

CITATION: Uzelac v. Dufferin Aggregates, a division of CRH Canada Group Inc.,
2026 ONSC 4191
COURT FILE NO.: CV-17-576946
MOTION HEARD: 20260319
REASONS RELEASED: 20260720

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN:

GOJKO UZELAC and G. UZELAC TRUCKING

Plaintiffs

- and -

**DUFFERIN AGGREGATES, a division of CRH CANADA
GROUP INC. and 470474 ONTARIO LIMITED, carrying on
business as AGGREGATE TRANSFER SYSTEMS**

Defendants

BEFORE: ASSOCIATE JUSTICE McGRAW

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Group Inc.

REASONS RELEASED: July 20, 2026

Reasons For Endorsement

I. Background

[1] This is the second status hearing motion in this action.

[2] This is an employment action in which the Plaintiffs claim damages of \$312,500 for wrongful dismissal and \$100,000 for breach of the *Human Rights Code* (Ontario). The Plaintiff Gojko Uzelac was a truck driver employed by the Defendant Dufferin Aggregates, a division of CRH Canada Group Inc. (“CRH”) from 1962 until 2000 and subsequently through the Defendant 470474 Ontario Limited carrying on business as Aggregate Transfer Systems (“ATS”), a trucking service used by CRH.

[3] The first status hearing proceeded before me on October 30, 2024. By Reasons For Endorsement dated February 10, 2025 (*Uzelac v. Dufferin Aggregates, a division of CRH Canada Group Inc.*, 2025 ONSC 896) I granted the Plaintiffs’ request for an extension of the set down date

(the “Order”). The Order established the following timetable (the “Timetable”) which could be amended on consent except the set down date which could only be amended by further order of the court:

- i.) February 28, 2025 – deadline for CRH to deliver sworn Affidavit of Documents;
- ii.) March 15, 2025 – deadline for any outstanding answers to undertakings and positions on refusals;
- iii.) May 31, 2025 – deadline for mandatory mediation;
- iv.) July 31, 2025 – deadline to set action down for trial.

[4] On February 20, 2025, CRH served a Notice of Appeal of the Order. Counsel appeared before Koehnen J. at Civil Practice Court (“CPC”) on March 4, 2026 to schedule the appeal. The appeal was initially scheduled for July 9, 2025 then rescheduled for June 23, 2025. In his Endorsement dated March 4, 2025 Koehnen J. states: “Associate Justice McGraw also set a timetable for the advancement of the action. That timetable remains in place and is not stayed in the absence of consent by the parties or an order of the court.” CRH served its affidavit of documents on March 28, 2025 and delivered its answers to undertakings on May 27, 2025.

[5] On April 3, 2025, counsel discussed the appeal, costs of the first status hearing, mediation and answers to undertakings. Plaintiffs’ counsel advised that the Plaintiffs were open to considering a private mediator but that if there was little chance of a constructive mediation then a roster mediator would be appropriate and quicker. CRH’s counsel corresponded on April 14, 2025 requesting consent for certain appeal materials and proposing 4 mediators with availability in May. CRH denies that it insisted on a private mediator.

[6] During a call with Plaintiffs’ appeal counsel on May 2, 2025, CRH’s counsel raised the possibility that the Timetable may require variation in light of the appeal. On May 7, 2025, CRH’s counsel sent an email message to the Plaintiffs’ appeal counsel inquiring if he had obtained instructions regarding an amended Timetable including an extended set down date. Appeal counsel advised that he had raised a consent request to amend the Timetable with Plaintiffs’ counsel, thought it made sense and that he would advise Plaintiffs’ counsel to contact CRH’s counsel.

[7] On June 12 and 16, 2025, respectively, the Plaintiffs and CRH served and filed their written costs submissions.

[8] The appeal was heard on June 18, 2025. On June 19, 2025, the parties agreed to postpone scheduling mediation until the following week or when it was clearer when a decision on the appeal would be released. By Reasons For Decision dated June 23, 2025 (*Uzelac v. Dufferin Aggregates, a division of CRH Canada Group Inc.*, 2025 ONSC 3723), Brownstone J. dismissed CRH’s appeal. That same day, Plaintiffs’ counsel emailed CRH’s counsel to schedule mediation. CRH’s counsel advised that she was unavailable until the week of July 7, 2025. Counsel scheduled a call for July 8, 2025.

[9] During the July 8 call, Plaintiffs’ counsel, Stephen Gillman, proposed that the parties wait to schedule mediation until after the costs decision was released given the potential impact on

settlement positions. Lesley Campbell, CRH's counsel, testified on cross-examination that during the call she was aware that the set down deadline was only 23 days away, and that she "was very deliberate with my words and chose them carefully", advising Mr. Gillman counsel regarding the proposal to further defer schedule until after the costs decisions was received that "it's your client's action, it's your client's choice." Ms. Campbell stated that she left the call thinking that as a next step she would be hearing from Plaintiffs' counsel confirming when the proposed mediation would be scheduled. She also testified that she did not know whether waiting for the costs decision would actually require missing the July 31 deadline. Plaintiffs' counsel states that he left the call under the impression that the parties were working collaboratively to schedule a mediation that had been delayed by the appeal and that he believed, based on CRH's conduct, that the strict enforcement of the July 31 deadline had been waived by necessary implication. He also states that he believed that the parties had agreed to defer mediation until after the costs decision was released.

[10] On August 12, 2025, Mr. Gillman emailed Ms. Campbell to advise that he was stepping away from his practice and that his colleague Gregory Sills would be taking over the file. On August 13, Mr. Sills emailed Ms. Campbell to discuss potential mediators. Mr. Sills' assistant followed up on August 18, 2025 and Ms. Campbell advised on August 19, 2025 that she was seeking instructions. On August 21, 2025, Ms. Campbell sent an email advising that CRH took the position that the Plaintiffs had not complied with the Order, the action was out of time and CRH would not consent to any further steps in the action. She further advised that if the Plaintiffs scheduled another status hearing that CRH would request that the action be dismissed for delay. It is not disputed that this was the first time that CRH's counsel advised that CRH would rely on the July 31 deadline and would not agree on an extension to the set down date so that mediation could be completed and the action set down.

[11] The parties scheduled a telephone case conference with me on September 11, 2025. The Plaintiffs requested that I extend the set down date. CRH opposed, submitting that another status hearing was required. As set out at paragraph 4 of my Endorsement dated September 11, 2025, I declined to extend the set down date:

"For numerous reasons, I conclude that it would not be appropriate to grant an extension to the set down date at this case conference and on the record before me. The court is not being asked to simply extend a deadline such as the completion of examinations for discovery. The court is being asked to again decide whether the action should be permitted to proceed or if it should be dismissed. While there is some case law with respect to what relief is appropriate at a case conference, I am not satisfied that it includes an opposed status hearing in the present circumstances. There are disputed issues of material fact, particularly with respect to communications between counsel, which will require affidavit evidence. There is also case law specific to motions with respect to second requests for dismissal based on delay which is not before me. Further, no case has been put before me, and I am unaware of any, where an Associate Judge has decided an opposed status hearing at a case conference."

[12] I set out three options for the parties in my September 11 Endorsement: i. schedule another status hearing before me; ii. attend CPC to speak to the granting of an extension at a case conference before a Judge; or iii. agree to attend mediation without prejudice to their rights to have

a second status hearing if the action did not settle at mediation. With counsel's agreement, I adjourned the matter to another case conference on September 25, 2025.

[13] On September 15, 2025, I released my Costs Endorsement in which CRH was ordered to pay costs of the first status hearing motion fixed in the amount of \$28,000 within 30 days.

[14] At the September 25 case conference counsel advised that, notwithstanding my ongoing involvement, the parties wished to schedule a second status hearing motion before me. The motion was originally scheduled for December 2, 2025 however, the Plaintiffs requested an adjournment. At a case conference on December 16, 2025, I scheduled the motion for 60 minutes on March 3, 2026. After reviewing the parties' materials and discussing with counsel at the return of the motion, the submissions were more substantial than initially contemplated and I adjourned the motion to March 19, 2026 for 2 hours.

II. The Law and Analysis

[15] For the reasons that follow, the Plaintiffs' motion to extend the time to set this action down for trial is granted.

[16] Rule 48.14 states:

(1) Unless the court orders otherwise, the registrar shall dismiss an action for delay in either of the following circumstances, subject to subrules (4) to (8):

1. The action has not been set down for trial or terminated by any means by the fifth anniversary of the commencement of the action.

...

(5) If the parties do not consent to a timetable under subrule (4), any party may, before the expiry of the applicable period referred to in subrule (1), bring a motion for a status hearing.

(6) For the purposes of subrule (5), the hearing of the motion shall be convened as a status hearing.

(7) At a status hearing, the plaintiff shall show cause why the action should not be dismissed for delay, and the court may,

(a) dismiss the action for delay; or

(b) if the court is satisfied that the action should proceed,

(i) set deadlines for the completion of the remaining steps necessary to have the action set down for trial or restored to a trial list, as the case may be, and order that it be set down for trial or restored to a trial list within a specified time,

(ii) adjourn the status hearing on such terms as are just,

(iii) if Rule 77 may apply to the action, assign the action for case management under that Rule, subject to the direction of the regional senior judge, or

(iv) make such other order as is just.

[17] The test on a motion for a status hearing is two-fold and conjunctive. The plaintiff bears the onus of demonstrating that: i.) there is an acceptable explanation for the delay; and ii.) that if the action were allowed to proceed, the defendant would not suffer non-compensable or actual prejudice (*Faris v. Eftimovski*, 2013 ONCA 360 at para. 32; *1196158 Ontario Inc. v. 6274013 Canada Ltd.*, 2012 ONCA 544 at para. 32; *Kara v. Arnold*, 2014 ONCA 871 at para. 9; *Carioca's Import & Export Inc. v. Canadian Pacific Railway Limited*, 2015 ONCA 592 at para. 43; *Martellacci v. Pitney Bowes of Canada Ltd.*, 2024 ONSC 320 at para. 5).

[18] The parties agree that since this is a second status hearing, the appropriate approach is for the court to focus on the delay since the granting of the Order while considering the overall delay since the commencement of the action (*Avdeeva v. Khankaldiyar Estate*, 2021 ONSC 4302 at paras. 48-49; *1196158 Ontario Inc.* at para. 25). The court has held the test for setting aside a second order by the Registrar dismissing an action for delay is the same as for a first dismissal, however the court should carefully examine the cause of the additional delay, why the deadline was missed and there should be an articulated reason for the inadvertence which is more than a bald claim from the plaintiff's lawyer (*Cousins v. Roesler*, 2014 ONSC 4530 at paras. 5-12).

[19] Although the court must be guided by the two-part test, the determination as to whether to allow an action to proceed is discretionary and determining whether it would be unfair for the action to be dismissed requires a consideration of the circumstances and a balancing of the parties' respective interests (*Koepecke v. Webster*, 2012 ONSC at para. 22; *Carioca's* at para. 43). The court must adopt a contextual approach weighing all of the relevant factors to determine the order which is just in the circumstances, not a rigid or purely formalistic approach that would penalize parties for technical non-compliance with timelines and frustrate the fundamental goal of resolving disputes on their merits (*Kara* at paras. 12-14; *Cobalt Capital CA Textile Investments*, 2017 ONSC 4664 at para. 46). Where, despite the delay, the defendant would not be unfairly prejudiced should the matter proceed for resolution on the merits, according the plaintiff an indulgence is generally favoured (*Marché d'Alimentation Denis Thériault Ltée. v. Giant Tiger Stores Ltd.* (2007), 87 O.R. (3d) 660 (O.C.A.) at para. 34).

[20] I am satisfied that the Plaintiffs have provided an acceptable explanation for the delay.

[21] Whether an explanation for delay is "acceptable" depends on the circumstances of each case (*Koepecke* at para. 22). "Acceptable" does not mean that the explanation must be "good", only "adequate" or "passable" and "cogent" and the terms "acceptable", "satisfactory" and "reasonable" are interchangeable in this regard (*2046085 Ontario Inc. v. Raby*, 2014 ONSC 774 at para. 6; *Greenwald v. Ridgevale Inc.*, 2016 ONSC 3031 at para. 17; *Carioca's* at para. 45; *Postmedia Network Inc. v. Meltwater Holding B.V.*, 2017 ONSC 6036 at paras. 13-15).

[22] The plaintiff bears both primary responsibility for moving its action forward and the onus to show cause why the action should not be dismissed for delay (*Faris* at para. 33). While the focus of the court's inquiry is on the plaintiff's conduct, the defendant's conduct is also a relevant factor in assessing the explanation for delay (*1196158 Ontario Inc.* at paras. 27-30; *Iacolucci v. TD Waterhouse Canada Inc.*, 2018 ONSC 1027 at paras. (Div. Ct.); *Houser v. TD Waterhouse Canada*

Inc., 2021 ONSC 7928 at paras. 12-14; *366012 Ontario Inc. v. Boudreau et al*, 2022 ONSC 2527 at paras. 26; *Faris* at para. 33).

[23] While the Plaintiffs did not set the action down for trial by the court-ordered deadline of July 31, 2025, I am satisfied that their explanation for their failure to do so is acceptable in the circumstances.

[24] The appeal was the primary factor which affected the Plaintiffs' compliance with the set down date. The Timetable provided the parties with approximately 5.5 months to complete the remaining steps so that the action could be set down for trial. This included CRH's delivery of a sworn affidavit of documents, answers to undertakings and mediation. The appeal significantly shortened the period of time to complete these steps and included the parties' agreement to defer mediation until after a decision on the appeal was released. It was reasonable for the parties to do so given that the appeal may have resulted in the dismissal of the action. Although the appeal was heard and a decision released in short order, the time between the Notice of Appeal and the appeal decision was approximately 4 months. This consumed most of the extension granted by the Order and by the time the appeal decision was released, only 6 weeks remained to complete mediation and set the action down.

[25] There were no gaps in activity or periods of delay after the Order was granted. Throughout this time, the Plaintiffs demonstrated an intention to move the action forward and complete the remaining steps so that it could be set down for trial. I reject CRH's assertion that there is insufficient evidence that the Plaintiffs did not intend to set the action down for trial. This is demonstrated and inferred throughout Mr. Gillman's affidavit filed by the Plaintiffs, which sets out all of steps taken by the Plaintiffs after the Order (*Bellefeuille v. Tamarack Developments Corp.*, 2026 ONCA 170 at para. 9). Notwithstanding the appeal, after the CPC attendance and before CRH delivered its outstanding answers to undertakings the Plaintiffs continued to engage CRH in discussions regarding mediation. While CRH denies that it insisted on a private, specialist mediator, the Plaintiffs were always open to one, CRH canvassed dates with private mediators and the parties ultimately agreed to use one. This too was reasonable. On the same day as the appeal decision was released, Plaintiffs' counsel emailed CRH's counsel to schedule mediation. CRH's counsel advised that she was unavailable until the week of July 7. Plaintiffs' counsel accommodated her by scheduling a call for July 8 which reduced the time until the set down date expired to 23 days. Counsel's suggestion to defer mediation until after I released the costs decision from the first status hearing was reasonable, however, it does not appear as if an explicit agreement was reached in this regard.

[26] The Plaintiffs concede that their counsel should have taken steps to extend the set down date and that it was a mistake not to do so. Koehnen J. confirmed in his March 4 Endorsement that the Timetable remained in effect. CRH's counsel raised the possibility of amending the Timetable in May due to the appeal. Even if the costs decision had been released on or shortly after July 8, it would not have been possible to schedule a private mediation, exchange and file mediation briefs, conduct the mediation and set the action down for trial all within 23 days. This should have been apparent to both parties' counsel. The reasonable and prudent course of action would have been for Plaintiffs' counsel to request CRH's consent to extend the set down date prior to July 31, preferably when counsel first discussed it in early May, and to schedule a case conference with me

as the Plaintiffs later did if CRH opposed. At the very least, Plaintiffs' counsel should have raised an extension on the July 8 call.

[27] However, counsel's failure to set the action down must be considered in the specific context of the present case and the ongoing discussions and correspondence between counsel. Based on the communications between counsel, the positions taken by the parties and the conduct of the proceedings, I am satisfied that it was reasonable for Plaintiffs' counsel to rely on and believe that CRH would not insist on strict compliance with the set down date. At no time prior to August 21 did CRH's counsel advise or suggest that CRH would be taking the position that it would not agree to extend the set down date so that mediation could be completed. This was a period of over 6 months from the granting of the Order, 2 months after the appeal decision and 3 weeks after the set down date expired. The silence of CRH's counsel on the July 8 call about a possible extension is more pronounced given the discussions in May with appeal counsel regarding the necessity and/or possibility of amending the Timetable. Taking everything into account, I accept that Plaintiffs' counsel was under the genuine belief that CRH was cooperating with respect to the set down date. The reasonableness of counsel's reliance is supported by the parties' agreement to use a private mediator, which necessarily would take longer to schedule; CRH's non-compliance with the deadlines in the Timetable to deliver its sworn affidavit of documents and answers to undertakings; the parties' non-compliance with the mediation deadline; and the Plaintiffs' accommodations of CRH.

[28] I reject any suggestion by the Plaintiffs that CRH appealed the Order as a delay tactic. The issue is that the effect of the appeal was to reduce the time available for mediation. I make no findings as to whether CRH's contributions to the failure to schedule mandatory mediation and set the action down were tactical. Intentional or not, they are relevant factors in assessing whether the set down date should be extended (*Houser* at para. 14; *Mohan Graphics Inc. v. Sherwin-Williams Canada Inc.*, 2022 ONSC 6610 at paras. 17-18; *Bolohan v. Hull*, 2012 ONCA 121 at para. 17). I agree with CRH that litigation is an adversarial process and CRH was not required to assist the Plaintiffs. However, CRH is not entitled to contribute to the circumstances which rendered compliance with the set down date impossible, by agreement, acquiescence and silence, and then, rely on those very circumstances to have the action dismissed (*Goldman v. Pace*, 2017 ONSC 1797 at paras 8, 11; *Arcadia Participacoes Ltda. v. Kondratiev*, 2019 ONSC 675 at paras. 24-25). This is the case even where CRH reasonably agreed with the Plaintiffs to defer mediation until after the appeal and to use a private mediator. If CRH intended to insist on the strict enforcement of the set down date then it should have given the Plaintiffs fair warning a reasonable period of time before its expiration on July 31, not after it had already expired (*Arcadia* at para. 25).

[29] I also conclude that granting a second extension is consistent with the longstanding principle that the court will not ordinarily allow an innocent client to suffer the irrevocable loss of their right to proceed and have their action decided on the merits due to inadvertence or errors of their lawyers (*H.B. Fuller Company et al. v. Rogers (Rogers Law Office)*, 2015 ONCA 173 at para. 27; *Arumugasamy v. Subaschandiran*, 2026 ONCA 102 at para. 20). This is particularly true given that I have also concluded that CRH would suffer no prejudice from a second indulgence (*1482241 Ontario Limited v. Clear Customers Brokers*, 2017 ONSC 7320 at para. 30).

[30] CRH argues that the conduct of Plaintiffs' counsel in missing the set down date constitutes

negligence, which is not an acceptable explanation. I decline to make a finding that Plaintiffs' counsel was negligent. To the extent to which counsel's conduct can be characterized as negligence, it does not prevent the court from finding that his conduct was not deliberate or intentional (*Cousins v. Roesler*, 2014 ONSC 4530 at para. 12; *Habib* at para. 7). Regardless of how counsel's conduct is characterized, I conclude that Mr. Uzelac relied on counsel and it is the kind of excusable non-deliberate, unintentional error of omission which should not be visited upon the Plaintiffs to deprive them of the right to proceed with their action (*1482241 Ontario Limited* at para. 30).

[31] I also do not accept CRH's assertion that Plaintiffs' counsel should have set the action down for trial by delivering a notice under Rule 24.1.09(5)(a) stating the name of the mediator and the mediation date. This still would have required the parties to schedule mediation before July 31 which they had not done and were considering delaying further until the costs decision was released. This is also not the usual practice in Toronto where parties typically file a mediator's report after mediation under Rule 24.1.09(5)(b). On cross-examination Mr. Gillman stated that he was unaware that filing a notice before mediation was an option in Toronto. In my view, this would fall within the category of solicitor inadvertence.

[32] I reject CRH's submissions that the Plaintiffs have filed insufficient evidence and that they should have filed affidavits from Mr. Uzelac and Mr. Sills. This is the kind of procedural motion where an affidavit from the plaintiff is not necessary (*Ferriera v. Cardenas*, 2014 ONSC 7119 at para. 15; *Karagiannis v. Riapov*, 2018 ONSC 2575 at para. 14). As Myers J. held in *Ferriera*:

"Some procedural motions turn on evidence that counsel is uniquely situated to provide. For example, a motion for dismissal for delay under rule 24.01 or a motion to amend a timetable under rule 3.04 will turn on facts concerning how the litigation has progressed or the reasons why it may not have progressed for a period of time. Counsel, rather than clients, are often best suited to have personal knowledge of these types of facts."

[33] The material facts on this motion relate to the progress of the litigation based largely on communications between counsel. Mr. Gillman was primarily responsible for communicating with CRH's counsel and advancing the litigation. His affidavit evidence is sufficient and proportionate to explain the relatively short period of 5.5 months which is the focus of this motion and, as applicable, the overall delay (*Erland v. Ontario*, 2019 ONSC 462 at para. 10).

[34] I also conclude that the Plaintiffs have satisfied their onus that CRH would not suffer any actual prejudice if a second indulgence is granted and the set down date is extended.

[35] Actual prejudice is any prejudice which would impair the Defendants' ability to defend the action resulting from the plaintiff's delay, not due to the mere passage of time (*Carioca's* at para. 57; *H.B. Fuller Company et al. v. Rogers (Rogers Law Office)*, 2015 ONCA 173 at para. 37). The Court of Appeal recently confirmed in *Arumugasamy* that the court is obliged to link the question of prejudice to whether a fair trial is still possible, and must consider whether there is real prejudice to the respondent's ability to put its case forward on the merits (*Arumugasamy* at paras. 15-16).

[36] I am satisfied that a fair trial is still possible and that there is no prejudice to CRH's ability to present its case and defend this action resulting from the delay and missed set down date. In fact, in the 5.5 months after the Order was granted, all remaining steps other than mediation were completed including the delivery of answers to undertakings. Not only did no prejudice arise during this period, but the record is substantially complete and the matter is ready for trial. CRH pointed to the unavailability of certain "in-and-out" tickets from 2017 however, this is not sufficient to alter my conclusions. The parties' discovery evidence and the material documents are available and CRH's counsel confirmed on cross-examination that there are no witnesses who have become unavailable, no documents that have been lost and no memories that faded due to the 5.5 month period. Even considering the overall delay since the action was commenced, there is no basis to conclude that CRH would suffer any prejudice at trial if a second indulgence is granted.

[37] CRH's primary submission is that a strong presumption of prejudice arises due to the passage of more than 8 years since the action was commenced. Prejudice is inherent in long delays as memories fade and fail, witnesses become unavailable, and documents and other potential exhibits are lost giving rise to a presumption of prejudice due to concerns of trial unfairness which the plaintiff must rebut (*Arumugasamy* at para. 13; *Langenecker v. Sauvé*, 2011 ONCA 803, at para. 11; *DK Manufacturing Group Ltd. v. MDF Mechanical Limited*, 2019 ONSC 6853 at para. 28; *1196158 Ontario Inc.* at para. 42). The longer the delay, the stronger the inference of prejudice to the defence flowing from that delay (*Langenecker* at para. 11). The plaintiff is not required to adduce affirmative evidence rebutting the presumption of prejudice, rather the court must consider all of the circumstances in evaluating the strength of the presumption (*1196158 Ontario Inc.* at para. 6(b); *DK Manufacturing* at para. 29). Unless the delay is truly inordinate, presumed prejudice alone will not usually justify depriving a plaintiff of their substantive rights (*Arumugasamy* at para. 16). As the Court of Appeal held in *Carioca's*:

"I do not accept that speculation that a case *may* depend in part on oral evidence, coupled with the assumption that witnesses' memories generally fade over time will, without more, prevent a plaintiff from satisfying the prejudice prong of the test. Counsel routinely address the reality of the passage of time in the litigation process by collecting and producing documents, undertaking oral examinations for discovery and taking witness statements. There are other methods under the rules to preserve evidence that may disappear or be lost before trial." (*Carioca's* at para. 76)

[38] I cannot conclude that a presumption of prejudice arises. I held on the first status hearing that no presumption had arisen, and to the extent that one did, it was not a strong one and had been rebutted. Even now considering the overall delay, nothing has changed in the additional 5.5 months to give rise to a presumption of prejudice. Any presumed prejudice would also be insufficient on its own to justify dismissal given the absence of inordinate delay and other factors.

[39] CRH also argues that since the record shows that Mr. Uzelac is in his 90s and relies on his sons, who rely on counsel, this raises capacity and memory issues which will prejudice CRH at trial. CRH submits that if Mr. Uzelac had sworn an affidavit then CRH could have cross-examined him to canvass these issues. There is no basis to conclude that Mr. Uzelac may have capacity or memory issues or that they would cause prejudice or arose due to any delay, and his

discovery evidence and documents are available.

[40] In all of circumstances, I conclude that the Plaintiffs have satisfied their onus to show cause that the set down date should be extended. In light of counsel's unintentional error and reasonable reliance on CRH's counsel and the lack of prejudice, the present case calls for a second indulgence. The Plaintiffs should not lose their right to have their claim tried on its merits with only mediation remaining due to their lawyer's technical non-compliance with the set down date. This would allow Rule 48.14 and the set down date to be used as a technical trap for the unwary and would not achieve the proper balance of the parties' interests or the balance between timely justice and determining actions on their merits (*Daniels v. Grizzell*, 2016 ONSC 7351 at para. 13; *Goldman* at para. 11).

III. Disposition and Costs

[41] Order to go extending the set down date to December 31, 2026. The parties shall complete mediation on or before November 30, 2026. The mediation deadline may be amended on consent. The set down date shall only be amended by further order of the court.

[42] The parties shall attempt to resolve the costs of the motion. Given how close this action is to trial, the parties should consider deferring costs to trial. If the parties cannot agree on the costs of this motion, they may file written costs submissions not to exceed 4 pages (excluding Costs Outlines and other attachments) on a timetable to be agreed upon by counsel.

Released: July 20, 2026

Associate Justice McGraw