

## Case In Point

# Appellate Court Refuses to Extend Time for Filing of Leave to Appeal: Case Lacked Merit

**Date:** December 2, 2016

In [Reid v College of Chiropractors of Ontario](#), the Ontario Court of Appeal recently reviewed the test for extending time to file leave to appeal. The Court dismissed the motion for an extension of time on the basis that the proposed appeal lacked merit. The decision provides a helpful summary of the test for extending time and affirms the need to assess the merits of the proposed appeal, even where there may be an alternate ground to deny a request for an extension.

Dr. Reid, a chiropractor, was subject to disciplinary proceedings arising out of a series of complaints made to the College of Chiropractors. As a result of the proceedings, a Discipline Committee panel imposed a 12-month suspension of Dr. Reid's licence, remedial measures and a \$10,000 fine. Dr. Reid was ordered to pay the College's significant costs of approximately \$166,000.

Dr. Reid unsuccessfully appealed the decisions to the Divisional Court, which dismissed the appeal on June 13, 2016. Dr. Reid's counsel advised him that he had 30 days – instead of the requisite 15 days – to file his notice of motion seeking leave to appeal to the Court of Appeal. Dr. Reid missed the deadline.

The Court of Appeal agreed with the College that Dr. Reid's motion for an extension of time would not be in the interests of justice. In dismissing the motion, the Court reaffirmed the governing principle of the test for extending time, which is whether the "justice of the case" requires that an extension be given. Each case depends on its own circumstances. The following are relevant considerations:

- (a) whether the moving party formed a *bona fide* intention to seek leave to appeal within the relevant time period;
- (b) the length of, and explanation for, the delay in filing;
- (c) any prejudice to the responding party, caused, perpetuated or exacerbated by the delay;  
and
- (d) the merits of the proposed appeal. (para 14)

The Court rejected Dr. Reid’s argument that the College’s costs decision would affect the reasonableness of future costs awards. Among other things, the Court recognized the College’s jurisdiction to order costs and its “right and responsibility to protect its members from the weight of the expense of protracted disciplinary hearings.”

The Court noted that the lack of evidence showing Dr. Reid formed an intention to appeal within the relevant time frame may be a sufficient basis upon which to dismiss the motion. However, the dismissal of the request for an extension ultimately rested on the finding that the proposed appeal was, in any event, without merit.

*Sonya Sehgal is a 2016-2017 Articling Student with Hicks Morley.*