

Extending Time to Appeal: Recent Decisions

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When the time to start an appeal (or perfect an appeal) has passed, an extension can be requested. Whether it is granted or denied depends on several factors, with the primary issue being “whether it is in the interests of justice” ([Oliveira v. Oliveira](#), 2022 ONCA 218, para. 14).

The Ontario Court of Appeal has recently reviewed extension requests in a number of cases, with some take-aways being as follows:

1. **Merit Matters:** the Court has indicated that merit of the proposed appeal is important, going so far as stating “[l]ack of merit alone can be a sufficient basis to deny an extension of time”: ([Trivedi v. Hudd](#), 2022 ONCA 147, para. 6]; *Oliveira v. Oliveira*, supra, para. 14).
2. **Costs/Prejudice:** at least in the family law context, the Court recently held that subjecting a litigant to costs in responding to an appeal without merit amounts to prejudice: “(i)n my view, again in the context of family law litigation, it would be prejudicial to subject Ms. Iranpour to further costs in responding to an unmeritorious appeal” ([Khorramshahi v. Iranpour](#), 2022 ONCA 210, para. 11)
3. **The Stakes:** the level of stakes can have an impact on the analysis. For example, in *Oliveira v. Oliveira*, a panel of the Court of Appeal permitted an extension to perfect related to an appeal addressing a Contempt Order, stating, in part that “A civil contempt order is a serious matter...”: [Oliveira v. Oliveira](#), 2022 ONCA 218, para. 16. To be clear, there were other factors that weighed into granting the extension.
4. **Repeated Failure to Follow Rules:** a pattern of repeated failure to follow the timelines and rules for addressing an appeal has been considered in denying an extension: “...Those timelines and rules of the court exist to facilitate the orderly and proper disposition of appeals without unreasonable delay. In all the circumstances of this case, notwithstanding the preference for dealing with appeals on their merits, the justice of this

case would not be served if I disregard the repeated failure by the appellant to comply with those rules and procedures” ([Dupuis v. Waterloo \(City\)](#), 2020 ONCA 96, para. 5).

The above are a few considerations, from recent decisions, of what the Court of Appeal has looked at when addressing extension requests. While the application of the considerations are unique to the facts of the specific case, its important to be aware of what the line of analysis the Court of Appeal looks at when determining to request or defend an extension.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.