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Thunder Bay Running List commencing September 2, 2025 at which time the Defendant's application for leave to appeal in the other matter will likely have been decided.

[3] The Plaintiff contests the request for an adjournment of the trial and argues that the matter ought to proceed on May 20, 2025.

[4] The Plaintiff is a former employee of the Defendant. She was terminated without cause and paid out according to a termination provision in her employment contract. She has brought a claim against the Defendant for pay in lieu of reasonable notice asserting that the termination provision in her employment contract is unenforceable as it is not compliant with the *Employment Standards Act, 2000*. Alternatively, she asserts a breach of contract claim alleging that her pay outs on termination by the Defendant were based on an incorrect calculation of her length of employment with the Defendant.

[5] The same lawyers were involved in another case recently involving the same Defendant, *Dufault v. The Corporation of the Township of Ignace* (the "Dufault Proceeding"). In that case, the Plaintiff was terminated without cause and asserted that the termination provision in her employment contract was unenforceable as it was not compliant with the *ESA, 2000*. The termination provision was found to be unenforceable. The Defendants appealed the decision to the Court of Appeal. The Court of Appeal dismissed the appeal in late 2024. The Defendant has now filed an application for leave to appeal to the Supreme Court of Canada. The leave materials have been filed and it is anticipated that it will take two to three months for a decision on the leave application to be released.

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[6] The termination provision in the Dufault Proceeding and this proceeding are nearly identical.

[7] All of the affidavits representing the evidence in chief for the trial in this matter have been prepared and filed. The matter is ready to proceed to trial in May 2025.

[8] In support of the adjournment request the Defendant makes the following submissions:

- a) The outcome of the appeal will directly impact the outcome of this proceeding. If the decision in the Dufault Proceeding is upheld the parties will likely be able to resolve this mater. If the appeal is granted, then the Plaintiff's claim disappears.
- b) The Defendant asserts that it would be a waste of judicial resources to proceed with the trial in May 2025 with the appeal pending.
- c) They further assert that this not a situation where they are suggesting that all cases that could be impacted by the pending appeal ought to be adjourned. This case is unique because it is involving the same Defendant and the same termination provision.

[9] In support of the position that the adjournment should not be granted the Plaintiff makes the following submissions:

- a) The Plaintiff has essentially mitigated her claim for pay in lieu of reasonable notice so even if the termination clause is found to unenforceable her claim for same would be minimal at best.

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- b) The primary focus of the Plaintiff's claim at this time as a result of her mitigation is on the breach of contract claim. This will have to be adjudicated regardless of the appeal. The results of the appeal will in no way impact this claim advanced by the Plaintiff.
- c) The appeal by the Defendant involves overturning longstanding law regarding the interpretation of employment contracts and specifically, termination provisions. The appeal if proceeding could impact many cases throughout Ontario that are presently before the Court. The suggestion that a case needs to be stayed or adjourned pending an appeal would set a bad precedent. If the position of the Defendant is accepted any case presently before the Court involving the interpretation of an employment contract or termination provision could seek an adjournment pending the Defendant's appeal. This cannot be permitted and would create larger concerns regarding judicial resources than any that would be created by having this trial proceed in May 2025.

[10] I am not prepared to grant the Defendant's request for an adjournment of the trial. The trial shall proceed as scheduled on May 20, 2025.

[11] While the termination provision in this proceeding and the Dufault Proceeding are essentially identical, the issues in the current proceeding are different and the main claim that the Plaintiff intends to advance at trial, being the breach of contract claim, will in no way be impacted by the appeal. To the extent that the appeal could impact the decision at trial in the current proceeding, the trial judge can be advised and take that into consideration when rendering a decision.

[12] If I were to accept the position of the Defendant, the trial could be adjourned for a number of years if leave is granted in the Dufault Proceeding. The suggestion that this matter be put over to the September 2025 running list pending the decision on the leave application is not tenable. If leave is granted the parties will be in the exact same situation and the Defendant will likely not want to proceed with the trial at that time. Traversing the matter does not solve the concern of the Defendant.

[13] Adjourning the trial until the final determination of the appeal would create a dangerous precedent wherein cases involving similar issues will be adjourned pending the outcome of appeals that may impact the case. This would create a slippery slope and would in my opinion lead to greater adjournment requests by parties trying to delay matters. With that being said, I do accept that this situation is unique in that the Defendant is the same in both proceedings and the termination clause at issue is essentially identical. However, given the fact that the main claim to be advanced by the Plaintiff in the within proceeding given her mitigation to date will not be impacted by the appeal there is no reason for an adjournment to be granted.

[14] The Defendant's motion is dismissed.

**Costs**

[15] A determination of the costs of this motion is reserved to the trial judge.

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"original signed by"  
The Hon. Madam Justice R.A. Lepere

**DATE:** April 24, 2025

**CITATION:** Colby v. Township of Ignace, 2025 ONSC 2506  
**COURT FILE NO.:** CV-23-0021-000  
**DATE:** 2025-04-24

**SUPERIOR COURT OF JUSTICE - ONTARIO**

Lynda Marie Joan Colby

Plaintiff/Responding Party

**- and -**

The Corporation of the Township of Ignace

Defendant/Moving Party

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**DECISION ON MOTION**

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Lepere J.

**DATE:** April 24, 2025