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SUMMER 2026, VOLUME 24, No. 3



Sharlene Rollins
RPR
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Administration

Deskless Workers

Discover what motivates them

I came across an interesting term a while ago: 'deskless workers'. No, this was not referring to the musical chair game that some office workers are playing in the recent return to the office protocols. It was referring to people who work outside of a desk-based office setting. The numbers are shocking. It is estimated that 70 to 80 percent of all workers around the world fall into this category.

They range from those who work in transportation to employees who perform cleaning and maintenance. Others work in retail or supermarkets or food packing or processing. Cleaning and maintenance workers at 34 percent and delivery, logistics and transportation workers at 28 percent are the most prevalent categories of these so-called deskless workers.

These deskless employees who work in fixed locations like plants or shopping malls or within office buildings may be fairly easy to communicate with. But how do we talk with this wide and varied group of employees about things like benefits? Most of them have limited access to a computer at work, many work irregular hours and it would be hard to hold a meeting so that you could address all of them at the same time.

Sometimes, the only contact that HR has with these employees is when we hire or fire or discipline them. We likely hand them their employee booklet and then may never physically see them again, unless we pass them in the hallway or the parking lot. This means that we need some different ideas and maybe a whole new approach to communicating with this large group of workers.

Options that seem to work include employee surveys, focus groups and possibly some individual interviews to get a sense of what they may need in terms of benefits. Find out if the current package even meets their needs. That way, at least you will know if you are on the right track.

The reason for making this effort is not just to do the right thing for your entire workforce. It may be a key to unlocking how you can keep more of these deskless workers longer at your organization. One recent global study of workers in transportation, retail, construction and healthcare found that almost 40 percent of them were looking at quitting their jobs within a short period of time.

There are many reasons why this group is looking for greener pastures. A major factor is salary, although many of them have received higher salaries during and since the pandemic. Others are seeking more flexibility in terms of working hours and scheduling. But for most of the employees surveyed, they talked about improvements in their overall benefit package as being an important incentive for them to stay or go to another employer.

Potential solutions could include improved and extended healthcare benefits and things like mental health support and access to expanded employee wellness programs. Be creative and think outside the office box. Your entire workforce will appreciate it.

Sharlene Rollins is Manager, Administration for IPM [Institute of Professional Management].

Perspective



"I don't mind working for someone who's younger than me, but now I draw the line."



Nathaly Pascal
RPR, CMP, RPT
President

President's Message

Never Too Late to Say You're Sorry

In this crazy world, we have lost the art of making an apology. In fact, it almost seems like a sign of weakness. But saying you're sorry when you are wrong or even partially wrong is actually a signal of strength. It's amazing how few people recognize this. So, be the better person and I promise you won't regret it!

So many people suffer great trauma admitting they were wrong or made a potential mistake. At work, taking responsibility for mistakes is how we learn - it's a fact. Making an apology when it's our fault is how we grow, not just inside ourselves, but in the stature and opinion of others. Also, keep in mind that unless you intend to leave very shortly, the people whom you've hurt or disappointed are going to be there, at a work station beside you tomorrow. We spend almost as much time with our work colleagues as with our family, so we don't have to like or love everybody at work, but we must find ways to get along.

Now that you've decided to do the right thing, make sure you do it the right way. Experts in the art of an apology say that how you do it could make things better - or make them much worse. They recommend making your amends in person. Don't email, text or even phone in your apology. It has much more weight if you deliver it in person, and much more chance that it will achieve your desired result. If you can't see the person within the next day or two, phoning them would be a good option, better than texting or emailing which are so impersonal and can be perceived as fake.

When you apologize, take responsibility for your part of the problem and do not focus on what anyone else has done. There may be others who share some of the blame, but that's not why you're there. Make your regrets specific and sincere. Apologize for exactly what you did, the actions that may have hurt the other individual. Don't wait for the person to come seeking you out before you act. Be proactive and deal with your issues quickly. Yes, if you don't act quickly, they will deteriorate.

Here's another note on apologies at work. Even if you feel aggrieved or hurt by someone else's actions or behaviour, do not seek out or expect an apology. That is simply setting yourself up for disappointment and resentment. People apologize when they're ready and, on their timeline, not yours. That said, those who don't apologize within a short period of time set themselves up for failure in the long run.

Finally, making an apology is only the first step- the story doesn't end there. An apology is about the past. Others may let you off the hook this time. However, if you repeat the pattern in the future, you may not get off so easily. Say you're sorry and then change your behaviour. That's the true secret for workplace success and harmony!

Nathaly Pascal is President of IPM [Institute of Professional Management].

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Members
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Feature

Helping 2SLGBTQI+ Employees Feel Welcome at Work

It's time to walk the talk

Words are important when it comes to helping employees feel welcome at work. However, actions are even more crucial for 2SLGBTQI+ workers. This will require a continuous effort and commitment, especially by senior management, so that everyone can work and feel valued in a workplace that values and respects them. So, what can employers do? Here are a few suggestions.

Review Training and Policy Frameworks

You are probably doing some things great right now. In other areas, not so much. Review your HR policies through an inclusivity lens. Involve some of your 2SLGBTQI+ employees to ensure that your anti-harassment policies go far enough by including their insights and concerns. Ensure that your benefits policies are not discriminatory to 2SLGBTQI+ workers and even take a look at things like a dress code if you have one, to make sure that you are welcoming to the full range of gender expressions.

Take a look at your training and development programs to ensure that there are no barriers to the participation of 2SLGBTQI+ employees. There are also plenty of educational programs that offer in-person or online expertise on building and fostering an inclusive workplace. Many organizations make this type of training mandatory for senior executives and those who aspire to join the management cadre.

Create Safe Spaces

One of the most successful ways to ensure that employees feel welcome is to give them a voice and a place to speak. As noted above, 2SLGBTQI+ employees should be given an opportunity to comment on current HR policies and asked for their input in developing future policies. This is particularly important when it comes to crafting employee benefit and incentive programs. They can provide valuable insights that can head off problems down the road. Some organizations also choose to formalize these opportunities through employee networks and employee resource groups.

Employee resource groups are created based on shared interests and identities. They were first popularized for black and racialized employees but have now expanded to include all equity seeking groups like 2SLGBTQI+ employees. Their goal is to give common-minded employees a voice and a seat at the table and to help foster a sense of community and belonging within an organization. The basic idea is to create a safe space where 2SLGBTQI+ employees can bring

their whole selves to the discussion.

Make Your Communications Inclusive

There are many other ways to make 2SLGBTQI+ workers feel comfortable at work. One is to encourage the use of personal pronouns in employee email signatures or other written materials. This shouldn't just be limited to 2SLGBTQI+ employees. All employees can be encouraged to follow suit to show their support for their colleagues and to foster a more inclusive communications style and approach. You can also remove gender-based pronouns from any employee manuals or handbooks.

Using 'they' as an alternative to 'he' or 'she' will also be seen as supportive by many 2SLGBTQI+ employees. There are several online resources that can assist your organization to become more inclusive in your communications. The Government of Canada has a glossary of non-discriminatory terms that you can reference when it comes to 2SLGBTQI+ terms and terminology.

<https://www.canada.ca/en/women-gender-equality/free-to-be-me/2slgbtqi-plus-glossary.html>

Don't Just Start... Keep Going

In order to continue to be successful in helping 2SLGBTQI+ employees feel welcome at work, you have to build this inclusivity into all your planning, training and hiring objectives. It has been shown that employers who do this are more positively viewed as a place of employment by 2SLGBTQI+ workers and that they tell others that the organization is pro- 2SLGBTQI+. In the US, this has been reviewed by the Human Rights Campaign and they found that companies are over four times more likely than those that do not include them to be rated as inclusive to current and prospective 2SLGBTQI+ workers.

2SLGBTQI+ workers are an important and valuable part of the current workforce. To hire and to keep them, employers have to walk the talk when it comes to inclusion. This is not just the right thing to do. It is an essential and important element of doing business in the modern world. Being welcoming to 2SLGBTQI+ employees will also show that your organization is welcoming and supportive of 2SLGBTQI+ customers and clients. They actively support businesses that welcome them and like your own employees, they tell others. Being open and welcoming is a win-win for any organization, so start and keep going.

Members Quarterly Staff Writer



Michelle Phaneuf
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Feature

Embrace Conflict

Unveil its gifts in the workplace

Conflict in the workplace often carries a negative connotation, evoking images of tension, stress and disrupted harmony. However, beneath the surface, lies a realm of potential growth, innovation and strengthened relationships. Being involved in conflict situations can provide each of us with profound opportunities to grow and learn. Sometimes this learning or other gifts we receive comes after hard labour that can rock our world. We might not see the gift in the moment, but hopefully distance and increasing perspective allows us to process our past difficult situations and find that nugget. Here are some gifts we should consider.

1. Awareness Building

Conflict helps us understand ourselves better and how others may perceive us. Awareness of ourselves transforms our ability to choose to 'respond' rather than 'react'. We are empowered through our choices. It leads us to take ownership of our thoughts, feelings and actions instead of seeing them as being 'caused' by another person or by a situation or experience.

2. Skill Development

Having exposure to conflict helps us develop our conflict resolution skill set- whether that's improving our listening skills or becoming more direct in our communication. Empathy is "the ability to understand and share the feelings of another." Research has shown that empathy is not simply inborn but can actually be taught. We don't always get to pick our teachers, but they often come disguised as difficult people or difficult situations. Strengthening empathy and communication skills has certainly been a gift for me.

3. New Perspective

Taking time to really listen to the person you are in conflict with can create a fresh perspective. It's like taking the blinders off and panning the camera back to see the situation in a whole new light- a glorious painting that can create some wonder in our world.

4. Stronger Relationships

A concern I hear often from people who are reluctant to take part in a facilitated discussion with a co-worker, etc. is 'what if it makes it worse?' I can't predict the outcome of any conversation, but in my experience, a common comment after is "I feel like a weight has been lifted off my shoulders." I've also encountered countless occasions where people feel that the conversation has strengthened a working

relationship with a colleague, leader or friend, a gift truly needed in the workplace.

5. Perseverance

Difficult conversations take time, are messy and suck a lot of emotional energy. Staying in the messy can be hard because it is so uncomfortable and creates some psychological, and at times, physical squirming. Human nature calls to us to find a solution as soon as a problem presents itself. This does not give us the opportunity to dig deeper and find out what is really going on. A quick solution is often a band-aid on a vast wound causing the issue to resurface again and again. The ability to persevere enables us to continue to build understanding and be wary of the allure of a quick solution.

6. Challenging the Status Quo

Comfort and complacency can stifle progress for us and our teams. Conflict disrupts our status quo by making us question our assumptions and push our boundaries. It encourages a culture of continuous improvement where our outdated practices are challenged and replaced with more effective methods. Embracing conflict means embracing change, fostering an environment where innovation thrives and we can remain agile in our rapidly evolving world.

While encountering conflict in the workplace may initially seem daunting, it harbors valuable gifts for those willing to embrace it. By fostering creativity, strengthening relationships and encouraging personal growth, conflict can act as a catalyst for positive change within us and our teams. It challenges the status quo, enhances decision-making and resolves lingering issues that can otherwise fester.

Effective conflict management is not about eliminating conflict, but harnessing its potential to propel ourselves, our teams and our organization toward greater success. When approached with openness, respect and a willingness to learn, conflict transforms from a barrier into a bridge to innovation and stronger relationships in the workplace.

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Workplace Conversations: Offensive or Discriminatory?

Understanding your role as the employer



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Feature

In the recent decision of *Wasacase v The Ranchmen's Club*, 2025 AHRC 62, the Alberta Human Rights Tribunal (the "Tribunal") contemplated the issue of whether comments made by an employee which caused offence to another employee amounted to an adverse impact under human rights law, specifically a poisoned work environment.

The Comments

The complainant is an Indigenous woman who worked as a sous chef. While working in the office off the kitchen, the complainant overheard a conversation between two of her colleagues who were in the kitchen, which the complainant summarized as follows:

- The first thing JS (the colleague) would do if she was in government or in power is to get rid of every reserve. It would just be more cost effective.
- Her parents know people from a reserve down in Lethbridge that's incredibly mismanaged and they had negative experiences so they wouldn't go back to the Reserve ever.
- The reserves are mismanaged. JS stated the Chief of the reserve lives in a gorgeous home and his parents live in a gorgeous home. But there's a bunch of bordered up shacks and so that's why she would get rid of the reserves.

The Employer's Response

The complainant felt overwhelmed by the comments and immediately spoke with the food and beverage manager, a former general manager and the controller. The controller recommended that the complainant contact the Employee Assistance Program.

The manager also confronted JS about the comments, which JS denied making. The manager told JS to apologize, but JS refused, because she said the conversation was not directed to the complainant and was a private conversation.

The complainant then met with the Facilities Chair and club president, who committed to follow up on the matter. The Facilities Chair spoke

with JS privately and mentioned that the complainant had found her comments very hurtful. JS was reluctant to issue the apology and stated that she needed more time to do it. Ultimately, the Facilities Chair directed JS to apologize to the complainant, but JS did not. The complainant felt she could not work with the employer any longer and accepted employment elsewhere. The employer did not want the complainant to resign; told her she is a valued employee and asked the complainant to stay.

The Complaint

The complainant subsequently filed a human rights complaint on the basis that the employer did not adequately respond to racially discriminatory remarks made by JS, which created a hostile and unsafe work environment. The complainant specifically complained that the employer failed to address her concerns in a timely manner.

The Decision

The Tribunal cited *Lalwani v ClaimsPro Inc.*, 2016 AHRC 2, which stated that "General rudeness or bullying is not within the purview of human rights legislation. Where bullying includes negative comments about an individual in relation to the grounds specifically listed in the Act such that the employee is forced to endure the comments as a term or condition of employment, a poisoned work environment is created". The Tribunal considered factors such as whether further comments were made, whether the employer took steps to resolve the issue and whether the complainant and JS continued to work together without issue.

In this case, the Tribunal found that the lack of apology from JS did not amount to a poisoned atmosphere and that, while the issue was not resolved prior to the complainant resigning, the employer did take steps to try to appropriately address the complainant's concerns. In its decision, the Tribunal explained that while comments can cause real and lasting damage, they do not

continued next page...

Workplace Conversations: Offensive or Discriminatory? *Understanding your role as the employer* *concluded from page 6*

always amount to discrimination under the law, stating “expressing an opinion [...] is not the same as a racially motivated attack... the complainant did not hear the beginning or the end of the conversation to understand the full context”. Further, the Tribunal found the employer acted reasonably in the circumstances and made efforts to resolve the complainant’s complaint. The fact that the issue had not been resolved within one month of the incident occurring was not seen as unreasonable in the circumstances.

Take-Away for Employers

In Alberta, in addition to the duty not to discriminate against an employee, employers have a duty to ensure, as far as it is reasonably practicable, that none of the employer’s workers are subjected to or participate in harassment at the work site. Specifically, employers are required to develop and implement a violence and harassment prevention plan which includes procedures to report violence and harassment as well as

procedures to investigate complaints. This case demonstrates that by taking reasonable steps to address and attempt to resolve workplace conflicts, the risk of an employer being seen as complicit in a discriminatory act will be reduced.

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Off the Clock, but On the Hook: Off-Duty Misconduct

Employer rights and obligations

What should an employer do upon learning of an employee's misconduct against a fellow colleague outside of working hours?

The default rule is that an employer has no authority over what employees do in their personal time. However, where an employee's off-duty conduct affects the employer's legitimate interests in some way, the employer may have the right, and sometimes, even an obligation, to address this conduct.

Generally, to justify disciplining an employee for off-duty misconduct, an employee must show that the behaviour falls into one or more of the following categories:

- i. The conduct detrimentally affects the employer's reputation or product;
- ii. The behaviour renders the employee unable to properly discharge their employment obligations;
- iii. The conduct causes other employees to refuse to or be reluctant to work with that person;
- iv. The employee had been engaged in a serious breach of the Criminal Code in a way that injures the general reputation of the employer and its other employees; or
- v. The behaviour inhibits the employer's ability to efficiently manage and direct the production process

In all cases, employers are expected to demonstrate that there is a real causal connection between the off-duty conduct and the operation of the employer's business. Importantly, employers must be cautious not to rely on mere suspicion or speculation; they must carefully investigate the ways in which, as well as the extent to which, the employee's off-duty activities would affect their interests. This inquiry would necessarily require an examination of the nature and severity of the off-duty conduct.

The nature of the employer may also play a role in its rights and obligations to respond

to an employee's misconduct outside of work hours. For example, a school board with public responsibilities to parents and vulnerable youth may find it easier to justify a broader than normal scope to discipline its employees for their off-duty misconduct. A further factor for consideration is the proximity of the employees to one another – Do the employees share office space or have common duties that will bring them into contact with one another?

In *Corporation of the City of Calgary v Amalgamated Transit Union, Local 583*, 2023 CanLII 20867 (AB GAA) [*City of Calgary*], a male transit operator offered a female colleague an opportunity to test drive his vehicle, which the female colleague was interested in purchasing. The test drive occurred after working hours. During this test drive, and despite clear statements that she was not interested in a romantic relationship, the male employee made several unwanted sexual advances on his female colleague, suggesting that they could be friends with benefits and stroked her breast without her consent. The employer subsequently found out about the test drive "through the grapevine", though the female employee never reported the incident.

While the Arbitrator in *City of Calgary* did not comment on the employer's duty to investigate, they found that the employer's actions after it learned of the test drive, including the decision to investigate and discipline the employee who had sexually harassed his female co-worker, were justified. Notably, the Arbitrator remarked that the only reason why the coworkers knew one another was because they worked for the same employer. Further, the Arbitrator found that the off-duty misconduct created operational challenges as it would be difficult for the City to guarantee that the male employee and the female employee would not come across one another in the course of their transit operator duties. Another factor in this decision was

continued next page...

Feature

Off the Clock, but On the Hook: Off-Duty Misconduct

Employer rights and obligations concluded from page 8

that transit operators are public-facing and unsupervised employees that work in a position of trust over vulnerable populations.

As many employers already know, occupational health and safety (“OHS”) legislation typically requires an employer to identify both existing and potential hazards at a worksite, including sexual harassment and domestic violence. Further, employers owe an OHS duty to all of its workers to take measures to eliminate hazards, or to control the same, if elimination is not reasonably practicable. In the event of a complaint or an incident, employers must investigate. As such, an employee’s off-duty misconduct against a fellow colleague could trigger an employer’s OHS obligations to protect its employees from a potentially unsafe or hostile situation in the workplace.


What an employer can or must do to address an employee’s off-duty misconduct against another employee depends on the specific facts of the matter. Therefore, employers are encouraged to seek legal advice upon learning of such off-duty misconduct to determine the scope of their rights, as well as any obligations they may have, to address the situation.




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Feature

Tariffs, Trade Wars and Temporary Relief

How Work-Sharing saves Canadian jobs

In the midst of continuing “trade wars” between the US and Canada, Canadian industries are facing mounting economic pressures. This is largely due to the tariffs that were imposed by the Trump administration starting in early 2025. The imposition of these tariffs highlights the vulnerability of Canadian workers to trade policy, and the direct impact of these tariffs on everyday working Canadians. As a response, one of the countermeasures imposed by the Canadian government was an expansion of the federal Work-Sharing Program (the “Program”) under the Employment Insurance Act, which is aimed at avoiding layoffs, while finding the balance between employer needs and employee rights. Here are some legislative updates.

Work-Sharing as a Legal Alternative to Layoffs

The Work-Sharing Program provides employers and employees with a mechanism to avoid layoffs when the decrease in the normal level of business activity is beyond their control. For context, the Work-Sharing Program has historically been used during wildfires and COVID-19. Specifically, the Work-Sharing Program offers employers with a lawful means of reducing working hours across their workforce without the need of terminating employment contracts, while allowing for employees that experience a temporarily reduced work week to receive income support through Employment Insurance.

For employees to be eligible for income support, they must have experienced a minimum 10% reduction to their normal weekly earnings under a Work-Sharing Agreement (“Agreement”). Employees that are party to an Agreement must agree to a reduced schedule of work, and to share the available work equally over the term of the Agreement. Employers, employees and unions (if applicable) who want to be part of the Program must apply to Service Canada at least ten days prior to the start of the Agreement.

Employers are eligible to implement a Work-Sharing Program if they are operating in Canada for a minimum of one year, and have a minimum of two Employment Insurance eligible employees who agree to the reduction in hours and to share any available work.

Work-Sharing Program Benefit Payment

Under the Work-Sharing Program, the employer pays the employee their regular wages for the hours worked, while Employment Insurance covers all or part of the lost wages due to reduced hours. For example, if an employee works four days instead of their usual five, Employment Insurance may cover the shortfall. The formula used by Service Canada to determine how much the Employment Insurance benefit amount is depends on:

- i. The number of hours worked by the employee;
- ii. The employee’s standard Employment Insurance insurable weekly earnings, up to a maximum of \$695/week); and
- iii. The number of hours the employee would have worked if not in the Work-Sharing Program.

Special Measures Announced by Canadian Federal Government

In March 2025, in response to the Trump tariffs, the federal government amended the Work-Sharing Program.

Key changes include:

Extended Duration: The maximum length of a Work-Sharing Agreement was doubled from 38 to 76 weeks. Under the special measures, the Agreement must be a minimum duration of six weeks.

Broadened Eligibility of Employers: Eligible employers have been updated to now include non-profit and charitable organizations that are experiencing a reduction in revenue due to the tariffs, cyclical/seasonal employers, and

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Tariffs, Trade Wars and Temporary Relief ... concluded from page 10

employers experiencing a decrease in work activity in the last six months less than 10% (which is a change from the general eligibility requirement mentioned above of at least 10% in the last six months).

Broadened Eligibility of Employees: The special measures remove the requirement that employees be year-round, permanent, full-time or part-time employees to participate in a Work-Sharing Program. Cyclical and seasonal employees are now included, as well as employees assisting the employer recovery efforts (i.e., senior management, sales employees, etc.)

The special measures are still fully in effect.

Unionized Workplaces and Collective Agreements

For employers in a unionized environment, it is important to note that a Work-Sharing Agreement

must be consistent with the collective agreement. Employers cannot unilaterally alter hours of work and/or wages without union consent. The union plays a key role in shaping the terms of any application to Service Canada for the Work-Sharing Program.

Conclusion

Given the uncertainty regarding the tariffs, the expansion of the Work-Sharing Program provides a sound legal alternative to layoffs, while promoting job preservation and workforce stability.

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AN UPDATE on the “ANY TIME” BUT NOT ANY WHERE DEBATE - Part II

The debate continues to evolve



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Feature

Introduction

What started in 2024 as one of the most notable employment law case threads continued strong through 2025 – this so-called “any time” debate continues to evolve in real time in Ontario case law.

In 2024, *Dufault v The Corporation of the Township of Ignace*, 2024 ONSC 1029 (“**Dufault**”) made its way up to the Court of Appeal - 2024 ONCA 915, and left open whether the use of the words “any time” or “sole discretion” in termination clauses will automatically render an otherwise valid termination provision unenforceable for failing to comply with Ontario’s *Employment Standards Act, 2000* (“ESA”). Then in *Baker v. Van Dolder’s Home Team Inc.*, 2025 ONSC 952 the court held it was bound to follow *Dufault* and thus confirmed the inclusion of the words “at any time” in a termination clause were enough to void the clause. Notably, in *Baker*, the impugned clause did not refer to the employer’s “sole discretion.”

Now, three more recent decisions from the Ontario Superior Court of Justice have added to this evolving discussion.

***Jones v. Strides Toronto*, 2025 ONSC 2482 (“Jones”)**

Employers were then given new hope with *Jones v. Strides Toronto*, 2025 ONSC 2482, wherein the court distinguished the prior case line by holding that the presence of the words “at any time” in a termination clause, in the absence of the words “sole discretion,” do not contract out of the ESA. However, that court held the termination clause at issue was unenforceable for other reasons. Once again, the debate was back on.

***Li v. Wayfair Canada ULC.*, 2025 ONSC 2959 (“Li”)**

Then came more promising decisions for employers. In the summary judgement decision by Justice Dow, the termination provisions in the plaintiff’s employment agreement, which pro-

vided Wayfair with the ability to terminate the plaintiff’s employment “at any time”, were found to be enforceable. More specifically, the employment agreement provided that Wayfair could terminate the plaintiff’s employment “at any time and for any reason,” subject to the plaintiff being provided with only his minimum statutory entitlements in accordance with the ESA.

Arguing against the termination clause’s enforceability, the plaintiff relied on *Dufault*, arguing once more that the termination clause was unenforceable because it provided for termination at “any time” and therefore could not comply with Ontario’s ESA. However, Justice Dow disagreed and distinguished *Dufault*. Justice Dow found that, when read as a whole, the wording of the employment contract in *Li*, particularly the express requirement of compliance with the ESA, materially differed from the clause at issue in *Dufault*. Justice Dow noted that *Dufault*’s definition of “cause”, unlike *Li*’s, failed to refer to the applicable ESA standard or provide for payment of all types of wages to be payable over the minimum statutory notice period. As a result, Justice Dow concluded that, under the circumstances in *Li*, the inclusion of phrases such as “at any time” was not, in itself, fatal to the enforceability of the termination clause. This case has since been appealed to the Court of Appeal, and a decision is still pending.

***Chan v. NYX Capital Corp.*, 2025 ONSC 4561 (“Chan”)**

Then the Ontario Superior Court released its decision in *Chan* on August 6, 2025, adding more confusion in this case thread. In *Chan*, Justice Paraghi followed a very narrow interpretation of *Dufault*, finding that the impugned “at any time” language was offside the ESA on the basis that an employer “does not have an absolute right to dismiss an employee.” However, despite having been heard around the same time as *Li* and *Jones* (and having been released after each of these

continued next page...

AN UPDATE on the “ANY TIME” BUT NOT ANY WHERE DEBATE - Part II ... concluded from page 12

two decisions), the Court did not draw any reference to or otherwise distinguish them. Rather, in *Chan*, Justice Paraghi concluded that the termination provision in the plaintiff’s employment agreement was void and unenforceable because:

- the employment agreement purported to have the plaintiff contract out of their rights for certain unwaivable claims arising from the termination of their employment;
- the employment agreement improperly attempted to contract out of the *ESA* by granting the employer the authority to terminate the plaintiff “at any time for cause”, without notice or severance pay, in circumstances that exceed those permitted under subsections 2(1)(3) and 9(1)(6) of *Termination and Severance of Employment*, O. Reg. 288/01; and
- the employment agreement incorporated contractual language such as “at any time and for any reason” and “at any time without cause”, which Justice Paraghi noted were found contrary to the *ESA* in both *Dufault* and *Baker*.

This decision has thus drawn attention from the employment law bar, as it serves as a continuation of the inconsistent jurisprudence surrounding the enforceability of termination clauses through the ongoing ‘any time’ debate.

Take Aways for Employers

After *Dufault* and *Baker* declared “any time” contrary to the *ESA*, out came *Li* and *Jones* offering a welcome shift back to a more balanced and holistic approach to the interpretation of Ontario employment contracts. That said, there remains an abundance of seemingly inconsistent case law on the issue, leaving the debate ongoing. Thankfully, clarity may be on its way as the the Court of Appeal for Ontario has decided to hear the appeals in *Li* and *Baker* together in 2026. For now, the debate continues.

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The Trauma Informed Workplace

It's time to review your plans and procedures

Let's start at the beginning. What is trauma? Trauma is a human's response to experiencing a dangerous or violent event. It could be caused by witnessing a crime or serious accident or from physical or emotional abuse or things like domestic/intimate partner violence. If someone has sustained trauma, they could react in unexplained and unexpected ways like depression, crying or reacting almost violently, or just appearing disconnected and disinterested.

The latter symptoms are the ones most likely to present themselves at work and people do bring their trauma to work with them. While it's not an employer's responsibility to treat or address trauma experienced by their employees, there are different ways that the organization can respond to any trauma that they become aware of. That's the beginning of what's called a trauma informed workplace.

What does a trauma informed workplace look like?

If an employee discloses that they have sustained trauma, an employer should be willing to discuss the situation with that employee, to see if there are things they can do to support them, like flexibility about schedules or workloads. The employer probably already sees the employee struggling and instead of moving to discipline, they open a dialogue with them, particularly if they are a loyal or long-time worker.

In cases where the situation may still be volatile, like domestic/intimate partner cases, the employer might work with an employee on adapting their work conditions and helping them to develop a safety plan or make contact with service providers. In a trauma informed workplace, the employer might also ensure that there is a safe and comfortable environment to have discussions, practice active listening and make sure that the workplace is an area where the employee will not be further traumatized. Employers do not have to be counsellors or social workers, but they do need to show empathy and understanding.

Creating a trauma informed workplace

In addition to developing and maintaining a caring and empathetic workplace, there are multiple ways in which an employer can create a trauma informed workplace. This could include providing training to managers and supervisors, having a plan in place to deal with difficult situations and trauma, and restoring stability in the workplace for all employees.

Training

There are numerous training programs that can help an organization grow into a trauma informed workplace. They range from informal training sessions that focus on soft skills like being emotionally aware and active listening to ones focused on dealing with behavioural challenges and mental health first aid programs. All these types of training programs help managers and supervisors gain the confidence they need to deal with difficult situations and tools to assist them and their employees to get through them.

An important aspect of all training that may be related to a trauma informed workplace is to help managers recognize and respond early to signs of employee trauma and distress. Another is knowing how and when to approach an employee who is definitely in trouble- what to say and do. Empathy is a good start but saying that 'you're sorry' about what happened isn't going to be enough.

Plan a response

You don't have to wait for a disaster to strike to make a plan about how your organization will deal with a difficult situation. At the very least, HR and senior managers should know who the initial point of contact is and how the first few steps can be rolled out. Every organization should have a bank of resources that they can call on from Employee Assistance Program representatives to local medical and mental health professionals who can be brought in at short notice.

The first response should always be to say that you as the employer are there for individuals who need help. They may not want it right away, but make the offer. It will be appreciated. Next, be vigilant as events play out in the workplace with someone who has sustained a trauma and may be still going through it. Listen to employees around them and be prepared to offer resources as quickly as you can. There may be little you can do at the beginning, but watch and see if that changes over time.

Restore stability

An employee in mental or emotional distress needs as much stability as they can get. The workplace should be one area where it's safe to ask for and receive that support. They should know what kind of flexibility the employer can provide around work scheduling, but also what other help they can access. Is there access to counselling and other supports for themselves and their families from your Employee Assistance Program?

Can they take short or longer-term leave to deal with the situation? Can they access any short-term disability benefits to get them through a particularly difficult period? Can you give them the assurance that their job will be waiting for them when they come back? These are all questions that you can think about now and have responses ready if and when they may be required.

Make sure that you also have a plan to help other employees who may be close to the employee in trouble or may have been affected by their reaction to their trauma. They need to know that the workplace will be safe for everyone and that they can access resources themselves if they need or want them.

Members Quarterly Staff Writer

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