

# COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Mohammad, 2024 ONCA 494

DATE: 20240619

DOCKET: M53951 (COA-22-OM-0070) & M54249 (COA-23-CR-0143)

Roberts, Monahan and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent (Respondent/Responding Party)

and

Ahmad Mohammad

Applicant (Appellant/Moving Party)

Ahmad Mohammad, acting in person

Jacob Millns, for the responding party

Heard: June 13, 2024

## REASONS FOR DECISION

[1] The moving party seeks a panel review of the orders of Miller J.A., dated November 16, 2022, and Favreau J.A., dated April 5, 2023. These reasons explain why we dismiss the motions.

### **Background**

[2] The moving party was formerly a student at McMaster University (the “University”). Beginning in 2017, he was supervised by Professor Bakr and a

co-supervisor, and by early 2019, Professor Bakr noticed a deterioration in the moving party's mental health. The moving party showed signs of paranoia, including making accusations of faculty stealing and manipulating his research. In 2019, he began to call Professor Bakr repeatedly.

[3] In February 2019, the University severed its relationship with the moving party via a *persona non grata* letter, prohibiting him from entering any University property or communicating with members of the University community, although he continued to communicate with them through third parties. The University issued several more letters. In the fourth letter, the moving party was notified that continued non-compliance may result in criminal charges. On February 10, 2020, Professor Bakr was approached by the moving party on the way to his car that was parked on campus. The moving party was charged with criminal harassment the same month.

[4] The Crown sought a common law peace bond. Justice Campling of the Ontario Court of Justice imposed a two-year peace bond on June 29, 2021, which was upheld on judicial review by Goodman J. of the Superior Court of Justice in December 2021. In November 2022, the moving party brought a motion for an extension of time to serve and file a notice of appeal from Goodman J.'s decision. This was a 10-month delay.

[5] Following the peace bond, the moving party filed private prosecutions against three people associated with the University. *Pre-enquete* hearings were held before a Justice of the Peace and at each hearing the Crown exercised its prosecutorial discretion, entering a stay of proceedings for all three private prosecutions. The moving party sought review of or relief in view of the stays. Goodman J. summarily dismissed the moving party's request.

### **Decisions Under Review**

[6] Miller J.A. dismissed the moving party's motion for an extension of time. The Crown advanced two arguments: first, the moving party did not have a valid explanation for the 10-month delay; and second, the proposed appeal was entirely without merit. Miller J.A. agreed with the Crown that there were no plausible grounds of appeal from the order of Goodman J. and that the moving party did not identify any errors in the decision of Campling J. As such, the appeal was without merit, and the motion was dismissed.

[7] The moving party appealed the decision of Goodman J. affirming the entering of stays in the private prosecutions. He subsequently brought a motion asking this court to order the production of documents and recordings, to summons the three people against whom he sought to bring private prosecutions, and to summons other people he describes as eyewitnesses.

[8] Favreau J.A. found it was not in the interests of justice to compel the production of fresh evidence or to summons any of the witnesses to the hearing. She noted the court's role is to review for any legal errors of Goodman J. and not to re-try a case. She noted that the decision to order fresh evidence is generally to be made by a panel of this court and not a single judge. She concluded that there was no basis for granting the relief sought, and the motion was dismissed.

### **Issues and Analysis**

[9] The moving party asserts that Miller J.A. and Favreau J.A. erred in dismissing his motions. While not pursued in oral argument, he also submits in his factum that Favreau J.A.'s dismissal of his motion should be set aside on the basis of bias.

[10] We are not persuaded that there is any basis for appellate intervention.

[11] A panel review of a motion judge's decision is not a *de novo* determination: *Machado v. Ontario Hockey Association*, 2019 ONCA 210, at para. 9; *Asghar v. Toronto (Police Services Board)*, 2021 ONCA 338, at para. 6. Intervention is warranted if the motion judge "failed to identify the applicable principles, erred in principle or reached an unreasonable result": *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 18; see also *Oliveira v. Oliveira*, 2022 ONCA 218, at para. 5. Absent legal error or misapprehension of evidence, discretionary decisions of a motion judge, such as the refusal to grant an extension

of time, to order production, or to permit summons to witnesses, are entitled to deference: *SS & C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, 2021 ONCA 913, at para. 6.

[12] The motion judges made no reversible errors. Nor is there any indication of bias in Favreau J.A.'s decision. The moving party has failed to meet the high onus to displace the presumption of judicial impartiality.

### **Disposition**

[13] For these reasons, the review motions are dismissed.

“L.B. Roberts J.A.”  
“P.J. Monahan J.A.”  
“J. Dawe J.A.”