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COURT OF APPEAL FOR ONTARIO

RE: HER MAJESTY THE QUEEN (Applicant) v. AHMAD
OMARZADAH (Respondent)

BEFORE: DOHERTY J.A.

COUNSEL: George McQ. Bartlett
for the moving party

Robbie Levita
for the respondent

HEARD: March 2, 2004

ENDORSEMENT

[1] Counsel for the appellant requests a further adjournment so that another counsel can argue the motion. The reason offered for the appellant's counsel for a further adjournment is unsatisfactory. The motion will proceed.

[2] The respondent successfully argued on appeal that his rights under s. 11(b) of the *Charter* had been infringed. The appeal judge stayed the proceedings. The applicant seeks leave to appeal.

[3] The applicant is concerned that the reasons below will be taken as establishing a six-month guideline for prosecutions under Part I of the *POA*. The applicant is concerned that delays beyond six months will be treated as presumptively unconstitutional. The

reasons below should not be read as authority for that proposition. The analysis of s. 11(b) provided in *R. v. Morin*, [1992] 1 S.C.R. 771 applies to *POA* prosecutions. To the extent that guidelines are helpful where s. 11(b) claims are advanced in prosecutions under Part I of the *POA*, the *R. v. Morin* summary conviction guidelines should govern. Even those guidelines, however, should not necessarily be strictly applied. It must be acknowledged that any "stigma" arising out of the delay in the trial of charges like speeding is virtually non-existent. In allocating finite resources, the state is entitled to give some priority to the speedy resolution of more serious allegations.

[4] I would, however, refuse leave to appeal. The delay was 14 months. The respondent objected to the proposed trial date immediately and put the prosecutor on notice of an 11(b) claim if the trial date was not changed. No attempt was made to accommodate the respondent's request. I see little prospect of this court reversing the result arrived at by the court below. Consequently, leave to appeal is refused.

A handwritten signature in black ink, appearing to read "Cory Allard". The signature is fluid and cursive, with the first name "Cory" and last name "Allard" clearly distinguishable.