

A Risk “At Any Time”: Ontario Court Voids Another Termination Clause



In *Baker v. Van Dolder's Home Tech Inc.*¹, the employee sued his former employer for wrongful dismissal after he was terminated without cause.

The issue before the Court was whether a termination clause in the employee's employment agreement was enforceable and therefore effectively limited the employee's entitlements on termination.

The employee's termination clause provided that the employer could terminate his employment without cause "at any time" upon providing him with his minimum entitlements under the *Ontario Employment Standards Act, 2000* (the "ESA" or the "Act").

The employee argued that the termination provision was unenforceable because it allowed for termination "at any time", which the employee argued was a misstatement of the *ESA*. The employee cited the decision in *Dufault v. The Corporation of the Township of Ignace* to support his argument.²

In *Dufault*, the Ontario Superior Court of Justice held that an employment agreement provision giving an employer the discretion to terminate employment "at any time" was unenforceable. The Court in *Dufault* reasoned that this language misrepresented the *ESA*, which prohibits termination in certain circumstances, such as during an employee's statutory leave or in reprisal for exercising rights under the Act.

What Did the Court Decide?

The Court in *Baker* agreed with the employee's reliance on, and followed the decision in *Dufault*. The Court concluded that the "without cause" termination provision in the employee's agreement was unenforceable for the same reasons. The Court emphasized that this incorrect statement regarding the *ESA* was not saved by general language indicating that the employer would comply with the *ESA*.

The Court reaffirmed the principle from *Dufault* that an employer's right to dismiss an employee is not absolute and must be consistent with the provisions of the *ESA*.

For the sake of completeness, the Court also considered the "with cause" termination provision. The Court similarly found that clause to be unenforceable because it permitted the employer to terminate the employee without notice for "just cause." The

Court noted that the *ESA* establishes a specific definition of cause with a higher threshold in order for an employer to terminate without notice. The Court emphasized the necessity of clearly distinguishing between the common law definition of “just cause” and the *ESA* definition of cause in termination provisions.

Takeaway

This marks the first instance in an Ontario court where the precedent set in *Dufault* was applied to invalidate a termination provision. This case provides additional authority, confirming that the problematic language “at any time” in termination provisions is unenforceable, even without the “sole discretion” element. The decision in *Dufault* was recently upheld at the Ontario Court of Appeal and, although the employer has applied for leave to the Supreme Court of Canada, the principles set out in *Dufault* remain in place at present. This decision highlights the importance of precise and careful drafting in employment agreements to avoid enforceability issues.

Footnotes

1. *Baker v. Van Dolder’s Home Team Inc.*, 2025 ONSC 952

2. *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029 (CanLII), appeal dismissed 2024 ONCA 915 (CanLII)

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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