

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: NOORA, KHATIR, Appellant

AND:

DESJARDINS INSURANCE, Respondent

BEFORE: Trimble, J.

COUNSEL: Ahmed, Zia Ur-Rehman, for the Appellant
Email: goldengatelawyers@gmail.com

Chadwick, Michael, for the Respondent
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Read at Brampton: 5 March 2026

MOTION TO EXTEND TIME ENDORSEMENT

[1] The Appellant, Noorullah Khatir, brings this motion dated 22 July 2025, in writing, to extend time to bring her Appeal from the decision of the Licence Appeal Tribunal, *Khatir vs. Desjardins Insurance*, 2025 ONLAT 23-006825/AABS, dated 25 January 2025. The LAT denied her entitlement to certain statutory accident benefits pursuant to the Statutory Accident Benefits Schedule, On. Reg. 34/10 which she says she sustained as a result of injuries sustained in an automobile accident.

THE LAW

[2] Rule 61.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 provides that an Appellant must file his or her Notice of Appeal within 30 days of the order appealed from. In this

case, the Notice of Appeal ought to have been served and filed by 24 February 2025. The Motion to extend time was brought on 22 July 2025.

[3] A Court may extend the time to appeal where it is in the interests of justice to do so based on relevant considerations including:

- (i) An intention to appeal within the appeal period;
- (ii) The length of the delay in appealing and whether that delay is persuasively explained;
- (iii) The degree of prejudice to the responding party; and
- (iv) The merits of the proposed appeal.

(Enbridge Gas Distribution Inc. v. Froese, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15; Liu v. Chan, 2024 ONCA 699, at para. 16; Home Trust Company v. Pitters, 2025 ONCA 818, para 2.)

[4] These factors are not hurdles, each of which must be cleared for the Appellant to succeed; rather, they are each to be weighed in their totality. The essential question is whether the justice of the case requires time to be extended.

Factor 1) An intention to appeal within the appeal period

[5] I accept that the Appellant had an intention to Appeal. The self represented Appellant filed a Notice of Appeal on 14 February 2025. He says, as well, that his age and catastrophic medical condition arising from the automobile accident contributed to his lack of understanding of procedures and his ability to navigate them. Ultimately, he retained counsel in May 2025, following which things moved, which was rejected.

Factor 2) The length of the delay in appealing and whether that delay is persuasively explained

[6] The delay in bringing this motion is just under five months.

[7] The Appellant explained the delay by saying, “I did not have legal representation and attempted to pursue the appeal process to the best of my limited understanding. My advanced age, medical condition, and lack of legal knowledge contributed to a misunderstanding and misapplication of the appropriate procedures”. This is a bald statement. He does not explain the nature of his claimed impairments and how they impaired his ability to file his Notice of Appeal, or to retain counsel for the appeal. He attaches no medical substantiation for his position.

Factor 3) The degree of prejudice to the Respondent

[8] There is no prejudice to the Respondent insurer which advances no argument about prejudice in proceeding with the Appeal.

Factor 4) The merits of the proposed Appeal

[9] The merit of a proposed appeal however is the most important of the factors to weigh, and in the appropriate circumstances, lack of merit alone can be sufficient to dismiss a motion to extend time (*Enbridge Gas Distribution v. Froese*, 2013 ONCA 131 at para. 16, *Liu v. Chan*, 2024 ONCA 699 at para. 29, *Beard Winter LLP v. Shekhdar*, 2016 ONCA 493, at paras 15 and 16).

[10] The Court of Appeal said in *Sabatino v. Posta Ital Bar Inc.*, 2022 ONCA 208, par. 21:

[T]here are occasions when the lack of merit in an appeal is so clear-cut that, on its own or in combination with a consideration of other factors, a motion judge determines that leave should not be granted ... Courts must be mindful of the cost of litigation and unnecessary expenditures of time but all the while preserving the need to ensure that the dictates of justice of the case are met.

[11] In *Liu v. Chan*, 2024 ONCA 699, at para. 33, the Court of Appeal declined to grant an extension of time to file a Notice of Appeal on the basis that the Notice of Appeal did not identify

any legal errors with respect to the trier of fact and instead, the would-be appellant sought to re-argue factual matters decided against him.

[12] A decision of the Licence Appeal Tribunal may be appealed only on a question of law (see: s.11(1) and S.11(3) of the *Licence Appeal Tribunal Act*).

[13] In this case, the Appellant's proposed Notice of Appeal asks that the adjudicator's decision be set aside and that the Court grant:

1. A declaration that the Appellant is not barred from proceeding to a hearing on catastrophic impairment;
2. A declaration that the Appellant is entitled to a non-earner benefit;
3. A declaration that the Appellant is entitled to the claimed medical and rehabilitation benefits;
4. A declaration that the Appellant is entitled to reimbursement of specific expenses claimed under the OCF- *[sic]*
5. An order granting interest and/or an award under section 10 of Ontario Regulation 664; and
6. Such further and other relief as this Honourable Court deems just.

[14] Under the "Grounds for Appeal", the Appellant lays out what appear to be legal grounds for the appeal.

[15] The merits of the appeal must be assessed not only on the claimed grounds, but on the nature of the decisions made.

[16] In this case, the Appellant applied to the LAT for a declaration that he was catastrophically injured and that he was entitled to a host of benefits under the Statutory Accident Benefits Schedule. The adjudicator at the LAT dismissed the Appellant's application for reasons, all of which were findings of fact which cannot be the subject of an appeal under s. 11 of the *Licence Appeal Tribunal Act*. Therefore, the merits of the Appeal are highly questionable. The Appellant did not address this issue in its submissions.

[17] The Arbitrator's decisions for denying the Appellant's claims for various benefits and other orders sought are all based on findings of fact or the exercise of discretion based on findings of fact. The former are not appealable by statute and the latter, while appealable, attract such a high degree of deference that their success is questionable. The main findings of the adjudicator from which an appeal is sought are follows:

- a. *Catastrophic Impairment*: The Appellant did not attend the Insurer's Examination, as required, even though he was properly notified of the appointment. Further, the medical information the Appellant submitted failed to support a finding of catastrophic impairment.
- b. *Caregiver Benefit*: It was never claimed, and the insurer was never notified of the intention to claim. The claim was raised for the first time at the hearing. Since the insurer had never denied the claim (because it was never advanced), the LAT had no jurisdiction to award it.
- c. *Non Earner Benefit*: The adjudicator found as a fact that the abilities of the claimant to do normal tasks were no different after the accident than before.
- d. *Chiropractic Expenses*: The Arbitrator found as a fact that treatment taken was for symptoms arising from other injuries, not accident related injuries.
- e. *Misc. Other Expenses*: The Arbitrator disallowed these expenses on the factual basis that they were not accident related, were incurred prior to submitting them to the insurer for approval as required by the SABS, and/or and that they related to property damage which are not covered by the schedule.

Weighing the Factors

[18] The intention of the Appellant and the absence of prejudice weigh in favour of extending time to commence the Appeal. The timeliness of the Motion is neutral. The Appellant's bald statements as to why waited five months to bring his Motion to extend time weigh heavily against granting leave. The strongest factor weighing against granting leave to extend time to appeal is the weak merits of the Appeal.

[19] Motion is dismissed.

COSTS

[20] The Respondent is successful on the motion and presumed entitled to costs. If the parties cannot agree on costs, I will decide costs on the basis of two page, double spaced, typed submissions with the Respondents due by 4:00 p.m., 27 March 2026 and the Appellant's by 4:00 p.m., 10 April 2026.

Trimble, J.

Date: March 16, 2026

CITATION: Khatir v. Desjardins, 2026 ONSC 1516
DIVISIONAL COURT FILE NO.: DC-25-00000098-00000
DATE: 2026-03-16

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

NOORA, KHATIR

Ahmed, Zia Ur-Rehman, for the Appellant

-and-

DESJARDINS INSURANCE

Chadwick, Michael, for the Respondent

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Released: March 16, 2026