

**IN THE COURT OF APPEAL OF MANITOBA**

***BETWEEN:***

***HAIMANA ROMANA*** )

*(Plaintiff) Appellant* )

- and - )

***THE CANADIAN BROADCASTING  
CORPORATION, HOLLY MOORE,  
GOSIA SAWICKA*** )

*(Defendants) Respondents* )

- and - )

***KATHERYN MEDLAND, BORIS PETER  
WESNER and HAMISH MCKENZIE*** )

*(Defendants)* )

***H. Romana***  
*on his own behalf*

***J. B. Kroft, K.C. and  
R. J. E. Prokopanko***  
*for the Respondents*

*Chambers motion heard:*  
***February 29, 2024***

*Decision pronounced:*  
***April 05, 2024***

**TURNER JA**

**Introduction**

[1] The plaintiff (Mr. Romana) brings a motion pursuant to r 42 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *Rules*], for an extension of time to perfect his appeal. He also brings a motion pursuant to r 17(2) of the *Rules* restricting the evidence to be transcribed. The defendants, the Canadian Broadcasting Corporation (CBC), Holly Moore (Ms. Moore) and Gosia Sawicka (collectively, the defendants<sup>1</sup>), are opposed.

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<sup>1</sup> Prior to the trial of this matter, Mr. Romana discontinued his actions against Ms. Medland, Mr. Wesner and Mr. McKenzie.

[2] Mr. Romana sued the defendants in defamation. He said that a 2014 CBC investigative report about him and his business ventures, that was published on television, radio and the internet (the publications), was defamatory.

[3] A judge-alone trial proceeded over the course of eighteen days between April 24 and June 27, 2023, during which twenty-six witnesses testified. The trial judge found that the publications were reasonably capable of defamatory meaning. However, he found that the defendants made out the defences of justification (substantive truth) and fair comment, therefore Mr. Romana's claim failed.

[4] On July 31, 2023, Mr. Romana filed a notice of appeal. At the same time, he filed a letter to the registrar seeking permission to submit the notice of appeal without fulfilling the requirement of r 16(1) of the *Rules*, which states:

**Transcript of evidence**

**16(1)** Subject to rule 17, where oral evidence was tendered in the court appealed from, the appellant shall file with the notice of appeal confirmation satisfactory to the registrar that a transcript of evidence has been ordered for the court, unless a judge otherwise orders.

**Transcription de la preuve**

**16(1)** Sous réserve de l'article 17 et sauf ordonnance contraire d'un juge, lorsque des témoignages oraux ont été présentés devant le tribunal de première instance, l'appelant dépose avec l'avis d'appel une confirmation jugée satisfaisante par le registraire et indiquant qu'une transcription de la preuve a été demandée pour le tribunal.

[5] With that letter, Mr. Romana attached the estimate he received that transcripts of the trial would cost just over \$20,000. The estimate also indicated that the amount had to be paid in full before transcripts would be prepared. Mr. Romana wrote in his letter to the registrar that, at the time, the costs were beyond his reach but that he was aware he could make a motion to a judge for an order restricting the evidence to be transcribed in accordance with r 17(2) of the *Rules*, which states:

**Limiting evidence**

**17(2)** A party may apply to a judge for an order restricting the evidence to be transcribed to that which is relevant to the appeal.

**Restriction de la preuve**

**17(2)** Une partie peut demander à un juge de rendre une ordonnance limitant la transcription de la preuve à celle qui est connexe à l'appel.

[6] Mr. Romana did not do anything to further his appeal until he received a letter from the deputy registrar on February 6, 2024. That letter informed Mr. Romana that unless his appeal was perfected in accordance with the *Rules* (in other words, unless transcripts were filed in the Court of Appeal), his appeal would be deemed abandoned on March 7, 2024.

[7] On February 23, 2024, Mr. Romana filed this motion.

An Extension of Time

[8] In *Penner v Montcalm (Rural Municipality)*, 2020 MBCA 97 at para 10 [*Penner*], Mainella JA set out the factors a judge must consider when determining whether to grant an extension of time:

- (i) there was a continuous intention to appeal;
- (ii) there is a reasonable explanation for the delay;
- (iii) there are arguable grounds of appeal; and

(iv) any prejudice suffered by the other party can be addressed.

[9] In addition, the overarching question is whether granting an extension of time would be right and just in all the circumstances (see *Finley v Times*, 2011 MBCA 101 at para 2; see also *Delichte v Rogers*, 2018 MBCA 79, aff'd 2019 MBCA 69).

*Has Mr. Romana Had a Continuous Intention to Appeal and Is There a Reasonable Explanation for the Delay?*

[10] In Mr. Romana's circumstances, the first two factors are very much interrelated, therefore I will deal with them together.

[11] At the hearing before me, Mr. Romana was very open about the mental health issues he has dealt with since a young age. His condition is well-managed by medications, but the intensity of his symptoms varies significantly from day to day. The trial judge noted in his decision that Mr. Romana is "exceptionally intelligent, charismatic and multi-talented"; nonetheless, his mental health "is a pervasive presence in all matters related to his businesses, the publications and trial" (*Romana v The Canadian Broadcasting Corporation*, 2023 MBKB 105 at para 9).

[12] In addition, Mr. Romana suffered a serious heart attack in July 2022. Since that time, he has been under the supervision of medical professionals and is on several medications.

[13] The defendants submit that Mr. Romana has not presented any objective evidence to show that his mental or physical health conditions have prevented him from moving the appeal forward and/or bringing this motion

in the last seven months. In addition, they say that there is no evidence that his conditions are any different now than they were at the time he successfully conducted the multi-week trial.

[14] From the letter that accompanied his notice of appeal, it is clear that Mr. Romana knew that transcripts were required to perfect his appeal and that if he wanted to reduce the number of transcripts required, he had to seek the permission of a judge. In an email exchange on November 9, 2023, counsel for the defendants reminded Mr. Romana that he would have to bring a motion to restrict the evidence to be transcribed.

[15] I accept that the combination of Mr. Romana's mental and physical health issues impaired his ability to perfect his appeal to some degree. I am not suggesting that every litigant who has health issues has *carte blanche* to delay moving an appeal forward. However, when I consider the extensive medical material provided by Mr. Romana on this motion and the observations noted by the trial judge in his decision, I find that Mr. Romana had a continuous intention to appeal and that his serious mental and physical health issues provide a reasonable explanation for the delay.

*Are There Arguable Grounds of Appeal?*

[16] As explained in *Mann v Mitchell*, 2019 MBCA 44, “an arguable ground is one which survives a preliminary examination under the applicable standard of review and has the potential to succeed and to change the result of the hearing below” (at para 3).

[17] Demonstration of an arguable ground of appeal is a low threshold but must be demonstrated on the materials filed (see *Penner* at paras 14-15).

[18] Mr. Romana has filed a notice of appeal with approximately thirty grounds of appeal. Most of the grounds relate to alleged errors of fact or errors of mixed fact and law. Some illustrative examples include: Mr. Romana says that the trial judge erred in finding that Ms. Medland provided Mr. Romana with \$50,000, he erred in finding that Ms. Moore was a credible witness, and the trial judge erred in failing to find that some of the statements in the publications were fabricated.

[19] To be successful on allegations of error of fact, Mr. Romana will have to convince a panel of this Court that the trial judge committed a palpable and overriding error. The standard of review will be deferential, and this Court will only interfere if they find that the trial judge made an error that would have been determinative of the outcome of the case (see *BN v Anglican Church*, 2020 MBCA 127 at paras 15-16). It is a high standard to meet.

[20] Mr. Romana also raises two issues regarding admissibility of evidence. First, he says that the trial judge erred in allowing the defendants to enter a document into evidence that was not produced to Mr. Romana in discovery. Second, he says that the trial judge erred in not allowing Mr. Romana to tender an email that he submits was material to an issue at trial.

[21] Admissibility of evidence raises a question of law, which is judged on a standard of correctness (see *R v Herntier*, 2020 MBCA 95 at paras 131, 217). Absent an error in principle, whether such evidence was properly admitted is a question of mixed fact and law to be reviewed on a standard of palpable and overriding error (see *Dobrowolski v Dobrowolski*, 2020 MBCA 105 at paras 21-22).

[22] While Mr. Romana's notice of appeal is lengthy and complex, I would not describe it as incomprehensible. It is difficult to truly assess the grounds of appeal without any transcripts, which puts Mr. Romana in a bit of a Catch-22.

[23] In all the circumstances, while Mr. Romana is going to have a steep hill to climb given that the standard of review on the vast majority of his grounds of appeal is very high, I am prepared to conclude, on the low threshold I am to apply at this stage, he does have arguable grounds of appeal.

*Can Any Prejudice Suffered by the Other Party Be Addressed?*

[24] Appeal periods are intended to bring finality to proceedings. It is in the best interests of everyone involved that legal proceedings do not hang over the heads of the parties indefinitely (see *Wong v Grant Mitchell Law Corporation*, 2017 MBCA 49 at para 6).

[25] While costs are often a remedy for at least some of the prejudice suffered by a party, in 2020, the trial judge found that Mr. Romana was impecunious (see *Romana v CBC*, 2020 MBQB 72 at para 26). From Mr. Romana's submissions before me, it does not seem that has changed in any significant way.

[26] The prejudice to the other party should be weighed against an appellant's ability to bring an appeal of a trial judge's decision.

[27] I appreciate that the defendants continue to have this matter hanging over their heads, but in the balance, this factor weighs in favour of granting Mr. Romana a very brief extension of time.

*Would Granting an Extension Be Right and Just in All the Circumstances?*

[28] The defendants ask that I also consider that Mr. Romana has filed appeals in this Court twice and they were both deemed abandoned for failing to file the necessary material.

[29] Mr. Romana replied in his submissions that, on the first matter, he realized that he did not have a chance of success and therefore did not pursue the appeal. On the second matter, he says that he was in a similar position as now in that he was not able to afford the cost of transcripts. He acknowledged that rather than letting the appeals linger, he should have filed a discontinuance in each.

[30] Given that the other factors that I have considered above weigh in favour of granting an extension of time, even with Mr. Romana's past of abandoning appeals, I conclude that it is right and just to grant an extension in these circumstances.

An Order Restricting the Evidence to Be Transcribed

[31] Rule 17(2) of the *Rules* provides that a party may apply for an order restricting the evidence to be transcribed to that which is relevant to the appeal.

[32] The question is whether the appeal could be properly considered if the transcripts were limited to only portions of the evidence.

[33] There may be appeals where only a discrete portion of the evidence is relevant to the issue being appealed. This is not one of those cases.



[34] As noted above, Mr. Romana lists over thirty grounds of appeal. From my review, the grounds cover almost all aspects of the trial and most of the witnesses. The allegations of errors in the assessment of credibility, of conclusions that the trial judge could draw, of interpretations of evidence and admissibility of evidence seem to touch on every part of the trial.

[35] I understand that the costs associated with ordering transcripts can be prohibitive. However, it would be impossible for a panel of this Court to properly consider this appeal with anything less than full transcripts of what occurred at the trial.

[36] At the hearing of this motion, the parties consented to, and I granted, an order for electronic transcripts only.

[37] In addition, I asked Mr. Romana how long he would need to provide Registry with confirmation that he ordered transcripts. He said that he would order them that day. Out of an abundance of caution, I will give Mr. Romana until April 19, 2024.

[38] To be clear, Mr. Romana is to provide confirmation, to the satisfaction of the registrar, that electronic transcripts of the full trial in the Court of King's Bench<sup>2</sup> have been ordered no later than 4:00 p.m. on April 19, 2024. If he fails to do so, his appeal will be struck.

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<sup>2</sup> April 24 to 28, 2023; May 1 to 5, 2023; May 8 to 11, 2023; May 15 to 16, 2023; May 18, 2023; and June 27, 2023

Further Requirements to Perfect the Appeal

[39] In an attempt to avoid any further requests to extend time, I refer Mr. Romana to the *Rules* regarding the next steps he is required to take to perfect his appeal. I expect that those timelines will be strictly adhered to and there will be no further delays.

Costs

[40] The defendants raised the issue of costs in their brief; however, the issue was not discussed at the hearing.

[41] If Mr. Romana follows through with perfecting his appeal, the question of costs shall remain with the appeal.

[42] If Mr. Romana does not file confirmation of transcripts as set out above, I invite the defendants to provide me with written submissions as to costs no later than May 3, 2024, and Mr. Romana to respond in writing no later than May 10, 2024.

Conclusion

[43] For the foregoing reasons, I would grant the motion for an extension of time to perfect the appeal. I would deny the motion restricting the evidence to be transcribed but would make an order for the filing of electronic transcripts only.

Turner JA

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