



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *College of the North Atlantic v. Thorne*,
2026 NLCA 20

Date: June 9, 2026

Docket Number: 202601H0006

BETWEEN:

COLLEGE OF THE NORTH ATLANTIC

APPLICANT/
APPELLANT

AND:

DEBORAH THORNE and ALAN LUYT

RESPONDENTS

Coram: F.J. Knickle J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202401G3474
(2025 NLSC 186)

Application Heard: June 9, 2026

Judgment Rendered (Orally): June 9, 2026

Judgment Filed: June 15, 2026

Reasons for Judgment by: F.J. Knickle J.A.

Counsel for the Applicant/Appellant: J. David B. Eaton K.C.
and Anna M. Wadden

Counsel for the Respondents: James D. Hughes K.C.
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Authorities Cited:

CASES CITED: *Thorne v. College of the North Atlantic*, 2025 NLSC 186; *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Canada (Royal Canadian Mounted Police) v. Rees*, 2005 NLCA 4; *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2021 NLCA 53; *Jadhav v. Kielly*, 2018 NLCA 50; *Weir’s Construction Limited v. Warford Estate*, 2016 NLCA 65; *Lee v. Lee*, 2019 NLCA 75; *Chaulk v. Coffin*, 2025 NLCA 19.

STATUTES CONSIDERED: *Class Actions Act*, SNL 2001, c. C-18.1, section 20.

F.J. Knickle J.A.:

[1] These reasons explain my oral decision for allowing an application, in part, for a stay of an order pending appeal.

[2] The appellant and applicant for the stay of the order is the College of the North Atlantic (the “College”) and the respondents are the representative members of a class action that was successfully argued before the trial judge by way of summary trial (the “Respondents”). The judge rendered his decision in December 2025 (*Thorne v. College of the North Atlantic*, 2025 NLSC 186 (the “Decision”)).

[3] The College seeks a stay of the proceedings, including the enforcement of the judgment on the basis that the judge intends to continue with issuing a Notice under section 20 of the *Class Actions Act*, SNL 2001, c. C-18.1 (the “Act”). The judge determined the common issues in a class action proceeding, and section 20 of the *Act* states that once this has occurred, the class or subclass “shall give notice to the members of the class or subclass under this section”.

[4] The College submits the wording of section 20 is mandatory and that the next steps, in particular, issuing the Notice under section 20, must occur. It submits, however, that no further steps should be taken in the proceedings until its appeal of the Decision is determined by this Court, and that to proceed to issue a section 20 Notice and commence proceedings to resolve individual claims could result in irreparable harm.

[5] I am satisfied that the application should be allowed in part. The appeal is not frivolous and I am satisfied that there could be irreparable harm if a stay were not

imposed. However, when I consider the balance of convenience, I am not satisfied that it is necessary to stop the litigation completely in its tracks pending the hearing of the appeal. Instead, until the within appeal is determined, I impose a stay of the issuance of any section 20 Notice to the members of the class represented by the Respondents of their entitlement to pursue damages from the College.

The principles governing whether to impose a stay of an order pending appeal.

[6] The three-part test for a stay of enforcement of an order pending appeal is well established, as stated by the Supreme Court of Canada's decision in *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, and has been repeatedly applied by this Court in *Canada (Royal Canadian Mounted Police) v. Rees*, 2005 NLCA 4, *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2021 NLCA 53, *Jadhav v. Kielly*, 2018 NLCA 50, *Weir's Construction Limited v. Warford Estate*, 2016 NLCA 65, and *Lee v. Lee*, 2019 NLCA 75.

[7] The first question is whether the College has established that there is a serious issue to be argued on appeal. This question requires a preliminary, but not a detailed or extensive, investigation of the merits of the appeal.

[8] Secondly, the College must establish that it would suffer irreparable harm if no stay were granted. It is the nature of the harm that is considered, not the magnitude of the harm. In *RJR — MacDonald*, the term “irreparable” was described in this way, at page 341:

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the courts' decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[9] It is not necessary to establish conclusively that the contemplated harm will occur (*Lee*, at para. 17). For example, in the context of harm that might be compensable by way of damages, the prospect of incurring monetary loss may nonetheless constitute irreparable harm if there is a “credible reason for uncertainty” as to whether those damages can be recovered (*Rees*, at para. 60).

[10] Thirdly, the College must establish that the balance of convenience, as between the parties, favours imposing a stay. That is, will the College be more inconvenienced because the stay is not granted, or would the Respondents be more inconvenienced if the stay is granted?

[11] In this assessment, it may also be appropriate to consider broader interests or potential harm beyond those of the immediate parties (see for example, *Chaulk v. Coffin*, 2025 NLCA 19). As stated in *RJR — MacDonald*, at pages 342-343:

The factors which must be considered in assessing the “balance of inconvenience” are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at p. 408, that:

[i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

He added, at p. 409, that “there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.”

[12] All three criteria must be met before the Court will determine that it is appropriate to enter a stay of the Decision pending resolution of the appeal.

ANALYSIS: The application of the principles to the circumstance.

(1) Serious Issue to be Heard on Appeal

[13] The College has raised several grounds of appeal. The College alleges that the judge erred in permitting the matter to proceed by way of summary trial and that in so doing, the judge also considered matters that were not properly before him as part of the determination of the common issues. The College also alleges that the case put forward by the Respondents was unclear, which made it difficult to know the case the College had to meet. The College further alleges that even if the judge did

not err in proceeding by way of summary trial, the judge erred in finding in favour of the Respondents.

[14] The Respondents concede that given the low threshold for establishing that there are serious issues to be heard on the appeal, the grounds raised by the College meet this first criterion. I agree. No more need be said with respect to the substance of the appeal except as is necessary to consider the other criteria for the stay.

(2) Irreparable Harm

[15] The College submits that if there is no stay of the judge's Decision pending appeal, proceedings will continue pursuant to the statutory requirements, which would include issuing the section 20 Notice to the members of the class. The College submits continuing with the proceedings, particularly issuing the Notice to class members of the judgment pending the determination of the appeal, is premature. As stated by the College in its application at paragraph 28:

Once the notice and individual-claim process is underway, it creates practical pressure and momentum toward administering and paying claims before the appeal is resolved.

[16] The College submits that the issuance of a section 20 Notice to the class members and the process implemented as per that Notice, only to be rescinded because of a successful appeal of the Decision, could cause considerable confusion. I agree. It makes no sense to give notice to class members that they may be entitled to damages or to advise them of the steps they should take to pursue those damages, when the question of entitlement is under appeal.

[17] In *Fluorspar*, a similar concern by Welsh J.A. of this Court was sufficient to warrant a stay of the lower court's decision. In *Fluorspar*, the union successfully sought judicial review of a Labour Relations Board Decision refusing to recognize the union as having successor rights to collective bargaining respecting certain workers and the employer, Canada Fluorspar (NL) Inc. ("Fluorspar"). The effect of the judicial review decision was that the union was entitled to commence collective bargaining on behalf of the employees with Fluorspar. Fluorspar appealed and sought a stay of the judicial review decision. A stay was imposed pending the appeal to this Court. In so doing, Welsh J.A. was concerned in part as to the confusion that could ensue if the parties were to prematurely commence collective bargaining only to have the decision set aside. At paragraphs 6 and 7, Welsh J.A. stated:

[6] In addition to the costs involved, the Company submits that to enter negotiations at this stage would be premature, and may have the effect of rendering the appeal, and the employees' choice regarding unionization, moot. That is, if the appeal succeeds and the Board's decision is reinstated, the Union would not hold successor rights and the employees would have a choice regarding unionization. They may or may not choose the Union.

[7] Further, given the early date set for hearing of the appeal, should the appeal succeed, collective bargaining, having begun, would cease, potentially leaving either or both of the parties with unfulfilled expectations.

[18] Similarly here, until the appeal has been determined as to whether or not the judge correctly ruled in favour of the Respondents, it would be imprudent and premature to issue a section 20 Notice to class members of their potential entitlement to damages or to advise them of the mechanics as to how this will be determined only for such a process to be halted should the College be successful on appeal.

[19] On that basis, I am satisfied that if there is no stay of the enforcement of the judgment, there is a risk of irreparable harm, not only to the College, but also to class members.

(3) The Balance of Convenience

[20] The balance of convenience also favours a stay, however, it is at this juncture that I part with the submissions of the College that there needs to be a stay of the class action proceedings in their entirety pending appellate review of the Decision on its merits. While I agree that there is a risk of irreparable harm should notice to the potential class members be issued prior to the resolution of this appeal, this does not mean that, in the meantime, the parties cannot continue to consider how to make efficient use of their time pending appeal.

[21] A possible outcome is that the College may be successful on appeal on the merits of the claims. If so, there would be no need for a section 20 Notice to be issued as the College will have successfully defended the claim. The College argues, given this, it does not make sense to spend time or resources resolving the content or structure of a Notice. However, on the balance of convenience, that possibility does not outweigh the utility in allowing the parties to continue to work out the terms of the Notice, to the extent this is reasonably possible.

[22] At present, there is disagreement as to the content of the draft section 20 Notice, as prepared by the Respondents. The Notice cannot be issued until that disagreement is resolved either by the parties or by input from the judge in his case management role. I agree with the Respondents that disagreement over these details could be resolved notwithstanding the appeal, without risking irreparable harm as discussed above, because the Notice, even if finalized, would not issue until a determination of the appeal that is in favour of the Respondents.

[23] Further, if the College is successful in establishing these errors, given the nature of several of the grounds of appeal, a likely remedy may be an order for a new trial. The grounds of appeal include the assertion that the trial should not have been by way of summary trial, that the record did not adequately provide for decisions that were made by the judge, and that the judge also considered matters that were not before him. The potential for a section 20 Notice would remain a live issue if a new trial is ordered. The contents of such a Notice might still have to be considered. Similarly, if the appeal is unsuccessful, the contents of the Notice will still have to be determined before it can be issued.

[24] Further, the level of familiarity of the parties with the details of the issues, who might be entitled to damages, and the appropriate mechanism to establish such damages means that both parties have some idea as to how a section 20 Notice should be structured and it behooves the parties, if they have not already so done, to turn their minds to what they would envisage as the contents of such Notice in these circumstances.

[25] The issues at trial involved an allegation of a breach of contract by not paying monies to which the class members asserted they were entitled by virtue of specific clauses, in the particular contracts. The issues required the judge to interpret the impugned clauses. The judge ruled in favour of the Respondents. While there are some complicated aspects to the computation of damages, depending on when the contracts were in place, the determination of entitlement for the potential class members may depend partly on whether or not the particular employee contract contained the impugned clauses. This determination is fairly straight-forward. A claimant's particular contract either contained the clauses or it did not.

[26] Notwithstanding that there is disagreement as to the current draft section 20 Notice, there is much that could be accomplished through case management in finalizing the content of the Notice that would not be impacted by the appeal nor risk the occurrence of the irreparable harm as discussed above.

[27] Nor do I accept that the time or resources would be wasted to resolve the contents of the section 20 Notice because the outcome of the appeal might impact terms agreed to that might need to be changed. As discussed, most of the grounds of appeal relate to procedural concerns of the College, that is, whether there should have been a summary trial or whether the judge had sufficient evidence before him to decide the issue, or whether he decided issues that were not before him. The College provided no examples of how the resolution of these issues might impact how a Notice should be structured, given the nature of these complaints. Even if the outcome of the appeal has some impact on the content of the Notice, that does not mean that the parties should not continue to resolve their disagreement regarding the Notice. The Notice could be amended to accommodate any changes arising from the decision on appeal.

[28] In contrast, if resolution of the structure and contents of the section 20 Notice are stayed until after appellate review, this will cause further delay in litigation that is already protracted. This litigation has been in existence since 2013. This is the fourth time this matter has come to this Court on appeal. This appeal is scheduled to be heard in October. There could be a considerable time period between the hearing and a decision which could further add to potential delay.

[29] The Respondents have been successful in their claim on the merits, and there is a public interest that the litigation move forward without compromising the rights or ability of the College to pursue their remedies on appeal.

[30] For these reasons, I am satisfied that while the balance of convenience favours a stay, it is a partial stay that is appropriate in these circumstances.

CONCLUSION

[31] I am satisfied that the three criteria have been met for the issuance of a partial stay. While I agree with the College that the proceedings should be stayed to the extent that a Notice under section 20 of the *Act* should not issue until resolution of the appeal, I do not agree that the circumstances warrant a complete halt to the proceedings until the appeal has been determined. As submitted by the Respondents, there is no reason why the parties cannot make efficient use of the time to continue to particularize the content of a section 20 Notice that might issue.

DISPOSITION

[32] The application for a stay is allowed in part. There will be a stay of further enforcement of the Order to the extent that no Notice shall issue under section 20 of the *Act*, until final resolution of this appeal.

[33] The hearing of the appeal is scheduled for October 21, 2026, at 9:30 a.m.

F.J. Knickle J.A.