

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Chemama, 2014 ONCA 171

DATE: 20140307

DOCKET: M43395 & M43425 (C46851)

Rosenberg, Epstein and Benotto JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Erich Chemama

Applicant/Appellant

Erich Chemama, appearing in person

Greg Skerkowski, for the respondent

Heard: February 19, 2014

On application to review the order of Justice Gillese dated December 17, 2013 and on application to review the order of Justice Feldman dated January 14, 2014.

ENDORSEMENT

[1] The appellant applies to review the decision of Gillese J.A. fixing March 11, 2014 as the date for the hearing of a number of his appeals. He also seeks to review the decision of Feldman J.A. dismissing his application for appointment of counsel, Mr. D. Brodsky, pursuant to s. 684 of the *Criminal Code*. If he were appointed, Mr. Brodsky would not be able to prepare and argue these appeals on

March 11. He says that he would not be ready until June or July. Most of these appeals relate to very old matters going back to 2007 and 2008. Armstrong J.A. made a s. 684 order in December 2009. Since that time, the appellant has dismissed or refused to co-operate with three counsel. On December 13, 2011, Daniel Santoro was appointed *amicus* in an order by Simmons J.A. He had previously been counsel for the appellant. Mr. Santoro has prepared materials and is ready to argue these appeals on March 11 and make such arguments as he feels are justified.

[2] The appellant says that he has confidence in Mr. Brodsky and wants him to be appointed for him. He argues that the appointment of Mr. Santoro violates the recent decision of the Supreme Court of Canada in *Ontario v. Criminal Lawyers' Association*, 2013 SCC 43. We do not agree. Given the lengthy history of these matters it is apparent that any counsel appointed by the appellant would be dismissed by him. This is a proper case to appoint *amicus*, who cannot be dismissed by the appellant. As Karakatsanis J. said for the majority in *Ontario v. Criminal Lawyers' Association* at para. 46, the authority to appoint *amicus* is grounded in the court's authority to control its own process and function as a court of law. The history of these proceedings shows that the appellant's conduct, while perhaps unintentional, has nonetheless resulted in a frustration of this court's obligation to deal with appeals that have been outstanding for many years. Mr. Santoro has not been appointed to act as defence counsel. He will

make those arguments that he believes are available on the record to assist this court. His appointment does not mirror the responsibility of defence counsel in the sense referred to by Karakatsanis J. in para. 50. The appointment does not interfere with the appellant's right to represent himself and to make such arguments, in addition to those made by *amicus*, that are available on the records for these appeals. Mr. Santoro may consult with the appellant but he is not taking instructions from him.

[3] Justice Feldman gave lengthy and careful reasons for her decision to dismiss the appellant's application to have Mr. Brodsky appointed as counsel. That decision was correct.

[4] After many years, the time has come to deal with these appeals. The application to review the decision of Feldman J.A. is dismissed. The application to review the decision of Gillese J.A. depended upon the success of the first motion. Since that motion has failed the appeals will proceed on March 11, 2014.

"M. Rosenberg J.A."
"Gloria Epstein J.A."
"M.L. Benotto J.A."