

**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 TERRY THOMAS  
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 sections 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 Terry Thomas arising from the Appeal made in December 2017.
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. Thomas did not attend this special meeting.

**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 12 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*, which states:

76(11) The Benchers may make an order dismissing the appeal, with or without a further order requiring the member to pay to the Society all or part of the costs of proceedings relating to the appeal, if

[...]

(c) the Benchers are satisfied that the member has otherwise abandoned the appeal.

### **History of Proceedings**

8. The history of this matter can be summarized as follows:
  - (a) On November 14, 2017 a Hearing Committee disbarred Mr. Thomas.
  - (b) Mr. Thomas appealed that decision in December 2017.
  - (c) In January 2018 Mr. Thomas was informed of the estimated cost of \$26,235.69 to prepare the hearing record, which costs have never been paid.
  - (d) On October 9, 2019 the LSA provided notice to Mr. Thomas of Rule 100.3 as required by Rule 100.3(4).
  - (e) On March 3 and April 7, 2020 the LSA wrote to Mr. Thomas advising him that the cost of preparing the hearing record had been reduced to \$9,891.00.
  - (f) Mr. Thomas sought a waiver of the hearing record costs. The waiver application was heard on October 8, 2020 by a panel of Benchers and they rendered a decision on October 15, 2020. The decision states in part:
    15. We decline to exercise our discretion under section 74(5) of the *Act*, but we recognize that little guidance was provided to Mr. Thomas as to our expectations on such an application. As such, we will provide Mr. Thomas with 30 days if he wishes to perfect his application after considering our reasons and we are prepared to reconsider it anew.

16. Barring that, our decision would become final and we would encourage the Law Society to bring an application under section 76(11)(c) dismissing this appeal as being otherwise abandoned. The costs to prepare the hearing records have still not been paid and the Former Member has provided nothing further to the LSA regarding the Decision or his appeal. The Decision was rendered nearly a year ago and the underlying appeal was started over four years ago.
- (g) Mr. Thomas made no further application for a waiver within the 30 days and the costs of preparing the hearing record have never been paid.

### **Adjournment Application**

9. Mr. Thomas did not appear at this special meeting, but he did seek an adjournment by way of a string of email communications which can be summarized as follows:
  - (a) Mr. Thomas advised the LSA on January 27, 2022 that he was not available on February 1, 2022 since he was in “training” and that he had been very ill, and given the lingering effects of his illness he had been in a “Covid study” through his work place.
  - (b) LSA counsel replied to Mr. Thomas on January 27, 2022 that the LSA was opposing the adjournment request for the following reasons:
    - i. Mr. Thomas was provided with the application materials on October 26, 2021 and the date of this special meeting was provided to Mr. Thomas on November 19, 2021.
    - ii. On December 21, 2021 Mr. Thomas provided the LSA with a new email address and again on January 4, 2022 the LSA provided Mr. Thomas with the application materials and notice of the February 1, 2022 date.
10. The LSA was opposed to the adjournment application and in support of their position they referred this Panel to the Alberta Court of Appeal decision in *Broda v. Law Society of Alberta*, 2017 ABCA 118. In that case a member was granted an adjournment by an appeal panel which adjournment was subject to a number of timeline related conditions. The member did not meet those adjournment conditions and the appeal panel subsequently dismissed the appeal. The Alberta Court of Appeal, after citing section 76(11)(b) of the *Act*, dismissed the member’s application stating:

[9] It seems to us that every courtesy was extended to the appellant. He had ample opportunity to make full answer and defence to the allegations that brought him before the Law Society of Alberta. The record is replete with cogent evidence of foot dragging on his part which was met with patient regard by the Appeal Panel

to afford the appellant multiple opportunities to put forward his evidence and submissions. Procedural unfairness is not made out. The principle of *audi alteram partem* was adhered to throughout the proceedings. The principles of fundamental justice were not infringed.

### Adjournment Decision

11. Section 76(11)(b) of the *Act* states:

76(11) The Benchers may make an order dismissing the appeal, with or without a further order requiring the member to pay to the Society all or part of the costs of proceedings relating to the appeal, if

[...]

(b) the member or the member's counsel appears before the Benchers for the purpose of applying for an adjournment of the hearing and the Benchers consider the adjournment unjustified in the circumstances, or

[...]

12. The Panel has also taken into consideration the factors as particularized in paragraph 15 of the *Section 76(11) Appeal Dismissal Guideline*, dated September 26, 2019, which are repeated below:

The Benchers may rely on several factors when considering an adjournment application, including:

- a. lack of compliance with prior orders, directions or conditions of the pre-hearing conference chair or the Benchers;
- b. previous adjournments granted to the lawyer;
- c. whether previous and current appeal hearing dates were or are peremptory on the lawyer;
- d. the need to have the appeal concluded;
- e. evidence that the lawyer is seeking to manipulate the system by orchestrating delay;
- f. the seriousness of the consequences of the hearing to the lawyer;
- g. the potential prejudice to the lawyer if the adjournment is not granted;
- h. if requesting an adjournment to seek counsel, whether the lawyer had counsel prior to the hearing and whether the lawyer is honestly and diligently seeking to exercise the right to counsel;
- i. whether timely and adequate notice of the application for an adjournment was provided;
- j. the lawyer's reason(s) for being unable to proceed on the scheduled date;
- k. the length of the requested adjournment.

13. The Panel is not prepared to grant the adjournment request of Mr. Thomas. That request is not justified in the circumstances for the following reasons:
- (a) Mr. Thomas first had notice of today’s hearing on October 26, 2021, but he did not advise the LSA of his adjournment request until January 27, 2022, some four days before this Panel convened.
  - (b) Mr. Thomas has provided no explanation as to what sort of training was being done, nor was any documentation provided to support his medical situation.
  - (c) The Appeal of December 2017 was filed over four years ago and there is a cogent need to have the Appeal concluded.
  - (d) Mr. Thomas has given no indication as to how long of an adjournment he is seeking, which is suggestive of “foot dragging” on his part.

### **Appeal Dismissal Decision**

14. The Panel has considered the *Section 76(11) Appeal Dismissal Guideline*, dated September 26, 2019, and that Guideline states in part:

35. If the lawyer fails to comply with any obligation in Rule 100.2 or Rule 100.3, as the case may be, the Law Society may bring an application to the Benchers for an order dismissing the lawyer’s appeal as otherwise abandoned in accordance with section 76(11).

36. If the Benchers determine that the lawyer has failed to comply with any requirements in Rule 100.2 or Rule 100.3, they may make an order under Rule 100.4 dismissing the lawyer’s appeal as otherwise abandoned pursuant to section 76(11)(c).

15. Also considered by the Panel were Rules 100.3 and 100.4, which state in part:

100.3(1) This rule applies to appeals commenced prior to September 27, 2019, pursuant to section 75 of the *Act*, where the member has not done one or more of the following:

- (a) paid the cost of preparing the hearing record;
  - (b) provided written appeal submissions to Society counsel;
  - (c) complied with directions imposed on the member by the chair of a pre-hearing conference; or
  - (d) complied with requirements imposed on the member by the Benchers.
- [...]

100.4 If the member fails to comply with any of the member's requirements in Rule 100.2 or in Rule 100.3, as the case may be, the Benchers may, on application by the Society, make an order dismissing a member's appeal as otherwise abandoned pursuant to section 76(11)(c) of the Act.

16. The Panel is satisfied that Mr. Thomas has effectively abandoned his Appeal for the following reasons:
- (a) Mr. Thomas has failed to comply with the requirements of Rule 100.3(1)(a) in that he has not paid the cost of preparing the hearing record. That payment was due at least by November 15, 2020, some fourteen plus months ago.
  - (b) On October 9, 2019 Mr. Thomas was advised of an amendment to the Rules of the LSA, where he was advised that he was required to pay the costs of the hearing record or apply for a waiver. That letter also stated that the LSA could apply to have the Appeal dismissed due to it being abandoned. It was only after receiving this notice, which was almost two years after the Appeal was filed, that Mr. Thomas took steps for a waiver application.
  - (c) Mr. Thomas has failed to pay the hearing record costs despite being given an opportunity to renew his waiver application by the panel of Benchers on October 15, 2020.
  - (d) The November 14, 2017 Hearing Committee decision was rendered over four years ago, which is an unreasonable delay.
  - (e) Mr. Thomas has taken no other active steps to move his Appeal forward, other than the motion seeking a waiver of costs on October 15, 2020, and his actions are suggestive of unwarranted and deliberate delay.

## **Conclusion**

17. The Appeal filed by Mr. Thomas in December 2017 is accordingly dismissed.
18. Mr. Thomas is ordered to pay costs of the Appeal proceedings in the amount of \$3,965.06.

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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