

Employment Update: The Court of Appeal Reaffirms a Commonsense Approach in Interpreting Termination Clauses in Ontario

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On August 6, 2026, the Ontario Court of Appeal released its much-anticipated decision in [*Baker v. Van Dolder's Home Team Inc.*, 2026 ONCA 568](#) ("**Baker**"), which addressed two grouped appeals from lower court decisions: [*Baker v. Van Dolder's Home Team Inc.*, 2025 ONSC 952](#) ("**Baker ONSC**") and [*Li v. Wayfair Canada ULC.*, 2025 ONSC 2959](#) ("**Li**"). *Baker ONSC* and *Li* involved virtually identical "at any time" language in without cause termination provisions, yet the lower courts had reached opposite conclusions on enforceability. The decision was heard with interveners (the Ontario Chamber of Commerce on behalf of the employer, and Parkdale Community Legal Services and the Income Security Advocacy Centre on behalf of the employees), signalling its broad policy significance.

These lower court decisions, among others, have provided uncertainty regarding the enforceability of termination provisions for over two years. The Court of Appeal in *Baker* provided much-needed guidance on how termination provisions in employment contracts should be interpreted.

I. The Interpretive Framework

The Court of Appeal emphasized that employment contracts have "many characteristics that set [them] apart from the ordinary commercial contract," including the importance of employment to dignity and self-worth, the power imbalance between employers and employees, and employees' lack of bargaining power. The Court also recognized that the *ESA* is remedial legislation and that Section 5(1) prevents contracting out, noting that where a termination clause could reasonably be interpreted in more than one way, courts should prefer the interpretation benefiting the employee.

Within that broader protective framework, the Court emphasized the following principles with respect to the proper interpretation of termination provisions in employment contracts:

1. Determining the meaning of an employment contract is still an exercise in contractual interpretation. The modern approach to contractual interpretation has shifted away from technical and legalistic formulations and towards a “practical, common-sense approach” that focuses on the objective intention of the parties in light of the words used and the surrounding circumstances.
2. Courts must read the contract as a whole, giving the words their ordinary and grammatical meaning consistent with the surrounding circumstances.
3. Courts should avoid a “magic words” approach, whereby the use of certain words considered in isolation will necessarily determine the legal effect of a contractual provision.
4. A provision is not ambiguous merely because it is possible to identify multiple potential interpretations. Genuine ambiguity arises only where there are two or more reasonable interpretations in the context of the entire contract.

II. An Employee Can be Dismissed “At Any Time”

The central issue was whether the inclusion of “at any time” in a without cause termination provision rendered the clause inconsistent with the *ESA*, since the *ESA* prohibits employers from terminating employees in certain circumstances (for example, on the conclusion of a leave under Section 53 or as a reprisal under Section 74). The Court also noted that similar prohibitions exist in other remedial statutes, such as the *Human Rights Code* and the *Occupational Health and Safety Act*, meaning the potential conflict extends well beyond the *ESA*.

The Court of Appeal rejected the employees’ argument that the words should be read literally and in isolation. Instead, the Court of Appeal emphasized the need to apply established principles of contractual interpretation, which require that contractual provisions be read in context and with a view to identifying the objective intentions of the parties. The Court of Appeal held that when the employment contract is read as a whole, and in particular, in conjunction with other clauses that expressly commit the employer to complying with the *ESA*, the parties could not have intended that the phrase “at any time” would entitle the employer to terminate employment in circumstances expressly prohibited by statute.

The Court of Appeal explained that the words “at any time” simply reflect a mutual intention that a without cause termination will be valid and legally effective regardless of when it occurs, but the language is not intended to render legally effective a termination that is expressly prohibited by the *ESA*. The Court of Appeal added that it would be contrary to common sense to interpret the provision as reflecting an intention to engage in conduct that would expose the employer to

the severe consequences of violating Sections 53 or 74 of the *ESA*, consequences that include reinstatement, “make whole” orders, prosecution, up to 12 months’ imprisonment, and/or a fine of \$100,000.

Thus, in accordance with the objective intentions of the parties, the Court of Appeal held that the words “at any time” did not violate the *ESA*.

III. A Termination “For Any Reason” is not Inconsistent with the *ESA*.

Similar to the words “at any time”, the Court of Appeal in *Baker* determined that the phrase “for any reason” is not inconsistent with the *ESA*.

The without cause termination clause in *Li* (which contained “for any reason” language) clearly evidenced an intention to provide all entitlements provided for under the *ESA*. The Court of Appeal stated that permitting an employer to terminate an employee’s employment “for any reason” simply means that a termination will be consistent with the contract and therefore legally effective regardless of the reason for the termination. In reaching this conclusion, the Court relied on the well-established principle that an employer is not required to provide a reason for terminating an employment contract. The inclusion of “for any reason” does no more than reflect this principle. To read this language as permitting an employer to dismiss an employee contrary to the *ESA* would ignore the objective intention of the parties.

IV. Referential Incorporation of *ESA* Entitlements in a “Just Cause” Provision Can Comply with the *ESA*

In reversing the lower court decision in *Baker* ONSC, the Court of Appeal in *Baker* also found that the “just cause” provision of the termination clause was enforceable. The just cause termination clause in *Baker* stated:

Termination with cause: we may terminate your employment at any time for just cause, without prior notice or compensation of any kind, except any minimum compensation or entitlements prescribed by the *Employment Standards Act* [Emphasis added]. Just cause includes the following conduct:

- a. Poor performance, after having been notified in writing of the required standard;
- b. Dishonesty relevant to your employment (such as misleading statements, falsifying documents and misrepresenting your qualifications for the position you were hired for);
- c. Theft, misappropriation or improper use of the company’s property;
- d. Violent or harassing conduct towards other employees or customers;
- e. Intentional or grossly negligent disclosure of privileged or confidential information about the company;
- f. Any conduct which would constitute just cause under the common law or statute.

The threshold for disentitling an employee from notice and severance pay upon termination is “wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.” This standard derives from the combined effect of ss. 55 and 64(3) of the *ESA* and ss. 2(1)3 and 9(1)6 of the *Termination and Severance of Employment* regulation, O. Reg. 288/01 (the “**Regulation**”). It is a higher standard than just cause at common law, and has been characterized by courts as the employee doing something “deliberately, knowing they are doing something wrong” or being “bad on purpose.” This threshold cannot be contracted out of or lowered. The Court of Appeal noted that the various forms of misconduct set out in the termination clause in *Baker* were lower than this statutory threshold.

However, the above just cause provision provides that if the employee’s employment is terminated for “cause”, he will still be entitled to any minimum compensation or entitlements prescribed by the *ESA*. The Court of Appeal held that this portion of the provision expressly brings the just cause provision into alignment with the *ESA*, since the employee will still receive notice, benefits continuation, and severance pay unless his conduct falls within the narrower category of wilful misconduct under the Regulation.

Significantly, the Court rejected the motion judge’s finding that the provision was unenforceable because it failed to explain the *ESA* wilful misconduct standard to “regular employees.” The Court held that: (a) the contract expressly states the employee will receive minimum *ESA* entitlements even upon a just cause termination, which is the opposite of what the motion judge concluded employees would assume; (b) requiring an employer to explain the complex interaction between contractual just cause, common law just cause, and statutory wilful misconduct within the contract itself is impractical; and (c) it is well-established that employers may referentially incorporate *ESA* entitlements in an employment contract, and such provisions are valid.

V. *Waksdale* Remains Good Law

The Court of Appeal was asked to reconsider its decision in [*Waksdale v. Swegon North America Inc.*, 2020 ONCA 391](#) (“***Waksdale***”). In *Waksdale*, the Court of Appeal held that if one termination provision in an employment contract violates the *ESA*’s minimum standards, all termination provisions in the contract are void and unenforceable.

Van Dolder had requested that the Court convene a five-judge panel to reconsider *Waksdale*; the Associate Chief Justice denied that request. Van Dolder then argued on appeal that the three-judge panel still had jurisdiction to reconsider *Waksdale*. The Court of Appeal declined to consider that argument, holding that because the Without Cause and With Cause Provisions in both Mr. Baker’s and Mr. Li’s contracts comply with the minimum requirements of the *ESA*, the issue did not arise on the facts. *Waksdale* therefore remains good law, though the Court’s disposition suggests it may be reconsidered in a future case where the issue is not moot.

Employer Takeaways

Baker provides welcome clarity for Ontario employers and should help to reduce the uncertainty that has surrounded the enforceability of termination clauses in recent years. As the Court itself acknowledged, the result rebuts the presumption of common law reasonable notice, which “might be thought to be a harsh outcome” for employees. However, the Court emphasized that the *ESA* contemplates that reasonable notice is a common law principle that can be excluded by express contractual terms, and that if minimum statutory entitlements are deemed insufficient, that is a matter for the legislature. The following are key takeaways:

1. Courts have been instructed to apply a practical, common-sense approach to the interpretation of termination provisions. Specifically, courts must avoid an overly legalistic interpretation of “magic words” (such as “at any time” or “for any reason”) to find an ambiguity where there is none.
2. The decision reinforces that termination provisions should be read in the context of the employment contract as a whole. Employers should continue to draft their employment contracts to clearly evidence an intention to comply with the *ESA*. Notably, the inclusion of a stand-alone “minimum standards” or *ESA* supremacy clause can serve as an additional interpretive safeguard for termination provisions.
3. Despite this employer-friendly decision, *Baker* should not be treated as a universal endorsement of all existing termination provisions. Employers who rely on provisions that deny *ESA* notice, severance, or benefit continuation, or whose with-cause provisions fail to preserve *ESA* minimums, remain exposed. The law surrounding termination clauses continues to evolve, and employers should review their employment contracts regularly to ensure they contain enforceable language and comply with the *ESA*. Termination clauses are a critical part of any employment contract and getting them right can save employers from costly disputes and significant damages awards.
4. Employers with active wrongful dismissal litigation, particularly where the primary issue is the enforceability of a termination clause, should revisit those matters in light of this decision to assess whether their position has been strengthened.

Given the significance of *Baker* with respect to the interpretation of employment contracts in Ontario, we will continue to monitor whether leave to appeal to the Supreme Court of Canada is sought.

For specifically tailored advice on your employment contracts, please reach out to a member of Blaney’s [Labour and Employment Group](#).

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