Kakkar v. Ontario, 2025 ONSC 3776: Another reminder that dismissal for delay is mandatory for stalled actions

July 07, 2025

In *Kakkar v. Her Majesty the Queen in Right of Ontario*, 2025 ONSC 3776, the Ontario Superior Court of Justice dismissed a putative class proceeding on the basis of delay pursuant to section 29.1 of the Ontario *Class Proceedings Act* (the CPA).

The plaintiff, Anupam Kakkar, commenced the action in May 2016 against the Crown, Crown Works Ottawa, and City of Ottawa, alleging class-wide issues relating to child support orders assigned or agreed to by the Crown. Despite early procedural activity in 2016 and 2017, including setting an agreed timetable to advance the proceeding, the case stalled and never advanced beyond the pleadings stage.

In May 2025, the Crown successfully brought a motion for dismissal for delay under s. 29.1 of the CPA. The Court found that the plaintiff had failed to deliver an amended statement of claim, or amended certification motion materials as ordered in the 2017 timetable. The plaintiff also failed to respond to the Crown's communications, missed multiple court-ordered deadlines, and appeared at the dismissal motion without having filed any responding materials. Though plaintiff's counsel sought (without advanced notice) an adjournment of the motion on the basis that the plaintiff was unavailable due to a medical concern, the Court refused to grant the adjournment as counsel had not provided any evidence to justify an adjournment on such short notice.

Section 29.1 of the CPA mandates dismissal of a class proceeding unless, within one year of commencement, the plaintiff has either filed a complete certification motion record, agreed to or obtained a timetable, or taken other prescribed steps. The Court emphasized that s. 29.1 is not to be applied with "zero tolerance" and instead that "it is the court's role to interpret the statute as befitting the specific context". However, in this case the plaintiff had failed to take any meaningful steps for over 6.5 years after being ordered to do so. The Court held that such delay was contrary to the objectives of the CPA and s. 29.1.

Ultimately, the Court granted the Crown's motion because the plaintiff failed to file a final complete motion record, or an amended statement of claim, and failed to file any responding materials to the Crown's motion to dismiss. The Court concluded that the plaintiff's inaction was indicative that the plaintiff was not seriously attempting to

advance the proceeding. While the Court dismissed the putative proceeding, the decision noted that because s. 28 of the CPA suspends the limitation period for a class proceeding that is dismissed without adjudication on its merits, the putative class members could pursue a new class proceeding on the same grounds.

Key takeaways

This decision is a cautionary tale for class counsel and representative plaintiffs. Courts are increasingly willing to enforce the mandatory dismissal provision set out in s. 29.1 of the CPA. The ruling underscores the importance of ensuring that class proceedings move along expeditiously rather than languishing to detriment of putative class members.

By

Robert Stefanelli, Glenn Zakaib

Expertise

Disputes

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written

permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.