

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

March 25, 2025

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

[Robert Stefanelli](#), [Glenn Zakaib](#), [David Elman](#), [Alyson Sutton](#)

Expertise

[Disputes](#), [Class Action Defence](#)

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.