putting the employer on the hook for common law notice.

*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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