

**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 DAVID SKRYPICHAYKO
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
Maira 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 David Skrypichayko arising from the Appeal made on June 9, 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. Skrypichayko 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.

Service

7. LSA counsel sought an order validating service pursuant to section 4 of the Rules of the LSA (Rules). The following particulars were evidenced regarding service of this hearing on Mr. Skrypichayko:
 - (a) Service of this application was sent by email to Mr. Skrypichayko on October 26, 2021.
 - (b) The email address that was used had been in use for a number of years and delivery notices were evidenced without any indication that the email address was either not in service or otherwise not receipted.
 - (c) Thereafter Mr. Skrypichayko did contact the LSA on November 24, 2021 about arranging for personal service of this application. However, Mr. Skrypichayko would not provide a current mailing address.
 - (d) An LSA investigator attended at the last known address for Mr. Skrypichayko on December 16, 2021, but the house appeared to be uninhabitable due to significant fire damage. Despite numerous attempts thereafter by the LSA investigator via email, text and Twitter to contact Mr. Skrypichayko, there was no response.
8. Section 114 of the *Act* states in part:

114 If any provision of this *Act* or the rules requires or authorizes the serving, giving or furnishing of a notice or other document on or to any person, the notice or other document is sufficiently served, given or furnished

 - (a) if it is served personally on that person,
 - (b) if it is delivered in accordance with the rules at (i) the official address for service of that person according to the records of the Society, in the case of a member or student-at-law, or (ii) the last known address of that person according to the records of the Society, in any other case, or
[...]
9. Section 4 of the Rules deals with service:

4 (1) Where a notice or other document is to be served, given or furnished pursuant to a provision of these Rules by a delivery under section 114(b) of the Act, the notice or other document may be delivered by a Benchers or an officer or employee of the Society, or any person engaged for the purposes by, or acting at the request of, a committee, a Benchers or an officer or employee of the Society, by

- (a) registered mail,
- (b) courier, or
- (c) mail, other than registered or certified.

(2) In addition to the delivery methods in (1), delivery may be by (a) fax, or (b) email to a member or student-at-law, and to any other person where that person explicitly or implicitly authorizes the Law Society to use that form of communication and has provided the required contact information for that purpose until that person advises the Law Society that the contact information is no longer valid or authorization is withdrawn.

10. It is the finding of this Panel that the email service on October 26, 2021 was effected in compliance with section 114 of the Act and section 4 of the Rules. Accordingly, service of this application is validated and deemed good service.

The Authority of the Benchers to Dismiss an Appeal

11. 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

12. The history of this matter can be summarized as follows:
- (a) March 18, 2016 a Hearing Committee disbarred Mr. Skrypichayko and a written decision was rendered May 11, 2017.
 - (b) Mr. Skrypichayko appealed that decision in June 2017.
 - (c) In June 2017 Mr. Skrypichayko was informed of the estimated cost of \$9,540.76 to prepare the hearing record, which costs have never been paid.

- (d) On October 9, 2019 the LSA provided notice to Mr. Skrypichayko of Rule 100.3 as required by Rule 100.3(4).
- (e) In response to this notice Mr. Skrypichayko applied to a panel of Benchers seeking a waiver of these costs.
- (f) On March 4 and April 7, 2020 the LSA wrote to Mr. Skrypichayko advising him that the cost of preparing the hearing record had been reduced to \$1,995.00. This revised amount has never been paid.
- (g) The waiver application was heard on October 8, 2020 by a panel of Benchers and they rendered a decision on October 26, 2020. The decision states in part:
 - 13. Mr. Skrypichayko has failed to satisfy the Panel of the articulated factors and accordingly the Panel is not prepared to grant the application to have the costs of the appeal record waived.
 - 14. While we have declined to exercise our discretion under section 74(6) of the *Act*, the Panel recognizes that the factors and information that would be relevant to a proper consideration of Mr. Skrypichayko's application were not known or provided to him at the relevant time. Accordingly, Mr. Skrypichayko will have 30 days from his receipt of our written decision to perfect his application. If Mr. Skrypichayko should provide such further evidence within this time period this Panel is prepared to reconsider his application anew.
- (h) Mr. Skrypichayko has made no further application for a waiver within the 30 days and the costs of preparing the hearing record have never been paid.

Appeal Dismissal Decision

- 13. 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).

14. 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*.

15. The Panel is satisfied that Mr. Skrypichayko has effectively abandoned his Appeal for the following reasons:

- (a) Mr. Skrypichayko 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 8, 2020, some fourteen plus months ago.
- (b) On October 8, 2019 Mr. Skrypichayko was advised of an amendment to the Rules, 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 some two plus years after the Appeal was filed, that Mr. Skrypichayko took steps for a waiver application.
- (c) Mr. Skrypichayko failed to submit further information to the panel of Benchers regarding his waiver application despite being given an opportunity to renew his waiver application by the panel of Benchers on October 26, 2020.
- (d) Mr. Skrypichayko has taken no further steps in his Appeal since the motion seeking a waiver of costs on October 8, 2020.
- (e) The May 11, 2017 Hearing Committee decision was rendered almost five years ago, which is an unreasonable delay.

- (f) Aside from the waiver application, Mr. Skrypichayko has taken no other active steps in pursuing his Appeal and his actions are suggestive of unwarranted and deliberate delay.

Conclusion

16. The Appeal filed by Mr. Skrypichayko on June 9, 2019 is accordingly dismissed.
17. Mr. Skrypichayko is ordered to pay costs of the Appeal proceedings in the amount of \$4,504.34.

Dated at Calgary, Alberta, March 1, 2022.

Bud Melnyk, QC – Chair

Sony Ahluwalia

Bill Hendsbee, QC

Jim Lutz, QC

Moira Váně

Grant Vogeli, QC

Louise Wasylenko