

COURT OF APPEAL FOR ONTARIO

CITATION: Novak v. CIBC World Markets Inc., 2026 ONCA 648

DATE: 20260911

DOCKET: M57534 (COA-25-OM-0315)

Lauwers J.A. (Motion Judge)

BETWEEN

Jaroslav Novak

Applicant (Moving Party)

and

CIBC World Markets Inc.

Respondent (Responding Party)

Jaroslav Novak, acting in person

Rachel Toope, for the responding party

Neil Wilson, appearing as *amicus curiae*, Pro Bono Ontario

Heard: September 9, 2026

REASONS FOR DECISION

[1] The moving party, Jaroslav Novak, believes that he was the victim of fraud related to an investment account. The investment recommended by CIBC World Markets Inc. was, he asserts, “a scam”. Mr. Novak was unsuccessful in pursuing an arbitral award in 2019.

[2] On September 10, 2025, Sossin J.A. dismissed a motion for an extension of time to appeal a Divisional Court order that dismissed Mr. Novak's appeal from a 2019 arbitral award. Justice Sossin refused to grant the initial motion before this court because of excessive and unexplained delay and because of insufficient merit in the proposed appeal.

[3] Mr. Novak then sought panel review of Sossin J.A.'s order. Justice Madsen was asked to grant Mr. Novak an extension of time to seek panel review of Sossin J.A.'s decision after a near ten-month delay. She denied the motion on the basis that Mr. Novak did not address the test for an extension of time.

[4] Mr. Novak moves before me to extend the time to review the decision of Madsen J.A. dated July 23, 2026.

[5] The applicable law is clear. A party who moves to set aside or vary the order of a single judge of the Court of Appeal under s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, must serve and file with proof of service a notice of motion within four days after the order is made pursuant to r. 61.16(6) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.¹ The date required to file was July 29, 2026, but the notice was filed was July 30, 2026, a day late. Mr. Novak therefore needs an extension of time.

¹ The time to seek panel review under r. 61.16(6) was amended to seven days by O. Reg. 275/26, s. 10 (6). At the time Mr. Novak sought review, the applicable period was four days.

[6] 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.

[7] 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.

[8] I have no doubt that Mr. Novak always had an intention to appeal every one of the decisions that were adverse to him. Related to the motion to panel review the order of Madsen J.A. is very short – one day. The problem is that the appeal

appears to be without merit and might be an abuse of the court's process. I could dismiss his motion on that basis alone, but I decline to do so for the following reason.

[9] I have the discretion to refuse the extension of time. However, in my view it would be more prudent to extend time in order to permit panel review of the order of Madsen J.A. This is not because I consider her order to be in error. Mr. Novak has engaged himself and this court in the regrettable revolving door process made possible because of the prospect of panel review under s. 7(5) of the *Courts of Justice Act*. Because he can, Mr. Novak will endlessly pursue panel review; I conclude that it is best for that panel review to happen rather than to expend more judicial resources in an interminable process.

[10] The motion for leave to extend the time to apply for panel review is granted.

“P. Lauwers J.A.”