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Finally, Good News for Ontario Employers!

Court of Appeal Confirms Enforceability of Many Existing Employment Contracts

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For years, it's appeared Ontario courts have been looking for any way to strike down termination provisions to avoid holding employees to the very employment contracts they signed. The result has been a parade of inconsistent and, in some cases, illogical and impractical decisions that offer little useful guidance.

Yesterday, the Court of Appeal for Ontario said – STOP the chaos. This uncertainty has helped neither employers nor employees and the caselaw has become increasingly inconsistent with the principles of contractual interpretation. It's time to go back to basics, give effect to the intentions of the parties as set out in the employment contract they signed, stop assuming employers don't intend to comply with the *Employment Standards Act* ("ESA"), and stop straining to find trouble in employment contracts when it does not reasonably exist.

In *Baker v Van Dolder's Home Team Inc*. ("*Baker*"),[1] the Court of Appeal resolved two conflicting lower court decisions that addressed whether "at any time" language in a without cause termination provision violated the ESA. The termination provisions at issue had substantively identical language, yet one was found to be enforceable, and the other not.

In finding both provisions to be enforceable, the Court of Appeal held there is no inconsistency between, on the one hand, saying an employer has the contractual right to terminate employment "at any time" or "for any reason" and, on the other hand, acknowledging that such discretion is necessarily subject to any conditions the parties agreed to in the contract and any applicable provisions found in employment standards legislation and/or other statutes.

The decision is significant for two key reasons: first, it brings clarity and, we hope, greater consistency to employment contract interpretation. Second, it restores a common sense approach to interpreting employment contracts and affirms it is the parties' objective intentions when entering into an employment contract that govern the contract's interpretation – not "magic words" and not an abstract ambiguity or hypothetical intention to violate the ESA.

Common sense approach

At the outset, the Court of Appeal acknowledged recent caselaw was replete with inconsistent rulings on the enforceability of substantively identical termination provisions. The court therefore took this "*opportunity to clarify the relevant legal principles governing the interpretation of termination provisions in employment contracts*." Those principles are summarized as follows:

[1] 2026 ONCA 568.

- There are no "magic words" that render a termination provision enforceable or not. Determining the meaning of an employment provision is an exercise in contractual interpretation with the goal being to understand the objective intention of the parties as expressed in the wording of the contract as a whole, and in its context.
- The modern approach to contractual interpretation has shifted away from technical and legalistic formulations toward a practical, common-sense approach. The question is, "what would the parties have reasonably understood their words to mean?"
- If a termination provision can reasonably be interpreted in more than one way, a court should prefer the way that gives the greater benefit to the employee. As such, a termination provision will only rebut the presumption of common law reasonable notice and comply with the ESA if its wording is clear.
- That said, a contractual provision is not ambiguous merely because it is possible to identify multiple potential or hypothetical interpretations. Ambiguity only arises where there are two or more reasonable but differing interpretations in the context of the contract. Courts should not strive to find an ambiguity (and therefore decline to enforce a termination provision) where none reasonably exists.

Lower court conflicting decisions

In 2024, in ***Dufault v The Corporation of the Township of Ignace*** ("*Dufault*"),[2] the Superior Court held a without cause termination provision which permitted termination "at any time" was unenforceable. The court reasoned the provision violated the ESA because the ESA does not permit an employer to dismiss an employee for reasons expressly prohibited by the ESA (*e.g.,* for taking a job protected leave).[3]

In 2025, the Superior Court issued two contradictory decisions regarding this language: ***Baker v Van Dolder's Home Team Inc.*** ("*Baker*"),[4] and ***Li v Wayfair Canada ULC.*** ("*Li*").[5] In *Baker,* applying *Dufault,* the court found the "at any time" language in the without cause termination provision made the provision unenforceable. In *Li,* "at any time and for any reason" was found to be enforceable.

Baker also challenged the enforceability of the for cause termination provision, which stated that the employer could terminate employment for cause without prior notice or compensation "except any minimum compensation or entitlement prescribed by the [ESA]." The provision listed examples of what would constitute just cause, including poor performance and "any conduct which would constitute just cause under the common law or statute." The lower court held this language was unenforceable because it did not explain the difference between the "cause" standards under the ESA and contract, and that an employee may have entitlements under the ESA (the higher standard of wilful misconduct) even if terminated for cause under the contract.

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[2] 2024 ONSC 1029.
[3] *Dufault* was affirmed by the Court of Appeal, but not on this point.
[4] 2025 ONSC 952.
[5] 2025 ONSC 2959.

Significantly, both contracts expressly acknowledged the employer's intention to comply with the ESA, and to provide minimum entitlements under the ESA.

Court of Appeal decision

Applying the principles of law summarized above, the court held that, when considered in context, the termination provisions in the two contracts, reflected an "objective intention [of the respective employers] to comply with the minimum standards in the ESA." The provisions were therefore enforceable.

The Court of Appeal strongly rejected the argument that "at any time" or "for any reason" permitted an employer to terminate employment at times or for reasons prohibited by the ESA, thereby rendering the termination provision unenforceable and entitling the employee to common law reasonable notice:

> The interpretation proposed by Mr. Baker and Mr. Li requires a literal reading of the Impugned Words, considered in isolation from the context in which they are found. … when viewed through the proper interpretive lens, the parties could not have intended that the inclusion of the Impugned Words meant that the employers in these cases were thereby entitled to terminate Mr. Baker's or Mr. Li's employment despite express statutory provisions to the contrary.

And further:

> I agree that, when read literally and in isolation, it is indeed possible to find an inconsistency between the Impugned Words and provisions of the ESA. But as explained above, contractual provisions must be read in context, with a view to identifying "what the parties objectively intended based on the text and surrounding circumstances." When that proper interpretive framework is applied, it becomes evident that the parties could not have intended for the Impugned Words to have the meaning proposed by Mr. Baker.

This conclusion was reinforced by other provisions in the employment contracts, which repeatedly stated the employer intended to comply with the ESA.

"At any time" did not convey any nefarious meaning, instead:

> Read in context, this wording simply reflects a mutual intention that a without cause termination will be valid and legally effective regardless of when it occurs. But the use of this wording is not intended to render legally effective a termination that is expressly prohibited by the ESA.
> …
> Therefore, there is no inconsistency between saying on the one hand that an employer has the contractual right to terminate an employment contract "at any time", and on the other hand acknowledging that such discretion is necessarily subject to any conditions the parties agreed to in the contract itself and any applicable provisions found in the ESA, or other statutes.

The court also warned against preferring speculation to the reasonably clear intentions of the parties:

> The motion judge "had no doubt that [Van Dolder], advised by capable counsel, intended only to comply with the ESA". As for Mr. Baker, although he argued before the motion judge that it was possible to interpret the Without Cause Provision as permitting termination contrary to statutory prohibitions, he also did not propose that the parties intended this result.
>
> This should have been sufficient, in itself, for the motion judge to conclude that the inclusion of the Impugned Words did not give rise to an inconsistency with the ESA. But rather than focus on what the parties could reasonably have intended, the motion judge instead fastened on the fact that it was possible to interpret the Impugned Words as permitting Van Dolder to ignore statutory provisions that would prohibit terminating Mr. Baker's employment in certain circumstances. [emphasis added]

Likewise, "for any reason" did not violate the ESA. Given the employer's "scrupulous intention" to comply with the ESA, it was "illogical" to read the inclusion of the words "for any reason" as somehow expressing an intention to violate the ESA. Rather it merely reserved the employer's right to terminate the contract without providing the employee reasons.

Finally, the Court of Appeal rejected Baker's argument the with cause provision would confuse a "regular employee" who might not understand they may have entitlements under the ESA despite being terminated "for cause" as defined in the contract. There was no basis to conclude an employee would assume they had "no entitlement" if terminated for cause. The contract expressly stated the opposite – if the employee is dismissed for cause they will be entitled to receive ESA minimum entitlements.

While there is always a chance the Supreme Court of Canada could overturn this decision on appeal, we think this unlikely. We will keep our readers posted.

Final thoughts

The court's common sense approach is welcome news for all the reasons noted above.

The decision also reinforces the importance of a well drafted employment contract that makes clear the parties' intentions **and** complies with prevailing law. This is **the** most effective and efficient way to limit liability and provide certainty at the end of an employment relationship. Of course, the devil is in the details, and we are here to help. We recommend an annual review of your employment contracts to ensure they still offer the best protection possible.

For more information or assistance, contact your Sherrard Kuzz LLP lawyer or info@sherrardkuzz.com.

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