

**IN THE MATTER OF AN APPLICATION TO DISMISS AN APPEAL UNDER  
SECTION 75 AND 76(11) OF THE  
LEGAL PROFESSION ACT, RSA 2000, c. L-8  
IN THE MATTER OF MARTIN McDONALD  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Special Meeting of the Benchers**

Bud Melnyk, QC – Chair  
Sony Ahluwalia – Bencher  
Bill Hendsbee, QC – Bencher  
Jim Lutz, QC – Bencher  
Moira Váně – Bencher  
Grant Vogeli, QC – Bencher  
Louise Wasylenko – Lay Bencher

**Hearing Date**

February 1, 2022

**Hearing Location**

Virtual Hearing

**DECISION OF THE BENCHERS PURSUANT TO SECTION 76(11)**

**Overview**

1. A special meeting of the Benchers (the “Panel”) was held by video conference on February 1, 2022 pursuant to section 75 and 76(11) of the *Legal Profession Act* (“Act”) to consider an application by the Law Society of Alberta (“LSA”) seeking to Dismiss the Appeal in the matter of Martin McDonald arising from the Appeal commenced February 2007.
2. As a special meeting of the Benchers, the President confirmed that this would be a written application, without oral submissions.
3. Mr. Shane Sackman appeared as counsel for the LSA. Mr. McDonald initially advised that he would be attending, but at the last moment he indicated that he was injured and would not attend, but that he was not opposed to the application proceeding in his absence.

**Preliminary Matters**

4. The jurisdiction of the Panel was established by Exhibits 1 through 4, consisting of the letter of appointment of the Panel, the Notice to Attend to the Former Member, the Certificate of Status of the Former Member with the LSA and the Letter of Exercise of Discretion. No objections were raised regarding the constitution of the Panel.

5. The LSA did not receive any request for a private hearing. Accordingly, the Panel directed that the hearing be held in public.
6. At the outset of the hearing Exhibits 1 through 13 were entered into evidence in the hearing.

### **The Authority of the Benchers to Dismiss an Appeal**

7. The *Act* provides a procedure for a member or the LSA to seek for the Benchers to Dismiss an Appeal, pursuant to section 76(11) of the *Act*.

### **Joint Submission on Abandonment**

8. LSA counsel advised that both the LSA and Mr. McDonald were consenting to the abandonment of the appeal without costs.
9. In considering the joint submission the Appeal Panel noted the following factors:
  - (i) That Mr. McDonald was consenting to the abandonment of his appeal.
  - (ii) That the LSA had incurred only nominal costs in the appeal.
10. The Supreme Court of Canada in *R v. Anthony-Cook* held that the trier of fact should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. While this matter is not strictly speaking a joint submission on sanction, the Panel is of the opinion that the policy reasons in *Anthony-Cook* would be reasonably appropriate in this instance. The Panel is therefore of the opinion that the joint submission would not bring the administration of justice into disrepute or that the joint submission is otherwise contrary to the public interest.

### **Conclusion**

11. The Appeal commenced by Mr. McDonald in February 2007 is hereby abandoned by consent and accordingly the appeal is dismissed on a without costs basis.

Dated at Calgary, Alberta, March 1, 2022.

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Bud Melnyk, QC – Chair

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Sony Ahluwalia

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Bill Hendsbee, QC

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