

A Court's Inherent Jurisdiction to Dismiss for Delay

A Commentary on *Wallace v. Crate's Marine Sales Ltd.*

On Sept. 30, 2014, in [Wallace v. Crate's Marine Sales Ltd., 2014 ONCA 671](#) the Ontario Court of Appeal determined that a court's inherent jurisdiction authorized it to dismiss an action for delay even if the criteria set out in Rule 24 were not met.

This was an appeal from an order of Justice Drew S. Gunsolus of the Superior Court of Justice, dated December 10, 2013, with reasons reported at [2013 ONSC 7384](#).

The action arose out of the purchase of an allegedly defective yacht in June 2000. The action was started in May 2003. The defendant brought a motion to dismiss for delay in November 2013, at which time the action had barely moved beyond the pleadings stage.

The motions court judge held that the plaintiff had not satisfactorily explained the delay. There was a presumption of prejudice. Further there was actual prejudice as the matter could not be tried before 2015 and the 15 year lapse would render witnesses' memories unreliable.

The Court of Appeal held:

[12] The confluence between discretion and dismissal for delay is traced out in this court's decision in *Langenecker v. Sauvé*, 2011 ONCA 803, [2011] O.J. No. 5777. Doherty J.A. observed:

An order dismissing an action for delay is obviously a severe remedy. The plaintiff is denied an adjudication on the merits of his or her claim. Equally obviously, however, an order dismissing an action for delay is sometimes the only order that can adequately protect the integrity of the civil justice process and prevent an adjudication on the merits that is unfair to a defendant. (Para. 3)

[13] In this case, the motion judge's finding that the delay was inordinate and inexcusable is unassailable.

The Court went on to say:

[18] The appellants argue that at least some of the delay falls at the feet of the respondents. It is fair to say that neither side is free of fault in the conduct of this action, but, as LaForme J. observed in *DeMarco v. Mascitelli*, [2001] O.J. No. 3582, 14 C.P.C. (5th) 384 (S.C.), at para. 22, the plaintiff is responsible for moving the action along. In this case the appellants manifestly failed to fulfill this responsibility.

In addition to dismissing the action for delay, Gunsolus, J. dismissed the counterclaim for delay.

The appellant argued that the court could not dismiss an action for delay as part of its inherent jurisdiction because Rule 24 effectively exhausts the court's jurisdiction to deal with dismissal for delay. The Court of Appeal ruled otherwise, holding:

[20] Regarding this exercise of inherent jurisdiction, the motion judge stated:

A lengthy, unexplained delay in a case of this nature could well be defined as an abuse of the court's process. There is, indeed, a strong public interest in promoting the timely resolution of disputes in our civil justice system, which is already overburdened. Litigants and the public regularly complain about inordinate delays in obtaining civil motions and trial dates. The delay in this matter, of over a decade, strains the empathy of the court to excuse a delay of this "magnitude and gravity" and further undermines public confidence in the administration of our civil justice system. (Para. 95)

I agree. This is a simple case in which there was no reason to delay the trial to permit the situation to unfold, as there often is in personal injury cases, for example.

[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.* This is such an action. The motion judge properly exercised his jurisdiction to dismiss the claim and the counterclaim. [emphasis added]

It would appear from this that a court would have the jurisdiction to dismiss an action for delay using its inherent jurisdiction, even absent a motion.

Obviously, there are exceptions, such as for instance the case of personal injury actions in which a part of delay may be caused by the necessity to wait until the plaintiff has plateaued, or other cases where the delay may be explainable by the necessity of testing and accumulating expert evidence, but if you have any nine or ten year old cases in your portfolio that have been stagnant, you may wish to consider whether they are ripe for being dismissed for delay.

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