CITATION: Louis v. Poitras, 2020 ONSC 5301
COURT FILE NO.: 15-64232/15-66034
DATE: 20200909

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	**Court File No.: 15-64232**
FIRMA LOUIS and MARCDERE LOUIS Plaintiffs	)	Joseph Y. Obagi/Christopher A. Obagi, for the Plaintiffs
– and –	)	
JACQUES POITRAS and SECURITY NATIONAL INSURANCE COMPANY Defendants	)	Kevin Nearing, for the Defendant, Jacques Poitras Barry G. Marta, for the Defendant, Security National Insurance Company

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	**Court File No.: 15-66034**
FIRMA LOUIS Plaintiff	)	Joseph Y. Obagi/Christopher A. Obagi, for the Plaintiff
– and –	)	
TD INSURANCE MELOCHE MONNEX and SECURITY NATIONAL INSURANCE COMPANY Defendants	)	Joseph W.L. Griffiths, for the Defendants
	)	**HEARD:** August 26, 2020 by ZOOM videoconference

REASONS FOR DECISION

BEAUDOIN J.

Introduction

> In an action in the Superior Court of Justice that is not in the Small Claims Court, a party may require that the issues of fact be tried, or the damages assessed, or both, by a jury, unless otherwise provided.[1]
>
> It is settled law that the right to trial by jury in a civil case is a substantive right and should not be interfered with without just cause or cogent reasons.[2]
>
> The delay of justice is a denial of justice. *Magna Carta* will have none of it. "... To no one will we deny or delay right or justice". [3]
>
> These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.[4]

[1] To date, this Court has, through the exercise of its discretionary powers, managed the tension between the legal principles quoted above. Lately, that tension has been exacerbated by a growing backlog of civil cases. In Ottawa, if the trial is expected to take three or more weeks, parties typically wait at least two years after setting a civil case down for their action to proceed to trial. This delay is encountered whether the action is to be tried by judge alone or by a judge and jury.

[2] The motion brought to strike the jury notices in these proceedings invites a review of how the justice system must balance these competing legal principles. This review is triggered, in part, by the impact of the COVID 19 pandemic on Ontario's courts. These extraordinary circumstances present unique challenges to court operations and to the exercise of judicial discretion in the application of the relevant case law.

[3] On March 15, 2020, and for the protection of the public, court staff, lawyers, and judges, the Superior Court of Justice suspended all operations except for matters deemed urgent.

---

[1] *Courts of Justice Act* R.S.O. 1990, c. C.43, s. 108 (1)
[2] *Cowles v. Balac* (2006), 83 O.R. (3d) (Ont. C.A.) at para 36.
[3] As stated by Lord Denning in *Allen v. Sir Alfred McAlpine & Sons Ltd.* [1968] 1 All E.R. 543 (C.A.) at p.547
[4] Sub rule 1.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("the Rules)

Previously scheduled matters were adjourned to various dates in June. Priority was given to criminal, child protection and family matters. Traditional hearings were replaced by "virtual hearings". ZOOM video and teleconference lines were secured. A teleconference or video conference took the place of a courtroom. Courthouse staff began to work remotely, and electronic filing of documents was expanded.

[4] Overnight, the court system was hurled into the twenty-first century. Past practices were jettisoned; new efficiencies are being explored; and there is a growing realization that the administration of justice will, at least in some ways, remain forever changed.

[5] As a result of the technological initiatives, the court's operations were expanded to some extent as of April 6, 2020; but all civil jury and criminal jury trials remained suspended until September 2020. On May 13, 2020, additional operations were announced, with the expectation that some non-virtual hearings would take place in a first expansion phase commencing July 6, 2020. A second phase of expansion is scheduled to take effect on September 14, 2020, and the third and final phase is targeted for November 1, 2020.

[6] On June 18, 2020, however, a formal notice was given to the Ottawa bar that civil jury trials will not proceed in Ottawa until January 2021 at the earliest.

[7] In the wake of the initial shutdown of the courts, the Ontario government suspended limitation periods pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9.

[8] On June 9, 2020, the Attorney General sought input about the possibility of removing civil juries to help address additional court backlog resulting from the COVID-19 pandemic. Jury questionnaires now advise potential jurors that jury selection stopped in March 2020 and that jury trials for which the potential juror could be selected may not resume until 2021 or later.

[9] On June 25, 2020, the Ministry of the Attorney General Recovery Secretariat released its COVID-19 precautionary measures for resuming court operations. In seeking new and innovative ways to deliver justice, the Attorney General is once again seeking public input on the expansion of mandatory mediation and single judge case management.

[10] At present, a limited number of courtrooms in Ottawa have been retrofitted with plexiglass dividers for the judge, witness, registrar, reporter and counsel. A small number of courtrooms are being prepared for a handful of homicide trials. That preparation includes increasing the size of the jury box. In all other courts, jury boxes remain as they were pre-pandemic. Yet, physical distancing guidelines permit a maximum of four people to sit in the jury box. In any event, no plan has been finalized for accommodating jury trials and criminal jury trials remain the priority.

[11] The jury assembly room in the Ottawa courthouse, a room designed to accommodate a panel of 120 potential jurors, has been converted into a jury deliberation room for twelve jurors. This conversion, although helpful, will only permit a single jury trial to proceed in Ottawa at any given time.

[12] As I write this ruling, more than 27 million people worldwide have been infected by the coronavirus. Nearly 900,000 people have died. There are fears of a resurgence of the pandemic in Europe. While Canada and Ontario appear to have effectively managed the spread of the virus, there is a concern of a second wave during the fall flu season. Many vaccines are in development; none of these is expected to be ready for widespread immunization until sometime in 2021. Continued success in containing COVID-19 requires physical distancing, mask-wearing and frequent handwashing. These preventative measures will remain in place for the foreseeable future.

The Actions

a) The Tort Action

[13] Action 15-64232 ("the Tort Action") involves claims by Firma Louis and her partner for damages arising from a motor vehicle collision that occurred on May 9, 2013. Ms. Louis seeks general damages for pain and suffering and the loss of enjoyment of life and for past and future loss of income and other relief. Mr. Louis seeks general damages for loss of care guidance and companionship. The statement of claim was issued on May 7, 2015. The damages claimed therein total $975,000. The Defendant, Jacques Poitras, delivered a statement of defence and a jury notice, both, dated August 25, 2015.

[14] The pre-trial conference ("PTC") of the tort action was scheduled for February 15, 2018 and the trial was to proceed in May of 2018. Plaintiffs' counsel was in trial on another matter on

February 15, 2018. As a result, the PTC was adjourned with the result that the trial was also adjourned.

[15] Counsel for the Defendant Poitras argues that the Plaintiffs cannot complain of any delay. The Defendant Poitras submits that this action could have been tried two years ago if Plaintiffs' counsel arranged to attend the PTC on the date that for which it was originally scheduled. The Defendant Poitras also argues that he is now prejudiced because, with the passage of time and the additional interest which has accrued on damages that may be awarded to the Plaintiffs, he is now facing a much larger claim - one in excess of his $1,000,000 policy limits.

[16] The record shows that Plaintiffs' counsel communicated with the court about his inability to attend the PTC as scheduled and sought an adjournment to the next available date. Shortly thereafter, the Defendant Poitras' counsel sent an e-mail that said: "we may have to do something about the trial date" and asked that the matter be sent back to trial management court. The defendant's email raises doubt as to whether this matter could have proceeded on the original May 2018 trial date.

[17] As for any prejudice to the Defendant Poitras, expert reports served by the Plaintiffs in 2017 supported a claim well in excess of his $1,000,000 policy limits. The Plaintiffs' PTC brief, served in anticipation of the 2018 PTC, disclosed that the Plaintiffs were seeking damages in excess of $3,000,000. It is trite law that the Plaintiffs may, at any time, seek leave to amend their statement of claim. The Plaintiffs cannot be faulted if Mr. Poitras was not personally informed, in a timely manner after service of the expert reports, of the full extent of the Plaintiffs' claims.

[18] The parties were referred to trial management court on April 4, 2018. I presided over that event. I raised the possibility that this action and the related action, 15-66034 ("the Accident Benefits Action"), be tried together. I referred the matters to a case conference. On June 15, 2018, Williams, J. ordered that the two actions be tried together, for a total of 10 weeks, commencing on April 20, 2020. It was noted that a judge's conference would be taking place during that period and an allowance was made for the incursion into trial time because of that conference.

[19] On October 5, 2018, the Plaintiffs' OPCF-44R insurer, the Defendant, Security National Insurance Company, ("Security National") was added as party. A timetable order was issued so that the April 2020 trial date could be maintained.

b) The Accident Benefits Action

[20] Action 15-66035 is a claim against Ms. Louis' accident benefits insurer for denied treatments, denied income replacement benefits, and punitive damages. In that action, the Defendant, TD Insurance Meloche Monnex ("TD Insurance") issued the motor vehicle insurance policy. The Defendant, Security National Company ('Security National"), acted as an underwriter for TD Insurance.

[21] But for the pandemic, the trial of both actions would have proceeded on April 20, 2020. All parties were and continue to be ready for trial.

Preliminary Issue – Leave to Bring These Motions

[22] As these actions have been set down for trial, the Plaintiffs require leave to bring these motions[5]. There are two tests for granting leave. The more established test requires the moving party to show a substantial or unexpected change of circumstances subsequent to the filing of the trial record. The second, more flexible test, provides that leave may be granted if it is in the interests of justice to do so.[6] In the context of the ongoing COVID-19 pandemic, the more flexible test has been preferred.[7] On either test, I am satisfied that the Plaintiffs should be granted leave to bring these motions.

The Positions of the Parties

a) The Plaintiffs, Firma Louis and Marcdere Louis

[23] The Plaintiffs argue that the parties were ready to proceed to trial on April 20, 2020. It is uncertain when, or even if, civil jury trials will resume in Ontario. The Plaintiffs argue that they should not bear the weight of these uncertainties and emphasize that any further delay could be

---

[5] Rule 48 of the *Rules*
[6] *BNL Entertainment Inc. v. Ricketts*, 2015 ONSC 1737, 126 O.R. (3d) 154 at para. 12.
[7] *J.A.L. Developments v. Residences of Springhill Inc*., 2020 ONSC 2222 (CanLII) at para. 69.

substantial. The Plaintiffs say that they have already waited seven years for the trials of these actions.

[24] Because one of the actions involves a tort claim arising from a motor vehicle collision, Ms. Louis' recovery for past loss of income is limited to 70 per cent of her past losses: *Insurance Act*, R.S.O. 1990, c. I.8, s. 267.5. There are no such restrictions on damages awarded for future loss of income.

[25] This Plaintiff says that the longer this trial is delayed, the percentage of her respective income losses that are past (as opposed to future) losses increases. With the passage of time, the percentage of her income losses to which the 70 percent restriction applies increases. This Plaintiff say that this conversion, by reason of delay, of future losses into past losses results in a windfall to the Defendant. This Plaintiff maintains that windfall is unfair to her.

[26] The Plaintiffs also submit that the Defendants in the tort action have not shown that they will suffer any prejudice if the jury notice is struck.

[27] With respect to the accident benefits action, Ms. Louis argues that the Defendants are insurers who have a good faith obligation towards her. In her statement of claim, Ms. Louis alleges that the Defendants have breached that duty. She alleges that the breach is in the form of unreasonable delays in adjusting her claim, delays in payment, delays in producing documentation, and delays in responding to treatment plans.

[28] The Plaintiffs are prepared to proceed with a non-continuous trial, of both actions together, before a judge alone. The Plaintiffs suggest a non-continuous trial broken into three-week blocks. They make that suggestion because the court can schedule trials of three weeks or less to start within the next six months. The Plaintiffs argue that the trials must start; even if there are interruptions, the trials would likely be completed before a lengthy jury trial could commence.

b) The Defendant, Jacques Poitras

[29] This Defendant submits that (i) the motion is premature, and (ii) the Plaintiffs have not established that a ten-week trial before a judge alone could take place and/or be completed any sooner than could a ten-week trial before a judge and jury. This Defendant relies on his substantive

right to a jury trial. He submits that the Plaintiffs have not discharged the evidentiary onus upon them in support of an order for the jury notice served in the tort action to be struck.

c) The Defendant, Security National (in the Tort Action)

[30] This Defendant argues that (i) the operation of s. 267.5 of the *Insurance Act* applies to all plaintiffs claiming damages from a motor vehicle accident, and (ii) there is no evidence to support findings, specific to the tort action, of financial hardship to this Plaintiff and/or benefit to the Defendants. This Defendant also points to affidavit evidence that Ms. Louis, continues to receive a long-term disability benefit, and a CPP disability benefit including CPP disability benefits for her children. This Defendant submits that Ms. Firma has not suffered any loss of income and therefore will not suffer any prejudice, by reason of delay, with respect to that aspect of her claim.

[31] This Defendant joins in argument that this motion is premature. This Defendant highlights that the government is preparing a response to the COVID-19 pandemic, including with respect to the right to a civil jury trial. This Defendant submits that, as a result, the court should not be making policy decisions about the right to a jury trial on a case-by-case basis.

[32] Lastly, this Defendant echoes the submissions of the individual defendant and argues that the Plaintiffs have not met the heavy onus on them with respect to an order discharging a jury notice.

d) The Defendants in the Accident Benefits Action

[33] These Defendants rely on their substantive right to jury trial. They also submit that the Plaintiff has not met the onus on her to deny the Defendants of their right in that regard. They also argue that this motion is premature. These Defendants submit that the court should adopt a 'wait and see' approach to determine if, and when, this trial can proceed with a jury.

The Law

[34] The right to a jury trial is statutory. It is undisputed that the defendants in these actions were within their respective statutory rights to deliver jury notices.

[35] I start my analysis by considering the circumstances in which a party does not have the right to deliver a jury notice – of which there are many.

[36] Section 108(2) of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, prohibits service of a jury notice where the action involves a claim for any of the following kinds of relief:

i. Injunction or mandatory order.
ii. Partition or sale of real property.
iii. Relief in proceedings referred to in the Schedule to s. 21.8.
iv. Dissolution of a partnership or taking of partnership or other accounts.
v. Foreclosure or redemption of a mortgage.
vi. Sale and distribution of the proceeds of property subject to any lien or charge.
vii. Execution of a trust.
viii. Rectification, setting aside or cancellation of a deed or other written instrument.
ix. Specific performance of a contract.
x. Declaratory relief.
xi. Other equitable relief.
xii. Relief against a municipality.
xiii. An action proceeding under Rule 76 of the *Rules of Civil Procedure*.

[37] The prohibition against jury trials in actions proceeding under Rule 76 is recent.

[38] Previously, jury trials were mandatory in actions for libel, slander, malicious arrest, malicious prosecution and false imprisonment. It is no longer mandatory for such claims to be put before a jury.

[39] The policy reasons behind these exclusions are not readily apparent; the complexity of the subject matter, the existence of questions of mixed fact and law, and the need for a timely resolution appear to ground many of the policy reasons.

[40] *Balac* is the seminal case where the Court of Appeal confirmed that that the right to trial by jury in a civil case is a substantive right that should not be interfered with without just cause or cogent reasons. In setting out the test to strike a jury notice under rule 47.02, the Court said the following at paras. 37 and 38:

> **37** A party moving to strike a jury bears the onus of showing that there are features in the legal or factual issues to be resolved, in the evidence, or in the conduct of the trial which merit the discharge of the jury. In the end, a court must decide whether the moving party has shown that justice to the parties will be better served by the discharge of the jury.

> **38** While that test confers a rather broad discretion on a court confronted with such a motion, it is nonetheless a sensible test. After all, the object of a civil trial is to provide justice between the parties, nothing more. It makes sense that neither party should have an unfettered right to determine the mode of trial. Rather, the court, which plays the role of impartial arbiter, should, when a disagreement arises, have the power to determine whether justice to the parties will be better served by trying a case with or without a jury. (emphasis added)

[41] At paras. 71 and 72, the Court went on to say:

> **71** Obviously, there is merit to taking a "wait and see" approach in some cases, and perhaps in most. However, taking such an approach is not a rule of law. The *Courts of Justice Act* and the rules contemplate that a judge may strike a jury notice even before a trial has begun and that a trial judge may dismiss a jury before beginning to hear the evidence.
>
> **72** A trial judge has a discretion whether or not to take a wait and see approach. In many cases it is the most prudent course to follow. In some cases, however, trial judges will consider that there is no advantage to beginning the trial with the jury because the situation as presented at the outset makes it apparent that the case should not be tried with a jury. There is thus no point to waiting and seeing.

[42] On the motions now before me, there are no features in the legal or factual issues to be resolved, the evidence, or the conduct of the trial to indicate that these actions cannot be tried by a jury. At the same time, there is no evidence before me that a jury is more capable than is a judge alone of making the necessary findings of fact.

[43] Much of the case law on motions to strike a jury turns on the complexity of the issues and a finding of prejudice if the matter were to proceed before a jury. In the Tort Action, the Plaintiffs rely on the impact, caused by delay, on the assessment of their respective damages for past and future loss of income.

[44] Prejudice is a broad concept predicated on the features of a particular case. In *Rolley v. MacDonell*, 2018 ONSC 508 (CanLII), Justice Corthorn discharged a jury when the trial was not completed within the allotted time and there would be a 44-day delay before the trial could resume. She found that the delay would prejudice the jury's reasoning process and its ability to fulfil its role.

[45] In *Palmer v. Ottawa General Hospital* (1999), 44 C.P.C. (4th) 279 (S.C.J.), I decided, in my capacity as Master at the time, that the preparations for and conduct of a jury trial are significantly different than those for a trial before a judge alone. I concluded that the plaintiff in that case was prejudiced by the late service of a jury notice.

[46] In my view, nothing turns on Ms. Louis' claim for damages for past and future loss of income. I find that the real and substantial prejudice arises simply by reason of delay. I recognize that there are few decisions that identify delay as being determinative on its own of the right to trial by jury. Regardless, I find delay to be determinative in the circumstances of this case, arising as it does in the context of a global pandemic.

[47] In *Gervais v. Kapasi*, [1995] O.J. No. 3128 (Gen. Div.), Justice Brockenshire struck a jury notice after concluding that the trial would be delayed by a year. The trial was scheduled to commence but then two juries were excused. Justice Brockenshire took notice of the court's backlog and inability to guarantee when the case could be tried. At para. 20 he said the following:

> **20** In my view there comes a time when the matters in dispute have to be resolved. There comes a time when the cost of litigation outweighs what can be hoped for as a result. I think in this case the time has come. I have considered the grounds put forth. I feel they are novel. I feel they are practical. I feel they meet the needs of present litigation in the needs of parties to be served by the judicial system. …

[48] Earlier that year, the *Civil Justice Review Task Force* published its First Report[8]. Chapter One opens with the following quote from the late Willard Z. Estey of the Supreme Court of Canada:

> Disputes, unlike wine, do not improve by aging. Many things happen to a cause and to parties in the dispute by the simple passage of time, and almost none of them are good. Delay in settlement or disposal of conflicting claims is … a primary enemy of justice and peace in the community.

[49] The Report continued at p. 3 as follows:

> Unreasonable delay in the disposition of disputes is, indeed, "the enemy of justice and peace in the community". It leads inevitably to unreasonable costs. It breeds

---

[8] *Ontario Civil Justice Review*, *First Report* (1995), online: Ministry of the Attorney General

> inaccessibility. It fosters frustration and frustrates fairness. The administration of justice falls into disrepute.

[50] In *MacLeod v. Canadian Road Management Company*, 2018 ONSC 2186 (CanLII), the plaintiff moved to strike jury notices in two actions that were to be tried together. I adopt the reasoning of Justice Myers as set out in paras. 31and 32:

> **31** Proportionality is a vital component of the civil justice system. It is enshrined in Rule 1.04 (1.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194 as an omnipresent consideration in the assessment and balancing of all procedural issues. Mr. Rachlin argues, with much logical force, that in addition to complexity alone, if it can be shown that a jury trial will take much longer or cost much more than a non-jury trial; or if, because of its added length or just because it is a jury trial, systemically, it will not be held until a much later date, then the use of a jury trial may fail to meet the interests of justice. I agree.
>
> **32** The court must react to the realities facing civil litigants and the civil justice system. It is not news to anyone that delays, and the high cost of civil proceedings impair access to justice. The Supreme Court has declared that "[e]nsuring access to justice is the greatest challenge to the rule of law in Canada today."[3] Systemic issues like the insufficient judicial compliment, resource deployment away from civil cases as a result of *R. v. Jordan*, 2016 SCC 27 (CanLII), and other pervasive funding concerns affect the realities facing civil litigants. The court's ability to provide long civil jury trials in an expeditious, affordable, proportionate way may be suffering as a result. Where this is so, the systemic realities may impair access to civil justice. The right to a civil jury trial might therefore have to yield in appropriate cases in order to provide the parties with an expeditious, affordable, and proportionate resolution that is fair and, especially, one that is "just" as we currently comprehend that term. (emphasis added)

[51] He ultimately dismissed the motion in that case as being premature because he could not yet determine the likely length of the trial and because the parties' evidence preparation had not advanced sufficiently.

[52] To my knowledge, there have been few cases to date where an Ontario court has considered the impact of the pandemic on a motion to strike a jury notice pursuant to rule 47.02(2). On September 1, 2020, Justice Roger struck a jury notice with oral reasons in the matter of *Higashi v. Shariot* - Court File No. 14 -61439 (Unreported). This case was scheduled for a four-week civil jury trial to start March 23, 2020, and the trial was adjourned because of the suspension of the court's operations.

[53] Justice Roger considered the plaintiffs' claim to be prejudiced by a 30 percent statutory loss of income for motor vehicle accident prior to trial, as well as in the unavailability of medical care and treatments irrespective of an advance payment made by the defendants.

[54] Justice Roger reviewed the same case law that was argued before me. He focused on the state of uncertainty at this point in time and concluded that it was not in the interest of justice to delay the trial with a resulting increase in expenses to both parties. He struck the jury notice without prejudice to the parties being able to return before him prior to trial should it be known by then when a jury trial could proceed. If the delay in proceeding with a jury trial was not as long as he feared, he was prepared to review if the interests of justice would balance differently.

[55] On September 4, 2020, in *Belton v. Spencer*, 2020 ONSC 5327, Justice Sheard struck a jury notice because an upcoming jury trial could be delayed by as much as 18 months because of COVID-19. The plaintiff in that case sustained injuries when he was kicked by a horse in May 2010. There were late developments in the case and original pre-trial and trial dates had been adjourned. The defendant advanced many of the same arguments that were made on this motion.

[56] Justice Sheard identified several very practical concerns in empanelling and continuing with a jury during the pandemic which would be exacerbated in a long trial[9]. She reviewed the relevant caselaw. Justice Sheard observed that COVID-19 has created additional challenges to ensuring access to justice. She concluded that the defendant' right to a jury trial was outweighed by the need to provide the plaintiff with a more timely access to justice.[10]

[57] In *Vacchiano v. Chen*, 2020 BCSC 1035, the B.C. Supreme Court held that, in light of the pandemic, the British Columbia rules of court should be looked at purposively and interpreted in accordance with their overarching object to promote the just and speedy inexpensive determination of a proceeding on its merits. The court observed that the delay to obtain a jury trial required at least a two-year adjournment, with potential additional costs to the parties and the risk of decaying

[9] At paras. 9 and 10
[10] At para. 45

memories. In striking the jury notice, the court also considered the impact of delay on the psychological and financial condition of the plaintiff.

[58] In the matters before me, the Plaintiffs have waited seven years for the trials of the actions. All parties are ready. Any delay will likely require costly updated expert reports. It is unknown when or how a new jury trial may be heard. When I questioned counsel as to how a jury trial could proceed without a physical return to the courtroom, they conceded that they had not turned their minds to the logistics.

[59] At the most recent trial management court, Justice Gomery advised that the court could readily fix hearing dates for civil non-jury trials of three weeks or less within the next six months. The Plaintiffs propose that the trial of these actions commence at the first three weeks that are available to all counsel. The trial would then continue in subsequent three weeks periods until complete.

[60] Except for the occasional bifurcated trial, the practice of our court has been to offer continuous trials. Historically, a concern existed about the impact of the passage of time on the memories of all who were involved in the trial. This concern has been addressed to some extent by digital audio recordings of all testimony. Virtual hearings or hybrid hearings currently conducted by ZOOM and other technologies are similarly recorded. Counsel typically attend trial with their own laptops and recording devices. In short, the ability to review the evidence and refresh the judge's memory as well as the memories of the parties and their counsel has vastly improved.

[61] I acknowledge trial scheduling premised on non-continuous trials is novel. I find that it should be attempted during these unprecedented times.

[62] None of the parties to these actions has an unfettered right to a jury trial. These parties should not be required to wait for a policy decision from the legislature. I decline to take a "wait and see" approach nor am I prepared to revisit the issue. I am satisfied that these are appropriate cases in which to exercise the discretion currently conferred upon me to strike a jury notice. I find that justice to the parties will be better served by these actions proceeding to trial, in a timely manner, before a judge alone.

[63] The parties are to attend the next trial management court and obtain the first available dates for trial. Costs of these motions shall be determined by the trial judge.

Mr. Justice Robert N. Beaudoin

Released: September 9, 2020

CITATION: Louis v. Poitras, 2020 ONSC 5301
COURT FILE NO.: 15-64232/15-66034
DATE: 20200909

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

FIRMA LOUIS and MARCDERE LOUIS

Plaintiffs

– and –

JACQUES POITRAS and SECURITY NATIONAL INSURANCE COMPANY

Defendants

AND BETWEEN:

FIRMA LOUIS

Plaintiff

– and –

TD INSURANCE MELOCHE MONNEX and SECURITY NATIONAL INSURANCE COMPANY

Defendants

REASONS FOR DECISION

Beaudoin J.

Released: September 9, 2020