CITATION: SHYNKAROVA v. 2554318 ONTARIO LTD. O/A TAX MECHANIC 2025 ONSC 6478

ONTARIO SUPERIOR COURT OF JUSTICE

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE:	**The Honourable Mister Justice** R. Lee Akazaki	**Court File Number**: CV-23-00698866-0000

Title of Proceeding:

SHYNKAROVA — Applicant(s)/ Plaintiff(s)

-v-

2554318 ONTARIO LTD. O/A TAX MECHANIC — Respondent(s)/ Defendant(s)

Case Management: ☐ **Yes** If so, by whom: ☐ **No**

Participants and Non-Participants:*(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff, Yelyzaveta Shynkarova	Shane Burton-Stoner Andrew Monkhouse	shane.burton@monkhouselaw.com Andrew@monkhouselaw.com	416-907-9249	**Y** **Y**
2) Defendant, 2554318 Ontario Ltd. O/A Tax Mechanic	Fraser Simpson (Self-Represented)	fraser@taxmechanic.ca	647-884-1216	**Y**

Date Heard: *(Rule 59.02(2)(c)(iii))* **November 10, 2025**

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐ Motion ☐ Appeal ☐ Case Conference ☒ Undefended Trial ☐ Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐ In Writing ☐ Telephone ☐ Videoconference ☒ In Person

If in person, indicate courthouse address:

Courtroom 7-6, 330 University Avenue, Toronto

Relief Requested: *(Rule. 59.02(2)(c)(v))*

Default judgment

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

The registrar shall sign default judgment in favour of the plaintiff, as follows:

1. Damages in the amount of $26,967.81.
2. Prejudgment interest in the amount of $3,589.01.
3. Costs as fixed below.
4. Post-judgment interest at a rate of 4%.

The defendant's formal approval of the judgment is hereby dispensed with.

Costs: On a **substantial** indemnity basis, fixed at $ 32,445.38 are payable by **defendant** to **plaintiff** [when] **30 days.**

Brief Reasons, if any: *(Rule 59.02(2)(b))*

PRELIMINARY ADJOURNMENT REQUEST

1. At the outset of the hearing, Mr. Fraser Simpson, the principal of the corporate defendant, rose to request an adjournment. He cited the volume of documents produced in the litigation and the fact that he has been too busy to deliver a statement of defence or to bring motions to set aside the noting in default.

2. I asked Mr. Simpson whether he had consulted a lawyer, because rule 15.01 required representation by a lawyer on behalf of a corporation. He stated that he had received leave to act for the company in other litigation. Because there was no motion or evidence before me required for such leave to be granted, I declined to grant leave. The absence of a lawyer meant there was no effective means for the defendant to request the adjournment.

3. It would also have been profoundly unfair to the plaintiff to grant the adjournment. The statement of claim was issued in May 2023. The defendant did not defend the action and was noted in default. Following the standard procedure for avoiding motions to set aside defaults and default judgments, the court directed the plaintiff to serve the defendant with the rule 19.05 materials. The defendant did respond, by requesting a case conference. On May 31, 2024, Glustein J. heard the case conference. However, no one appeared on behalf of the defendant. Mr. Simpson did not attend. Instead, he informed the registrar that he was busy in a business meeting during the appointed time.

4. Rule 19.03 provided a procedure for the defendant to move to set aside the noting in default. The case law emerging from such motions requires the court to consider the parties' behaviour, the length of the defendant's delay, the reasons for the delay, the complexity and value of the claim, prejudice to the plaintiff, the balance of prejudice to the parties, and the availability of an arguable defence: *Trayanov v. Icetrading Inc*., 2023 ONCA 322, at para. 20. These are not to be considered rigidly.

5. The plaintiff has been waiting for her day in court for two years. The process allowed a method for the defendant to hire a lawyer and move to set aside the noting in default. In his May 31, 2024, endorsement, Glustein J. directed the defendant to bring a motion to set aside the noting in default and for leave to Mr. Simpson to act for his company by April 30, 2025. The judge also expressly warned the defendant that the failure to bring such a motion could result in the defendant being precluded from raising any defence. The defendant did not bring the motion. Being too busy does not explain missing an 11-month delay in bringing such a motion and the failure to take any steps between April and November. Mr. Simpson was amply warned that this day would come and that he could be precluded from defending.

6. The case is not complex. Nor is the amount being sought more than the rule 76 simplified procedure jurisdiction. The plaintiff would be severely prejudiced by a rescheduling of the hearing, given that the case stems from an abrupt employment termination effected a few days before her first anniversary from the date of hiring. The only point that could have pointed in the defendant's favour was the availability of one or more defences related to the length of reasonable notice and the provision in the agreement (signed by the employee but not by the employer) related to the notice period. Since there was no statement of defence, and no evidence from the defendant despite the order requiring delivery by September 16, 2024, it was not for the court to imagine the form or the substance of the unrepresented defendant's defence.

7. The defendant has had ample time and opportunity to regularize its participation in the legal proceeding. The rules of court are meant to ensure fairness of process. Rule 1.04 requires the court to apply the rules to secure the just, most expeditious and least expensive determination of the action. None of these policy goals would be achieved by granting an adjournment. Granting an adjournment in these circumstances would also have been to indulge a defendant who displayed no flexibility or compassion when it summarily dismissed the plaintiff from her employment. Justice is impartial, but it is not divorced from the society in which all persons must coexist. I therefore declined to grant the adjournment.

RULE 19.05 DEFAULT JUDGMENT TRIAL

8. The pleadings, as deemed admitted, established that the plaintiff was hired on February 15, 2022, and fired on February 6, 2023, nine days short of the one-year threshold under the *Employment Standards Act, 2000*, s. 57. I draw from this fact the inference that the defendant sought to avoid having to pay the plaintiff an additional week of statutory severance pay.

9. The plaintiff was employed as the manager of social media and internet content for marketing the defendant, an online tax consultancy. She initially managed the video and internet content producers and moved on to produce her own content. The job entailed a version of the freelance work she had been performing for clients prior to the job with the defendant. It is highly creative work and requires various applied skills.

10. The uncontested evidence established that Mr. Simpson micromanaged the plaintiff during the year of employment, to the point of harassment, including jokes about terminating her employment. However, since this is not a constructive dismissal claim, the conduct is only relevant to the culminating moment when Mr. Simpson dismissed the plaintiff in a messaging app text.

11. I accept that the plaintiff made appropriate efforts to mitigate her damages by seeking employment and performing freelance work during the aftermath of her termination. Since the freelance work was not of the kind precluded by her employment with the defendant, it is open to the court to find that no deduction for the mitigation income should be made: *Brake v. PJ-M2R Restaurant Inc*., 2017 ONCA 402, at paras. 139-147. Counsel for the plaintiff agreed that the mitigation efforts do not extend the common-law notice period, however. What is proven from the plaintiff's failure to obtain comparable employment is the absence of comparable employment under the multi-factor approach under *Bardal v. Globe & Mail Ltd.*, [1960] O.W.N. 253, 24 D.L.R. (2d) 140.

12. Taking the *Bardal* criteria into consideration, the length of employment and the plaintiff's age (25) point to a lower length of notice. The availability of similar employment, the nature of her employment (training and qualifications), as well as the depressed economic circumstance of the immediate post-pandemic period, tend to increase the length. It was submitted that she was entitled to 12 months' notice, but counsel could point to no comparable case. Technically, 12 months would amount to a longer notice period than her term of employment. Although the plaintiff's age made her more employable by another employer, the abrupt and callous manner of her termination would have impacted her differently than an older employee with more employment experience.

13. In *Khan v. Fibre Glass-Evercoat Co.*, [2000] O.J. No. 1877, at para. 28, Lederman J. awarded a basic notice period of four months for a two-year employee but added eight months due to additional factors such as a restrictive covenant. There was a restrictive covenant in the agreement in this case, but the plaintiff did not provide evidence that she felt precluded from seeking employment with another tax consultancy because of it.

14. Because every case is different, the absence of precedent does not preclude the court from weighing all the *Bardal* factors. It would be unfair to adopt a base of two months, based on *Khan*, because the year difference would have a disproportionate effect compared to a case comparing nine and ten years. I therefore find that three months would be appropriate, given the balancing of the various factors I mentioned.

15. I do not consider the termination conduct of the defendant to warrant punitive or moral damages. There was also no breach of the ESA as such. However, I do consider the termination nine days before the first anniversary as a calculated measure to avoid an additional statutory amount of severance. In the circumstances, this conduct likely demoralized the plaintiff to the extent of impeding her search for new employment by at least a few weeks. A more responsible employer ought to have helped to ease the dismissal by offering a letter of reference and some transitional discussion. Instead, the defendant held back $3,967.81 in wages and forced the plaintiff to take low-paying employment such as restaurant work, to make ends meet. Having regard to the precarity of the employee's economic outlook, the misconduct likely set her back by at least one month in the job market in depriving her the opportunity to transition into a new job. I would therefore increase her notice period to four months, representing $20,000 in damages based on a $60,000 annual salary.

16. It was forcefully submitted that the defendant's conduct in the litigation, including abusive communications with counsel, further aggravated the damages or attracted punitive damages. These points are relevant to costs but not to damages.

17. As stated above, the defendant already owed $3,967.81.

18. There was no evidence of the value of the benefits lost during the notice period, because the defendant did not participate in the action beyond dragging it out through occasional demands for adjournments. In the absence of evidence, the practice has been to award a percentage, such as 10%: *Ruston v. Keddco Mfg*. (2011) Ltd., 2018 ONSC 2919, at para. 117. In the *Ruston* case, the plaintiff's income was much higher than the plaintiff here. The value of benefits is not readily measured a percentage, because basic benefits cost the same across the board, unless special perks are negotiated. In this instance, I award damages for lost benefits at a rate of 15%, calculated in the amount of $3,000.00.

19. The total damages therefore amount to $26,967.81. Prejudgment interest shall run from February 6, 2023, calculated based on 1012 days at 4.8%, totalling $3,589.01 as of today's date.

20. Objectively, it is hard not to see that the defendant's conduct in requesting the reopening of pleadings and failing to follow through substantially delayed the proceedings and unnecessarily increased the plaintiff's legal costs. This conduct, addressed in rule 57.01(1), paras. (e) and (f), relate to the unnecessary delay and forcing of additional steps. I agree that the conduct must bear the costs consequence of an award of costs on a substantial indemnity scale, because the default judgment would have been determined sooner as a motion in writing instead of a delayed oral hearing. The corporate defendant, who has saved money by not hiring defence counsel, exercised and abused its procedural rights at the expense of the plaintiff, who hired competent and experienced employment law counsel. The substantial indemnity costs demand of $32,445.38, is appropriate and proportionate to the case.

Additional pages attached: ☐ Yes ☒ No

November 10 , 2025

Date of Endorsement *(Rule 59.02(2)(c)(ii))*

Signature of Judge/Associate Judge *(Rule 59.02(2)(c)(i))*