

Court of Appeal Enforces Termination Clauses With “Any Time” and “For Any Reason” Language

By Landon Young and Sarah O’Flaherty

The Ontario Court of Appeal has issued a decision that is good news for employers who seek to rely on termination clauses in their contracts with employees that define or limit employee entitlements.

The Court has issued an unusual joint decision in the cases of [Baker v. Van Dolder’s Home Team Inc.](#), 2025 ONSC 952, (“Baker”) and [Li v. Wayfair ULC.](#), 2025 ONSC 2959, (“Li”). The lower level Courts in these cases issued conflicting decisions as to the enforceability of termination clauses that had similar language.

The bottom line of the Court’s decision is that termination clauses are not invalidated simply because they say the employer may terminate the employee “at any time” or “for any reason.”

The Court also decided that a termination clause that sets out when an employee may be terminated without notice for just cause will be valid where it states the employee will receive their entitlements under the Ontario *Employment Standards Act, 2000* (the “ESA”) if terminated for just cause.

This is significant because many, if not most, termination clauses in employment offer letters and contracts in Ontario contain language similar to that found in the clauses considered in this decision.

Employee entitlements under the *ESA* to termination pay and, if applicable, severance pay, are usually much less than for pay in lieu of “reasonable notice” under the common law. This decision will mean that employers can rely on their termination clauses with greater confidence that they will be enforced, reducing liabilities to employees on termination and hopefully avoiding expensive litigation to enforce them.

Legal Background

Where a termination clause provides for the employee to receive less than the employee's minimum entitlements under the *ESA*, it will not be enforceable with the result that the clause is void and the employee is entitled, by default, to pay in lieu of reasonable notice under the common law.

In the groundbreaking decision of *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391 (“*Waksdale*”), the Ontario Court of Appeal found that termination clauses must be read as a whole and where a termination clause potentially takes away an employee’s minimum entitlements all other termination clauses will be void.

In *Waksdale* the contract contained a valid clause that set out the employee’s entitlements if terminated without cause. However, the contract had another “for cause” clause that said the employee could be terminated without notice for certain infractions which did not meet the higher “Wilful Misconduct” threshold under the *ESA*. Even though the employee was terminated on a “without cause” basis, the Court of Appeal decided that this potential violation of the *ESA* in with the “for cause” clause also invalidated the “without cause” clause.

Since *Waksdale*, trial level Judges have reached conflicting decisions as to whether certain words had the effect of invalidating termination clauses, including in the *Baker* and *Li* cases that were considered by the Court of Appeal in this recent decision. This has had the effect of prolonging litigation because both employers and employees could find support in existing cases as to whether termination clauses should be enforced. Employment lawyers have been eagerly awaiting the Court's decision for clarification as to the applicable legal rules.

The Motions Judge's Decision in *Baker*

On a motion for summary judgement, the motions Judge in the *Baker* case ruled that "without cause" and "with cause" termination clauses both potentially violated the *ESA*, with the result that Mr. Baker was entitled to pay in lieu of reasonable notice under the common law.

The "without cause" clause stated:

Termination without cause: we may terminate your employment at any time, without just cause, upon providing you with only the minimum notice, or payment in lieu of notice and, if applicable, severance pay, required by the Employment Standards Act. If any additional payments or entitlements, including but not limited to making contributions to maintain your benefits plan, are prescribed by the minimum standards of the Employment Standards Act at the time of your termination, we will pay same. The provisions of this paragraph will apply in circumstances which would constitute constructive dismissal. [Emphasis added.]

[the "Without Cause Provision"]

The termination with cause clause 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*. 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 “With Cause Provision”]

The motion Judge decided that the Without Cause Provision was unenforceable because it permitted Van Dolder to terminate Mr. Baker’s employment “at any time”. The language “at any time” was found to be inconsistent with the *ESA* because the *ESA* prohibits employers from terminating an employee’s employment at certain times, including on the conclusion of an employee’s leave.

The motion judge followed the decision of *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029. The motion Judge in that case held that a without cause provision with similar “at any time” language was inconsistent with the *ESA* and, as result, invalidated the *ESA*.

The With Cause Provision in Mr. Baker’s contract was also held to be unenforceable by the motion Judge. He acknowledged that this wording at least alerted Mr. Baker to the fact that the *ESA* may provide for something other than what is provided in the contract. He accepted that such a provision might well be valid if this were a commercial contract with lawyers involved, since in such a case the parties would be taken to understand the difference between the contractual definition of just cause, the common law definition of just cause, and the *ESA* definition of wilful misconduct.

But the motions Judges reasoned that the provision was potentially unfair in relation to “regular employees” because, although it set out what conduct constituted “just cause” for purposes of the contract, it did not explain the *ESA* definition of “wilful misconduct” and how that statutory standard differed from the contractual standard. In the motion judge’s view, “[g]iven that many employees will not be familiar with the *ESA* provisions, many employees would assume that they had no entitlement if they breached the contractual standards”. Therefore, the provision was unenforceable.

The Motions Judge’s Decision in *Li*

The termination provisions in Mr. Li’s employment contract with Wayfair were as follows:

For all purposes in this letter, “Cause” means any willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the Company and that constitutes “cause” under the *ESA*.

...

The Company may terminate your employment at any time for Cause without notice, pay in lieu of notice, severance, benefits continuance or other compensation or damages of any kind, unless expressly required by the *ESA* in which case only the minimum statutory entitlements will be provided.

[the “With Cause Provision”]

After your probationary period concludes, in the absence of Cause, the Company may terminate your employment at any time and for any reason by providing you with only the minimum statutory amount of written notice required by the ESA or by paying you the minimum amount of statutory termination pay in lieu of notice required by the ESA, or a combination of both, as well as paying statutory severance pay required by the ESA, providing benefits continuance for the requisite minimum statutory notice period under the ESA and all other outstanding entitlements, if any, owing under the ESA. These payments and benefits shall fully satisfy all of the Company's notice, severance and benefits continuance obligations upon the termination of your employment, whether arising under the ESA, the common law or this Agreement, and you agree you shall have no further entitlements unless expressly required by the ESA. In no event will you receive less than your statutory minimum entitlements under the ESA. [Emphasis added.]

[the "Without Cause Provision"]

The motions Judge found the Without Cause Provision enforceable. In his view, reading the employment contract as a whole led to the conclusion that it sought only to exclude Mr. Li's right to common law damages and limit his entitlement on termination to the minimum required by the *ESA*. The motion judge relied on the fact that the Without Cause Provision "clearly and repeatedly indicates payments will be made as 'required by' or 'under the *ESA*'".

The motion judge similarly held that the With Cause Provision was enforceable since, unlike the provision considered in *Dufault (Ont. S.C.)*, Mr. Li's employment contract defined cause in relation to the *ESA* standard of "wilful misconduct" and provided that he would receive any minimum statutory entitlements required by the *ESA*.

The Court of Clarified Governing Interpretive Principles

The Court reinforced the principles governing the interpretation of employment contracts:

Employment contracts are distinct from ordinary commercial contracts and must be interpreted with the protective principles that recognize the power imbalance between employers and employees and the *ESA*'s remedial purpose.

Courts strictly enforce *ESA* compliance and resolve any *reasonable* ambiguity in favour of employees, but they still apply the modern, common-sense approach to contractual interpretation: reading the agreement as a whole, considering context, and avoiding "magic words" reasoning.

A clause is only ambiguous if there are two or more reasonable interpretations in the context of the entire contract; courts should not manufacture ambiguity where none exists

The Court held that, although a literal reading of the phrase in isolation could suggest a conflict with the *ESA*, contractual provisions must be interpreted contextually to determine the parties' objective intentions.

The Court's Decision in the *Baker* Case

a) The Without Cause Provision

In the *Baker* case, the Court held that both the Without Cause and With Cause Provisions were enforceable and did not demonstrate an intention on the part of the employer to not comply with the *ESA*.

The words "at any time" means that a without-cause termination is contractually effective regardless of timing, subject to statutory limitations. This interpretation is consistent with longstanding jurisprudence recognizing an employer's right to terminate employment at any time, provided applicable statutory and contractual requirements are satisfied.

The Court found no inconsistency between a contractual right to terminate employment "at any time" and the reality that such a right remains subject to the *ESA* and other applicable legislation. The motion Judge improperly strained to find ambiguity where none existed, and the Without Cause Provision was therefore enforceable.

b) The With Cause Provision

The With Cause Provision also did not violate the *ESA* when interpreted objectively. The Court rejected the motions Judge's analysis that the clause was potentially unfair to the employee because it did not explain when rights under the *ESA* may be taken away when terminated for cause.

Prior decisions have held that termination provisions defining "cause" more broadly than the *ESA*'s Wilful Misconduct standard are unenforceable where they purport to deny employees notice or compensation, including *ESA* entitlements, for conduct that falls short of Wilful Misconduct.

The Court distinguished those cases. Here, the contract expressly provided that, even where Mr. Baker was terminated for "cause" rather than the higher *ESA* "wilful misconduct" standard, he would remain entitled to any minimum compensation or entitlements prescribed by the *ESA*. As a result, the provision did not contract out of *ESA* minimum standards and was therefore enforceable.

The Court declined to find ambiguity in the clause and reiterated that employers may validly incorporate *ESA* entitlements by reference into employment contracts.

Interestingly, the Court did not characterize the "except" language as a savings clause, despite the long line of cases holding that savings clauses generally cannot rescue otherwise unenforceable termination provisions.

Prior cases have held that employers may not rely on "saving clauses", which state that other provisions of a contract are still enforceable where a particular clause violates applicable legislation, to save a termination clause that violates the *ESA*.

While the Court declined to consider whether to overturn *Waksdale*, the Court did not explicitly endorse the reasoning in that case. Rather, the Court simply declined to consider whether *Waksdale* is correct on the basis it was not necessary to decide the appeal.

The fact the Court declined to consider whether *Waksdale* was correctly decided, or to cite the case in support of its decision, is interesting. The Court of Appeal's reasons in this case, which call for a pragmatic approach to interpreting termination clauses that does not rely on isolated words that ignore other language in the agreement can be considered to be contrary to the approach taken by the Court in *Waksdale*.

The Court's Decision in the *Li* Case

The Court applied the same reasoning to uphold the Without Cause provision in Mr. Li's contract, which provided that Wayfair may terminate his employment without cause "at any time and for any reason". The provision expressly and repeatedly affirmed Wayfair's intention to comply with the *ESA*, including contractual commitments that would apply in the case of a without cause termination.

The Court found that the repeated affirmation of Mr. Li's entitlement to the minimum benefits provided by the *ESA* makes it implausible to interpret the words "at any time and for any reason", when interpreted objectively, to reflect a mutual intention to permit Wayfair to violate statutory prohibitions on termination in the *ESA* and other statutes.

The Court stated that the words "for any reason" simply mean that a termination will be consistent with the contract and therefore legally effective regardless of the reason for the termination. The employer is not required to give the employee a reason for terminating the employment contract, but the employer must simply provide the employee with their contractual entitlement on termination, express or implied, which must at a minimum be the *ESA* entitlements.

Implications for Employers

This decision represents a significant victory for employers with termination clauses in their employment contracts that restrict employee entitlements on termination. Termination provisions containing broad language such as "at any time" and "for any reason" are not inherently unenforceable.

Rather than seizing on individual words or language that could potentially be considered to violate the *ESA*, termination provisions should be read as a whole with a view to determining the parties' intentions as objectively demonstrated by the language. In other words, termination provisions should not be interpreted in a piecemeal manner to find any potential or theoretical violation of the *ESA*.

Employers should nevertheless exercise caution. The Court's reasoning is grounded in a contextual reading of the entire agreement, and termination provisions will continue to be scrutinized closely for *ESA* compliance. Broad language can survive judicial review, but only where the contract as a whole clearly preserves statutory minimum standards.

You can contact the authors, Landon P. Young and Sarah J. O'Flaherty, "at any time" if you would like to discuss this decision "for any reason."

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