

CITATION: D’Mello v. Sapusak et al., 2023 ONSC 3088
COURT FILE NO.: CV-22-2425, CV-22-2405
DATE: 2023 05 23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Roy D’Mello, Applicant

AND:

Chris Jamie Sapusak, The Honourable Justice Leonard Ricchetti,
Respondents

AND:

RE: Roy D’Mello, Applicant

AND:

Chris Jamie Sapusak, Attorney General of Ontario, Attorney General
of Canada, Respondents

BEFORE: Justice P. A. Daley

COUNSEL: R. D’Mello – Self-Represented

N. Colville-Reeves & C. Zhao – For the Respondent, Chris Jamie
Sapusak

HEARD: April 21, 2023

ENDORSEMENT

[1] The applicant in the two above-styled proceedings continues his unrelenting and continuous campaign of stonewalling and delay of the underlying civil action by weaponizing the *Rules of Civil Procedure*, in order to obstruct the court’s due process.

[2] The respondent in the two above-styled applications, Chris Jamie Sapusak (“Sapusak”) brought motions to have the two above-styled applications, instituted by Roy D’Mello (“D’Mello”), struck out or dismissed.

[3] Similar motions were brought by the respondents The Honourable Justice Leonard Ricchetti (“RSJ”) and the Attorney General of Ontario (“AG Ontario”) and the Attorney General of Canada (“AG Canada”).

[4] On consent of all parties the applicant agreed to the dismissal of his application against the AG Canada in the application CV – 22 – 2405.

[5] The respondents the RSJ and AG Ontario moved for orders dismissing or striking out both applications. For my reasons for judgment released on February 8, 2023, the applications as against those respondents were dismissed without leave to amend: *D’Mello v. Sapusak et al.*, 2023 ONSC 970.

[6] As the underlying facts, evidentiary record and the legal principles applicable are the same on the present motions brought by the respondent Sapusak, for simplicity and economy, I hereby incorporated by reference my earlier reasons for decision, as cited above, in these reasons and as such, the earlier reasons shall be treated as part of the present reasons for decision.

[7] As was the case on the earlier motions, D’Mello failed to file any responding material or factum on the present motions.

[8] For the reasons set out in my earlier decision, despite the fact that the applicant failed to comply with the requirements of Rule 37.10 (1), I nevertheless reviewed the material which he filed with the court within the applications proper on the hearing of the present motions. Again, I have concluded that there is no evidence whatsoever contained in the application records that would properly bear upon the determination of the present motions. The evidence adduced in that material filed in the applications proper adds nothing to any position that could have been advanced by the applicant in responding to these motions.

[9] On his motions, the moving respondent urges that both applications must be dismissed as against him for the same reasons advanced by the other respondents on their motions, namely on the basis that the applications disclose no reasonable cause of action against him, they plainly and obviously cannot succeed and further the applications are frivolous, vexatious and an abuse of process in that they constitute collateral attacks on prior judicial decisions.

[10] I have concluded for the reasons to follow that both applications brought against the respondent Sapusak must be dismissed as it is plain and obvious and beyond doubt that the applications cannot succeed.

[11] Furthermore, it is noteworthy that no relief whatsoever is sought from the moving respondent in either application.

[12] As to application CV – 22 – 2425, D’Mello, in his application record filed just prior to the return of the respondent’s motions incorporates a document entitled “Amended Notice of Application”. The document is dated January 20, 2023, however the document was not issued by the Ontario Superior Court of Justice. The so-called Amended Notice of Application is an amended version of the original Notice of Application largely with respect to the nature of the relief sought which all asserts alleged bias and improper judicial conduct on the part of the RSJ.

[13] In order to ensure that the record before me was true and accurate, I personally inquired of the court’s civil filing office with regard to the so-called Amended Notice of Application and I was advised that no such application had ever been filed or issued by the court and as such for the purpose of these motions I considered only the originally issued Notice of Application in file CV – 22 – 2425.

[14] In file CV – 22 – 2405, the Notice of Application and the relief sought all relate to rulings of Petersen J in the underlying action and the claims asserted are all in the nature of appeals from those rulings.

[15] As set out in my earlier decision, both applications constituted proceedings in the nature of appeals and were collateral attacks on the orders made in the underlying action and therefore I concluded they were an abuse of the courts process.

[16] That conclusion applies equally to the respondent's present motions in both applications.

[17] In oral submissions D'Mello asserted that both applications were in reality proceedings seeking the recusal of the RSJ and Petersen J.

[18] In support of his position the applicant relied upon the Supreme Court of Canada decision in *R. v. S. (R.D.)*, [1997] 3 SCR 484 and specifically paragraph 99 of the majority decision wherein the court states:

If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. See *Curragh*, *supra*, at para. 5; *Gushman*, *supra*, at para. 28. This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision. In the context of appellate review, it has recently been held that a "properly drawn conclusion that there is a reasonable apprehension of bias will ordinarily lead inexorably to the decision that a new trial must be held": *Curragh*, *supra*, at para. 5.

[19] Notably the decision in that case was within the context of a criminal prosecution and the Ontario *Rules of Civil Procedure* were not applicable or engaged.

[20] The court's direction, in that decision, that where a judge appeared to have exceeded his or her jurisdiction the party can proceed by way of "an application to

the presiding judge for disqualification...” was not addressing considerations under Rule 14.05 of the *Rules of Civil Procedure*, but rather was using the term “application” in a general way in the context of a criminal proceeding.

[21] Rule 14.05 (3) identifies specifically the forms of relief that may be sought through the originating process of an application. The relief outlined in the present applications is not available through the process established in Rule 14.05 and as has already been noted, the applications constitute an abuse of process, in any event.

[22] The applicant is a lawyer licensed to practice law in Ontario and from the history of these proceedings and the underlying litigation, it is evident that he is entirely familiar with the intricacies of the *Rules of Civil Procedure*.

[23] Apart from my conclusions that the applications constitute an abuse of the court process and further that they had no hope of success, these ill-conceived applications are not proceedings that are otherwise authorized to be instituted as applications under Rule 14.05 and on that basis as well the applications must be dismissed.

[24] For these reasons, including my earlier reasons for decision on the previous motions, the motions brought by Sapusak are granted dismissing both applications as against him, without leave to amend.

[25] Counsel for Sapusak shall deliver brief submissions as to costs, along with a bill of costs within 15 days from the date of release of these reasons. D’Mello shall deliver brief responding submissions as to costs within 15 days thereafter. No reply submissions are to be filed.

Date: May 23, 2023

Daley J.

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BEFORE: Justice P. A. Daley

COUNSEL: R. D’Mello – Self-Represented

N. Colville-Reeves – For the Respondent,
Chris Jamie Sapusak

M. J. Sim & M. Chung – For the Respondent,
The Honourable Justice Leonard Ricchetti and
The Attorney General for Ontario

S. Phillips & A. Karakolis – For the
Respondent, The Attorney General of Canada

ENDORSEMENT

Date: May 23, 2023

Daley J.