

Court File No. M47078

Ms Qu, assisted by Duty Counsel, appears in person. An interpreter was provided. No Notice of Appeal has been filed and the material filed did not disclose the purpose of the motion. Duty Counsel proffered the view that Ms Qu should return to the trial judge in an attempt to file fresh evidence before him. The respondents treated the motion as a request to extend the time to file a Notice of Appeal. I agree and do the same.

The judgment sought to be appealed arises from two motor vehicle accidents: December 2002 and February 2007. Ms Qu was the plaintiff in both actions which were tried together.

During the course of the proceedings there were pre-trial conferences before Faieta J. who clearly attempted to assist Ms Qu in the presentation of evidence. Ms Qu was repeatedly advised to present medical evidence to support her claims. She was told of the necessity to expert reports. She was given the instructions for self-represented litigants.

When the trial proceeded, she was the only witness. Following the completion of her testimony, the trial judge ruled that the “threshold” of serious and permanent impairment had not been met. Ms Qu protested and left the trial after being advised that the respondents would be moving for a dismissal. She did not return. The claims were dismissed as abandoned on June 20, 2016.

Against this background, I consider whether there should be an extension of time granted for her to file an appeal.

The following five factors are relevant on motions to extend these time limits:

- (1) whether the appellant formed an intention to appeal within the relevant period;
- (2) the length of, and explanation for delay;
- (3) any prejudice to respondent;
- (4) the merits of the appeal; and
- (5) whether the “justice of the case” requires it.

There is no evidence that the applicant formed an intention to appeal within the relevant time. This motion was served in November 2016 long after the 30 day period.

There is no explanation for the delay.

There is prejudice to the respondents in that the accidents occurred 14 and 9 years ago respectively. There is obvious difficulty inherent in presenting a defence.

The merits of the appeal are dubious at best. The applicant – although repeatedly advised by a judge of the Superior court to present medical evidence – chose not to do so. There is no evidence upon which this court could determine the merits of her claims for damages. Duty Counsel's suggestion that she return to the trial judge do not engage this court and I make no comment in that regard.

On all of these facts, I conclude that the justice of the case does not require the granting of the extension to file an appeal.

ML Benetto J.A

December 21, 2016

*Approval of this order by the applicant
is dispensed with.*

*ML Benetto J.A
Dec 21/16*