

At Any Time, A Termination Clause May Be Found Unenforceable



The Court of Appeal has released one of the most anticipated employment law decisions of the year in *Dufault v. Ignace (Township)*, 2024 ONCA 915 (“Dufault”). We reported on this case previously [here](#). Earlier today, the Court of Appeal dismissed the appeal of Dufault. The decision can be found [here](#).

Unfortunately, the decision does not engage with the without cause language in the lower court’s decision, where the court held that termination clauses which permitted an employer terminate an employee in their “sole discretion” at any time were unenforceable. The Court of Appeal only opines on the with cause element of the termination clause at issue and relies on the decision in *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391 to find the balance of the clause unenforceable.

This means that many termination clauses may remain unenforceable, especially if they contain “at any time” language, entitling employees to higher notice on termination of employment. For many businesses, these entitlements can have dire financial impacts when terminating long service employees.

Employers are encouraged to review their employment contracts and update them on a yearly basis. With the new year approaching, it is a good time to audit old contracts and work towards updating current and future employee contracts so that all parties have clarity on their entitlements in the event of termination. Our employment group is available, at any time, to help and guide employers through this process.

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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