



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Wave Dynamics International Inc. v. Canada (Attorney General)*,
2026 NLSC 70

Date: May 28, 2026

Docket: 202101G0010

2026 NLSC 70 (CanLII)

BETWEEN:

**WAVE DYNAMICS INTERNATIONAL
INC.**

PLAINTIFF

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

Before: Justice Justin S.C. Mellor

Place of Hearing: St. John's, Newfoundland and Labrador

Dates of Hearing: October 27, 2025 and March 19, 2026

Summary:

Wave Dynamics International Inc. is suing the Attorney General of Canada for breach of contract. Canada awarded the company a contract to supply Light Marker Distress devices for the Canadian Armed Forces. Canada terminated the Contract for an alleged default. It applied for summary determination of this matter under Rule 17A.01 of the *Rules of the Supreme Court, 1986*.

Held: There is a genuine issue for trial. This is not a simple case of interpreting contractual language. Rather, it is a dispute that is fact intensive, involves conflicting evidence and requires the court to assess witness credibility. It is not an appropriate matter for a summary trial under Rule 17A.

Appearances:

J. Michael Cabot	Appearing on behalf of the Plaintiff
Laura Rhodes	Appearing on behalf of the Defendant

Authorities Cited:

CASES CONSIDERED: *Hutchings v. Power*, 2020 NLSC 7; *Marco Ltd. v. Newfoundland Processing* (1995), 130 Nfld. & P.E.I.R. 317, 405 A.P.R. 317 (Nfld. S.C. (T.D.)); *Dalley v. Northern Arm (Town)*, 2016 NLTD(G) 68

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

MELLOR, J.:

INTRODUCTION

[1] Wave Dynamics International Inc. (“WDI”) is suing Canada for breach of contract. The Contract was for the purchase of Light Marker Distress devices (“LMDs”) for the Canadian Armed Forces. Canada has applied for summary determination of this matter under Rule 17A.01 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

[2] There is a genuine issue for trial. This is not a simple case of interpreting contractual language. Rather, it is a dispute that is fact intensive, involves conflicting

evidence and requires the court to assess witness credibility. It is not an appropriate matter for a summary trial under Rule 17A. The matter will be set down for trial in accordance with Rule 40.

Background

[3] In October 2015, Canada awarded WDI a contract to deliver LMDs by 1 December 2015. The specifications were complex, and no existing commercially available product met Canada's requirements. This meant that substantial engineering, design, and testing were required to produce and deliver a compliant LMD.

[4] After the Contract was awarded, design changes occurred which necessitated further engineering and testing. There is conflicting evidence as to whether Canada or WDI initiated these design changes. Regardless, the changes caused delay resulting in the Contract's delivery date being amended from 1 December 2015 to "an estimated delivery schedule" of full delivery by the end of April 2016.

[5] The product was not ready for delivery at the end of April 2016; however, Canada did not terminate the Contract. WDI with Canada's engagement, continued its work on the redesign, testing and certification of the LMD throughout the spring and summer of 2016.

[6] On 22 August 2016, WDI informed Canada that its most recent testing indicated some minor quality issues.

[7] On 23 August 2016, Canada issued an amendment (Amendment 2) requiring WDI to immediately stop all work. There is no evidence as to whether WDI's authorized representative signed Amendment 2 as required under the terms of the Contract.

[8] On 24 August 2016, WDI provided a “Test Report Update and Status” indicating that all testing would be completed by the first week of October 2016.

[9] Throughout the fall of 2016, WDI tried unsuccessfully to obtain a status update from Canada. On 17 November 2016, WDI wrote to the Member of Parliament for St. John’s East, Nick Whalen, to obtain an update.

[10] On 12 December 2016, Canada wrote to WDI informing it that it had not received any deliverables, and it was terminating the Contract for default.

[11] On 2 March 2018, Canada advised WDI that because the Contract was terminated for default and there would be no reimbursement for costs.

Issues

[12] Is there a genuine issue for trial?

[13] Are the requirements of the threshold test for a summary trial under Rule 17A met?

ANALYSIS

Law

[14] The objective of a Rule 17A summary trial is to provide a fair, expeditious and less expensive route to adjudicating a dispute. (*Hutchings v. Power*, 2020 NLSC 7, at para. 13)

[15] Rule 17A.01(1) states that:

A plaintiff or defendant may, ... apply to the Court with supporting affidavit material or other evidence for summary trial seeking judgment on or dismissal of all or part of the claim in the statement of claim, as the case may be.

[16] Rule 17A.03(2) authorizes a judge to dispose of an application by way of summary judgment:

Where the Court decides that there is a genuine issue with respect to a claim or defence, a judge may nevertheless grant judgment in favour of any party, either upon an issue or generally, unless

- (a) the judge is unable on the whole of the evidence before the Court on the application to find the facts necessary to decide the questions of fact or law; or
- (b) it would be unjust to decide the issues on the application.

Is there a genuine issue for trial?

[17] Canada argues that there is no genuine issue for trial. In *Marco Ltd. v. Newfoundland Processing* (1995), 130 Nfld. & P.E.I.R. 317, 405 A.P.R. 317 (Nfld. S.C. (T.D.)), Justice Green stated at para.76:

There will be a "genuine issue for trial" if the issue in question is not spurious and the issue relates to a material fact or point of law that is necessary to be decided to resolve the ultimate controversy between the parties. Obviously, there will not be a genuine issue for trial if the responding party can put forward no evidence that could constitute either a defence or a claim in law.

[18] WDI has put forward evidence to support its claim for breach of contract. In his affidavit, James Locke, WDI's President, states that by the time Canada instructed WDI to stop work on the Project, no firm delivery deadline existed. Attached to his affidavit is discovery evidence from one of Canada's official's that

appears to support that position. Mr. Locke also puts forward evidence that the product testing was not a failure, and that delivery could have been completed before 31 October 2016, but Canada ceased communicating with WDI.

[19] There is a genuine issue for trial. WDI's claim for breach of contract is not spurious. The company clearly had a contract; the question is whether Canada's conduct and its failure to terminate in accordance with its express terms amounts to waiver or estoppel.

[20] Having determined that there is a genuine issue for trial, it now necessary to apply the threshold test.

Are the requirements of the threshold test for a summary trial under Rule 17A met?

[21] Not all matters are suitable for adjudication by summary trial. As a result, the case law imposes a threshold test. In *Dalley v. Northern Arm (Town)*, 2016 NLTD(G) 68, at para. 24, Justice Butler explained the threshold enquiry as follows:

1. At the threshold step, the Applicant for a summary trial must satisfy the Court that it has presented an appropriate evidentiary basis for either:

a) the claims made; or
b) the defences to the claims made;
in the affidavit and other documentary evidence presented by all parties (subject to the right to cross-examine deponents).

2. The second element of the threshold step is consideration of whether, at this preliminary stage, it would appear appropriate to deal with the issue in this summary manner.

3. If the threshold step is not met, the Court may give directions, order the proceeding to proceed to trial in the normal course or order it to proceed by expedited trial.

4. If the threshold step is met, depending on the facts, the Court may give directions and/or address any requests for production of deponents for cross-examination. If the parties are ready and the Court has ample time available, the summary trial hearing may proceed the same day. Alternatively, it may be set over to another date. In either case the summary trial should be heard by the judge who determined the threshold issue.

[22] In this case, Canada asserts that the Contract was terminated for default. It claims that the product failed testing and that it was not delivered in accordance with the deadline specified in the Contract. To determine if Canada's termination of the Contract amounts to a breach requires this Court to consider if Canada waived the deadline for delivery and whether the product did indeed fail testing.

Appropriate Evidentiary Basis

[23] Canada maintains that the key issues in this case can be determined by reference to the affidavits filed without the necessity of *viva voce* evidence. It has filed two affidavits in support of this Application. The first is from Joëlle Thériault, who was a Supply Officer with Public Works Government Services Canada, now renamed as Public Services and Procurement Canada (PSPC). Her affidavit sets out a chronology of events relating to the Contract, and includes the following attachments:

- the Request for Proposals (RFP) package
- a copy of the Contract
- a copy of Amendment 1
- a copy of Amendment 2
- a copy of WDI's status report
- copies of emails between Canada and WDI

[24] The second affidavit is from Patti Hallman, who was Ms. Thériault's Team Leader at PSPC and was responsible for overseeing the RFP process for the LMDs. Her affidavit also contains a chronology of events and includes the following attachments:

- the General Conditions of the Contract
- a copy of the Bid Evaluation Form for the Contract
- a copy of Amendment 1
- a copy of an invoice from WDI
- copies of emails between WDI and Canada

[25] James Locke, the President of WDI, has also provided an affidavit with attachments. It contains a chronology of events and specifically deals with the testing process. In his affidavit, he disputes that the Safety of Life at Sea (SOLAS) testing was failed.

[26] I am satisfied that there is an appropriate evidentiary basis to determine whether there was in fact default on part of WDI.

Appropriate to Deal with on Summary Trial

[27] The second step of the threshold enquiry requires a court to assess whether it is appropriate to determine the matter by summary trial. In this case, I am not convinced it is.

[28] On the key question of the delivery deadline, there is conflicting evidence, some which engages witness credibility. Mr. Locke's evidence is that the deadline was flexible and that at "... the time the Defendant issued the Stop Work Order there

was no agreed upon delivery date”. This position conflicts with some but not all of Canada’s evidence.

[29] Even if WDI’s evidence is ignored, Canada’s evidence on the deadline is inconsistent. While the amended Contract specified an “estimated delivery” by the end of April 2016, Ms. Thériault stated in discovery that “... there was not a firm deadline for delivery which means that no, no contract revision through formal amendment was required ... to revise the schedule”. Canada’s other affiant, Ms. Hallman maintains that there was a revised delivery date of the week of 10-17 May 2016. When Canada terminated the Contract on 12 December 2016, Ms. Thériault appears to have reverted to relying on the deadline specified in the Contract stating that “Canada has not received any deliverables by the timelines identified in the Contract ...”.

[30] The question of what if any, delivery date existed when the “stop work” order was issued cannot be easily resolved by cross-examination of the affiants or by reference to other facts on the record. (see *Marco*, principle 14 at para. 76) There are clear conflicts in the evidence. *Viva voce* evidence is necessary to determine if the actions by Canada after April 2016 were simply part of an alternative strategy of trying to negotiate delivery from an underperforming supplier or whether an inference should be drawn that it was somehow forgoing its right of termination.

[31] The question of whether the product failed testing when the “stop work” order was issued is also a contested point with conflicting evidence. The affidavit of James Locke provides details of the testing difficulties which he characterizes as insignificant. In contrast, Canada’s evidence treats the same issues as substantive non-conformity that justifies termination. It can be distilled from Mr. Locke’s affidavit that Ernie Parolin, the Department of National Defence’s Life Cycle Manager, viewed the testing as a complete failure. Although Mr. Parolin was discovered as part of the litigation, no affidavit was submitted containing his evidence.

DISPOSITION

[32] For the reasons provided, this is not an appropriate case for summary trial. The Application is dismissed.

[33] WDI shall have its costs in accordance with Column 3 of the Scale of Costs in the Appendix of Rule 55 of *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

JUSTIN S.C. MELLOR
Justice