

Employment

“The Ontario approach to termination clauses is increasingly being questioned – both within the province and beyond it.”

What was the most interesting development of 2025, and why?

Termination clauses continued to be under assault in Ontario in 2025 – but the judicial approach reached a new extreme. Courts didn’t just scrutinize language; they strained to find any ambiguity that could be used to invalidate termination provisions, often departing from basic contractual interpretation principles.

That tension was on full display in conflicting decisions on whether employers can terminate employment “at any time” provided they give notice and pay severance. In *Baker v Van Dolder’s Home Team Inc*, following the 2024 decision *Dufault v The Corporation of the Township of Ignace*, the Court held that “at any time” language conflicted with the *Employment Standards Act* (ESA) and invalidated the termination clause. Later that year, *Jones v Strides Toronto* reached the opposite conclusion, finding the language acceptable unless

paired with “sole discretion” wording. *Li v Wayfair Canada ULC* also upheld “at any time” language and distinguished *Baker*.

Courts were similarly split on equity plan forfeiture provisions. *Wigdor v Facebook Canada Ltd* upheld restricted stock unit (RSU) forfeitures, while *Liggett v Veeva Software Systems* ignored *Wigdor* and found comparable provisions unenforceable.

The result? Deepening uncertainty for employers and a growing sense that in Ontario, outcomes drive interpretation – not the other way around.

What decisions should we look out for in 2026?

Courts within Ontario and beyond are increasingly questioning Ontario’s approach to termination clauses. In *Egan v Harbour*, the British Columbia Court of Appeal implicitly criticized Ontario courts’ tendency to disaggregate clause language in search of ambiguity rather than focusing on the parties’ true intentions.

There are three key decisions from the Court of Appeal to come in 2026: *Baker v Van Dolder’s Home Team Inc* and *Li v Wayfair Canada ULC* (heard together), and *Wigdor v Facebook Canada Ltd*. The *Baker* case attracted multiple intervenors and gives the Court a clear opportunity to address whether “at any time” language truly violates the ESA. *Wigdor* allows the Court to revisit the enforceability of forfeiture provisions in RSU plans.

More broadly, these cases may allow the Court to recalibrate its interpretive approach and inject some desperately needed certainty into employment contracting.

What’s one trend you are expecting in 2026?

After years of steadily expanding scrutiny, the pendulum may finally start to swing back to a more balanced

approach in 2026. With mounting criticism from the employment defence bar and increasing divergence from other provinces, the Ontario Court of Appeal may move toward a more orthodox and predictable approach to interpreting employment contracts.

The appeal decisions in *Baker*, *Wayfair*, and *Facebook* give the Court an opportunity to reassert traditional contractual principles and curb outcome-driven reasoning. A shift toward coherence would not only reduce litigation risk but restore some much-needed certainty for employers trying to draft enforceable agreements in an increasingly volatile legal landscape.

If the Court elects to maintain the lower court’s current aggressive approach to striking out termination provisions and ignoring forfeiture provisions, Ontario employers may begin to opt out of court proceedings altogether with arbitration clauses.



Matthew Sammon

PRACTICE GROUP LEADER
416-865-3057
msammon@litigate.com



Aoife Quinn

PARTNER
416-865-9907
aquinn@litigate.com



Nicole Naglie

ASSOCIATE
416-441-3618
nnaglie@litigate.com

OUR EMPLOYMENT EXPERTISE

Lenczner Slaght provides expert counsel in employment litigation to organizations of all sizes, acting on their behalf in disputes and helping to establish effective corporate policies and practices. Our focus is on complex employment law disputes, including terminations of executives, employee fraud, disputes involving departing employees who take confidential information to a competitor, and employment law class actions.