Your Termination Budget Is Only as Reliable as Your Employment Agreements



Finance has a termination allowance. HR has a folder of employment agreements. Until someone checks which signed agreement applies to each employee and whether its terms can support the proposed calculation, the connection between those two things is an assumption. An expensive one, potentially.

A year-end review should test that connection before leadership relies on it. The work begins with a practical question: what evidence supports the amount the organization expects to pay if this employment relationship ends? A current template in the shared drive isn't enough. Neither is a notation in the HR system saying that a contract was signed.

The October 29 decision in Ghazvini v. Canadian Imperial Bank of Commerce, 2026 ONCA 766, gives this review a timely reason to move up the agenda. The Ontario Court of Appeal upheld the unenforceability of termination provisions in agreements governed by the Canada Labour Code. The defective cause wording mattered even though the employees had been dismissed without cause. For HR, the immediate concern is how many budget calculations depend on wording that hasn't been examined in the context of the full agreement.

This article focuses on non-union employment agreements and common-law termination exposure, using Ontario decisions to explain the risk. Employers elsewhere must obtain advice on their own jurisdiction, including Quebec's distinct civil-law framework. Collective agreements and statutory dismissal protections require separate assessment. The management task remains clear: identify the agreement, test the assumption and price the uncertainty.

Read The Provision The Employer Does Not Plan To Use

In Ghazvini, the contractual definition of cause was broader than the Canada Labour Code's just-cause standard. The court rejected reliance on the termination provisions as a whole, and the general saving language didn't cure the defect. An employer budgeting for a dismissal without cause therefore couldn't confine its assessment to the paragraph describing that particular kind of dismissal.

The operational lesson is easy to miss. HR may send counsel the proposed termination letter and a screenshot of the without-cause clause, believing that this is the relevant material. A proper assessment needs the complete agreement, related documents and any amendments. Ask what other language affects the rights the organization intends to rely on, including definitions and provisions incorporated by reference.

Don’t turn the decision into a search-and-replace exercise. A phrase can have different consequences depending on the governing statute and surrounding terms. The assessment belongs with counsel who can examine the actual agreement and applicable law. HR’s job is to make that assessment possible, then apply the result to the employees and financial assumptions it affects.

Nor does Ghazvini establish that every termination limitation fails. In Bertsch v. Datastealth Inc., 2025 ONCA 379, the Ontario Court of Appeal upheld a provision that unambiguously limited entitlements to the applicable Employment Standards Act minimums and excluded common-law notice. The cases underline the importance of the wording and its operation. They don’t support a blanket decision that all agreements are either safe or worthless.

A useful instruction to the reviewer is specific. Identify whether the agreement can reasonably support the proposed budget treatment, the material uncertainties and what further facts are needed. A general request to “check the template” may produce advice about future hiring while leaving the existing workforce’s exposure untouched.

Find The Agreement That Actually Governs The Employee

Begin with the employees whose departure costs are most likely to affect a near-term decision. Planned restructuring, a proposed senior hire and an approaching fixed-term expiry may warrant attention before a broad review of lower-priority files. Establish the priority from the business plan and potential exposure, rather than starting alphabetically and hoping the important cases appear early.

For each selected employee, locate the complete signed agreement and its attachments. Confirm that the document is readable and that all referenced schedules are present. An electronic-signature completion record may help establish the execution history, but it doesn’t replace the contents of the agreement itself. If the file contains competing versions, preserve them and establish which version was issued and accepted.

Then reconstruct the relevant timeline. Record the offer, acceptance and start dates, along with subsequent agreements, promotions and material changes to compensation or duties. Include evidence of any benefit provided in exchange for an amendment. These are facts counsel may need when assessing formation, consideration and the continuing operation of the terms. Don’t assume that a signature obtained after work began has the same legal effect as an agreement completed before employment started.

A missing record should remain a missing record in the review. It shouldn’t become a confirmed statutory-minimum assumption because someone remembers that everyone signed the same form. Ask whether the document can be recovered from an authorized source and set a date for resolving the question. Until then, tell Finance that the contractual basis hasn’t been verified.

Keep acquired workforces visible. An employee may have a predecessor agreement, an

assumption letter and a later compensation amendment, while the HR system shows only the acquisition date. The estimate needs an assessment of the employment history and documents that matter to the relationship. A convenient migration field cannot settle those issues.

This is also a useful moment to examine jurisdiction. The employer’s head office and the employee’s mailing address don’t automatically resolve every question about applicable employment law. Flag cross-border work, federal regulation and transfers between entities for advice. The calculation should follow the assessment, rather than forcing the assessment to fit the payroll code already in use.

Separate Template Risk From Individual File Risk

Once the initial files have been examined, organize the broader review around agreement versions. A common drafting problem may affect a substantial group of employees. That makes version control a financial issue as well as a document-management task.

Create a register that links each employee to the agreement located, its version and the relevant jurisdiction. Record whether there are amendments or missing attachments. Keep the legal assessment distinct from the administrative finding: “signed copy located” doesn’t mean “termination limitation enforceable.” Someone preparing a forecast should be able to see that difference without interpreting a lawyer’s email.

Use the register to identify groups sharing material wording, then have counsel determine how far a conclusion can be applied. Employees using the same template may still have different execution histories or later amendments. Reviewing one clean file doesn’t establish that every agreement in the group was properly implemented. Conversely, a genuine common defect shouldn’t require the organization to rediscover the same issue one employee at a time.

Document the scope and date of each review. If the opinion addresses a particular version under Ontario law, don’t allow it to become an organization-wide statement that “legal approved our contracts.” Note any facts on which the assessment depends and identify who will monitor relevant changes in law. The record needs to remain intelligible when the HR manager who commissioned it has moved on.

Protect legal advice appropriately. Work with counsel on how findings should be recorded, circulated and used in business planning; simply placing “privileged” on an ordinary spreadsheet doesn’t settle privilege. Finance still needs actionable assumptions, but it doesn’t necessarily need the underlying advice in every budget workbook.

Price The Change In Exposure Without Inventing An Entitlement

Ontario’s employment standards guidance makes clear that statutory termination and severance requirements are minimums and that some employees may have greater common-law rights. A budget based only on a statutory calculation may therefore need revision where the employer cannot rely on its intended contractual limitation.

The revised number shouldn’t come from a rule of thumb such as one month per year of service. Ask counsel to assess the relevant circumstances and provide a supportable planning range. Identify how mitigation, compensation terms and other facts could affect it. A range can be useful for an internal decision without pretending to predict the outcome of litigation.

Consider a hypothetical forecast for ten employees, each earning a C$90,000 annual base salary. Assume the budget currently contains C$15,000 per employee as its total base-salary departure allowance. That produces a C$150,000 allowance. The amount is an invented planning assumption, not a statutory calculation or a recommendation for employees with any particular length of service.

Now suppose a legal review leads Finance to test an alternative total base-salary allowance equivalent to six months per employee. At C$45,000 each, that scenario totals C$450,000. The difference is C$300,000 before benefits, incentive compensation, legal spending and other applicable amounts. Six months is a sensitivity assumption here, not a finding about reasonable notice.

Finance must also ensure that the two scenarios measure the same thing. Don’t add an alternative total notice-related damages estimate to a statutory allowance if that would count overlapping payments twice. Have payroll and counsel identify which amounts are included, which are additional and what payment timing the forecast assumes. Label the result accordingly.

The value of the exercise is the decision it changes. If leadership can proceed only at the C$150,000 estimate, but the contractual basis remains unverified, the proposal has an unresolved financial dependency. HR should surface it before the organization announces departures or commits the expected savings elsewhere. An uncertain number doesn’t become more reliable because the budget has already been approved.

Review Compensation Documents Alongside The Employment Contract

Base salary can dominate the forecast while the larger uncertainty sits in a bonus plan. Read the relevant incentive and equity documents with the employment agreement, including amendments and the versions that applied during the relevant period. Ask whether the employee received them and what evidence supports acceptance where that matters.

Matthews v. Ocean Nutrition Canada Ltd., 2020 SCC 26, illustrates the importance of compensation during the reasonable-notice period. The Supreme Court of Canada held that the employee was entitled to a bonus he would have received during that period; the terms did not remove his entitlement in the circumstances. [4] HR shouldn’t assume that ending active employment automatically removes every claim connected to a later payment date.

Make the information request practical. Obtain the payout history, award terms, performance period and relevant transaction dates. Identify commissions in progress and other compensation that may need assessment. Counsel can then evaluate the terms against the facts instead of receiving a plan booklet without any explanation of how the employee was paid.

The financial estimate should preserve genuine uncertainty. A contingent award may require a scenario rather than a single fixed amount. Explain the event that would change the forecast and assign responsibility for monitoring it. Avoid inserting zero

merely because the payment hasn’t yet vested or been approved; those facts belong in the assessment, but they aren’t substitutes for it.

Benefit continuation and pension consequences also need examination under the applicable rules and terms. Coordinate the legal assessment with payroll, the insurer or administrator as appropriate. HR shouldn’t promise coverage the plan cannot provide, or assume that a carrier’s administrative limit resolves the employer’s legal obligation. Resolve any mismatch before final terms are communicated.

Repair The Process Before Replacing The Paperwork

A new template helps future hiring only if recruiters actually use it. Withdraw superseded versions from active systems, identify the approved jurisdiction-specific form and establish who may authorize a change. A manager copying last year’s offer from an email can reintroduce the problem immediately.

Changing existing agreements is a different task. Obtain advice on the proposed amendment, consideration and implementation process before asking employees to sign. Don’t backdate documents or describe a material change as routine administration. The communication should accurately explain what the employee is being asked to accept and provide an appropriate opportunity to consider it.

A salary increase or promotion may create an occasion to discuss revised terms, but it doesn’t automatically make every amendment enforceable. Establish what has already been promised and what is being offered in exchange for the new agreement. Keep the evidence. A rushed signature at the end of a promotion meeting can leave the organization with another document whose effect is disputed.

Where an employee declines revised terms, management needs advice on the available options. Don’t instruct managers to improvise consequences or assume that refusal is misconduct. Price the remaining exposure and make a deliberate business decision about it. Some risks may remain after the review, but they should remain by informed choice rather than by omission.

Make the final administrative step verifiable. Confirm that the approved version was issued, accepted where required and stored with its attachments. Update the agreement register only after that evidence is available. Marking an amendment complete when it was merely emailed will give the next budget preparer the same false confidence the review was meant to remove.

Give Finance Assumptions It Can Defend

By year-end, HR should be able to distinguish employees whose agreements have been located and assessed from those whose files still contain material uncertainty. Each unresolved group needs an owner, a next action and a budget treatment agreed with Finance. The objective is useful visibility, not a claim that every employment dispute can be eliminated.

The forecast should state the basis of the estimate and identify what could materially change it. Where the business relies on a contractual limit, record the scope and date of the assessment supporting that reliance. Where it cannot yet do so, use an appropriate alternative scenario and resolve the missing facts. Revisit the estimate if the employee population, proposed dates or compensation arrangements

change.

Keep the employment decision separate from the settlement process. A budget allowance isn’t an employee’s entitlement or an automatic settlement offer. A release requires its own legal assessment, and amounts owed regardless of a release must be handled accordingly. Managers need clear authority limits so an internal contingency doesn’t become an unauthorized promise.

The strongest outcome is a repeatable process. New hires enter the register with their actual agreement, amendments follow a controlled path and material legal developments trigger a targeted review. When leadership asks whether a departure estimate is reliable, HR can point to the evidence supporting it and explain what remains uncertain. That is a much firmer foundation for a financial decision than the existence of a contract folder.