

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. M.A., 2026 ONCA 358<sup>1</sup>

DATE: 20260520

DOCKET: M56930 (C70029, C70758, C70843, C70883)

Zarnett, Copeland and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent

and

M.A.

Appellant

M.A., acting in person

Étienne Lacombe, for the respondent

Daniel Brodsky, appearing as *amicus curiae*

Heard: May 8, 2026

REASONS FOR DECISION

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<sup>1</sup> This appeal is subject to a publication ban pursuant to s. 486.4 of the *Criminal Code*, R.S.C., 1985, c. C-46.

## Overview

[1] The appellant has five appeals pending in the inmate appeal stream, four of which have been grouped together for argument.<sup>2</sup> Each of these appeals arises from a different trial, involving different charges. In two of the grouped appeals (C70029 and C70758), the appellant has, since 2022, been pursuing an ineffective assistance of counsel (“IAC”) ground of appeal concerning two lawyers who acted as co-counsel during the trial proceedings that give rise to these two appeals (the “Existing IAC Claim”). Completion of cross-examinations for the Existing IAC Claim occurred in December 2025.

[2] In January 2026, the appellant served new Notices of Appeal, effectively seeking to add a new ground of appeal in three of the four grouped appeals (specifically, in C70758, C70843, and C70883). The appellant’s proposed new ground of appeal in each of these appeals is a claim that he received ineffective assistance from a different trial counsel than those subject to the Existing IAC Claim (the “New IAC Claim”). Having been directed on February 12, 2026 to seek leave from a panel to add the New IAC Claim as a ground of appeal, the appellant now moves for leave.

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<sup>2</sup> The four appeals (C70029, C70758, C70843 and C70883) were grouped by a direction of a panel of this court, dated July 4, 2023.

[3] The four grouped appeals are dated. The convictions in issue were rendered, and sentences for them imposed, between 2020 and 2022. In September 2023, two of the appeals, C70883 and C70843 (in which, at the time, no IAC claim had been made) were ruled complete in terms of their readiness to be scheduled for argument. Since then, these two appeals have not proceeded due to delays encountered in the other two appeals in which the Existing IAC claim was made.

[4] As cross-examinations for the Existing IAC Claim were completed in December 2025, the impediment to scheduling the four grouped appeals for argument is the appellant's desire to add the New IAC Claim as a ground of appeal in three of them. In addition to wishing to advance the New IAC Claim, the appellant opposes the Crown's request to "ungroup" the appeals if leave is granted. He wants the appeals to remain grouped so that none of them may proceed until all are ready.

[5] We deny leave to add the New IAC Claim as a ground of appeal. It is not in the interests of justice to allow the New IAC Claim to be raised at this point. We are not satisfied that there is a reasonable explanation for the delay in asserting it. Allowing it to be added at this stage will cause substantial further delay to the resolution of the already long delayed grouped appeals.

[6] To ensure progress in the grouped appeals, we make the ancillary orders described below relating to their scheduling for argument.

## **The Appeals**

### **i. C70029**

[7] This is an appeal from a September 8, 2020 conviction for sexual assault and from the sentence imposed on October 1, 2020.

[8] The Existing IAC Claim is advanced as one of the grounds in this appeal. The IAC Protocol<sup>3</sup> to advance that claim was initiated in 2022. Cross-examinations were completed for the Existing IAC Claim in December 2025.

[9] The appellant does not seek to raise the New IAC Claim in this appeal. However, because it is grouped with other appeals, his desire to raise the New IAC Claim in the other appeals interferes with the ability to schedule this appeal for hearing.

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<sup>3</sup> The steps necessary to advance an allegation of ineffective assistance of counsel set out in s. 15 of the *Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario*, effective March 1, 2017.

**ii. C70758**

[10] This is an appeal from a September 1, 2021 conviction for sexual assault and sexual interference,<sup>4</sup> and from the sentence imposed on February 3, 2022.

[11] The Existing IAC Claim is one of the grounds in this appeal. The IAC Protocol to advance that claim was initiated in 2022. Cross-examinations were completed for the Existing IAC Claim in December 2025. However, scheduling of this appeal for argument is currently delayed by the appellant's desire to advance the New IAC Claim as an additional ground in this appeal.

**iii. and iv. C70883 and C70843**

[12] C70883 is an appeal from a March 16, 2022 conviction for indecent exposure and from the sentence imposed on April 13, 2022.

[13] C70843 is an appeal from an October 25, 2021 conviction for possession of child pornography and from the sentence imposed on May 18, 2022.

[14] The Existing IAC Claim is not advanced in either of these appeals. Trotter J.A. deemed them complete (in terms of being otherwise ready to be scheduled for argument) in September 2023. Since that time, the appeals have been awaiting that scheduling, which has depended on the completion of the IAC Protocol in C70029 and C70758. As noted, cross-examinations were completed for the

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<sup>4</sup> The sexual assault conviction was stayed at the Crown's request, pursuant to *Kienapple v. R.*, [1975] 1 S.C.R. 729.

Existing IAC Claim in December 2025. However, scheduling of argument is now delayed because of the appellant's desire to advance the New IAC Claim as an additional ground in these appeals.

### **The Test and Its Application**

[15] This court has jurisdiction to preclude an appellant from belatedly adding or pursuing an IAC Claim in an existing appeal. In *R. v. Zhou* (31 March 2021), C66921,<sup>5</sup> MacPherson J.A. precluded an IAC Claim based on a finding that the appellant's attempt to raise IAC was "a delay tactic" and his decision was upheld by a panel of this court.<sup>6</sup>

[16] In our view, it will be appropriate for the court to prevent an appellant from adding a new ground of appeal long after the appeal was launched where 1) there is no reasonable explanation for the delay in raising the new ground, and 2) allowing it to be added will cause significant further delay to the resolution of the appeal. We find that both of these factors weigh against the appellant's request to add the New IAC Claim in this case.

[17] First, there is no reasonable explanation for the delay in asserting the New IAC Claim.

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<sup>5</sup> By case management directions.

<sup>6</sup> *R. v. Zhou* (1 September 2021), M52763 (C66921).

[18] With respect to C70843, the appellant alleges that trial counsel was provided with funds to retain an expert but did not do so on the basis that none could be found who would be acceptable to the court. The appellant stated in his submissions that he formed the view that that advice was deficient in 2024. He did not seek to raise this as a ground of appeal until 2026.

[19] With respect to C70758 and C70883, the appellant states that trial counsel who is the target of the New IAC Claim told him that a Blue Bin which was part of Crown disclosure contained nothing useful, but that he learned on or about July 7, 2025 that it contained documents (such as his Ontario and Quebec driver's licences, criminal record, and copies of credit applications) that he contends would have assisted in showing that he was not where the Crown alleged he was at the time of the offences.

[20] We reject the assertion that the appellant only discovered a basis to criticize the performance of trial counsel for not using documents such as his driver's licences, criminal record, or credit applications upon learning those documents were in the Crown disclosure. Copies of these types of documents were clearly available earlier from other sources. We also reject the suggestion that a claim on this basis was raised in a timely way even if it was only discovered in early July 2025. The appellant did not raise the New IAC Claim until January 22, 2026, although there were inmate appeal attendances relating to his appeals on July 18 and December 4, 2025, and on January 9, 2026.

[21] The appellant was aware of the effect that the Existing IAC Claim and the requirement to follow the IAC Protocol had on the timing of the grouped appeals. It was not reasonable for him to wait to raise the New IAC Claim until steps under the IAC Protocol with respect to the Existing IAC Claim were sufficiently complete that the grouped appeals were ready to be scheduled for argument.

[22] Second, given the need to start from scratch in initiating the IAC Protocol for the New IAC Claim, allowing it to be added at this late stage would inevitably mean significant further delay for the resolution of all of the grouped appeals.<sup>7</sup>

[23] Accordingly, we exercise our discretion to deny permission to the appellant to add the New IAC Claim as a ground of appeal in any of the grouped appeals.

### **Disposition**

[24] The appellant's motion is dismissed. The Notices of Appeal purporting to raise the New IAC Claim are struck.

[25] The grouped appeals are to be scheduled for hearing in the solicitors appeal stream, given the length of time expected to be allocated to them for oral argument and the fact that Mr. Brodsky has been appointed as *amicus* and can assist in the presentation of the appeals. In accordance with Mr. Brodsky's helpful suggestion, we direct that any factums for the grouped appeals be filed, in the case of the appellant, by at least thirty days before the date set for hearing, and in the case of

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<sup>7</sup> The Crown estimated at least a further year of delay. The appellant did not address this.

the Crown, by at least fifteen days before the hearing. To the extent the appellant has already filed factums for the appeals, he may replace them with amended factums that contain his arguments on the Existing IAC Claim; such amended factum(s) shall be filed by the deadline referred to above.<sup>8</sup>

“B. Zarnett J.A.”  
“J. Copeland J.A.”  
“J. Dawe J.A.”

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<sup>8</sup> In argument, the Crown made a submission concerning a fifth appeal, COA-26-CR-0149. In that matter, the appellant has been convicted but not yet sentenced. The Crown asked us to direct that appeal not be scheduled for hearing until after sentencing. Although that is the court’s normal practice, and we are not aware of any reason to depart from it, the matter is not directly before us and should be addressed as that appeal is managed through the inmate appeal stream.