

**CITATION:** Courtney v. Sprunt, 2026ONSC141  
**COURT FILE NO.:** CV-10-00395906-0000  
**DATE:** 20260107

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:**

ROSELYN COURTNEY Plaintiff/ Responding Party

- and -

RONALD SPRUNT Defendant/ Moving Party

**BEFORE:** L. Brownstone J.

**COUNSEL:** Alistair Courtney, personal representative for the Plaintiff/ Responding party  
Emily Lum, for the Defendant/ Moving party

**HEARD:** January 7, 2026

**ENDORSEMENT**

- [1] The accident at the root of this litigation occurred almost 18 years ago, on January 28, 2008. The claim was issued exactly two years later, on January 28, 2010. As is obvious from the date of this endorsement, the claim has been beset by delays. It has been struck from the trial list, twice dismissed for delay, and twice reinstated.
- [2] A third motion to dismiss for delay was heard by Associate Justice McGraw in 2019. Associate Justice McGraw declined to dismiss the action but made several orders requiring the plaintiff to take steps to move the action forward. These were followed by further orders at subsequent case conferences.
- [3] On the eve of another dismissal motion, the issue of the plaintiff's capacity and potential need for a litigation guardian was raised, resulting in another adjournment.
- [4] The defendant again moves to dismiss the action for delay and for the plaintiff's failure to comply with various orders of Associate Justice McGraw.

*Governing law*

- [5] Rule 24.01(1)(c) provides that a defendant who is not in default under the rules or a court order may move to have an action dismissed for delay where the plaintiff has failed to set the action down for trial within six months after the close of pleadings.
- [6] Rule 24.01(2) provides that the court shall, subject to subrule 24.02(2), dismiss an action for delay if the circumstances described in r. 48.14(1)1 or 2 applies to the action, unless the plaintiff demonstrates that dismissal of the action would be unjust.
- [7] Rule 24.02(2) provides that notice the motion to dismiss an action for delay will be served on the litigation guardian and the PGT in the case of a party under disability<sup>1</sup>.
- [8] Rule 48.14(1)1 provides that unless the court orders otherwise, the registrar shall dismiss an action for delay if the action has not been set down for trial or terminated by any means by the fifth anniversary of the commencement of the action. The circumstances in which r. 48.14(1) does not apply are set out in rr. 41.14(4) to (8). Subrule (8) provides that subrule (1) does not apply if, at the time the registrar would be required to dismiss an action for delay, the plaintiff is under a disability.
- [9] The Divisional Court has set out the following principles to be applied on a motion to dismiss for delay in *Woodheath Developments Ltd. v. Goldman*, 2003 CanLII 46735, 66 O.R. (3d) 731, at para. 4:

The principle to be applied on a motion to dismiss for delay is that the action should not be dismissed unless: (1) the default is intentional and contumelious; or (2) the plaintiff or his or her lawyers are responsible for the inexcusable delay that gives rise to a substantial risk that a fair trial might not now be possible. It is presumed that memories fade over time, and an inordinate delay after the cause of action arose or after the passage of limitation period gives rise to a presumption of prejudice. Where there is a presumption of prejudice, the defendant need not lead actual evidence of prejudice and the action will be dismissed for delay unless the plaintiff rebuts the presumption. The presumption of prejudice may be rebutted by evidence that all documentary evidence has been preserved and the issues in the lawsuit do not depend on the recollection of witnesses or that all necessary witnesses are available with detailed recollection of the events. If the presumption is rebutted,

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<sup>1</sup> The matter first came before me on November 21, 2025, at which time I issued the following endorsement: The affidavit material states that Associate Justice McGraw has found the plaintiff to be a party under disability. It is for this reason that this motion was to be heard before a judge and not an associate justice. Associate Justice McGraw has not signed the order appointing Mr. Courtney as litigation guardian not because the plaintiff is not a party under disability, but because the proposed litigation guardian, her son, has not appointed counsel. In these circumstances, the PGT must be served with the motion materials under r. 24.02(1)(b). The PGT, who was served and has confirmed it will not be participating in the matter

then the action may still be dismissed if the defendant leads convincing evidence of actual prejudice.

[10] In addition, Associate Justice Graham has more recently comprehensively summarized the principles applicable as follows in *Szpakowsky v Tenenbaum*, 2017 ONSC 18 at para. 19:

- (1) To dismiss an action for delay, the court must be satisfied that the plaintiff's default has been intentional and contumelious, or that there has been inordinate and inexcusable delay for which the plaintiff or his lawyers are responsible resulting in a substantial risk that a fair trial will not be possible. (*Armstrong v. McCall*, 2006 CanLII 17248 (ON CA), [2006] O.J. No. 2055 (C.A.), *Langenecker v. Sauve*, 2011 ONCA 803 (CanLII), [2011] O.J. No. 5777 (C.A.), *Francis v. Peel (Regional Municipality) Police*, [2015] O.J. No. 5001 (SCJ))
- (2) A dismissal on the basis of intentional and contumelious delay would be warranted in cases "in which the delay is caused by the intentional conduct of the plaintiff or his counsel that demonstrates a disdain or disrespect for the court process." (*Langenecker, supra*, para. 6)
- (3) The plaintiff is responsible for moving the action along. (*Wallace v. Crate's Marine Sales Ltd.*, 2014 ONCA 671 (CanLII), [2014] O.J. No. 4606 (C.A.) at para. 18)
- (4) Any delay in the prosecution of an action requires an explanation. The onus rests with the plaintiff to show that the delay was not intentional. In the absence of an explanation from the plaintiff for the delay, it is to be presumed that the delay was intentional. (*Berg v. Robbins*, [2009] O.J. No. 6169 (Div. Ct.) at para. 13)

The onus is on the plaintiff to rebut the presumption of prejudice arising from the unexplained delay by showing that documents have been preserved, and that the issues in dispute do not require the recollection of witnesses, or that necessary witnesses are available with detailed recollection of events. (*Berg*, para. 14)

- (5) The requirement that the delay be "inexcusable" requires a determination of the reasons for the delay and an assessment of whether those reasons afford an adequate explanation for the delay. . . . [E]xplanations that are "reasonable and cogent" or "sensible and persuasive" will excuse the delay at least to the extent that an order dismissing the action would be inappropriate.

In assessing the explanations offered, the court will consider not only the credibility of those explanations and the explanations offered for individual parts of the delay, but also the overall delay and the effect of the explanations considered as a whole. (*Langenecker, supra* at paragraphs 9 and 10)

- (6) An inordinate delay after the cause of action arose or after the passage of a limitation period gives rise to a presumption of prejudice in which case the

defendant need not lead actual evidence of prejudice and the action will be dismissed for delay unless the plaintiff rebuts the presumption. The plaintiff's onus is to persuade the court with convincing evidence that there is no substantial risk that a fair trial is not possible. (*Armstrong, supra* and *Woodheath Developments Ltd. v. Goldman*, 2003 CanLII 46735 (ON SCDC), [2003] O.J. No. 3440)

- (7) Courts may dismiss actions for delay even when the relevant rules do not mandate it. A court has inherent jurisdiction to control its own process, which includes the discretionary power to dismiss an action for delay. The power of a superior court to dismiss an action for delay is not limited to that conferred by any specific Rules of Civil Procedure, but also flows from the inherent power of the court to prevent an abuse of its own process. (*Marché D'Alimentation Denis Thériault v. Giant Tiger Stores Ltd.*, 2007 ONCA 695 at paragraph 24, *Wallace, supra* at para. 21)

As stated in *Wallace* at para. 22 "There comes a time, in short, when enough is enough, and the civil justice system will no longer tolerate inordinate and inexplicable delay. A court may then eject the action as an exercise of its inherent jurisdiction, whether or not the relevant rules expressly mandate it."

- [11] Rule 60.12 provides that the court may, among other things, dismiss a proceeding for a party's failure to comply with an interlocutory order.

### *Chronology*

- [12] I turn to the chronology of the action.
- [13] The action was commenced on the second anniversary of the accident by the plaintiff's then-counsel, Misir & Company. The claim alleges the plaintiff was rear-ended by the defendant when her car was at a complete stop. She seeks general damages of \$300,000 because she suffered, among other things, "a serious shock to her system together with a general tearing and straining of the muscles and ligaments throughout her body", and special damages of \$500,000. The statement of defence and jury notice were delivered on August 19, 2010.
- [14] The defendant served his sworn affidavit of documents on June 27, 2012. The plaintiff has never served a sworn affidavit of documents.
- [15] On February 1, 2013, Mr. Misir obtained an order removing himself as lawyer of record. The Plaintiff was given 30 days from service of the order to appoint a new lawyer of record, or serve a notice of intention to act in person.
- [16] The plaintiff did not comply with the order and on March 1, 2013, the registrar ordered the action to be dismissed for delay.
- [17] On December 17, 2013, new counsel for the plaintiff, Mr. Mostyn, delivered a notice of appointment of lawyer.

- [18] On September 5, 2014, AJ Graham granted the plaintiff's motion, at which the defendant did not appear, setting aside the registrar's dismissal order and ordering that the registrar not dismiss the action for delay prior to December 31, 2014.
- [19] On December 10, 2014, Mr. Mostyn served the trial record.
- [20] On May 20, 2015, the defendant changed counsel.
- [21] On February 9, 2016, the plaintiff's examination for discovery was completed. The defendant has not been examined.
- [22] On March 18, 2016, the action was struck from the trial list.
- [23] On June 1, 2016, Mr. Mostyn obtained an order removing himself as lawyer of record. The plaintiff was given 60 days from service of the order to appoint a new lawyer or serve a notice of intention to act in person failing which, the court may dismiss the proceeding or strike out her claim. The court also ordered that the action "shall be struck off the trial list, without further notice, if pre-trial and trial dates are not obtained prior to November 30, 2016."
- [24] On July 27, 2016, the plaintiff served a notice of intention to act in person.
- [25] Pre-trial and trial dates were not obtained by November 30, 2016.
- [26] In early 2018, defendant's counsel requested a mediation, which occurred on April 10, 2018.
- [27] On September 11, 2018, the parties attended before Mullins J. for the defendant's motion to dismiss the action for delay. The plaintiff sought and was granted an adjournment for 60 days as she wished to obtain new counsel. The motion was adjourned to November 29, 2018, and the plaintiff was advised the matter would proceed regardless of whether she had retained counsel.
- [28] On November 29, 2018, the parties appeared before Pollak J. The plaintiff had not appointed new counsel. Justice Pollak directed the motion should be heard by a master, and noted the date had been peremptory on the plaintiff.
- [29] The motion was brought before Associate Justice McGraw on December 12, 2018. No one appeared for the plaintiff and Associate Justice McGraw dismissed the motion for delay.
- [30] On January 16, 2019, the plaintiff, still self-represented, sent the defendant's counsel a notice of motion returnable February 19, 2019, seeking to reinstate the action.
- [31] On January 18, 2019, defendant's new counsel forwarded the plaintiff a notice of change of lawyer. New counsel asked the plaintiff to forward the briefs and exhibits to which the notice of motion referred. Counsel also provided the plaintiff with Associate Justice

McGraw's issued and entered order. On February 14, 2019, the plaintiff advised counsel that the hearing scheduled for February 19 was rescheduled to February 27.

- [32] On February 27, 2019, Chalmers J. heard the plaintiff's motion to set aside the dismissal order. The plaintiff advised that she had not received notice of the motion before Associate Justice McGraw, despite evidence that notice was sent to her home address that was provided in her notice of intention to act in person. Justice Chalmers reviewed the history of the matter and noted there had been no hearing on the merits as to whether the action should be dismissed for delay at which the plaintiff had been present. He stated:

I grant the relief reluctantly. From the record, the plaintiff has failed to move this matter forward promptly. She failed to obtain new counsel after she served her Notice of Intention to Act in Person on July 27, 2016. She has not answered her undertakings from her examination for discovery which took place in February 2016. She failed to provide any responding motion materials for the dismissal for delay motion returnable on November 29/18.

Despite the fact that she has not promptly moved the matter forward, I am prepared to give the Plaintiff one last chance to argue the dismissal for delay motion on its merits.

I order that the defendant shall schedule the motion for dismissal for delay on the first available date.

- [33] The plaintiff was required to serve her materials four days before the new motion date and the date was again preemptory to her.
- [34] The motion was heard by Associate Justice McGraw on May 24, 2019. His endorsement was released on June 14, 2019. He found the delay to have been inordinate, but noted that steps had been taken in the case including documentary discovery, mediation, and examination for discovery. He did not dismiss the action. He stated:

However, in light of the circumstances, in granting this indulgence to the Plaintiff, I am mindful of the delay to date and the Defendant's right to have this matter progress promptly to its conclusion. Therefore, I dismiss this motion with terms to ensure that the Plaintiff moves promptly to fulfill her outstanding obligations and complete the remaining steps without further delay." He imposed the following terms:

- i. the Plaintiff shall deliver answers to all outstanding undertakings and / evidence of best efforts to Defendant's counsel on or before September 30, 2019;
- ii. the Plaintiff shall deliver any additional relevant documents in her possession or control to Defendant's counsel on or before September 30, 2019;

- iii. the Plaintiff shall obtain pretrial and trial dates on or before October 31, 2019;
  - iv. the Plaintiff may be served by regular mail and e-mail at the address she has provided.
- [35] Defendant's counsel sent correspondence asking the plaintiff to comply with the order. On November 14, 2019, the plaintiff served the defendant's counsel with a notice of motion to restore the action to the trial list.
- [36] On November 22, 2019, Associate Justice McGraw ordered that the plaintiff be permitted to restore the matter to the trial list. He also incorporated the terms of his previous endorsement.
- [37] The defendant scheduled, after consulting the plaintiff on dates, a further conference with Associate Justice McGraw as undertakings remained outstanding. A conference occurred on November 30, 2020, and another one on December 16, 2020, to address the plaintiff's production of documents and responses to undertakings.
- [38] At the conferences, Associate Justice McGraw noted that about 30 undertakings remained outstanding. The plaintiff thought Mr. Mostyn may have some of the needed documents. A further case conference was scheduled for January 11, 2021, to which Mr. Mostyn was to be invited to attend. In the meantime, the following steps were ordered:
- (i) Mr. Courtney, the plaintiff's son who was assisting her, was to, by December 17, 2020, request an itemized list of documents from Mr. Mostyn, which on receipt, he would produce to the Defendant. Mr. Courtney was also to request a copy of Mr. Mostyn's outstanding account and the particulars of photocopy charges;
  - (ii) Mr. Courtney was to send a copy of the Endorsement to Mr. Mostyn, which included a request that he attend the next case conference; and
  - (iii) Defendant's counsel was to send a list of updated medical records which the Defendant required to Mr. Courtney
- [39] Mr. Mostyn attended the conference on January 11, 2021, and advised he was asserting a solicitor's lien on the file. He was willing to waive his fees if the plaintiff paid his disbursement account. The plaintiff disputed owing anything to Mr. Mostyn. Mr. Mostyn was ordered to provide a list of the plaintiff's files that were in his possession.
- [40] As of the next case conference of April 7, 2021, 26 of the 30 undertakings remained outstanding. The plaintiff was provided until May 12, 2021, to review files received from Mr. Mostyn and send documents to the defendant's counsel in response of the undertakings. He was also to inquire into retaining counsel and setting the action down for trial.
- [41] On May 12, 2021, at the case conference, the plaintiff advised she had retained new counsel and requested 60 days for counsel to review the file.

- [42] On June 24, 2021, Mr. McKoy, a paralegal, contacted defendant's counsel. He twice requested more time to review the file and was ordered to provide additional records to the defendant by August 4, 2021.
- [43] At the case conference that was eventually held on October 28, 2021, numerous undertakings remained outstanding. While Mr. McKoy requested additional time to review documents and fulfill undertakings, Associate Justice McGraw noted that the plaintiff was to have delivered answers to the undertakings and/or evidence of best efforts and any additional relevant documents three years ago, on or before September 30, 2019, and obtain pre-trial and trial dates on or before October 31, 2019.
- [44] Associate Justice McGraw ordered further documents to be produced, and ordered the plaintiff to take steps by January 17, 2022, to obtain a pre-trial date. These steps were not taken.
- [45] The defendant continued to seek answers to undertakings from Mr. McKoy.
- [46] Ultimately a further dismissal motion was scheduled and confirmed for February 14, 2023. Again, the plaintiff sought and was granted more time to respond. The motion was adjourned to May 11, 2023. Mr. McKoy raised then, for the first time, a potential issue about the plaintiff's capacity. Associate Justice McGraw adjourned the motion for a week, peremptory on the plaintiff, so that the capacity issue could be addressed.
- [47] On May 18, 2023, Mr. McKoy advised that the plaintiff's son, Mr. Courtney, was prepared to act as litigation guardian. Not steps had been taken to appoint him.
- [48] The motion to appoint a litigation guardian was scheduled to be heard before Associate Justice McGraw. On September 27, 2023, Associate Justice McGraw granted the order appointing Mr. Courtney, subject to the form of order being filed for review and approval. Associate Justice McGraw ordered that Mr. Courtney had until November 27, 2023, to retain counsel.
- [49] No order was taken out. Counsel was not retained. On April 30, 2024, Associate Justice McGraw deferred signing an order appointing Mr. Courtney until Mr. Courtney had retained counsel.
- [50] Counsel was still not retained. A case conference with a judge was scheduled by the defendants. On June 30, 2025, Glustein J. ordered that this motion proceed and set a schedule for the exchange of materials.

*Analysis and conclusion*

- [51] As of today, 27 of 29 undertakings remain outstanding, despite numerous request letters and authorizations being provided to the plaintiff. The records requested by the defendant further to Associate Justice McGraw's December 16, 2020, endorsement remain outstanding.

- [52] The plaintiff has failed to comply with six court orders. There is no explanation provided for these failures, other than that Mr. Courtney has been unable to obtain counsel and does not have the ability to comply without the assistance of counsel.
- [53] The plaintiff, through her desired litigation guardian, has failed to obtain counsel or to give the court any evidence of steps taken by the plaintiff to try to retain counsel. Although Mr. Courtney advised the court at the return of this motion that he had tried to retain counsel, there is no evidence before the court of steps taken.
- [54] The plaintiff has not provided a sworn affidavit of documents. It is almost 15 years since pleadings closed, and more than five years since the action was restored to the trial list.
- [55] The plaintiff has been provided with every opportunity to retain counsel and participate in the process. Yet they have been unable or unwilling to do so. It is only the defendant who is moving matters forward.
- [56] The plaintiff has not rebutted the presumption of prejudice arising from the plaintiff's delay, which is clearly inordinate. The defendant has been unable to retain experts, given the lack of documentation provided by the plaintiff. It is unknown whether the documentation that would satisfy the undertakings even exists, given the long passage of time since the accident.
- [57] The preference to have cases decided on their merits is a preference, not a rule. There are limits. Those limits have been reached in this case. The rules must be given some meaning. Defendants are entitled to expect that court orders be followed and that rules be followed, so that they can properly prepare and defend their case within a reasonable time line.
- [58] For these reasons, I dismiss the action on the basis of both inordinate delay and the plaintiff's repeated failure to comply with interlocutory court orders.

#### *Costs*

- [59] The defendant sought costs of over \$40,000 on a partial indemnity scale. Fixing costs is a matter of discretion under the *Courts of Justice Act* R.S.O. 1990 c. C.43 and the Rules.
- [60] Counsel for the defendant candidly acknowledged there had been no conversation with Mr. Courtney about its requests for costs. The request appeared to come as a complete surprise to Mr. Courtney (although a request for costs is included in the defendant's factum). Mr. Courtney appears, for all intents and purposes, as a litigation guardian. The plaintiff is a party under disability. Mr. Courtney's lack of familiarity with the court system and processes ought to have been obvious to the defendants by the chronology above. Had there been a conversation with Mr. Courtney such that he understood the potential costs consequences, perhaps a resolution could have been found.

[61] In the circumstances, I decline to make any order as to costs. The action is dismissed without costs.

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L. Brownstone J.

**Date:** January 7, 2026