

“At Any Time” In Employment Termination Clauses



In the companion appeal decision *Baker v. Van Dolder’s Home Team Inc.*, 2026 ONCA 568, the Ontario Court of Appeal (ONCA) considered the enforceability of termination clauses in employment agreements, and in particular, whether the language of “at any time” or “for any reason,” read literally, contravened the *Employment Standards Act, 2000* (the “ESA”) and rendered employment agreements unenforceable.

The Court rejected a purely literal reading. A termination clause is not to be assessed by isolating individual words or asking whether they *could* produce an unlawful result. Rather, termination provisions must be read in the whole context of the employment agreement, considering the objective intention of the parties and whether the provision, properly interpreted, would permit an employer to contract below the ESA’s minimum standards. For employers, that distinction is crucial. It does not make broad termination language harmless, nor does it permit contracting around statutory minimums. It simply means that the contract must be read as a contract. We expect the Court’s guidance to be followed in other jurisdictions, including Saskatchewan.

Background

The Court heard appeals arising from separate actions in *Baker v. Van Dolder’s Home Team Inc.* [*Baker*] and *Li v. Wayfair Canada ULC* [*Li*] together in part because the lower court decisions reached divergent conclusions on the interpretation of similar termination clauses.

In *Baker*, the employment agreement permitted termination without cause “at any time, without just cause,” while expressly providing for the statutory entitlements as set out by the ESA. It also contained a separate provision addressing termination for cause. Mr. Baker’s employment was terminated without cause and he received his statutory minimum entitlements. He nevertheless challenged the enforceability of the termination provisions. His argument focused, among other things, on the words “at any time.” If those words were given their broadest possible meaning, he argued, they could encompass circumstances for termination that the ESA expressly prohibited. In the lower court decision, the motion judge accepted that argument and found both termination provisions unenforceable.

In *Li*, the agreement permitted termination without cause “at any time and for any reason.” But the agreement repeatedly affirmed Mr. Li’s entitlement to the ESA’s

statutory minimums, expressly providing that he would receive no less than the amounts guaranteed by the legislation. Mr. Li argued that “at any time and for any reason” was broad enough to encompass circumstances in which termination was prohibited by statute. The motion judge disagreed and upheld the provision.

The issue, before the ONCA, was not whether “at any time” or “for any reason” could be read broadly. The question was whether those words, read as part of the agreements in which they appeared, authorized termination in circumstances prohibited by the ESA. The Court held they did not.

Employment contracts are still contracts

The Court recognized that employment contracts are not ordinary commercial agreements. Employees have vulnerability particularly at the end of their employment and employment standards legislation serves a protective purpose. Those considerations necessarily inform the interpretation of employment agreements.

The task of interpretation remains one of determining the objective intention of the parties, based on the language of the agreement as a whole and the surrounding circumstances. Such a distinction matters because it rejects two propositions at once. An employer cannot avoid the ESA simply by using contractual language that intends to provide less than the statutory minimum. But an otherwise compliant termination provision should not be invalidated merely because one phrase, read in isolation, could theoretically produce an ESA violation. The contract must be read as a contract.

“At any time” is not a license to terminate unlawfully

The Court’s treatment of “at any time” provides the clearest example. At its broadest, the phrase appears to confer an unrestricted right to terminate and could encompass circumstances in which the ESA prohibits termination. The Court declined to read it that way because the parties could not objectively be understood to have intended to authorize conduct the law prohibits, particularly where the same agreement expressly preserves the employee’s statutory rights.

In *Baker*, reading “at any time” as permitting termination in breach of statutory protections would have placed that phrase in direct tension with the remainder of the agreement. The agreement was designed to establish the employee’s entitlements upon termination, not to authorize the employer to disregard statutory restrictions. Simply put, the phrase “at any time” does not automatically invalidate an otherwise compliant termination provision. The relevant question is what the phrase means in the contract.

“For any reason” presents the same issue

The Court applied the same reasoning to “for any reason” in *Li*. Again, the phrase appears broad when considered on its own. But the contract did not merely give Wayfair the right to terminate “for any reason.” It repeatedly affirmed Mr. Li’s entitlement to statutory minimums and expressly stated that he would never receive less than those entitlements. Against that backdrop, it would be difficult to conclude that the parties objectively intended “for any reason” to include reasons the law expressly prohibits. The distinction is between not having to provide a reason for the termination and having a contractual right to terminate for an unlawful reason.

A without cause termination does not require an employer to establish a particular reason for ending the employment relationship. That does not mean the employer has

contracted for an unrestricted right to act contrary to statutory protections. Again, the emphasis should not be on whether the broadest possible reading of a phrase can be imagined. It should be on what the parties can reasonably be understood to have agreed to.

The “just cause” problem

Of note for Ontario employers in particular is that the Court also took the opportunity to address the distinction between common law just cause and the ESA’s elevated threshold of “wilful misconduct” and further addressed how drafting termination clauses that define “just cause” for contractual purposes with an intention to preserve statutory entitlements may save them. The Court upheld the termination provisions in Mr. Baker’s agreement because the minimum statutory entitlements were preserved in the agreement’s terms. Once again, the Court refused to let one contractual term, or speculative reading of the term, eclipse the agreement as a whole.

What does this mean for employers?

For employers, this decision reinforces the importance of drafting termination provisions as an integrated contractual scheme. The agreements upheld by the Court did not simply give the employer broad termination rights. They also expressly and repeatedly confirmed the employee’s statutory entitlements. This does not necessarily mean that a statutory “failsafe” provision will cure every defect in a termination clause. The decision does not suggest that courts should disregard language that, properly interpreted, deprives an employee of statutory entitlements. Helpfully for employers, the Court also cautioned against searching for ambiguity where none exists. Overly technical interpretations can produce uncertainty and inconsistent results.

The decision reaffirms that the analysis should begin with the agreement as a whole. For employers reviewing existing agreements, the question should therefore not simply be whether a termination provision contains language such as “at any time” or “for any reason”. The more useful question is whether the termination scheme, taken as a whole, clearly communicates the intended allocation of rights while preserving the statutory minimum. The statutory minimum remains the floor. The question is how the contract sits on that floor.

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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