

# Re-Starting Limitation Periods After Defeating Class Certification

November 05, 2019

On October 2, 2019, the Ontario Superior Court of Justice released its latest decision in the litigation surrounding the Motherisk Drug Testing Laboratory (MDTL). This decision answers questions relating to restarting suspended limitation periods and continuing individual or joinder actions after class certification is defeated under the [Class Proceedings Act, 1992](#) (the Act).

As [previously reported](#), the underlying case was a proposed class action about MDTL's hair tests, used to test for presence of drugs and/or alcohol in an individual's hair. The hair test results were used for multiple purposes including in clinical settings, child protection case management and proceedings, and criminal proceedings. In her proposed class action, plaintiff R.G. alleged the defendants (the hospital, as well as MDTL's director and manager) were negligent in operating the lab, producing unreliable test results causing class members harm. The alleged harm included loss of custody, impaired ability to participate in family affairs, and pain and suffering.

Justice Perell refused to certify R.G.'s action as a class proceeding, a decision the Divisional Court affirmed in November 2018. The Court of Appeal for Ontario denied leave to appeal in March 2019. The plaintiff did not seek leave to appeal to the Supreme Court of Canada.

## Limitation Periods Under Section 28 of the Act

Justice Perell's recent decision focuses on when limitation periods resume running after a class certification motion is dismissed. This issue engages ss. 28(1) of the Act. As interpreted over the years by Ontario courts, s. 28 provides that any limitation period associated with claims pleaded in a proposed class action is suspended in favour of putative class members upon commencement of the proposed class proceeding. Subsection 28(1) enumerates six circumstances in which limitation periods resume running against class members. Extraordinarily, denial of class certification is not one of the enumerated circumstances.

In a precedent-setting ruling, Justice Perell found that limitation periods remain suspended under the Act despite the denial of class certification. According to Perell J., one of the six enumerated circumstances of ss. 28(1) must occur before limitations

automatically start running again. Since dismissal of certification is not expressly listed, limitations remained suspended.

Applying these principles to the case before him, Justice Perell found that “limitation periods remain suspended until the defendant moves to have the class action dismissed **without an adjudication on the merits**”. The decision specifies that a defendant’s motion to dismiss a class action could be made either by cross-motion on the original certification motion or after the certification motion is dismissed.

As noted by Justice Perell, this ruling will be news to the class action bar. The generally held view has been that limitations resume running upon class certification being defeated, subject to exhaustion of appeal rights. Placing an onus on defendants to **restart the limitations clock by way of a cross-motion is new Ontario law - subject to any potential appeal from this novel decision.** The

By

[Naveen Hassan](#), [Neva Lyn Kew](#)

Expertise

[Class Actions](#), [Disputes](#), [Appellate Advocacy](#)

---

## 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 725 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](http://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](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.