

CITATION: Trident Management Consulting Inc. v. Jackson, 2026 ONSC 1383
COURT FILE NO.: CV-24-720710
DATE: 20260223

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TRIDENT MANAGEMENT CONSULTING INC.

Plaintiff

AND:

MONIQUE REMINA JACKSON

Defendant

BEFORE: Associate Justice Josefo

COUNSEL: James Heeney & *Junaid Malik*, for the Plaintiff

Candice Malan, for the Defendant

DATE HEARD: February 20, 2026

DATE DECIDED: February 23, 2026

REASONS FOR DECISION

Relief Requested: Plaintiff brings its motion to lift the defendant's noting in default, for a litigation timetable, and for costs.

Facts Underpinning the Motion:

[1] The plaintiff, a Toronto-based management consulting firm, provides services to clients across the globe in the business disciplines, of, *inter alia*, management, finance, and HR. The defendant, an individual domiciled in the city of Rotterdam, was hired by plaintiff to be an Engagement Manager pursuant to a February 24, 2023 contract of employment (“contract”). On or about March 1, 2023, defendant purportedly accepted the contractual terms, and she signed and returned the contract and a non-solicitations agreement to plaintiff. She commenced employment with plaintiff on or about April 3, 2023.

[2] The contract has a “governing law” clause, as follows:

“22. Governing Law: This Agreement shall be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein. The Company and you both attorn irrevocably to the exclusive jurisdiction of the Superior Court

of Ontario and all claims, applications and/or causes of action shall be commenced in Toronto which shall have the exclusive jurisdiction to entertain any action arising under this Employment Agreement or in any way related to your employment.”

[3] The contract also sets out defendant’s obligations should she wish to resign her employment. Yet plaintiff alleges that, on or about March 12, 2024, defendant purported to resign her employment without providing the notice required pursuant to the contract. On May 22, 2024, plaintiff thus commenced this within action by issuing a Statement of Claim (“claim”). The essence of the claim is, *inter alia*, “wrongful resignation”. The claim was personally handed to defendant where she resides, in the city of Rotterdam, in the Netherlands, on June 13, 2024.

[4] Defendant did not defend the action despite, on August 6, 2024, plaintiff’s counsel emailing defendant and warning that she risked default proceedings. Absent a response, on September 6, 2024 defendant was noted in default. On April 8, 2025, defendant was handed a Notice of Motion for Default Judgment. On April 17, 2025, defendant’s counsel delivered a responding record opposing the motion for default judgment. Plaintiff proposed a litigation timetable as defendant now had Ontario counsel. Yet on May 14, 2025, defendant’s counsel asserted only a limited retainer to address the motion for default judgment. Subsequently, on May 29, 2025, counsel for defendant asserted her intention to bring a cross-motion under Rule 17.06 to set aside and stay the action. In her email of June 10, 2025, counsel for defendant asserted that defendant was not properly served with the claim pursuant to requirements of the Hague Convention, and she reiterated that:

“Regarding our motion, yes—we will be proceeding under Rule 17.06(2)(c), seeking to set aside the noting in default on the basis that there has not been proper service. As indicated, we expect to serve our motion materials by the end of next week.”

[5] Counsel for plaintiff responded on June 12, 2025, stating its intention to bring a cross-motion seeking to set aside the noting in default and compelling the defendant to move the Ontario action forward.

The Only Motion Before the Court

[6] The July 10, 2025 motion of the plaintiff seeking to set aside the noting in default and for a litigation timetable is, indeed, the sole motion properly before me. Plaintiff served its Motion Record on Friday, January 23, 2026 via email sent at 5:48pm to counsel to defendant. Given the time of emailing, the motion record was deemed delivered Monday, January 26th. The seventh day for service purposes is thus February 4, 2026. The motion record was thus served more than three calendar weeks ahead of the return date. While earlier might have been better, I find that this was adequate service.

[7] As for defendant, she never brought her threatened motion under Rule 17.06. Nor did defendant schedule time for her motion. Rather, only on Friday, February 6, 2026 at 5:31 p.m., did counsel for defendant email her Notice of Motion of that same date to counsel for

plaintiff. Defendant's Notice of Motion sought to set aside service of the claim on defendant, and to stay the proceeding pending proper service pursuant to Rule 17.05(3)(b).

[8] No explanation was provided for the lengthy delay from June 10, 2025 (if not from the earlier May 29th date) through to February 6, 2026, a period of eight months, for the defendant to deliver a Notice of Motion, *albeit* she failed to schedule an actual motion. Moreover, counsel for defendant only served her Notice of Motion after her receipt of plaintiff's Motion Record.

[9] Defendant's Notice of Motion was thus served on counsel for defendant effective Monday, February 9th. Seven days notice, not counting the statutory holiday of February 16th, leads to February 19. Thus, defendant's bare Notice of Motion was served just seven days prior to the long-scheduled hearing day.

[10] Defendant then purported to serve her Motion Record on Friday, February 13, 2026, the eve of the Ontario Family Day weekend. The email serving such was only sent, yet again, after 4pm; at 5:23pm to be precise. Thus, such service was effective Tuesday, February 17, 2026—not even three clear days prior to the scheduled hearing.

[11] The email from counsel for defendant's firm described what was being served as a Motion Record of the Defendant (respondent). In my view, this was not, however, a responding motion record which pursuant to Rule 37.10 must be served no less than four days prior to the hearing (which timeline, in any event, was not met). Rather, this was, in my view, a purported cross-motion attempted to be brought by defendant. Which motion counsel for defendant first asserted would be brought on May 29, 2025 and which counsel reiterated on June 10, 2025 was then shortly to be forthcoming. At least seven days notice for the motion record was required, but that minimum notice was not provided, let alone that this purported cross-motion was not properly scheduled in the first place.

[12] The end result is that not only was defendant's motion not properly before the Court, I find that it was also short-served. I am unable to fathom why this was so. No explanation was offered. Thus, the only motion properly before me is that of the plaintiff. Yet I do, as I believe I must, nevertheless consider some of the material in the defendant's record in coming to my conclusions on the issues.

[13] Addressing both sides serving records after 5PM on Friday afternoons, this is not good practice. It may not be intentional to cause this, but the impact is to in essence disrupt the weekend plans of counsel and parties opposite. Counsel should serve materials during business hours, or, if unable to do so for good reason, then to take into account that service will not be effective until the next business day.

[14] One other important and undisputed part of the chronology of this matter is that the parties agreed to and did participate in mandatory mediation, with a roster mediator, on November 12, 2025. Counsel for defendant provided the signed mediation agreement on July 28, 2025. In her email of that date, counsel for defendant stated that she was "happy for the mediation to satisfy the mandatory mediation step within the litigation. I am hopeful that the matter will settle at the mediation". Counsel did not add any caveat or other requirement, such that the mediation would

be “without prejudice” to her client’s position regarding the Ontario claim. Nor was it asserted by defendant that participating in mandatory mediation would not constitute attornment to the jurisdiction.

[15] The mediator’s report of November 12, 2025, on the form used pursuant to Rule 24.1.15(1) & (2), recorded that the mediation lasted from over two to three hours. Thus, it was not, in my view, a “walk-in and walk-out” *pro-forma* step only taken to ‘tick a box’. The parties herein, to their credit, made genuine effort to try to settle the dispute over a period of hours. It is unfortunate that they did not succeed.

[16] I will return to the significance of this step subsequently in these reasons.

[17] In the defendant’s motion record there is a letter, not a sworn affidavit, from a Netherlands lawyer named Harmen Walther Haksteeg. This lawyer purports to opine that service of the claim on defendant was not proper pursuant to Dutch law. One very apparent difficulty with the late delivery of defendant’s materials is that plaintiff had no genuine opportunity to obtain its own opinion from a Dutch lawyer, or to seek to cross-examine Mr. Haksteeg as a witness on a pending motion (if defendant would have facilitated that, which is not a certainty given counsel for defendant would not permit defendant to be cross-examined on her affidavit).

Conflicting Opinions as Pertains to Service – and what to do about it

[18] The Netherlands and Canada are both signatories to the Hague Convention on Service Abroad of Judicial & Extrajudicial Documents in Civil or Commercial Matters (“Hague Convention”), and the Netherlands is a “non-objecting state”. This means that, pursuant to article 10 of the Hague Convention, one can serve “judicial documents” by postal mail, via the Dutch Central Authority, or through certain judicial officers or “other competent persons” to serve.

[19] Plaintiff did not mail the claim to defendant, *albeit* pursuant to the Hague Convention and Dutch law, it seemingly could have done so pursuant to article 10 (a) of the Hague Convention. The plaintiff did not also choose to rely on the Dutch Central Authority for service pursuant to article 10 (b). The plaintiff went beyond postal mailing, by engaging an individual employed by what is held out as a private detective firm, which individual personally handed the claim to defendant in 2024.

[20] There is no doubt that defendant actually received the claim long ago—yet she disputes that she was “served” so, in that regard, defendant will not waive what defendant submits is the strict legal requirement for service. Defendant asserts, through Dutch lawyer Mr. Haksteeg, that service of judicial documents in the Netherlands, called writs, which are issued by an authorized bailiff, only may be personally served by such a bailiff.

[21] Plaintiff, however, submits that what was being served on defendant was not a Dutch writ as pertaining to litigation commenced in the Netherlands, but rather an Ontario claim. While the above obligation of serving a writ through a bailiff may well apply to litigation commenced in the Netherlands, plaintiff submits that Mr. Haksteeg only speaks to that. Plaintiff submits that he does not speak to the method of service of initiating process originating in another jurisdiction.

[22] At section 3.1.13 of his opinion, Mr. Haksteeg writes how legal proceedings in the Netherlands are initiated:

“Legal proceedings in the Netherlands are initiated either by issuing a writ of summons (a 'dagvaarding') in the case of 'dagvaardingsprocedure' (summons proceedings), or by submitting a petition to the competent court in the Netherlands in the case of 'verzoekschriftprocedure' (petition proceedings), after which the competent Dutch court itself takes care of servicing the judicial documents. In accordance with Article 111 of the Dutch Code of Civil Procedure, only a bailiff is authorized to issue a writ of summons.”

[23] At section 4.1.1 of his opinion, the following conclusion is offered:

“In my professional opinion as a Dutch attorney, therefore, no legally valid service has taken place in accordance with Article 10(c) of the Convention, nor has there been a legally valid service of a writ according to the Dutch Code of Civil Procedure.”

[24] Accordingly, I find that Mr. Haksteeg does state his opinion that service of the Ontario claim was not valid under Dutch law. In response, plaintiff tendered an affidavit from Nico van den Dries, the owner of the firm, “Strongwood”, which firm delivered the claim to the defendant. He confirms that Strongwood is a licensed private investigation agency, and opines as follows:

“It is my understanding that Dutch law does not exclusively restrict the category of "other competent persons" to bailiffs when service concerns a foreign judicial proceeding governed by the Hague Convention, rather than domestic Dutch civil procedure.”

[25] The difficulty is that this is not an expert legal opinion (and I am equally hesitant to call the unsworn memo from the Dutch lawyer an expert opinion, either). Rather, Mr. Van den Dries offers his point of view. Yet I also must consider that it is from the individual who accepted the mandate to serve the claim, for which his authority has been called into question.

[26] Unfortunately, the record before me lacks a clear expert opinion, and the parties also lacked an opportunity for an expert(s) to have been cross-examined, if desired. The question of whether valid service of the claim on the defendant was made, on the record before me, is thus difficult to answer.

[27] Fortunately, I need not decide whether service was or was not made properly, although it is appropriate to observe that by delivering (if arguably not actually “serving”) the claim personally to the defendant, the plaintiff went above and beyond one permitted route of postal mailing the claim. *If* principles of equity and fairness negated the strict rules of the Hague Convention, then, in my view, plaintiff should prevail.

[28] Yes, because I find that defendant attorned to the jurisdiction of Ontario, I need not try further to sort out the conflicting opinions as pertaining to service, or to further consider whether equity and fairness can under law influence my conclusion in that regard. This is because, once defendant attorned, in my view, any service issued or purposes defects were deemed waived, as I discuss below.

Attornment

[29] Notwithstanding the thorough arguments of counsel for defendant, I am unable to agree that mediation is only a procedural, or minor, or unimportant, step in an action. Rather, in my view, participating in mandatory mediation, as such is required by the *Rules of Civil Procedure*, is quite a substantive as well as a necessary step in any civil action commenced in certain regions of Ontario. Mediation is also important in the Ontario litigation process, given the use of roster and private mediators, and the institutional support for both roster and private mediators (the use of forms, the reference in the Rules, etc.). Mediation also settles cases, so it is quite important to and for the administration of civil justice in Ontario. By agreeing unconditionally to participate in mandatory mediation, defendant accordingly submitted to the Rules and Practice Directions which govern civil litigation in Ontario. She attorned.

[30] It would have been well within the rights of counsel for defendant to offer to mediate conditionally, under the proviso that, if the case did not settle, defendant's participation in mediation would not constitute attornment. Yet that proviso was not raised. Again, the mediation proceeded unconditionally. That the items discussed in mediation are "without prejudice", and not to be subsequently relied upon by the parties in the litigation, does not mean that the process of mediation, in and of itself, is rendered *sub rosa*, not to be referenced to demonstrate attornment.

[31] If, after all, delivering only a Notice of Intent to Defend, a mere form typically dashed off by counsel constitutes attornment, it logically cannot be that taking the time and effort to prepare and exchange mediation briefs and then to attend and participate at mediation with one's client available, is not attornment.

[32] In *Capone v. Fotak*, 2022 ONCA 430, The Court of Appeal discussed attornment as follows:

"Attornment refers to the situation where a party has, **through its actions**, agreed to submit to the jurisdiction of the court. Under r. 16.01(2) and r. 17.06(1) of the *Rules of Civil Procedure*, a party who files a Notice of Intent to Defend is then estopped from asserting that the service should be set aside. When, as here, a party waives any potential defect in service by its conduct in attorning to the jurisdiction or in not moving to set aside service under r. 17.06 before filing a Notice of Intent to Defend, it may not later claim the proceeding is a nullity because it was not served in accordance with the strict requirements of the Convention [*bolding mine*]."

[33] The above decision is applicable to this within matter because, first, the defendant through her actions of participating in mediation unconditionally agreed to submit to the jurisdiction of the Ontario court. As the Court of appeal makes clear, because of this she is estopped from seeking to set aside service. Her conduct herein constitutes waiver of any issue with her being potentially not properly served under the Hague Convention.

[34] Finally, and equally importantly, is the defendant's unexplained and lengthy delay in bringing, and her never in fact properly bringing, her motion to set aside service. As reviewed above in these reasons, the defendant stated that she would bring such a motion—yet she never purportedly did until nearly eight months later, and then only improperly (which is equally inexplicable).

[35] In regard to, in particular, defendant's delay, I am also persuaded by the conclusions of Justice Cumming in *Wilson v. Servier Canada Inc.*, 2000 CanLII 22407. In this class proceedings case, the Court found that filing a Notice of Intent to Defend constituted attornment. Moreover, the Court concluded that, by waiting eight months until an initial case conference to advise that it might assert *forum non conveniens* and that its ongoing involvement was only on a without prejudice basis, was too long and not acting “in a timely manner” (paragraph 15).

[36] Addressing whether the Hague Convention's service requirements can be trumped by attornment or delay, the Court concluded as follows:

“[41] Biofarma says that rule 16.01(2), which allows that an originating process need not be served on a party who has delivered a notice of intent to defend, cannot give relief, as rule 17.05(3)(b) makes it an absolute requirement that an originating process “shall be served . . . in a manner that is permitted by Article 10 of the Convention and that would be permitted by these rules” (emphasis added): see for example *Dofasco Inc. v. UCAR Carbon Canada Inc.* (1998), 27 C.P.C. (4th) 342 (Ont. Gen. Div.) at p. 344. **Biofarma submits that the court cannot override the Hague Convention's requirements by dispensing with service under rule 16.01(2) or validating the service under rule 16.08 on the basis that the claim has come to the notice of Biofarma.**

[42] In my view, Biofarma fails in this motion. First, in my view, by filing a notice of intent to defend and waiting some eight months before advising that it might challenge Ontario's jurisdiction, Biofarma has attorned to the jurisdiction of Ontario. Second, I read rule 17.06(1) as stating that **a party must move for an order to set aside any actual service (and even if the service is in non-compliance with the Hague Convention)** before delivery of a defence or notice of intent to defend or notice of appearance. **The position of Biofarma, that the proceeding is inevitably a nullity when service under the literal requirements of the Hague Convention is not met, logically would lead to the absurd result that Biofarma could proceed through to the conclusion of a trial in this action and then disavow the result on the assertion that there was never service in accordance with the Convention.**

[43] The essence of the provisions in rule 16.01(2) and rule 17.06(1) is that a party who files a notice of intent to defend is then estopped from asserting that the service should be set aside. **When a party in effect waives a defective service by its conduct in attorning to the jurisdiction or in not moving to set aside service under rule 17.06 before filing a notice of intent to defend, it may not later claim the proceeding is a nullity because it was not served in accordance with the strict requirements of the Hague Convention.** Once Biofarma filed a notice of intent to defend, it was precluded from challenging the manner of service [*my bolding and underlining*].

[37] In my view, this decision and disposition is a complete answer to the defendant's challenges herein. The only distinction is that, instead of a Notice of Intent to Defend, in this within matter the parties deliberately chose to participate in mandatory mediation, turning their minds to mediation briefs and agreeing on a roster mediator. In my view, again, this is more than delivering a one-page, arguably pro-forma, document.

Outcome, and Preliminary Observations on Costs

[38] As such, for reasons above, the plaintiff's motion is granted. I shall sign an Order setting aside the default of the defendant and compelling a timetable. To that end, I urge counsel to communicate so to hopefully agree on the terms of a timetable Order. I urge the parties to agree as otherwise I will consider the invitation to case-manage this action which counsel for plaintiff made, and to which counsel for defendant did not object. If the parties cannot genuinely agree on timelines and milestones, such can be addressed at a case-conference. Yet a party whom I find is uncooperative in that regard is subject to cost consequences.

[39] Regarding costs of this motion, we agreed to convene a case conference to address these. My preliminary observations, based on the facts and my conclusions as set out herein, is that defendant caused months of delay in this matter. My finding that defendant's position in law was not the correct one does not mean that substantial indemnity costs should follow. Yet the delay on the part of defendant is a concern.

[40] In addition, the overall position of the defendant, as expressed in counsel's final submissions, that Ontario is not the *forum conveniens* notwithstanding a contract which clearly provides otherwise, a contract ostensibly that was freely entered into by defendant, a party who is clearly sophisticated given her position and the compensation entitlements she had under the contract, is also concerning. That some witnesses in this action may be, as counsel for defendant submitted, in various countries (counsel identified Germany, South Africa and the Netherlands) as well as Canada, does not, in this "Zoom era", make it difficult for those witnesses to testify in Ontario and would not, in my preliminary view, oust Ontario as the convenient jurisdiction. Especially, as the law of the contract is Ontario, elsewhere one would need Ontario lawyers to prove Ontario law, rendering the case even more cumbersome and expensive to the parties.

[41] Moreover, if contracts entered into still mean anything then, absent compelling *non es factum* arguments, these must be enforceable. Anything less risks commercial uncertainty.

[42] Preliminarily, there thus seemingly is at least an echo herein to *Olasz Scanning v J & S Mechanical*, 2024 ONSC 6506, which decision counsel for plaintiff handed up. Given, in particular, the contract, and that defendant has long acknowledged personally receiving the claim, this dispute could, and likely should, have been avoided.

[43] Having provided those observations, I urge the parties to try to agree on costs. Since this is, subject to any appeal of my decision, the beginning of the road for this action, I urge both parties to compromise, resolve this skirmish, and then seek to efficiently move the action forward (or settle it).

Associate Justice Josefo

Date: February 23, 2026