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No ‘magic words’: Ontario Court of Appeal takes contextual approach to termination clauses

By **Soma Ray-Ellis and Max Ray-Ellis**

Soma Ray-Ellis

Max Ray-Ellis

Law360 Canada (August 14, 2026, 2:20 PM EDT) -- After six years of uncertainty following the seminal decision of the Court of Appeal for Ontario in *Waksdale v. Swegon* North America Inc., 2020 ONCA 391, the court has provided employers and employees with some much-needed clarification with respect to the enforceability of termination provisions in employment contracts in Ontario.

In its recent decision, *Baker v. Van Dolder’s Home Team Inc.*, 2026 ONCA 568, the Court of Appeal reviewed the use of the phrases “at any time” and “for any reason” in termination provisions. The court stated that “courts should avoid a legalistic ‘magic words’ approach whereby the use of certain words considered in isolation” would determine the enforceability of a termination provision.

This decision considered two cases that were being appealed: *Baker v. Van Dolder’s Home Team Inc*., 2025 ONSC 952 (*Baker*) and *Li v. Wayfair Canada ULC*., 2025 ONSC 2959 (*Wayfair*).

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In *Baker*, the employee, Frederick Baker, was terminated without cause and then sued his former employer for wrongful dismissal. On a motion for summary judgment, the motion judge found the “without cause” provision of Baker’s contract to be unenforceable because it permitted the employer to terminate Baker’s employment “at any time.”

The motion judge found that this language was inconsistent with the Ontario *Employment Standards Act* (ESA), as the ESA prohibits employers from terminating an employee at specific times, such as on the conclusion of an employee’s protected leave, or as a reprisal for the employee attempting to exercise ESA rights. The specific provision read as follows:

> 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." [Emphasis added.]

The motion judge also found that the "with cause" provision in Baker's contract was unenforceable. The specific provision read as follows:

> 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 motion judge found that this provision did not explain the ESA definition of "wilful misconduct," and how that differed from the contractual standard. Therefore, it was unenforceable, as many employees would not be aware of their entitlements if they breached the contractual standard.

In *Wayfair*, the employee, Song Li, was similarly terminated without cause and then sued his former employer for wrongful dismissal. His employment contract had the following "without cause" provision:

> 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 minimum 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 notice period under the ESA and all other outstanding entitlements, if any, owing under the ESA. These payments and benefits shall fully satisfy all of the Company's notice, severance and benefits continuance obligations upon the termination of your employment, whether arising under the ESA, the common law or this Agreement, and you agree you shall have no further entitlements unless expressly required by the ESA. In no event will you receive less than your statutory minimum entitlements under the ESA. [Emphasis added.]

On a motion for summary judgment, the motion judge found this "without cause" provision to be enforceable, stating that the provision "clearly and repeatedly indicates payments will be made as 'required by' or 'under the ESA.'"

These decisions were effectively in opposition to each other with regards to the "without cause" provisions. The employer appealed the *Baker* decision, while Li appealed the decision against him in *Wayfair*. The Court of Appeal elected to hear the decisions at the same time. They decided to allow the appeal in Baker, finding both relevant provisions enforceable, and to dismiss the appeal in *Wayfair,* agreeing with the motion judge that the relevant provision was enforceable.

Baker and Li both argued that their employment contracts were unenforceable due to the phrases "at any time" (in *Baker*) or "at any time and for any reason" (in *Li*), as these phrases would make the

contract inconsistent with the ESA. The Court of Appeal disagreed with these arguments. It found that these interpretations would require a “literal reading of the Impugned Words, considered in isolation from the context in which they are found.”

The Court of Appeal stressed that the concern of modern contractual interpretation cannot be ignored, and that “when viewed through the proper interpretive lens, the parties could not have intended that the inclusion of the Impugned Words meant that the employers in these cases were thereby entitled to terminate Baker’s or Li’s employment despite express statutory provisions to the contrary.”

In *Baker*, the Court of Appeal found that the motion judge erred by not reading the contractual provisions in context, with a view to identifying “what the parties objectively intended based on the text and surrounding circumstances.” There were repeated references to complying with the ESA throughout the termination provisions of the contract, and therefore, the Court of Appeal found that this commitment to complying with the ESA “must include” the phrase “at any time” when the employer exercises its right to terminate.

In *Wayfair*, the Court of Appeal stated with regards to the “at any time” wording, that the “repeated affirmation of Mr. Li’s entitlement to the minimum benefits provided by the ESA makes it implausible to interpret the Impugned Words as reflecting a mutual intention to permit Wayfair to violate statutory prohibitions on termination in the ESA and other statutes.”

The Court of Appeal applied a similar logic towards the “for any reason” wording, stating that “given this scrupulous intention to comply with the ESA, it is illogical to read the inclusion of the words ‘for any reason’ as somehow expressing a contrary intention by either Wayfair or Mr. Li.”

Lastly, the Court of Appeal also overruled the motion judge with regards to the “with cause” provision in *Baker*. They found that the provision was enforceable, as the motion judge “made an error in principle by failing to consider the objective intentions of the parties as expressed in the wording of the contract.” The Court of Appeal found there was no ambiguity in the wording of this provision and that “it is well established that employers may referentially incorporate ESA entitlements in an employment contract and that such provisions are valid.”

The important lesson for employers and employees that stems from this decision is that the wording “at any time” and “for any reason” can be held enforceable, *if* the termination provisions in the employment agreement consistently affirm a commitment to comply with the minimum entitlements of the ESA.

Furthermore, we can also extrapolate that the court is likely to take a contextual approach in upholding termination provisions that seek to preserve the employee’s rights under the ESA.

Soma Ray-Ellis is partner and chair of the employment and labour law group, Gardiner Roberts LLP.

Max Ray-Ellis is a J.D. candidate at the Henry N.R. Jackman Faculty of Law at the University of Toronto and a 2L summer student at Gardiner Roberts LLP.

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