



Superior Court of Justice – East Region
61 Elgin Street
Ottawa, Ontario K2P 2K1

Citation: Royal Bank of Canada v. Wendy Palma and The Estate of Brian Cormier, deceased, 2026 ONSC 1744

**ENDORSEMENT SHEET FOR
CIVIL MOTION/APPLICATION**

SHORT TITLE OF PROCEEDINGS: Royal Bank of Canada v. Wendy Palma and The Estate of Brian Cormier, deceased

COURT FILE NO.: CV-20-00084198-0000

BEFORE: Associate Justice Perron

HEARD ON: June 12 and October 27, 2025

COUNSEL: Amanda McInnis for the plaintiff

Matthew G.T. Glass for the defendants

ENDORSEMENT:

1. This is a motion by the Bank to set aside the Registrar's Order dismissing this action for delay on January 22, 2025.
2. Before I move to a discussion on the legal test and the factors that I must consider on the motion, I will provide an overview of the nature of the action and the litigation history.
3. The Bank commenced the action in April 2018. The Bank seeks damages against Ms. Palma and the estate of her deceased husband, Mr. Cormier, for debts alleged to be outstanding pursuant to two credit facilities. The principal amount claimed by the Bank is approximately \$50,000 plus interest. The action is therefore governed by the Simplified Procedure Rule.
4. Ms. Palma delivered a statement of defence in November 2018. She alleges that after her husband was diagnosed with cancer in October 2016, he sought the Bank's advice regarding his insurance coverage. She alleges that the Bank told Mr. Cormier that his disability insurance would cover the indebtedness in the event of his passing, and that he could cancel his mortgage life insurance because it was duplicative and unnecessary.
5. Mr. Cormier passed away in March 2017. Ms. Palma alleges she encountered difficulties with the Bank after she submitted the insurance claim to cover the indebtedness and that she has suffered damages due to the Bank's alleged misconduct. Ms. Palma has brought a counterclaim where she seeks damages in excess of \$400,000.

6. The Bank delivered its defence to the counterclaim in March 2019. The Bank denies that it made representations to Mr. Cormier or that it is a provider of insurance. The Bank maintains that there are outstanding amounts due on the credit facilities notwithstanding partial coverage under the applicable insurance policies.
7. Following the close of pleadings, the Bank made a request to inspect documents in July 2019 (the original credit line statements and an email alleged to have been sent by the Bank in October 2016). Ms. Palma retained new counsel and produced her affidavit of documents in December 2019 and advised that she could not find the electronic version of the email requested. The Bank subsequently produced its documents in October 2020. The action was transferred to Ottawa.
8. The Bank attempted to schedule examinations and encountered difficulties because of Ms. Palma changing counsel and Ms. Palma's lack of cooperation. The Bank brought a motion seeking a timetable order pursuant to Rule 48.14. The motion was returnable in November 2022 but was adjourned due to lack of judicial resources. Ms. Palma's counsel also brought a motion to get off record.
9. The motions were heard together on March 31, 2023 by Justice Somji. In her endorsement, Justice Somji notes that the Bank was concerned that the action would be struck for delay and requested a timetable to compel Ms. Palma to participate in discovery failing which her defence and counterclaim be struck. Her Honour noted that Ms. Palma had three counsel to date, but she was satisfied there had been a breakdown of the latest solicitor-client relationship and granted the removal motion.
10. Justice Somji also ordered a timetable which provided that the action not be dismissed for delay before March 31, 2024, and that Ms. Palma attend at examinations on a date to be chosen by the Bank's counsel, but no later than May 31, 2023. Her Honour also ordered that Ms. Palma's defence and counterclaim be struck if she did not attend at examinations or comply with the timetable.
11. Ms. Palma attempted to explain her failure to cooperate in scheduling discoveries by stating that she was trying to resolve matters with the Bank by way of a repayment plan. Justice Somji notes the following in her endorsement: "I informed Ms. Palma that scheduling and attending for discovery does not preclude her from negotiating a resolution with Plaintiff's counsel."
12. Justice Somji also found that "Ms. Palma's continued delay in advancing the action" was one of the factors that warranted costs against Ms. Palma on a substantial indemnity basis in an amount just shy of \$5,000.
13. However, and notwithstanding Justice Somji's Order, examinations for discovery never occurred. The Bank never brought a motion seeking to strike Ms. Palma's defence and counterclaim. The Bank did not set the action down for trial prior to March 31, 2024.
14. Following the motion, the Bank sought to complete Ms. Palma's examination in the Spring of 2023. In fact, a Notice of examination was served compelling Ms. Palma's attendance on May 5, 2023. Ms. Palma requested an adjournment to prepare for examinations and to make a settlement offer. The Bank agreed to postpone the examinations to May 31st and stated there would be no further adjournments granted if a resolution was not reached by May 31st. After some resistance and attempts to set a revised schedule for examinations, the Bank agreed to a further adjournment when Ms. Palma retained yet another counsel.

15. Although the Bank followed up again in July 2023 to schedule examinations, the Bank admits that thereafter, the parties commenced exchanging emails to try and resolve the litigation. These exchanges led to further requests for documents by the Bank, which were produced by Ms. Palma in November 2023.
16. The Bank's evidence — submitted in an affidavit sworn by an administrative assistant with the law firm retained by the Bank in this matter -- is that: "Since then, the parties have been going back and forth with settlement offers in the hopes of resolving this matter. The matter was close to resolution when, on January 22, 2025, RBC received the order dismissing the action."
17. Ms. Palma does not dispute that the parties engaged in settlement discussions after March 2023, but her position is that the action should not be reinstated because the Bank has failed to prosecute the action pursuant to the timelines set out in the Rules and by order of the Court.
18. As will appear below, one of the central issues I must determine on this motion is whether the settlement discussions constitute a satisfactory explanation for the litigation delay.

Summary of the applicable test on a motion seeking to set aside a Registrar's dismissal order

19. The parties agree that the applicable legal test was set out by the Court of appeal in *Piedrahita v. Costin*¹ which requires consideration of the following four factors:
 - (a) Has the plaintiff provided a satisfactory explanation for the litigation delay;
 - (b) Has the plaintiff led satisfactory evidence to explain that they always intended to prosecute the action within the applicable time limits but failed to do so through inadvertence;
 - (c) Has the plaintiff demonstrated that they moved forthwith to set aside the dismissal order as soon as the order came to their attention; and,
 - (d) Has the plaintiff convinced the Court that the defendants have not demonstrated any significant prejudice in presenting their case at trial as a result of the plaintiff's delay or as a result of steps taken following the dismissal of the action?
20. The test is not rigid and requires the Court to consider and weigh all the factors to determine what is just. "The overriding objective is to achieve a result that balances the interests of the parties and takes account of the public's interest in the timely resolution of disputes."²
21. Several guiding principles have emerged from the caselaw. These principles were conveniently summarized by the Court in *1682558 Ontario Limited v Salman*³. I will not repeat them here, but I have considered those principles in arriving at my findings below.

Has the Bank provided a satisfactory explanation for the litigation delay?

22. I am generally satisfied that leading up to the motions before Justice Somji in March 2023, although the pace of the litigation was very slow, the Bank demonstrated that it intended to pursue the action and has provided a satisfactory explanation for the litigation delay. The Bank's explanation up to March 2023 is bolstered by Justice Somji's previous finding that Ms.

¹ *Piedrahita*, 2023 ONCA 404 at para 8.

² *Piedrahita* at para 9 adopting its previous reasons in *Prescott v Barbon*, 2018 ONCA 504 at paras 14-15.

³ *168 Ontario Ltd*, 2019 ONSC 4120 at para 5 adopting the summary of Master Graham in *Cedrom-SNI Inc. v Meltwater Holding*, 2017 ONSC 3387 at para 6.

Palma was responsible for delays up until that time.

23. However, the Bank's explanation for the delays after the motions in March 2023 is an entirely different story.
24. Although the Bank initially tried to pursue the examinations, and signaled that it would bring the motion to strike if Ms. Palma did not attend at examinations or cooperate to reschedule them, the Bank does not allege that Ms. Palma delayed its prosecution of the action after July 2023. The Bank's explanation for the delay after July 2023 is that the parties pursued settlement.
25. In respect of those settlement negotiations, the Bank has produced redacted emails between the parties from July 2023 to October 2023. In her sur-reply affidavit, Ms. Palma included an offer to settle she presented in March 2024. After that date, there is no evidence of any other written communications whatsoever between the parties in the record before me until January 24, 2025, which was after the parties' receipt of the Registrar's dismissal order.
26. On January 24th, the Bank's counsel wrote to confirm that the parties were "previously engaged in settlement negotiations" [emphasis added] and that a "settlement is close to being completed". However, in that same email, the Bank's counsel took the position it would be more efficient to work towards finalizing the settlement rather than bringing a motion to have the Registrar's order set aside. The Bank requested Ms. Palma's position and stated that "otherwise we will be serving our motion".
27. In the days that followed, there were further settlement communications between counsel. On January 30, 2025, the Bank's counsel stated that there were some points not yet agreed to and that it may take some time to work out those issues and that "in light of this, can we have your position with respect to whether your client will consent to an order vacating the dismissal order?". Ms. Palma did not consent and the Bank served its motion materials on or about February 20, 2025.
28. Settlement communications between the parties are privileged. Parties shouldn't necessarily be required to produce redacted versions of each settlement communication if they rely on settlement discussions to support their explanation of delay. However, there is a significant, and rather curious, gap in the Bank's evidence to support that there were any meaningful, ongoing settlement communications between October 2023 and January 2025. The Bank's counsel admitted during submissions that there was a lack of momentum in the settlement discussions during this timeframe, and no communications of substance from May 2024 to January 2025.
29. The ongoing settlement discussions are the only explanation provided by the Bank to explain the delay after March 2023. I would therefore expect the Bank to provide more robust evidence to support that there were ongoing settlement discussions other than a one-phrase assertion by an assistant with the plaintiff's law firm.
30. In addition, there was no evidence whatsoever about the Bank's intention to proceed with the litigation in the first two affidavits it delivered in support of this motion. Those affidavits were delivered by an assistant and counsel from Gowlings.
31. In June 2025, I adjourned the motion because Ms. Palma had delivered her responding motion materials earlier that same morning. I therefore timetabled the delivery of a reply affidavit by the Bank and any supplementary factum, along with any responding factum by Ms. Palma.
32. The Bank delivered a very short reply affidavit from an in-house litigation associate. The affiant

confirms the chronology of events set out in the previous affidavits, and asserts that “notwithstanding these settlement discussions, it was always the instructions of the Plaintiff to proceed with the litigation including obtaining an order amending the timetable regarding the remaining steps in the litigation up to and inclusive of setting the matter down for trial”.

33. That said, the Bank’s reply affidavit also makes it quite clear that after Ms. Palma delivered a settlement letter in July 2023, the Bank’s instructions were to enter into settlement discussions instead of bringing a motion to strike.
34. The Bank’s actions in this matter contradict the bald assertion in the reply affidavit that it always intended to pursue the litigation. In my view, it is clear from the evidence after July 2023 that the Bank switched gears and was focused only on settlement. The Bank took no steps whatsoever after July 2023 to advance the litigation. The Bank did not attempt to comply with Justice Somji’s Order to ready the action for trial to set it down by March 31, 2024. After July 2023, the Bank simply abandoned the litigation track.
35. I fully agree with the Court’s comments in the *Apotex* decision⁴ (relied upon by the Bank) that parties should be encouraged to engage in settlement to try and avoid costly litigation. I also agree that in some cases, the pursuit of settlement discussions might constitute a reasonable explanation for delay.
36. However, the facts of this case are distinguishable from those in *Apotex* where there was evidence before the Court that the parties were engaged in frequent settlement discussions throughout the history of the action. In *Apotex*, in the backdrop of the settlement discussions in the related action, there were ongoing steps to advance litigation in the main action. On a contextual approach, the Court was therefore satisfied with the explanation for the delay.
37. Ms. Palma submits that the Bank’s settlement discussions were not good faith attempts to resolve the dispute. However, Ms. Palma did not ask me to make a finding of bad faith by the Bank. I have already found that *Apotex* is distinguishable on other grounds therefore I need not consider Ms. Palma’s argument on bad faith.
38. In the present case, no steps were taken to advance the litigation during the 17-month period that settlement discussions were attempted. I have nothing but bald assertions of the Bank’s intention to proceed with the action after July 2023. There are similarities in the present case to the facts in *Muscaj*⁵ where the Court found that the explanation for the delay was not reasonable. In addition, I note that in *Muscaj* the parties had completed examinations and mediation had been scheduled; the litigation in that case was more advanced than in the present case.
39. Acknowledging that a plaintiff’s explanation for delay need not be “good” or “perfect”⁶, I am not satisfied that the Bank’s explanation to abandon the litigation for 17 months to pursue settlement is reasonable in the circumstances of this case. Prior to March 2023, the Bank was concerned about delay, and obtained the necessary timetable to move the action forward. The Bank was successful in obtaining orders to address Ms. Palma’s conduct up to that point in time and it benefited from an extension to set the action down for trial.
40. I acknowledge that after July 2023, Ms. Palma appears to have been passive in the face of the Bank’s inaction. Ms. Palma also took no steps to advance her counterclaim. However, Ms. Palma was previously sanctioned for her lack of cooperation when Justice Somji ordered costs

⁴ *Apotex Inc v Relle*, 2012 ONSC 3291, at paras 7 and 50-54.

⁵ *Muscaj v Urszula*, 2018 ONSC 5427.

⁶ *Martellacci v Pitney Bowes of Canada Ltd*, 2024 ONSC 320 at para 6.

against her on a substantive indemnity basis. Ms. Palma is also the only party that produced evidence of a written communication in 2024.

41. The primary onus was on the Bank, as plaintiff, to move the action forward⁷. Instead of doing so, the Bank took its eye off the litigation ball and the ball dropped. Even after receiving the dismissal order, the Bank's first reaction was to try and finalize the settlement.
42. The result is that this is now a 7+-year-old simplified procedure action that has not progressed past the exchange of productions.
43. I am therefore not satisfied that the settlement discussions constitute an acceptable explanation for the delay.

Was the delay caused by inadvertence?

44. During their submissions at the motion, the Bank's counsel stated that it was always the Bank's intention to proceed with the litigation but due to inadvertence, the file had not been diarized.
45. The only smidgen of evidence to support any inadvertence is set out in the affidavit of counsel from Gowling who asserts that an order to vary the timetable order was not brought through inadvertence.
46. While a party should not be prejudiced by the inadvertence of counsel⁸, the difficulty in the present case is that I am not satisfied that there was inadvertence. Bald assertions by counsel alleging inadvertence in one sentence in their affidavit are not sufficient to support a plea of inadvertence.
47. I cannot conclude that the delay was caused by inadvertence.

Was the Bank's motion brought promptly?

48. The Bank brought its motion within a month of receiving the Registrar's Order. Ms. Palma does not take the position that the motion was delayed.
49. This factor is not an issue in this case.
50. The Bank's motion was brought promptly.

Has the Bank proven that Ms. Palma has not demonstrated any significant prejudice to present her case at trial as a result of the delay?

51. Courts have noted that the presence of actual prejudice or lack thereof is an important factor on these motions. However, the test is conjunctive. Therefore, even though I have found that the Bank has not provided a satisfactory explanation for the delay, I may still dismiss the action even in the absence of proof of actual prejudice to the defendant.⁹
52. The nature of the prejudice to be considered by the Court on these motions is only the kind of prejudice caused by the plaintiff's delay in the proceedings, and not such prejudice to the

⁷ *Beshay v Labib*, 2024 ONCA 186 at para 23.

⁸ *Muscaj* at para 50 citing *Marché d'Alimentation Denis Theriault Ltd. v Giant Tiger Stores Ltd.*, 2007 ONCA 695 at paras 28-29.

⁹ *1196158 Ontario Inc. v 6274013 Canada Ltd.*, 2012 ONCA 544 at para 32.

defence that would otherwise exist regardless of the delay¹⁰.

53. The only direct evidence in the Bank's affidavits addressing the issue of prejudice is set out in the affidavit of its external counsel who asserts: "To my knowledge, relevant documents have been preserved and produced other than those documents which the Defendant advised in 2019 that she was unable to locate. I am not aware of any witnesses that are no longer available."
54. I do not place any weight on the double-hearsay "evidence" of the administrative assistant who baldly asserts that on advice of counsel, the Bank is not aware of any prejudice to the defendants if the Registrar's order were set aside.
55. Ms. Palma's evidence of prejudice is set out in a sur-reply that she delivered on October 10, 2025. I did not permit the delivery of sur-reply material in the timetable I ordered in June 2025. However, the Bank did not request to strike Ms. Palma's sur-reply affidavit and confirmed it did not seek to deliver further responding materials. I therefore considered Ms. Palma's sur-reply.
56. In essence, Ms. Palma submits that the delay in the proceedings, and the Bank's alleged "scorched earth" approach in this matter, has caused her financial hardship, including adverse impacts on her ability to work and to obtain credit. She also describes several difficult personal circumstances that "has always" and "will continue" to impact her "ability to participate in the litigation" including the death of Mr. Cormier and of her mother, and her subsequent involvement in an alleged abusive relationship. She also states that she has suffered emotional hardship due to the stress of the ongoing litigation for the past 7+ years which has affected her health.
57. In my view, the Bank's evidence seeking to refute any claim of prejudice is inadequate. Once again, the Bank relies on nothing but assertions from its external counsel. For example, and as Ms. Palma's counsel pointed out during the hearing, it is completely unknown if the employees involved in communications with Mr. Cormier and Ms. Palma are still employed with the Bank or are otherwise available. That said, Ms. Palma does not appear to have made any attempts to locate or contact potential witnesses either.
58. In addition, the Bank is correct that the type of prejudice I must consider on this motion is prejudice arising from the Bank's delay that impacts Ms. Palma's ability to defend the action. Mr. Cormier's evidence will not be available but he passed away prior to the litigation. I therefore cannot consider this as an element of actual prejudice caused by the delay. The same can be said for alleged missing documents which appears to consist of one electronic email that Ms. Palma could not locate as early as 2019, one year after the litigation was commenced. Otherwise, affidavits of documents have been produced by both parties.
59. In respect of the financial prejudice alleged by Ms. Palma, the Bank is correct that Ms. Palma's recourse to mitigate that prejudice would have been to pursue her counterclaim. The Court has also found that stress caused by litigation is not the kind of prejudice that affects one's ability to defend the action.¹¹ In addition, Ms. Palma's lack of display of any sense of urgency, both in respect of the main action and her counterclaim, undercuts her claims of actual prejudice¹². Ms. Palma also acknowledged that her counterclaim would suffer the same fate as the main action if the motion was unsuccessful.
60. Therefore, and while I do have sympathy for Ms. Palma's personal circumstances, I find that

¹⁰ *Labelle v Canada (Border Services Agency)*, 2016 ONCA 187 at para 23.

¹¹ *Apotex* at paras 62-65.

¹² *H.B. Fuller Co. v Rogers*, 2015 ONCA 173 at para 42.

there is no actual prejudice caused by the delay.

61. That said, “the absence of actual prejudice does not automatically or inevitably trump the values of timeliness and efficiency”.¹³ Courts must promote timely resolution of disputes. It has also been recognized that the more time that passes, the more difficult it is to defend cases. There is also some harm caused by delay from a litigant being left “with the claim hanging over its head in a kind of perpetual limbo”.¹⁴
62. As indicated above, this is an action governed by the simplified rules. While I cannot hold the Bank entirely responsible for failing to abide by the timelines set out in Rule 76 because the Court has already found that Ms. Palma delayed the action prior to March 2023, I cannot ignore that the objectives of Rule 76 have been completely defeated by the overall delays in this case, including the delay that lies primarily at the Bank’s feet from July 2023 to February 2025¹⁵.
63. The action was commenced in April 2018 which means that it is currently on the eve of its 8-year anniversary. If the action is reinstated, the parties need to complete examinations, answer any undertakings, complete mediation and set the action down for trial. I do not expect that the pre-trial and trial would occur until sometime in 2017 or 2018.
64. The delay has now reached the point of inordinance, particularly viewed through the lens of a Rule 76 action.
65. It is important for disputes to be heard on their merits. But it is also vital that the public have confidence that justice will be administered timely and efficiently. On balance of these two principles, the scale heavily tips against reinstatement of this action.
66. The Bank’s motion is dismissed. The Registrar’s dismissal order shall stand. There shall be no costs of the motion because neither party uploaded costs outlines to Case Center prior to the commencement of the hearing despite the reminder set out in my endorsement of June 12, 2025.



Date: March 20, 2026

Associate Justice Perron

¹³ 1196158 *Ontario Inc.* at para 33.

¹⁴ 1196158 *Ontario Inc.* at paras 41-44; see also *Beshay* at paras 11 and 28.

¹⁵ I recognize that the Bank is not responsible for any delay from the time it set the motion down in February 2025 to the delivery of these reasons.