



# What's New in HR Law

## Requiring a Release in Exchange for Contractual Entitlements Has Serious Consequences for Employer

March 7, 2025 | By Travis Carpenter

### Bottom Line

The recent decision of [\*Timmins v. Artisan Cells\*](#) ("*Timmins*") is in line with existing case law, and represents a sobering reminder of the significant potential liability for employers who fail to comply with the terms of an employment contract upon termination of employment.

In *Timmins*, the Superior Court of Ontario sided with the terminated employee, holding that the employer had repudiated their own employment contract by requiring an executed release from the employee in exchange for amounts owed under the contract. This meant that the employer could not rely on their own termination clause. The case in *Timmins* highlights the potentially serious consequences of failing to provide an employee with their contractual entitlements.

### Basic Facts

In *Timmins*, the employee, a forty-four (44) year old Vice President, had a written employment contract that provided for three (3) months of pay in lieu of notice should his employment be terminated without cause. The agreement did not require the employee to sign a release to receive such amounts.

*This article is for the purposes of only general information and does not constitute legal advice or opinion.*

The employer, Artisan Cells, then terminated the employee's employment, but refused to provide the full amount set out in the employment contract unless he signed a release. The employee refused, and so Artisan provided him with only (1) week of termination pay. This was less than his statutory minimum entitlements pursuant to the Ontario *Employment Standards Act* (the "ESA").

The former employee, through counsel, advised the employer that he was treating the employment contract as being repudiated, or at an end. He then brought a wrongful dismissal action, seeking damages for a common law notice period of nine (9) months, instead of the three (3) month entitlement under his contract.

### The Decision

Justice Callaghan held that the employer repudiated its own employment contract by requiring the former employee to sign a release. In other words, the employer had acted in a manner that showed it no longer intended to follow the terms of the employment contract. This conduct meant it could not rely on the termination clause in that contract. As a result, the Court awarded the former employee nine (9) months' notice, despite his three and a half (3 1/2) years of service.

Justice Callaghan quoted the 2021 Superior Court case of *Peretta v. Rand A Technology Corporation*, 2021 ONSC 2111 ["*Peretta*"]. In *Peretta*, at paragraph 32, the Court held:

[32] I am satisfied that a reasonable person assessing the Defendant's conduct would conclude that in demanding that its employee execute a Full and Final Release and comply with the terms of an "Enhanced Severance" offer as preconditions to receiving the two weeks' pay to which the employee was contractually entitled, Rand no longer intended to be bound by the 2018 Employment Contract. ... My assessment is whether the Defendant's conduct evidenced an intention not to be bound by the 2018 Employment Contract, assessed objectively. It does.

Applying this reasoning, Justice Callaghan held that the former employee had been "denied the only remaining benefit of the employment contract" by not being provided his contractual termination entitlements.

Justice Callaghan awarded the employee a total of \$456,908.82 as pay in lieu of nine (9) months' notice. He also awarded \$27,900.00 of legal costs on a partial indemnity basis.

### Takeaways

This case reminds employers of the potential consequences of not providing contractual entitlements and for improperly requiring the execution of a release. As a reminder, employees terminated without cause should always receive their *ESA* minimum entitlements whether or not they sign a release.

Should an employer wish to have a release requirement, they may wish to consult counsel about how to draft both an effective employment contract and release. Employers may also wish to review their existing employment contracts to ensure they appropriately address a release requirement.

### Need More Information?

For more information or assistance with employment contracts and releases, contact [Travis Carpenter](#) at [tcarpenter@filion.on.ca](mailto:tcarpenter@filion.on.ca), or your [regular lawyer](#) at the firm.



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