

alleging that Kidd Fuel's principal, Manuele Mansueto, had diverted business, withheld information, disparaged Frew and interfered with its operations by enticing customers away from it. Frew claims damages of \$5 million.

[4] Kidd Fuels denied the allegations and delivered a Reply and Defence to Counterclaim on or about March 18, 2020.

[5] Affidavits of Documents were not exchanged. Examinations for discovery were repeatedly rescheduled.

[6] On November 27, 2024, Associate Judge Robinson ordered that Kidd Fuels' Statement of Defence be struck without notice to Kidd Fuels or Mr. Mansueto. On January 14, 2025, they were noted in default.

[7] On January 21, 2025, Frew served its motion for default judgment in the amount of \$4,017,281.57. Justice Dow ordered that Mr. Mansueto be served personally and that the motion for default judgment proceed in writing.

[8] Throughout this period, Kidd Fuels and Mr. Mansueto were represented by Ted Kalnins.

[9] Mr Mansueto received the notice of default on March 4, 2025. He and Kidd Fuels retained new counsel by March 13, 2025; served a Notice of Motion to set aside on April 10, 2025; and served a Motion Record by June 10, 2025.

[10] The defendants by counterclaim argue that any default arose from "the inaction and misconduct of [Mr. Kalnins], who became unresponsive to both his clients and opposing counsel before effectively abandoning the matter without notice."

[11] Frew argues that the defendants cannot hide behind former counsel. They say that Mr. Mansueto is sophisticated, was always a directing mind of the litigation, and is not credible.

ISSUES AND BRIEF CONCLUSION

[12] The issues are:

- a. Should this motion be adjourned to permit Frew to question Ted Kalnins?
- b. Is it just to set aside the noting in default?
- c. What are next steps, if any?
- d. What costs, if any, are owing?

[13] I find it would not be appropriate to adjourn the motion. The noting in default is set aside. Regarding next steps, the parties shall follow the timetable filed as a schedule to Kidd Fuels' proposed Order. The responding party shall pay costs.

HISTORY

[14] Manuele Mansueto is a director, officer, and majority shareholder of R. Kidd Fuels Corp., an Ontario company that markets and distributes petroleum fuels and lubricants. Mr. Mansueto is also President of R. Kidd Fuels Maintenance Corp. and of Fuelux Inc., which are the other named defendants to the counterclaim.

[15] Kidd Fuels was a long-standing wholesale marketer and distributor for Petro-Canada, later Suncor. When Suncor ended the agreement in August 2018, Kidd Fuels was obliged to sell certain assets which it did through an Agreement of Purchase and Sale with Frew.

[16] Under the APS, Frew purchased substantially all of Kidd Fuels' accounts receivable, with \$250,000 of the purchase price held back in escrow pending Frew's collection of receivables.

[17] In May 2019, Kidd Fuels sued Frew for release of the holdback. Its lawyer was Ted Kalnins, then of Dickinson Wright LLP.

[18] Frew answered and, as previously described, filed a counterclaim.

[19] Mr. Kalnins was in communications with counsel for Frew over the next two years. There are numerous emails between December 4, 2019, and December 8, 2020, where Frew's counsel repeatedly asked Mr. Kalnins for an Affidavit of Documents. He never provided it.

[20] In April 2022, Mr. Kalnins left Dickinson Wright to form his own practice, Kalnins Law. Kidd Fuels continued to retain him. According to Mr. Mansueto, Mr. Kalnins became much less responsive.

[21] Around the same time, the parties were rescheduling examinations for discovery – from July 2022, to Fall 2022, to March 2023. Mr. Mansueto deposes that:

- a. He provided Mr. Kalnins with relevant documents for an Affidavit of Documents.
- b. He confirmed with Mr. Kalnins his availability for examinations.
- c. Mr. Kalnins told him the discoveries were rescheduled several times, but not why.
- d. Mr. Kalnins told him that delays in litigation were common,

[22] On April 27, 2022, Associate Judge Robinson endorsed a consent order for a timetable for affidavits of documents, discoveries, and mediation. Mr. Mansueto deposes he was not informed

or consulted about this Order. The Order included costs thrown away against Kidd Fuels for a prior motion that it abandoned, as well as costs of the motion.

[23] According to Mr. Mansueto, unbeknownst to him, Mr. Kalnins:

- a. Failed to deliver Affidavits of Documents;
- b. Consented to and failed to comply with multiple court orders; and
- c. Consented to timetables that he ignored.

[24] On October 12, 2022, Associate Judge Josefo issued a second consent Order with a new timetable. He ordered Kidd Fuels to pay costs of the motion and costs previously ordered. Justice Josefo warned that failure to comply with orders would result in pleadings being struck. The costs were paid.

[25] Mr. Mansueto deposes that he attempted to contact Mr. Kalnins 6-8 times between 2022 and 2025. When the two were able to speak, Mr. Kalnins always advised him that the matter was moving forward. Mr. Mansueto's last communication with Mr. Kalnins, he says, was sometime between December 2022 and February 2023.

[26] On November 27, 2024, Associate Justice Jolley struck the defendants' statement of defence for failing to abide by the Josefo order.

[27] Mr. Mansueto says that the first time he realized he was in default is when he was personally served with the documents on March 4, 2025.

[28] The motion record includes:

- a. Two affidavits sworn by Mr. Mansueto;
- b. An affidavit sworn by Jared Brown, a lawyer who since 2013 has acted for Kidd Fuels on approximately 18 matters related to accounts receivable and account collection;
- c. Multiple emails between counsel to the parties; and
- d. Prior endorsements and orders.

ANALYSIS

[29] My findings are contained in the following analysis.

Should the motion be adjourned to permit Frew to question Mr. Kalnins?

[30] At the hearing, I declined Frew's request to adjourn the motion. These are my reasons.

[31] No one has heard from Ted Kalnins since early 2023. Until recently, it seems, no one even knew where he was.

[32] At Civil Practice Court before Justice Callaghan on December 17, 2025, Frew requested an opportunity to examine Mr. Kalnins. Justice Callaghan noted that:

- a. The lawyer could not be found.
- b. The matter had commenced in 2019, and any attempt to examine someone would prolong it.
- c. The Defendants by Counterclaim had not waived privilege.

[33] Accordingly, His Honour declined to adjourn the motion but left the question open to the motion judge (me).

[34] At the motion, counsel for Frew advised that he recently became aware of a news report about an amateur baseball league that featured Mr. Kalnins. Subsequently, a private investigator was able to locate him. Frew issued a summons for Mr. Kalnins to appear for examination on February 5, 2026. He did not appear.

[35] Frew says that Mr. Kalnins can corroborate critical parts of Mr. Mansueto's testimony. Their counsel says that, if this motion proceeds anyway, the court should draw an adverse inference from the lack of any evidence from Mr. Kalnins.

[36] The defendants argue that:

- a. Frew had plenty of time to make their request before December 17, 2025.
- b. At an earlier conference before Justice Papageorgiou on October 3, 2025, Frew did not mention that it wanted to examine Mr. Kalnins.
- c. Frew could have cross-examined Mr. Mansueto on his affidavit. (Frew counters that cross-examining Mr. Mansueto without the ability to test his evidence against Mr. Kalnins would not have been helpful.)

[37] I am not persuaded that the motion should be adjourned. Two other members of this court thought it important that the motion proceed. Frew could have flagged this issue earlier. The defendants' reliance on Mr. Kalnins' failures has been clear since June at least. Furthermore, there is no sign that Mr. Kalnins will voluntarily appear. If that is so, then the matter will get bogged down by additional proceedings. That concern is buttressed by the need to address any privilege concerns.

[38] Therefore, an adjournment is not warranted.

Is it just to set aside the noting in default?

The Law

[39] Under Rule 19.03 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, a court may set aside a noting of default “on such terms as are just”.

[40] The threshold for setting aside is low: *Westcott v. Khan*, 2021 ONSC 1396 at para. 21; *Bridgepoint Financial Services Limited Partnership I et al v. Grillone et al*, 2022 ONSC 4802 at para. 23. The Court of Appeal has said that such motions are “typically granted on an almost routine basis” and “it is not in the interests of justice” to grant judgment based on technical defaults: *Nobosoft Corporation v. No Borders, Inc.*, 2007 ONCA 444 at para. 7, citing *McNeill Electronics Ltd. v. American Sensors Electronics Inc*, 1998 CanLII 17693 (ONCA).

[41] When deciding whether to set aside a noting of default, the court must consider:

- a. The parties’ behaviour;
- b. The length of the defendant’s delay;
- c. The reasons for the delay;
- d. The complexity and value of the claim;
- e. Whether setting aside the noting in default would prejudice a party relying on it;
- f. The balance of prejudice as between the parties; and,
- g. Whether the defendant has an arguable case on the merits.

[42] The above factors are not a closed list, and there is no set way to apply them.

[43] Courts have observed that, where a default occurs because of something a lawyer did or failed to do, innocent clients should not be punished: *Bates v. The Corp. of the Town of Atikokan et al.*, 2025 ONSC 3490; *Alcantara v. Tulsiani*, 2021 ONSC 85; 8697469 *Canada Inc. cob as Rev Install 360 v. Kimberly Medica*

[44] Frew urges the court to consider a different approach because Kidd Fuels is the original Plaintiff. Frew relies on *Wellwood v. Ontario Provincial Police*, 2010 ONCA 386, paragraph 48, which states: “[T]he party who commences a proceeding bears primary responsibility for its progress. For this reason, the initiating litigant generally suffers the consequences of a dilatory regard for the pace of the litigation.”

[45] Frew also relies on *Khan v. Mander*, 2011 ONSC 5276 (CanLII). There, the court refused to set aside a Registrar’s Order dismissing an action for delay. The court stated that granting the requested relief would “bring the administration of justice into disrepute”, because it would condone serious solicitor’s negligence: para 189.

Application

[46] I will first deal with Frew’s reliance on *Khan*.

[47] Frew says that *Khan* means that this motion requires a more nuanced analysis than the defendants suggest. It is true that, in *Khan*, the court holds that solicitor negligence should not be condoned. The court was concerned with the rights of all litigants, not just the party who received diffident representation.

[48] Nevertheless, I find *Khan* distinguishable from the current case because:

- a. *Khan* dealt with a second dismissal order – in this case, the dismissal order is the first one;
- b. In *Khan*, the status notice was “clearly received and reviewed – but then, apparently, ignored”: para, 142 – in this case, there is no evidence of what happened to any notices.
- c. Ms. Khan issued her statement of claim “near the end of the applicable limitation period...and served near the end of the expiry of the 6-month period for service”; she had an obligation to “move the matter along”, which she did not: para. 129 – in this case, there is no similar pattern.
- d. Ms. Khan was not responding to a counterclaim – in this case, Kidd Fuels and Mr. Mansueto are.
- e. Ms. Khan could not remember whether she had called her lawyer more than two times in ten years: para. 7 – in this case, Mr. Mansueto deposes that he tried to contact his lawyer many times. Whenever they did speak, Mr. Kalnins invariably said that everything was proceeding normally.

[49] Nor am I persuaded that Kidd Fuels’ status as a plaintiff changes the analysis on this motion. While a plaintiff has a duty to move a matter along, that can be considered under the existing factor of “the parties’ behaviour”. Frew has not provided any caselaw that supports, as a general principle, a more stringent approach to plaintiffs who seek to set aside a noting in default. In any event, in this case, Kidd Fuels is not just a plaintiff but also a defendant.

[50] Therefore, I decline to modify the legal framework set out in *Franchetti*. Kidd Fuels’ status in the litigation can be considered within that matrix.

[51] The defendants argue that every factor favours them. While I find the analysis more nuanced, I agree that the facts in this case overcome the low bar for setting aside a noting in default.

i. The parties' behaviour

[52] I first review how Kidd Fuels Corp. and Mr. Mansueto have conducted themselves. To do so, I will consider whether the defendants evinced an intention to defend, their behaviour throughout the litigation, and their response to the noting in default: *Bridgepoint, supra*, at para. 22 citing *Economical Mutual Insurance Co. v. Montgomery*, 2013 ONSC 6153 at para 55.

[53] Based on the record, I am persuaded that the defendants evinced an intent to defend. They filed a Reply and Answer within three months of receiving Frew's pleadings.

[54] However, I find that the defendants were lackadaisical in moving the matter forward. I agree with Frew that there was delay in exchanging an affidavit of documents. I note, as well, the prior court endorsements for mundane procedural steps, such as setting out a timetable. Those endorsements should not have been needed. Indeed, Kidd Fuels was ordered to pay costs.

[55] With respect to the third point, Frew acknowledges that, once Mr. Mansueto was personally served, the defendants moved swiftly. The defendants cannot be faulted for their behaviour since that time.

ii. The length of the delay

[56] The parties dispute the length of the delay. Frew says it is over six years, i.e., from the commencement of the claim in 2019. The defendants say it is around two and a half years beginning only when Mr. Kalnins stopped responding to them in March 2023 and ending when they sought to have the default set aside.

[57] The answer lies somewhere in the middle.

[58] Contrary to Frew's arguments, I do not think it is appropriate to count delay from the beginning of proceedings. At that point the defendants were engaged, issuing a Reply and Answer to the Counterclaim. While I acknowledge that the defendants did not respond promptly to requests for an Affidavit of Documents, the emails in the record do not suggest that Frew regarded this as greatly out of the ordinary until the end of 2020. I also find that delay does not continue to run after the defendants sought to set aside the noting in default.

[59] At the same time, I do not accept Kidd Fuels' and Mr. Mansueto's suggestion that delay *only* counts after they lost touch with their counsel. Delay must be assessed in terms of all parties, not just the one seeking the indulgence. The record shows that the defendants by counterclaim were not responsive to ordinary requests for almost a year, following which there were several court appearances to address delay and inaction.

[60] I find that the delay in this case began in April 2022, when Mr. Kalnins left Dickinson Wright, and the parties appeared before Associate Justice Robinson. It ended April 10, 2025, when the defendants filed a Notice of Motion.

iii. The reasons for the delay

[61] On a balance of probabilities, I am satisfied that the principal factor for the delay is Mr. Kalnins' failure to attend to this file with a modicum of diligence. I am not persuaded that the blame for that falls on his clients.

[62] The evidence going to this factor includes:

- a. The Affidavits of Mr. Mansueto
- b. The Affidavit of Mr. Brown
- c. The emails between counsel
- d. The prior judicial endorsements

[63] Mr. Mansueto's affidavits are untested by cross-examination, which warrants some caution in how I use them. However, Frew chose not to cross-examine the affiant. It is, therefore, open to me to consider the plausibility of Mr. Mansueto's narrative.

[64] I find Mr. Mansueto's account more likely than not because:

- a. The evidence about Mr. Kalnins' unresponsiveness is consistent throughout the record. It began as early as 2020, when Mr. Kalnins dithered in producing an Affidavit of Documents.
- b. On a balance of probabilities, I am persuaded that the Kidd Fuels and Mr. Mansueto were unaware of the degree to which Mr. Kalnins was not complying with his professional obligations. Given the size of the counterclaim, I find it implausible that they were nonchalant about what was happening. I am not persuaded that they were content to let the matter languish as Frew suggests.
- c. I find that Mr. Mansueto relied on Mr. Kalnins to move things along. This is normal in a solicitor-client relationship and accords with common sense. I do not accept Frew's argument that Kidd Fuels has been, essentially, 'litigation happy', or that Mr. Mansueto is a sophisticated client who ought to have known something was amiss. Mr. Mansueto denies that, and Mr. Brown's affidavit supports his denial. Mr. Brown deposes that the vast majority of prior cases that the defendants initiated were routine collection matters on which Mr. Mansueto had little, if any, input or

direction. Mr. Brown rarely if ever even spoke to Mr. Mansueto. On a balance of probabilities, I do not find Mr. Mansueto to be a “sophisticated” client.

- d. Ted Kalnins did not respond to a summons for questioning. All the evidence suggests that he is indifferent to his former clients.

iv. The complexity and value of the claim

[65] Frew’s counterclaim against Kidd Fuels and Mr. Mansueto is for millions of dollars. It raises questions of contractual reliance, intentional inference with business relations and other issues that require extensive evidence.

[66] In both its particulars and its size, the Counterclaim calls for a decision on the merits.

v. Whether setting aside the noting in default would prejudice a party relying on it

[67] Given that the defendants tried to set aside the noting in default almost immediately, I am not persuaded that Frew has a reliance interest.

vi. The balance of prejudice as between the parties

[68] I find that the balance of prejudice favours the defendants.

[69] Frew argues that the sheer passage of time creates significant prejudice. It points out that it has been 7 years since the initial transaction, and the matter likely will not proceed to trial for another two years. The defendants argue that nothing in the record suggests that the matter cannot be decided on its merits. No critical witnesses have died, and there is no indication that the appropriate evidence cannot be marshalled. I accept that the passage of time creates some difficulties, but I am not persuaded that Frew will suffer very great prejudice if the case proceeds to trial.

[70] By contrast, Kidd Fuels and Mr. Mansueto are at risk of multi-million-dollar liability if there is no trial. Per *Alcantara* at para. 36, that is a “serious factor” that tilts towards Kidd Fuels.

vii. Whether the defendant has an arguable case on the merits.

[71] Courts rarely require a party seeking to set aside a noting in default to demonstrate an arguable case on the merits. The court must guard against delving too deeply into the case: *Zeifman Partners Inc. v. Aiello*, 2020 ONCA 33 at para. 34.

[72] Kidd Fuels has articulated several defences to the counterclaim. Frew does not appear to challenge this factor. Applying the required light touch, I find that there is an arguable case.

Conclusion on the factors

[73] Most of the factors favour the defendants. The most critical factors in this case – the reason for the delay and the balance of prejudice – strongly militate for the defendants.

[74] Therefore, having considered the framework from *Franchetti*, I am satisfied that Kidd Fuels and Mr. Mansueto have met their burden to warrant setting aside the noting in default.

Next steps

[75] The moving parties attach a proposed timetable to their Order. Having reviewed it and since Frew did not have any serious objections, I am ordering the parties to abide by the timetable.

[76] Kidd Fuels and Mr. Mansueto are receiving an indulgence from the court. They must assiduously follow the rules and not contribute to any further delay.

Costs

[77] The parties agreed that I could fix costs after reaching my decision.

[78] Kidd Fuels cites substantial indemnity costs of \$61,241.48, which Frew cites \$50,848.27.

[79] The moving parties have succeeded in their motion. I have found that the delay in this case is due to their former lawyer.

[80] Having considered the factors in Rule 57, I find that this is a case where costs should follow the cause. I do not find it appropriate to award more than partial indemnity. While these motions are routinely granted, I do not think that Frew's conduct warrants the judicial sanction of higher costs. In addition, Kidd Fuel's conduct throughout this litigation has not been flawless.

[81] I have reviewed Kidd Fuels' bill of costs. I find that \$35,000 is fair and reasonable, and within the reasonable contemplation of the responding party.

ORDER

[82] In conclusion, I make the following order:

- a. The motion is granted.
- b. Frew Energy Limited shall pay costs fixed at \$35,000 within 30 days.
- c. The Order submitted by Kidd Fuels shall issue.
- d. For clarity, the proposed Timetable is hereby endorsed.

MATHEN, J.

Released: March 23, 2026

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COURT FILE NO.: CV-19-00620340-0000
DATE: 20260323

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

R. KIDD FUELS CORP.

Plaintiff

– and –

FREW ENERGY LIMITED

Defendant

REASONS FOR DECISION

MATHEN, J.

Released: March 23, 2026