

COURT OF APPEAL FOR ONTARIO

CITATION: Hordo v. CAA Insurance Company, 2025 ONCA 529

DATE: 20250716

DOCKET: COA-25-OM-0233

Lauwers J.A. (Motions Judge)

BETWEEN

Diana Hordo and Michael Hordo

Applicants/Appellants
(Appellants/Moving Parties)

and

CAA Insurance Company

Respondent/Respondent
(Respondent/Responding Party)

Diana Hordo and Michael Hordo, acting in person

Peter Kazdan, for the respondent/responding party

Heard: in writing

ENDORSEMENT

[1] The Hordos wish to appeal the decision of the Divisional Court dated December 6, 2024, and released to the parties on December 16, 2024. Section 6 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides that:

(1) An appeal lies to the Court of Appeal from,

(a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided for in the rules of the court....

[2] Rule 61.03.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides that a party may make a motion for leave to appeal in writing, which “shall be served within 15 days after the making of the order or decision from which leave to appeal is sought.” This would set the deadline to serve a motion for leave to appeal in writing at December 23, 2024 or, reading the rule generously and counting from December 16, 2024 when the parties say the decision was released to them, December 31, 2024.

[3] The Hordos did not submit anything to the Court of Appeal until February 18, 2025. They have since been unable or unwilling to comply with the *Rules*.

[4] In their filed material, the moving parties do not actually seek leave to appeal, although the motion could be deemed to do so. However, I am in no position to override the provisions of the *Courts of Justice Act* and grant any of the relief sought in the Notice of Motion, which is properly sought before a panel, including leave to appeal. Accordingly, the Hordos will need leave from a panel of this court if the appeal is to proceed.

[5] The motion in writing that has been put before me seeks, among many things, “[a]n Order setting aside the Judgment of Divisional Court Adjudicating Panel, Jarvis, Sachs and Matheson JJ., December 06, 2024, for errors of law and fact.”

[6] However, my task as a single judge is more limited. It is whether to permit the Hordos to proceed with their motion for leave to appeal even though it is long out of time.

[7] The test for an extension of time was succinctly stated by Gillese J.A. in *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15:

The overarching principle is whether the “justice of the case” requires that an extension be given. Each case depends on its own circumstances, but the court is to take into account all relevant considerations, including

- (a) whether the moving party formed a bona fide intention to appeal within the relevant time period;
- (b) the length of, and explanation for, the delay in filing;
- (c) any prejudice to the responding parties caused, perpetuated or exacerbated by the delay; and
- (d) the merits of the proposed appeal.

[8] The last factor, the merits, is the most important and can be determinative: see e.g. *Liu v. Chan*, 2024 ONCA 699, at para. 29; *Robson v. Law Society of Ontario*, 2023 ONCA 709, at para. 5. Lack of merit alone can be a sufficient basis to deny an extension of time: *Codina v. Canadian Broadcasting Corporation*, 2020 ONCA 116, at para. 7, citing *Enbridge*, at para. 16.

[9] I have no doubt that the Hordos always had an intention to appeal. They offer no real explanation for the delay, but it manifests in their utter inability to

prepare and provide the necessary documentation, as I explain below, which is surprising in part since Mr. Hordo used to be a lawyer.

[10] The material provided by the Hordos is uselessly carbunched with the addition of parties not properly added and of causes of action that are not relevant. The Hordos also appear to be ungovernable, judging from the ongoing exchange with staff as noted below:

- **February 18, 2025:** Diana Hordo attempted to file a Notice of Appeal “As a Right From Reconsideration of Divisional Court”.
- **March 31, 2025:** A phone discussion took place. Court staff notified Ms. Hordo again via email that the submitted notice could not be accepted because any appeal requires a motion for leave which had a 15-day deadline for service and additional 5 days for filing. This timeline was not met. Court staff advised Ms. Hordo that she will now need consent for acceptance of late service and filing, or a motion for extension of time.
- **April 25, 2025:** Ms. Hordo attempted to submit a Notice of Motion, Motion Record, Amended Constitutional Question, and Factum.
- **May 5, 2025:** Court staff notified Ms. Hordo that all material is rejected for filing:
 - The notice period for an opposed motion in writing required 14 days notice to the court and the responding parties. Only 9 days notice was provided. A new hearing date was needed.

- The incorrect form was used for the notice of motion.
 - The title of the notice of appeal indicated that the Hordos would be seeking an extension of time, however, this was not included within the “reliefs sought” section.
 - No draft order was submitted.
 - No Schedule A or B was included in the factum, or indication that they were not needed.
 - Electronic bookmarks were done improperly.
- **May 5, 2025:** Ms. Hordo confirmed that she will attempt to resubmit the documents with the deficiencies cured. She also confirmed that she and Mr. Hordo are seeking an extension of time, and relief from the decision of the Divisional Court decision.
 - **June 16, 2025:** Ms. Hordo attempted to file a notice of motion, motion record, appellant’s factum, affidavit of Diana Hordo, further amended constitutional questions, draft cost order, Michael Hordo’s bill of costs, and Diana Hordo’s bill of costs.
 - **June 17, 2025:** Ms. Hordo attempted to file a payment authorization form, counsel slip, affidavit of service, and a copy of instructions from the appeal case management officer dated May 6, 2025.
 - **June 24, 2025:** Ms. Hordo requested confirmation of payment made to the court and instructions for “uplifting” materials.

- **June 24, 2025:** Court staff notified her that all material is rejected:
 - Material was attached separately from the Motion Record.
 - The Factum indicates documents not included and/or containing no reference to the Motion Record.
 - The Motion Record did not contain a Notice of Motion and was not properly bookmarked.
 - Both bills of costs seem to not be contained to this motion.
- **June 27, 2025:** Ms. Hordo submitted an amended Notice of Motion, Motion Record (2 volumes), Factum, draft order, and bill of costs.

[11] This sorry record of ungovernable non-compliance by the Hordos tempts me to refuse leave.

[12] On the second consideration, the prejudice to the responding party is not significant on a substantive basis, but addressing these claims is no doubt expensive.

[13] I now come to the justice of the case.

[14] The Divisional Court boiled down the claims in its decision. The only matter that might have some merit on appeal is the reasonable apprehension of bias allegation. This was addressed by the Divisional Court at paras. 30-35 of the decision. The nub of the problem is set out by the Divisional Court at para. 31:

After the Reconsideration Hearing, it came to the attention of the appellants that Adjudicator Reilly who had participated in the LAT decision on September 12, 2022, had accepted an offer of employment with another insurer, Aviva Canada Inc. (“Aviva”) in June 2022. Her appointment to the Tribunal ended on November 4, 2022, after which she started working for Aviva in approximately December 2022.

[15] I am not able to conclude that this ground of appeal is utterly without merit and am satisfied that the factors weigh in favour of granting an extension of time to seek leave to appeal.

[16] I therefore make the following orders:

1. The moving parties are granted an extension of time within which to seek leave to appeal;
2. The material filed thus far on this motion before me is deemed to constitute the moving parties’ material on their motion for leave to appeal;
3. The motion for leave to appeal is deemed to be perfected and is referred immediately to the court’s ordinary process for addressing a motion for leave to appeal from the Divisional Court;
4. The deadline for the responding party to submit their materials responding to the motion for leave to appeal is 25 days from the date of release of these reasons;
5. The moving parties’ reply factum, if any, is to be filed 10 days after service of the responding party’s factum: r. 61.03.1(13); and

6. Other than the reply factum described in #5 above, the moving parties shall not file any further material on this motion for leave to appeal. Court staff are directed to reject any material other than the reply factum submitted for filing by the moving parties.

[17] The costs of this motion are reserved to the panel addressing the leave application.

“P. Lauwers J.A.”