# From Any Time To Most Of The Time – A Paradigm Shift In Termination Clauses

When was the last time you reviewed your employment agreements, and specifically, the termination clauses within them? Given recent developments in the case law, now is a good time to take a closer look.

Termination clauses are one of the most important elements of any employment agreement. They govern how, when, why, and for what amount of compensation an employee can be terminated. Because of this importance, courts are wary (and growing warier) to enforce termination clauses that are offside employment standards legislation.

Historically, Canadian courts have taken no issue with termination clauses that empower employers to terminate employees without cause *at any time*, but recent jurisprudence in Ontario has reversed this long standing status quo.

In a series of cases culminating with a recent decision from the Ontario Superior Court, *Baker v Van Dolder's Home Team Inc*, 2025 ONSC 952 [***Baker***], courts have solidified two new developments in Ontario law governing termination clauses:

- courts are unlikely to sever aspects of a termination clause that are in breach of employment standards legislation from compliant aspects; and
- a termination clause that empowers an employer to terminate an employee without cause "at any time" may render the entire termination section of the contract unenforceable.

These changes pose a significant financial risk for Ontario employers who may be unknowingly relying on unenforceable termination clauses, as they could be ordered to pay far more in severance than the parties intended when employment contracts were signed.

### The Slippery Slope to *Baker*

The Ontario Court of Appeal took its first steps toward *Baker* in *Waksdale v Swegon North America Inc,* 2020 ONCA 391 [***Waksdale***]. In *Waksdale*, the Court held that both the "with cause" and "without cause" clauses of the termination section in an employment agreement were unenforceable because the "with cause" provision violated employment standards legislation. The Court made this finding despite the employer *not relying on* the "with cause" clause to terminate the employee, and in the

face of a term in the employment agreement that permitted illegal clauses to be severed from the rest of the contract.

The Court based its decision on two grounds. First, it held that an employment contract cannot be read in piecemeal, and the termination provisions must be read together. Second, as a point of public policy, even if employers do not rely on illegal clauses at the time of termination, they may benefit from them because employees may change their behaviour as a result of the illegal clause. For these reasons, the Court took a strict approach to the interpretation of termination clauses.

Ontario courts further tightened their interpretation of termination clauses in *Dufault v Ignace (Township),* 2024 ONSC 1029 [***Dufault***]. In *Dufault*, the Ontario Superior Court found that a "without cause" termination clause was illegal for several reasons, including because it had language empowering the employer to terminate the employee "at its sole discretion" and "at any time". The Court held that this language was impermissible because Ontario employment standards legislation prohibits the termination of employees at specific times, such as when they return from a leave of absence. Therefore, the Court found that language permitting an employer to terminate an employee at *any* time is technically illegal. *Dufault* was upheld by the Ontario Court of Appeal, but the three-judge panel did not directly address the legality of the "at any time" language.[1]

Enter *Baker,* where the Ontario Superior Court affirmed and extended its ruling in *Dufault.* Unlike in *Dufault,* the only defect with the termination clause at issue was that it empowered the employer to terminate the employee without cause "at any time". The Court held that following the recent jurisprudence, this small defect alone was enough to render *the entire* termination clause, including both the "with cause" and "without cause" provisions, illegal and unenforceable.

In its reasons, the Court empathized with employers, explaining that this new line of authorities sets "an exacting standard that many employers and knowledgeable counsel have failed to attain despite their good faith and best efforts".[2] Nonetheless, the Court found that the termination clause was unenforceable and ordered damages for the employee to be assessed.

## Key Takeaways

There are three key takeaways from this line of Ontario authorities.

First, any illegal provisions in *either* the "with cause" or "without cause" clauses of the termination section of an employment agreement may render the entire section unenforceable.

Second, it does not matter whether an employer actually relies on an illegal clause, as illegality is based on the written language in the contract, not the employer's conduct.

Finally, employers should take care in drafting termination clauses and avoid language empowering them to terminate employees "at any time", as this language alone could render the entire termination section of an employment agreement unenforceable.

## What This Means for BC Employers

BC courts have not yet had the opportunity to consider the legality of "at any time" language in termination clauses following the changes to the law in Ontario brought about by *Dufault* and *Baker*. However, BC courts have not previously taken issue with

“at any time” language in termination clauses. So, as of the date of this article, termination clauses with “at any time” language arguably remain enforceable in BC.

However, given the similarities between Ontario and BC legislation, we expect it is only a matter of time before BC courts are asked to grapple with this issue. Similarities in employment standards legislation in both provinces, including restrictions on terminating employees in certain situations, suggest that the principles underpinning *Dufault* and *Baker* could be applicable in BC.

As this area of law is in flux, we recommend that all employers take care in drafting termination clauses, or risk being held responsible for significant and unexpected severance payments. This caution may result in more termination clauses that simply reference applicable employment standards legislation, but the full effect of this new caselaw is yet to be seen.

Best practice for avoiding a costly wrongful termination dispute is to conduct regular reviews of employment agreements with the support of an experienced workplace lawyer.

For more information about termination clauses, employment agreements, or other specific concerns, contact the writers of this article.

**Footnotes**

1 *Dufault v Ignace (Township),* 2024 ONCA 915.

2 *Baker v Van Dolder’s Home Team Inc.*, 2025 ONSC 952 at para 23.

*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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