Ontario Court of Appeal rules on ESA termination clauses: The Baker and Li decisions

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Two recent Ontario employment law decisions, *Baker v. Van Dolder's Home Team Inc.*, 2025 ONSC 952, and *Li v. Wayfair Canada ULC*, 2025 ONSC 2959, have renewed scrutiny of termination provisions that limit employees to minimum statutory entitlements under the *Employment Standards Act, 2000* (the ESA). Although both cases address "ESA only" drafting, the lower courts had reached opposing conclusions. Both appeals were argued on March 25, 2026, and the Court of Appeal decisions provide clear guidance for employers.

Why these appeals matter

Employers have increasingly attempted to craft "ESA only" termination provisions to limit exposure to common law notice. However, inconsistent trial decisions have made it difficult to predict when such clauses will be enforced. Taken together, the *Baker* and *Li* Court of Appeal decisions provide much needed certainty in Ontario employment law regarding termination clause drafting.

Baker v. Van Dolder's Home Team Inc.

Background and lower court decision

In *Baker*, the Ontario Superior Court considered a wrongful dismissal claim arising from a termination without cause. The employer relied on contractual termination provisions that limited the employee's entitlements to ESA minimums.

Termination clauses in issue (excerpts)

> *"**Termination without cause:** we may terminate your employment at any time, without just cause, upon providing you with only the minimum notice, or payment in lieu of notice and, if applicable, severance pay, required by the Employment Standards Act. If any additional payments or entitlements, including but not limited to making contributions to maintain your benefits plan, are prescribed by the minimum standards of the Employment Standards Act at the time of your*

> *termination, we will pay same. The provisions of this paragraph will apply in circumstances which would constitute constructive dismissal."*
>
> *"**Termination with cause:** we may terminate your employment at any time for just cause, without prior notice or compensation of any kind, except any minimum compensation or entitlements prescribed by the Employment Standards Act. Just cause includes the following conduct: (a) Poor performance, after having been notified in writing of the required standard; (b) Dishonesty relevant to your employment (such as misleading statements, falsifying documents and misrepresenting your qualifications for the position you were hired for); (c) Theft, misappropriation or improper use of the company's property; (d) Violent or harassing conduct towards other employees or customers; (e) Intentional or grossly negligent disclosure of privileged or confidential information about the company; (f) Any conduct which would constitute just cause under the common law or statute."*

The lower court had held that both the "without cause" and "with cause" provisions were unenforceable because the repeated use of "at any time", together with the agreement's definition of "just cause," suggested an absolute right to terminate that is inconsistent with the ESA's restrictions (including prohibitions on termination in certain circumstances, such as during statutory leaves or in reprisal). Relying on *Dufault v. Township of Ignace* and *Waksdale v. Swegon North America Inc.*, the court concluded that:

- A termination clause that misstates the ESA cannot be saved by general ESA compliance language.
- The phrase "at any time" incorrectly conveys that an employer's right to terminate is absolute.
- Because one part of the termination regime was unenforceable, the entire termination provision failed, entitling the employee to common law reasonable notice.

Issues on appeal

The appeal in *Baker* raises issues of broader significance for Ontario employers and employees. As recognized by the Court of Appeal in granting leave to intervene *in Baker v. Van Dolder's Home Team Inc., 2025 ONCA 578* and *2025 ONCA 829*, the appeal engages:

- Whether contractual language allowing termination "at any time" necessarily violates the ESA;
- How strictly courts should scrutinize termination provisions that purport to limit employees to statutory minimums;
- The continued scope and application of *Waksdale* in ESA based termination clause analysis; and
- The proper balance between the ESA's remedial purpose and commercial certainty in employment contracting.

Appeal decision

The Ontario Court of Appeal allowed the employer's appeal, overturning the lower court decision. The Court found that both the without cause and with cause provisions were ESA compliant. The without cause clause clearly stated that the employee would receive all of their minimum ESA entitlements, and was therefore enforceable. Similarly, the with cause provision remained enforceable because it preserved "any minimum compensation or entitlements prescribed by the ESA", even though the contractual cause definition was broader than the ESA's wilful misconduct standard.

Li v. Wayfair Canada ULC

Background and lower court decision

The lower court in *Li* had reached a different conclusion on similar issues. Mr. Li, a senior employee with less than one year of service, was terminated and paid the ESA minimum of one week's notice. He challenged the enforceability of his employment agreement's termination provisions, arguing that they improperly restricted him to statutory entitlements.

Termination clauses in issue (excerpts)

> *"**Termination for Cause:** The Company may terminate your employment **at any time** for Cause without notice, pay in lieu of notice, severance, benefits continuance or other compensation or damages of any kind, unless expressly required by the ESA in which case only the minimum statutory entitlements will be provided."*
>
> *"**Definition of 'Cause':** For all purposes in this letter, 'Cause' means any wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the company and that constitutes 'cause' under the ESA."*
>
> *"**Termination Without Cause:** After your probationary period concludes, in the absence of Cause, the Company may terminate your employment **at any time and for any reason** by providing you with only the minimum statutory amount of written notice required by the ESA or by paying you the minimal amount of statutory termination pay in lieu of notice required by the ESA, or a combination of both, as well as paying statutory severance pay required by the ESA, providing benefits continuance for the requisite minimum statutory period under the ESA and all other outstanding entitlements, if any, owing under the ESA."*

In contrast to the lower court in *Baker*, the lower court in *Li* upheld the termination clauses, emphasizing that the agreement repeatedly anchored entitlements to ESA minimums and defined "Cause" by reference to the ESA "wilful misconduct" standard. Reading the agreement as a whole, the lower court emphasized that:

- The contract repeatedly and expressly tied both "for cause" and "without cause" terminations to ESA standards;
- The definition of "Cause" was expressly aligned with the ESA "wilful misconduct" standard;
- Unlike in *Dufault* and *Baker*, the agreement did not misstate the ESA or omit required categories of entitlements; and

- Courts should not invalidate otherwise compliant agreements merely because they restrict employees to statutory minimums, provided the drafting is clear and accurate.

As a result, the plaintiff was limited to ESA entitlements and denied common law reasonable notice.

Issues on appeal

The appeal in *Li* raised similar issues in *Baker*, including:

- Whether courts may uphold termination clauses that clearly and consistently defer to ESA minimums when read as a whole;
- The extent to which “at any time” and “for any reason” language is fatal when coupled with detailed ESA compliance wording elsewhere in the contract; and
- How appellate courts should reconcile seemingly divergent trial level authority on termination clause enforceability.

Appeal decision

The Ontario Court of Appeal dismissed the employee’s appeal. The Court upheld the without cause provision because it repeatedly confirmed that the employee would receive no less than the minimum entitlements required by the ESA. The Court of Appeal held that on a plain reading, it was clear that the employer and employee agreed that the employee would receive their ESA entitlements on termination of employment, and therefore there was no reason to hold the clause unenforceable. The phrases “at any time” and “for any reason” were not contrary to law, as they simply restated an employer’s right to terminate the employment relationship, and did not suggest that the employer could do so unlawfully.

The Court declined to revisit *Waksdale*, because it found the termination provisions in both contracts were enforceable.

Practical takeaways for employers (post appeal)

The decisions clarify that courts should not invalidate termination clauses by straining to find hypothetical ESA inconsistencies. The focus is on whether the clause, read contextually, objectively preserves ESA minimum standards.

The Ontario Court of Appeal decision in *Baker* and *Li* clarifies when “ESA-only” termination language will be enforced. Employers reviewing or drafting termination provisions should consider:

- Ensuring that the contract complies with ESA minimums in all termination scenarios (both without cause and for cause).
- Using clear language showing an objective intention to comply with the ESA.
- Not relying on “at any time” or “for any reason” as permission to terminate unlawfully.
- Ensuring with cause clauses preserve ESA entitlements unless the ESA wilful misconduct standard is met.

Bottom line: employers may use termination clauses to limit employees to ESA minimums, but only if the agreement, read as a whole, clearly preserves ESA entitlements in all circumstances, and does not purport to authorize terminations or forfeitures prohibited by employment standards, health and safety, human rights, or other protective statutes.

Armed with this new guidance from the Court of Appeal, now is the time to review the termination provisions in your employment contracts.

By

Jeffrey Mitchell, Danielle Rawlinson

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Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

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