

Ontario Court of Appeal Brings Clarity to Enforceable Termination Clauses

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Baker v. Van Dolder's Home Team Inc. and Li v. Wayfair Canada ULC

Ontario employers and employment lawyers have had to navigate an uncertain legal landscape when it comes to termination clauses. Ontario courts regularly struck down termination provisions for highly technical drafting deficiencies, often resulting in employers who intended to comply with the *Employment Standards Act, 2000* (ESA) being exposed to substantial common law notice obligations instead.

With the release of its decision in *Baker v. Van Dolder's Home Team Inc. (Baker)* and *Li v. Wayfair Canada ULC (Li)*, the Ontario Court of Appeal has signalled a welcome shift in how termination provisions should be interpreted. The Court emphasized a practical, contextual approach focused on the parties' intentions, rather than an overly technical search for hypothetical ESA violations.

Background

The appeals arose from two different employment agreements containing similar language.

In *Baker*, the employee's contract permitted the employer to terminate employment without cause "at any time" upon providing the minimum notice, pay in lieu, and severance required by the ESA. The contract also contained a for-cause provision stating that the employee would receive any minimum ESA entitlements even if dismissed for cause.

The motion judge held that the phrase "at any time" rendered the without-cause provision invalid because the ESA prohibits termination in certain circumstances, such as during protected leaves or as a reprisal for exercising ESA rights. The court also found the for-cause provision unenforceable because it did not adequately explain the distinction between contractual just cause and the ESA's higher "wilful misconduct" standard.

In *Li*, the contract allowed termination without cause "at any time and for any reason" while repeatedly confirming that the employee would receive all minimum ESA entitlements. The motion judge upheld the provision as enforceable.

The Court's New Emphasis: Context Over Technicality

The Court of Appeal acknowledged the widespread criticism that termination clause jurisprudence has become difficult to predict. It specifically referenced concerns that virtually identical clauses have often produced opposite results, with courts invalidating provisions over minor wording differences.

Writing for the court, Justice Monahan emphasized that while employment contracts must be interpreted with sensitivity to the power imbalance between employers and employees, they are still contracts. The proper task of the court when adjudicating a contractual dispute is to determine the parties' objective intentions by reading the contract as a whole and considering the surrounding circumstances.

Importantly, the Court warned against searching for ambiguity where none reasonably exists. A termination provision should not be invalidated simply because counsel can imagine a hypothetical interpretation that would violate the ESA.

“At Any Time” Does Not Breach the ESA

The Court rejected the argument that the phrase “at any time” is necessarily inconsistent with the ESA because the statute prohibits termination in certain protected circumstances. According to the Court, that interpretation reads the words in isolation and ignores the broader contractual context.

Instead, the Court held that where the agreement repeatedly expresses an intention to comply with the ESA, reasonable parties would not understand “at any time” as authorizing unlawful conduct. The phrase simply means that a termination can occur without cause regardless of timing, provided the employer complies with applicable legal requirements.

The Court similarly found that the phrase “for any reason” does not imply a right to terminate for prohibited reasons.

Clarification on For-Cause Provisions

The Court also provided helpful guidance on for-cause termination language.

Ontario courts have repeatedly held that contractual definitions of cause cannot deprive employees of ESA termination entitlements unless their conduct meets the higher standard of “wilful misconduct.” Recent cases invalidated cause provisions that purported to deny all entitlements based on broader definitions of cause.

In *Baker*, however, the contract expressly stated that even where dismissal occurred for cause, the employee would still receive any minimum compensation or entitlements prescribed by the ESA. The Court held that this language cured the potential problem. An employer is not required to provide a detailed legal tutorial within the employment agreement itself.

Key Takeaways for Employers

1. Ontario Courts May Be Moving Away from Hyper-Technical Interpretations

The decision strongly suggests that Ontario courts should focus on the overall meaning and purpose of termination provisions rather than isolated wording.

2. Clear ESA Compliance Language Matters

The Court repeatedly relied on language demonstrating the employer's intention to comply with the ESA. Agreements that expressly preserve statutory minimum entitlements are more likely to survive scrutiny than those that are silent or ambiguous.

3. “At Any Time” and “For Any Reason” Language Appears Safer

The Court has now expressly held that these commonly used phrases do not violate the ESA when read within an agreement that otherwise complies with statutory requirements.

Looking Ahead

The significance of *Baker* and *Li* extends beyond the specific wording at issue. The Court's overarching message is that employment contracts should be interpreted like all contracts, albeit through the lens of employment law principles and employee protection. Courts should identify what reasonable parties objectively intended, rather than invalidating agreements based on unlikely theoretical interpretations.

For employers, the decision provides clarity in an area that has often seemed unpredictable. While termination clauses will continue to be closely scrutinized, employers who clearly express an intention to comply with the ESA may now have a stronger basis to enforce carefully drafted provisions.