

COURT OF APPEAL FOR ONTARIO

CITATION: MacRae v. Cassan, 2026 ONCA 242

DATE: 20260331

DOCKET: COA-26-OM-0080

Gomery J.A. (Motion Judge)

BETWEEN

Robert William MacRae

Plaintiff (Appellant/Moving Party)

and

John Paul Robert Cassan, Timothy Harmar and Wishart Law Firm

Defendants (Respondents/Responding Parties)

Robert William MacRae, acting in person

Danika So, for the respondents/responding parties

Heard: March 25, 2026

REASONS FOR DECISION

[1] Mr. MacRae seeks an order extending the time to serve and file a notice of appeal from the order of Senior Regional Justice Patrick Boucher (the “RSJ”), dated December 16, 2025, dismissing Mr. MacRae’s action against the respondents pursuant to r. 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] After hearing the parties' submissions, I advised that the motion would be granted, with reasons to follow. These are my reasons.

Background

[3] Mr. MacRae is a lawyer. The individual respondents, also lawyers, wrote to the Law Society of Ontario on three occasions raising concerns about Mr. MacRae's fitness to practice. According to Mr. MacRae, the respondents were opposing counsel to him on several lawsuits at the time. The respondents' reporting led to an investigation by the Law Society and the suspension of Mr. MacRae's licence.

[4] After his licence was suspended, Mr. MacRae sued the respondents and their law firm for damages. He alleges that they are liable under an array of causes of action, including intentional interference with business relations, negligence, and defamation. He seeks general, special and punitive damages. The Law Society is not named as a party nor does Mr. MacRae seek any relief against it, such as an order staying its investigation.

[5] After being served with Mr. MacRae's action, the respondents requested that the RSJ stay or dismiss it as an abuse of process under r. 2.1.01. This rule permits the court to dismiss or stay an action if it is, on its face, frivolous, vexatious, or otherwise an abuse of the court's process.

[6] The court registrar sent a notice to Mr. MacRae that the RSJ was considering the request and invited him to make submissions. Mr. MacRae did not file any submissions in response. He instead took steps to bring a motion to extend the time for his submissions and for leave to adduce evidence. Mr. MacRae's motion was returnable in February 2026.

[7] After the deadline for the receipt of submissions from Mr. MacRae had passed, the RSJ proceeded to consider whether the action should be dismissed under r. 2.1.01. He noted that Rule 7.1-3 of the Law Society's *Rules of Professional Conduct* obliges lawyers to report to the Law Society any conduct that raises a substantial question about a licensee's capacity to provide legal services. He held that the Law Society proceedings are a proper forum for determining issues related to a lawyer's ability to be licensed to practice, and that any issues that Mr. MacRae might have with the Law Society proceedings could be raised on appeal from a decision based on its investigation. The RSJ concluded that Mr. MacRae's lawsuit amounted to a "collateral attack" on the Law Society's investigation and dismissed it.

[8] Mr. MacRae denies receiving a copy of the December 16, 2025 dismissal order allegedly e-mailed to him on or around that date. As a result, he did not file his notice of appeal within the 30-day deadline set out in r. 61.04(1). Mr. MacRae says that he promptly served this motion for an extension of time and his proposed

notice of appeal after learning of the dismissal order on February 20, 2026. His evidence on these points is uncontested.

Analysis

[9] An extension of time should be granted if required by the “justice of the case”: *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15. Relevant considerations include:

- a. whether the moving party formed an intention to appeal within the relevant time period;
- b. the length of, and explanation for, the delay;
- c. any prejudice to the responding party from the delay; and
- d. the merits of the proposed appeal.

[10] Mr. McRae says that he promptly acted to bring this motion once he learned his action had been dismissed; that the respondents will suffer no prejudice if the extension is granted; and that his appeal has arguable merit.

[11] The respondents concede that Mr. MacRae has adequately explained his failure to file an appeal within the prescribed time. They nonetheless say that his motion should be dismissed because his proposed appeal is devoid of merit.

[12] Although all the *Enbridge Gas* factors must be considered, the merits of the appeal have been described as the most important factor in determining whether

the justice of the case requires an extension of time, and an appeal's lack of merit, on its own, may provide a sufficient basis on which to deny an extension of time: *Robson v. Law Society of Ontario*, 2023 ONCA 709, at para. 5, citing *Paulsson v. University of Illinois*, 2010 ONCA 21, at para. 2.; *Reid v. College of Chiropractors of Ontario*, 2016 ONCA 779, at para. 15. When assessing the merits of the appeal, however, the court should not try to determine whether the appeal will succeed but instead assess whether the appeal has so little merit that the court could reasonably deny the important right of appeal: *Issasi v. Rosenzweig*, 2011 ONCA 112, 277 O.A.C. 391, at para. 10.

[13] I must therefore consider whether Mr. MacRae's appeal has any arguable merit.

[14] If the extension is granted, Mr. MacRae proposes to advance four grounds of appeal. He will contend that the RSJ erred:

- a. in characterizing Mr. MacRae's action as a collateral attack on the Law Society of Ontario;
- b. in concluding that the existence of statutory reporting authority under the *Law Society Act*, R.S.O. 1990, c. L.8 precludes civil scrutiny of the respondents' conduct;
- c. in failing to recognize that the statement of claim raised arguable civil causes of action against the respondents; and

d. in his application of r. 2.1.01, given the nature of the action.

[15] In my view, the proposed grounds are not clearly devoid of merit. In the action, Mr. MacRae seeks civil remedies from the respondents that he arguably cannot recover in Law Society proceedings. He alleges that the respondents breached legal duties after they reported their concerns to the Law Society; assessing such allegations would arguably fall outside the jurisdiction of the Law Society. Even if the action could be seen as premature, so long as the outcome of the Law Society's investigation is unknown, this would arguably justify a stay of Mr. MacRae's action rather than an outright dismissal.

[16] The purpose of r. 2.1.01 is to weed out actions that are not simply unmeritorious, but that are, on their face, so frivolous, vexatious, or abusive that it would be a waste of party and court resources to allow them to proceed. The rule is a blunt instrument, reserved for the clearest of cases: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, at para. 8, leave to appeal refused, [2015] S.C.C.A. No. 488; *Khan v. Krylov & Company LLP*, 2017 ONCA 625, 138 O.R. (3d) 581, at para. 12; *Sumner v. Ottawa (Police Services)*, 2023 ONCA 140, at para. 9.

[17] My determination that the proposed appeal raises arguable grounds does not imply that it should or will succeed. A decision made under r. 2.1.01 is a discretionary decision and, as such, is entitled to deference: *Sumner*, at para. 6. It

is possible that the action suffers from defects, unmentioned in the RSJ's decision but apparent on its face, that would justify its dismissal under r. 2.1.01. The respondents have not, however, persuaded me that there is a such a patent lack of merit to the proposed grounds of appeal that an extension of time should be denied on this basis alone.

[18] Having concluded that the relevant factors weigh in favour of granting leave to appeal, I conclude that it is in the interest of justice to grant the motion.

[19] The motion for an extension of time is therefore granted, without costs. Mr. MacRae shall have until April 9, 2026 to file his notice of appeal.

“S. Gomery J.A.”