

COURT OF APPEAL FOR ONTARIO

CITATION: Baker v. Van Dolder’s Home Team Inc., 2025 ONCA 578

DATE: 20250806

DOCKET: M56047 and M56058 (COA-25-CV-0297)

Monahan J.A. (Motion Judge)

BETWEEN

Frederick Baker

Plaintiff

(Respondent/Responding Party)

and

Van Dolder’s Home Team Inc.

Defendant

(Appellant/Responding Party)

Brandon Kain, for the appellant¹

Madison Chilvers, for the respondent

Andrew J. McCreary, Mari T. Maimets and Stephanie Gellatly, for the proposed
intervener the Ontario Chamber of Commerce

George Avraam, for the proposed intervener the Canadian Association of
Counsel to Employers

Heard: July 22, 2025

REASONS FOR DECISION

¹ Brandon Kain made no oral submissions, as the appellant consented to the motion.

[1] The Ontario Chamber of Commerce (the “OCC”) and the Canadian Association of Counsel to Employers (“CACE”) (collectively, the “Proposed Interveners”), seek leave to intervene as friends of the court in this appeal, pursuant to rr. 13.02 and 13.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

BACKGROUND

[2] The respondent’s contract of employment was terminated by the appellant on a “without cause” basis. The motion judge found that the “without cause” termination provision in the employment contract was unenforceable because it stated, contrary to the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (“*ESA*”), that the employer was entitled to terminate employment “at any time”. The motion judge further held that the “with cause” provision was also unenforceable, because (i) it provided for termination “at any time” for just cause, and (ii) it did not explain the difference between the less stringent “just cause” standard and the higher “wilful misconduct” standard that would result in an employee losing their entitlements under the *ESA*. Since the termination provisions in the contract were unenforceable, the appellant’s motion seeking dismissal of the respondent’s action for wrongful dismissal was dismissed.

[3] The Proposed Interveners seek leave to intervene on the basis that, although the appeal arises from a private dispute, the issues that are raised

transcend the parties' interests and involve questions of public importance. They argue that they have a real, substantial and identifiable interest in the appeal and can provide a helpful perspective to the court. The appellant consents to their intervention.

[4] The respondent opposes the motions, arguing that the test for leave to intervene should be applied stringently because this appeal concerns a private contractual dispute between an employer and an individual employee. He further argues that the Proposed Interveners' submissions are duplicative of the appellant's arguments; that their participation would add to the complexity and cost of the appeal; and that the participation of two interveners aligned with the interests of the employer would create the appearance of an imbalance between the positions being advanced.

[5] The test for leave to intervene is well-established. The court will consider (1) the nature of the case; (2) the issues involved; and (3) the likelihood that the proposed intervener will make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties: *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.), at p. 167; *Caruso v. Law Society of Ontario*, 2025 ONCA 270, at para. 6.

THE NATURE OF THE CASE AND THE ISSUES INVOLVED

[6] Where the litigation in which the intervention is sought is a private dispute, the standard to be met by the proposed intervener is normally more onerous: *Jones v. Tsighe* (2011), 106 O.R. (3d) 721 (C.A.), at para. 23. That said, the issues that arise in private litigation sometimes have implications that transcend the idiosyncratic interests of the immediate parties and may engage matters of public policy. In such instances, the more onerous threshold governing intervention “may be softened somewhat”: *Jones*, at para. 23; *Caruso*, at para. 8.

[7] I am persuaded that this appeal raises such broader implications and that a more relaxed standard should be applied in assessing the motions to intervene.

[8] In *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, the Supreme Court noted employers may dismiss an employee at any time on reasonable notice and provided that there are no express provisions to the contrary: paras. 65 and 75. Contractual provisions permitting the termination of employment “at any time” are commonly used in employment contracts: *Roden v Toronto Humane Society* (2005), 259 D.L.R. (4th) 89 (Ont. C.A.), at paras. 55, 59-62; *Egan v. Harbour Air Seaplanes LLP*, 2024 BCCA 222, at paras. 6, 36, and 72-73. While such provisions have been interpreted as complying with employment standards legislation, this court has recently suggested that this is an open question and one which, moreover, could have broad implications for the enforceability of termination

provisions in contracts of employment: *Dufault v. Ignace (Township)*, 2024 ONCA 915, at para. 25.

[9] The appeal also engages public policy issues, including the remedial purposes of the *ESA* and its aim of protecting employees, and the policy grounds for interpreting termination clauses in a way that encourages employers to draft agreements that comply with the *ESA*. It raises a question about whether there is a need for this court to bring greater certainty and clarity to the interpretation of termination provisions.

USEFUL CONTRIBUTION

[10] There is no doubt that both the OCC and CACE are well-recognized organizations that regularly engage with the broader public policy issues raised in this appeal.

[11] The OCC is the largest chamber of commerce in Ontario, with a broad and diverse base of 150 local chambers and 60,000 individual members in every economic sector and region. It has expertise in advocating for public policies that contribute to a competitive economy and increased prosperity for Ontario's communities.

[12] CACE is a national not-for-profit organization that represents over 1,400 management-side labour and employment lawyers working in a variety of settings.

It has made timely and substantive submissions before Canadian courts, including the Supreme Court of Canada, on matters of interest to its constituency.

[13] Given their established interest and expertise, the Proposed Interveners are well-placed to address the broader public policy issues raised in this appeal. I am further of the view that the submissions of the Proposed Interveners will not be duplicative of those of the appellant. Both moving parties have submitted draft factums setting out the positions that they will advance if granted leave to intervene. Having reviewed those draft factums carefully, I conclude that the moving parties make submissions that are either not raised or only raised tangentially by the appellant.

[14] It is true that adding one or both of these interveners will require the respondent to respond to the distinct arguments they raise, which will involve additional time and expense. But this is the case in all interventions, since leave is granted only where an intervener makes submissions that go beyond those of the immediate parties. The appeal has not yet been set down for argument, and so the respondent will have ample opportunity to respond to the submissions made by either Proposed Intervener.

[15] My main concern is whether granting leave to both Proposed Interveners would give rise to an appearance of unfairness.

[16] The fact that a proposed intervener's position is generally aligned with one of the parties is not a factor standing in the way of granting leave to intervene: *Jones*, at paras. 27-28. However, granting both of these large organizations leave to intervene in this private dispute risks creating the perception of an imbalance, given that the respondent is a private individual with limited resources. I am also concerned that, while the submissions of the Proposed Interveners are distinct from those of the appellant, they overlap to a significant extent with each other. Multiple interveners making overlapping submissions on only one side of a dispute can imperil the fairness of the hearing: *Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619 at para. 13; *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67, at para 15. I am therefore of the view that only one of the two Proposed Interveners should be granted leave to intervene.

[17] I accept that CACE is a well-respected and independent organization that has made useful contributions to developing labour and employment law and policy across Canada. Nevertheless, of the two Proposed Interveners, the OCC has the more substantial and identifiable interest and expertise in relation to Ontario, and will thus be in a better position to assist the court in understanding the implications of the appeal for Ontario employers and employees.

[18] I therefore grant leave to the OCC to intervene in the appeal on the terms set out below. CACE's motion for leave to intervene is dismissed, on a without costs basis.

[19] The OCC is granted leave to intervene on the following terms:

1. The OCC will take the record as it is and not supplement the record by way of its factum or otherwise;
2. The OCC shall be permitted to serve and file a factum of no more than 15 pages in length, by no later than August 22, 2025;
3. The OCC shall make efforts to avoid duplicating the submissions of the appellant;
4. The respondent shall be permitted to serve and file a supplementary factum of no more than 15 pages in length responding to the factum of the OCC, by no later than September 12, 2025;
5. The OCC shall be permitted a maximum of 10 minutes to make oral submissions at the hearing of the appeal;
6. The respondent will be provided with an additional 10 minutes to make oral submissions responding to those of the OCC; and
7. The OCC shall not be entitled to, nor subject to, any costs of this motion or of the appeal.

“P.J. Monahan J.A.”