

Ontario Court of Appeal clarifies enforceability of ESA-only termination clauses

By **Frank Portman**

Law360 Canada (August 10, 2026, 12:23 PM EDT) -- The Ontario Court of Appeal's decision in *Baker v. Van Dolder's Home Team Inc.*, 2025 ONSC 952 and *Li v. Wayfair Canada ULC.*, 2025 ONSC 2959, released together as *Baker v. Van Dolder's Home Team Inc.*, 2026 ONCA 568, is a significant development in Ontario employment law. For executive employment lawyers, *Baker v. Van Dolder's Home Team Inc.* is the most significant decision since *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391.

For several years now, employers, employees and employment lawyers have faced uncertainty over whether termination clauses limiting employees to their minimum entitlements under the *Employment Standards Act, 2000* (the ESA) could survive increasingly technical judicial scrutiny.



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The court addressed two recurring issues:

- whether language permitting termination "at any time" or "at any time and for any reason" is inconsistent with the ESA, and
- whether a "with cause" provision remains enforceable where it defines cause more broadly than the ESA's wilful misconduct standard but expressly preserves minimum ESA entitlements.



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In doing so, the court rejected a rigid, word-by-word approach and emphasized that employment agreements must be read as a whole, in context and on the assumption that the parties did not intend to contract out of the ESA or otherwise deprive employees of their minimum statutory entitlements.

Overall, the decision brings welcome clarity for both employers and employees regarding the enforceability of ESA-only termination clauses.

While the court signalled that termination provisions should not be invalidated based on overly technical or isolated readings, it also reinforces that enforceability will continue to depend on careful drafting.

Employers should ensure that termination language is precise, internally consistent and clearly preserves all minimum ESA entitlements, while employees including executives, directors and managers should remain attentive to whether their agreements adequately comply with those statutory protections.

Facts

The court heard the appeals in *Baker* and *Li* together because the lower court decisions had reached opposite conclusions on materially similar termination language.

Baker v. Van Dolder

In *Baker*, the employee was employed as controller, head of finance. His employment agreement permitted termination “at any time, without just cause” upon payment of the minimum notice, pay in lieu, severance pay and other entitlements required by the ESA. It also included a “with cause” provision permitting termination “at any time for just cause” without notice or compensation, except for any minimum compensation or entitlements prescribed by the ESA. After his employment was terminated without cause, the employee argued that the termination provisions were unenforceable and that he was entitled to common law reasonable notice.

The motion judge in *Baker* agreed. The judge found that the “at any time” language conflicted with ESA protections against termination in certain circumstances, including after a protected leave or as a reprisal. The judge also found the “with cause” clause unenforceable because it described contractual just cause without explaining how that standard differed from the ESA’s higher wilful misconduct standard.

Li v. Wayfair

In *Li*, the employee was employed as a senior product manager. His agreement permitted the employer to terminate his employment “at any time and for any reason” after the probationary period, provided the company paid his minimum ESA entitlements, including notice or termination pay, statutory severance pay where applicable, benefits continuation and any other outstanding ESA entitlements.

Unlike in *Baker*, the motion judge in *Li* upheld the termination provision. Reading the contract as a whole, the judge concluded that the clause was intended to exclude common law reasonable notice while preserving the employee’s ESA minimums. The conflicting results in the two cases created considerable uncertainty and set the stage for clarification.

Decision of the Court of Appeal

The Court of Appeal allowed the employer’s appeal in *Baker* and dismissed the employee’s appeal in *Li*. In both cases, the court held that the termination provisions were valid and enforceable because they reflected an objective intention to provide the employees with at least their minimum statutory entitlements under the ESA.

The court confirmed that employment contracts must be interpreted in a manner that recognizes employee vulnerability, the remedial purpose of the ESA and the prohibition on contracting out of statutory minimum standards. At the same time, the exercise remains one of contractual

interpretation. Courts must read the contract as a whole, give the words their ordinary meaning in context and avoid straining to find ambiguity where none reasonably exists.

Applying that framework, the court rejected the argument that “at any time” necessarily conflicts with ESA protections that prohibit termination in certain circumstances. That argument depended on reading the words literally and in isolation. In context, no reasonable interpretation supported the conclusion that the parties intended to authorize termination in breach of the ESA or other employment-related statutes. Rather, “at any time” meant that the employer could terminate without cause, subject to statutory limits and minimum entitlements.

The court reached the same conclusion with “for any reason” language. In context, the words did not mean that the employer could terminate employment for a prohibited reason. They meant that the employer was not required to establish cause or provide a reason in order to terminate without cause, provided it satisfied the employee’s statutory entitlements.

The court also upheld the “with cause” provision in Baker’s agreement. Although the contractual definition of cause was broader than the ESA’s wilful misconduct standard, the clause expressly preserved any minimum compensation or entitlements prescribed by the ESA. That was sufficient. The court also confirmed that employers may referentially incorporate ESA entitlements into an employment agreement.

Importantly, the court did not revisit *Waksdale v. Swegon North America Inc.* Because the court found that the termination provisions at issue complied with the ESA, it was unnecessary to determine whether one invalid termination provision should continue to invalidate the entire termination scheme. As a result, *Waksdale* remains part of the governing law, even though its application was not determinative in these appeals.

What this means for employment agreements moving forward

The decision provides clarity for employers and employees alike. The Court of Appeal has confirmed that common termination language such as “at any time” and “for any reason” will not render an ESA-only termination clause automatically unenforceable. The enforceability analysis should focus on the agreement as a whole and on whether the clause, properly interpreted, preserves the employee’s minimum statutory entitlements.

For employers, the decision should not be understood as permitting reliance on broad or imprecise drafting. The safest approach remains to draft termination provisions carefully, expressly preserve all ESA minimum entitlements, and avoid language that could reasonably be read as excluding notice, termination pay, severance pay, benefits continuation or other statutory rights.

With cause provisions should also ensure that employees remain entitled to ESA minimums unless their conduct meets the statutory standard of wilful misconduct.

Where there is any doubt, employers should seek legal advice to ensure their termination provisions are compliant and enforceable.

For employees, the decision means that challenges to ESA-only termination clauses may face a more contextual and less technical analysis.

However, it does not mean that all termination clauses will be enforceable. Clauses that actually contract out of the ESA, fail to preserve required statutory entitlements or create a genuine ambiguity may still be invalid.

Employees who are unsure about how their termination clause affects their rights should seek legal advice to better understand their entitlements and options.

Ultimately, *Baker* and *Li* signal a return to a more practical and contextual approach to employment contract interpretation. The Court of Appeal decision reduces uncertainty around commonly used termination language and reinforces that termination clauses must be precise, internally consistent and clearly preserve ESA minimums.

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