

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: Behrouz Salehi

AND:

Bernard C. LeBlanc, Natasha S. Danson, and Professional Engineers of Ontario

BEFORE: Justice O’Brien

COUNSEL: *Mr. Salehi*, Self-Represented

HEARD: In-writing

ENDORSEMENT

Overview

[1] This endorsement provides my reasons for dismissing this application for judicial review pursuant to r. 2.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] It appears Mr. Salehi initially contacted the court on October 10, 2024 with a notice of application and his filing was rejected as late. He more recently contacted the court with a new notice of application dated August 12, 2025.

[3] After reviewing his notices of application as part of the case management process, it was not entirely clear which orders Mr. Salehi was seeking to have judicially reviewed. The notices of application do not expressly seek to have any order other than perhaps an order of Justice Merritt dated August 21, 2023 quashed.

[4] I issued directions seeking to clarify the orders Mr. Salehi sought to review. I also requested a copy of the Statement of Claim from the underlying action to assist in determining whether this court had jurisdiction over an appeal from the underlying orders. I later provided directions asking the Registrar to issue a notice under r. 2.1.

[5] In response to the notice under r. 2.1, Mr. Salehi has clarified that he is seeking to judicially review the orders of Justice Akazaki and Justice Hood.

[6] Justice Akazaki issued an endorsement dated January 24, 2024 setting aside the noting in default of the defendants, who are the respondents in this application, and granting the defendants leave to bring a motion in writing for summary dismissal of the action. The defendants sought

summary dismissal because they said the action repeated matters determined in a previous action. In an endorsement dated July 8, 2024, Akazaki J. also dismissed Mr. Salehi's attempt to bring a motion for default judgment.

[7] The motion for summary dismissal was put before Hood J., who, in an endorsement dated September 10, 2024, dismissed the action by striking Mr. Salehi's claim without leave to amend. Justice Hood found the action was a collateral attack on the court's order in the previous case. He subsequently ordered costs totaling \$13,000 against Mr. Salehi.

[8] I asked the Registrar to issue a notice under r. 2.1 because I was concerned the application was frivolous, vexatious or an abuse of the process of the court. I outlined the following reasons for my concern:

- a) It is within the court's discretion whether to grant judicial review.
- b) There is a right of appeal from a final order of a judge of the Superior Court of Justice.
- c) In this case, the right of appeal lies to the Court of Appeal and not the Divisional Court. This is because, under s. 19(1.2)(c) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (CJA), an appeal only lies to the Divisional Court if the amount claimed was not more than \$50,000. Although the Plaintiff did not fix the amount of damages in the Statement of Claim, it appears his intention was to claim over \$50,000 in damages.
- d) Since the appropriate route to challenge the underlying decision is to the Court of Appeal, it is unlikely this court would exercise its discretion to grant judicial review.

[9] In the directions, I asked Mr. Salehi to respond to the court's concerns. I also indicated it was open to him to withdraw his application and to file an appeal to the Court of Appeal, though he would need to seek an extension of time from the Court of Appeal to do so.

[10] In Mr. Salehi's responding submissions, he mostly addressed the merits of his challenge to the underlying orders rather than the question of jurisdiction. However, with respect to jurisdiction, he did say that if it was necessary "to assign a monetary value to this application," he suggested it be for: \$13,000 related to the costs order of Hood J., \$20,000 representing the reimbursement of an unauthorized charge to his credit cards; and \$17,000 associated with the costs order in this proceeding. He noted that the total value therefore was \$50,000.

[11] In his submissions, Mr. Salehi also stated the court was now attempting "to justify disregarding his submissions solely on the basis of alleged delay." For clarity, the court's concern as described above was focused on issues related to jurisdiction and the appropriateness of judicial review, not on delay.

[12] Mr. Salehi also alleged that I had already concluded the proceeding was frivolous or vexatious or otherwise an abuse of the process of the court. He stated this conclusion appeared to reflect a lack of impartiality since it was reached before the judicial review was formally filed.

[13] For the following reasons, I find the application for judicial review should be dismissed.

Analysis

[14] Rule 2.1 allows the court to stay or dismiss a proceeding where it appears on its face to be frivolous, vexatious, or otherwise an abuse of the process of the court. The application of r. 2.1 is “limited to the clearest of cases where the abusive nature of the proceeding is apparent on the face of the pleading and there is a basis in the pleadings to resort to the attenuated process”: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, [2015] O.J. No. 5692, at para. 8; *Mohammad v. McMaster University*, 2023 ONCA 598, [2023] O.J. No. 3997, at para. 6.

[15] The rule “must be interpreted robustly so that a motion judge can effectively exercise his or her gatekeeping function to weed out litigation that is clearly frivolous, vexatious, or an abuse of process”: *Scaduto*, at para. 8; *Visic v. Elia Associates Professional Corporation*, 2020 ONCA 690, at para. 8.

[16] An attempt to bring a claim that has no jurisdiction to grant the relief sought qualifies as an abuse of process, even if the claim is not otherwise frivolous and vexatious: *Berentschot v. Ontario*, 2025 ONSC 4857, at para. 8; *Edusei v. Philips*, 2025 ONSC 4723, at para. 17.

[17] In this case, Mr. Salehi’s application for judicial review is bound to fail. For the purposes of this order, I consider the orders of Akazaki J. to be subsumed in the final order of Hood J. and, therefore, there is no issue of delay. If the orders of Akazaki J. are treated as separate orders, Mr. Salehi would be late to seek review of them, but that is not the reason I am dismissing the application.

[18] In my case management directions, I raised the concern that the Court of Appeal would have jurisdiction over an appeal from the orders Mr. Salehi seeks to have reviewed and that this court therefore would not exercise its jurisdiction to judicially review the underlying orders. On further consideration, there is a more fundamental issue, which is that this court does not have jurisdiction to judicially review a decision of an Ontario Superior Court judge: *Bevan v. Ontario Society for the Prevention of Cruelty to Animals*, 2006 CanLII 10140 (ON CA), at para. 8; *Kostiuk v. Liu*, 2024 ONSC 3500, at paras. 4 and 5; *Berentschot*, at para. 10.

[19] As Charney J. stated in *Berentschot*, at para. 10:

As indicated, the Divisional Court does not have jurisdiction to entertain an application for judicial review of a Superior Court Judge, but only those of an “inferior court”. This is by virtue of the definition of “statutory power of decision” in s. 1 of the *Judicial Review Procedure Act* (JRPA), which includes “the powers of an inferior court”. Judicial Review in the context of the JRPA is a public law concept that establishes a statutory court to review the decisions of tribunals and inferior courts (and other persons exercising statutory powers) to ensure that these tribunals respect the rule of law: *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, at para. 13.

[20] Decisions of Superior Court judges are subject to review by the Court of Appeal or the Divisional Court by way of appeal: ss. 6 and 19 of the CJA. As I indicated in my initial directions, an appeal in this case would lie to the Court of Appeal because the relief sought in the Statement of Claim would total more than \$50,000. Paragraph 19(1.2)(c) of the CJA provides that, when the underlying order dismissed the claim, which is what happened in this case, this court has jurisdiction only if the claim sought a payment of not more than \$50,000 exclusive of costs.

[21] Mr. Salehi did not specifically quantify the damages he claimed in his Statement of Claim, but they included a payment of \$20,000 and “damages including [his] direct costs and lack of income for past ten years plus sixteen years of illegal actions of Professional Engineering of Ontario.” He also sought “emotional damages to [his] reputation and bringing down standard of living of [his] family.” From these claims, I take it he intended to claim a payment of more than \$50,000. Mr. Salehi’s statement that he now would seek less on the application does not affect the s. 19(1.2)(c). Therefore, to the extent the applicant wishes to appeal the underlying order, his appeal would not lie to this court.

[22] I also reject Mr. Salehi’s submission that I was biased because I concluded from the outset the application was frivolous, vexatious or an abuse of process. The nature of the r. 2.1 process is that a proceeding should appear “on its face” to be frivolous or vexatious or otherwise an abuse of the process of the court. Pursuant to r. 2.1.01(3), the court may make a r. 2.1 order on its own initiative.

[23] That said, in the court’s directions, I stated only that I was “concerned” the application was frivolous, vexatious or an abuse of process. I listed the reasons for my concern and asked Mr. Salehi to address the concerns in his responding submissions. I have only decided the application should be dismissed after reviewing Mr. Salehi’s responding submissions and finding they did not address my concerns.

[24] Because the Divisional Court has no jurisdiction over an application for judicial review of an order of a Superior Court judge, the application is doomed to fail. The application is dismissed pursuant to r. 2.1.

O’Brien J

Date: December 8, 2025