Late registration of a class action to the National Class Actions Database does not render the action a nullity

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When two or more putative class proceedings are commenced and involve the same or similar subject matter and some or all of the same proposed class members, a representative plaintiff may, if they are unable or unwilling to cooperate with the other representative plaintiffs, move to have the court determine which proceeding would best advance the claims of the class (*i.e*. a carriage motion). A carriage motion is a procedural step in which a court intervenes to determine which of multiple overlapping class proceedings should proceed, ensuring efficiency and avoiding duplication.

Under section 2(1.1) of the *Class Proceedings Act* (CPA) and *O. Reg* 497/20, section 1(2), representative plaintiffs must register their claim on the National Class Actions Database (the Database) the day it is commenced. After 60 days, no other representative plaintiffs can start a class proceeding for the same or similar subject matter without first obtaining leave from the court. Those who filed within the 60-day timeline participate in a carriage motion to determine which claim will best advance the interests of the class members, in a cost-effective and efficient manner.

In *Parkin v. Toronto-Dominion Bank*, 2025 ONSC 1201, three proposed class actions were commenced involving investors' claims against TD Bank, and each representative plaintiff sought carriage of the claim to the exclusion of the other two.

Parkin issued a Notice of Action on May 24, 2024, but did not register the action with the Database until June 19, 2024. Gazarek issued a Notice of Action on June 4, 2024, and registered the claim with the Database the same day. Nam issued a Statement of Claim and registered the claim with the Database on Aug. 2, 2024, 70 days after Parkin issued their Action.

While the Court's carriage motion decision was otherwise a standard decision, Nam asked the Court to answer two preliminary questions prior to making a carriage decision: When does the 60-day period to commence a competing action begin, and what are the consequences of failing to register with the Database on the date the action is commenced?

Question 1 - When does the 60-day carriage motion period begin?

The CPA creates a 60-day carriage motion period that begins on the day the first proceeding is *commenced*. Nam argued that that 60-day period should start only when an action is both issued and registered in the Database. The Court disagreed, ruling that a claim is *commenced* when it is issued, and that alone triggers the 60-day period. Registration, while important, occurs after a claim is commenced.

In this matter, the 60-day period for the carriage motion commenced on May 24, 2024, meaning Nam's claim was outside the 60-day period and required leave to participate in the carriage motion.

Question 2 – What are the consequences for failing to register with the Database?

The parties did not dispute that Parkin failed to register the action on the Database on the date it was commenced, contrary to the statute and regulations. Nam asked the Court to use its remedial powers under section 12 of the CPA to deem Parkin's claim a nullity for failing to register. Doing so would allow Nam to participate in the carriage motion based on the running of the 60-day period from the commencement of the Gazarek claim (commenced June 4). However, the Court rejected Nam's submissions. The Court identified that while there are no legislated consequences for failing to register on the Database on the date the action is commenced, and that registering is an important step that should not be ignored, declaring the action a nullity would be too harsh a penalty for a procedural defect and would undermine class members' access to justice. The consequence for a procedural defect was more appropriately left in the direction of the Court based on the extent of the non-compliance and any prejudice suffered.

In any event, the Court ultimately granted Nam leave to participate in the carriage motion, finding that the "justice of the case", as informed by the circumstances, supported granting leave. The Court's analysis was informed by four factors:

1. the length of the delay – 11 days was deemed brief;
2. the reason for the delay - Parkin's delayed registration on the Database was connected to Nam's delayed commencement;
3. any prejudice – the Court found the prejudice to be minor given the parties had notice of each others' position and their materials; and
4. the justice of the case - favoured granting leave.

Key takeaways

Timely Database registration is important and should not be ignored through inadvertence or to gain a strategic advantage but failing to register does not automatically nullify an action – particularly if doing so would impede class members' access to justice.

The 60-day period to commence a claim starts when the first claim is issued, not when it is first registered in the Database.

Representative plaintiffs who fail to commence a claim within the 60-day period may be given leave to participate in a carriage motion provided the justice of the case supports granting leave.

If you have questions about class actions or carriage motions, BLG's experienced litigators would be happy to hear from you.

By

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