

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

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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

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