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Okuns v Alberta Labour Relations Board, 2025 ABCA 327

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In the Court of Appeal of Alberta

Citation: Okuns v Alberta Labour Relations Board, 2025 ABCA 327

Date: 20250929
Docket: 2303-0174AC
Registry: Edmonton

2025 ABCA 327 (CanLII)

Between:

Patrick Okuns

Applicant

- and -

Alberta Labour Relations Board and
Canadian Union of Public Employees (Local 1505)

Respondents

Reasons for Decision of
The Honourable Justice Kevin Feehan

Application to Restore an Appeal

Reasons for Decision of
The Honourable Justice Kevin Feehan

2025 ABCA 327 (CanLII)

I. Overview

[1] Patrick Okuns applies to restore an appeal to the record pursuant to *Alberta Rules of Court*, AR 124/2010, rr 14.47 and 14.65(1). His appeal was struck under r 14.64(a) for failure to file an Appeal Record within four months after the Notice of Appeal, contrary to r 14.16(3)(b). His appeal was later deemed abandoned, pursuant to r 14.65(3)(a), for failing to take steps to restore the appeal within six months of the striking.

[2] For the reasons below, the application is dismissed.

II. Background

[3] On April 2, 2019, Mr Okuns was terminated from his employment as a bus driver resulting from interactions with a minor female passenger. The Canadian Union of Public Employees (Local 1505) filed a grievance on his behalf on April 2, 2019, but on September 21, 2020, determined not to proceed, citing a poor prospect of success based on video footage of the incident. Mr Okuns appealed that decision and his appeal was dismissed on September 25, 2020.

[4] On January 4, 2021, Mr Okuns brought a duty of fair representation complaint against the Union, but on December 7, 2021 the Alberta Labour Relations Board summarily dismissed his complaint for lack of merit.

[5] On January 6, 2022, Mr Okuns brought an application for judicial review of the Labour Relations Board dismissal. On February 7, 2022, a consent order was filed in the Court of King's Bench setting out timelines for Mr Okuns' judicial review to proceed.

[6] On December 9, 2022, Mr Okuns missed his deadline to file his supplemental affidavit, and on December 10, 2022, Mr Okuns' lawyer withdrew from the record.

[7] On January 13, 2023, Mr Okuns missed his deadline to file his brief and authorities, and on January 17, 2023 Mr Okuns' application for judicial review was struck under Civil Practice Note 1, paragraph 12(c), for failure to meet the timelines.

[8] On May 25, 2023, a new lawyer for Mr Okuns applied to extend the deadlines for steps to be taken and to restore his judicial review application. On July 27, 2023, a Court of King's Bench judge refused to extend the deadlines for the filing of Mr Okuns' materials, and refused to reinstate his judicial review application.

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[9] On August 25 and September 13, 2023, Mr Okuns filed a Notice of Appeal and an Amended Notice of Appeal in this Court. On September 28, 2023, the Court of King's Bench denied his application for reinstatement of his judicial review application in that court.

[10] On January 3, 2024, Mr Okuns' appeal was struck for failure to file an Appeal Record within four months after the Notice of Appeal and on January 12, 2024, his new lawyer withdrew from the record.

[11] On July 4, 2024, Mr Okuns' appeal was deemed abandoned as no further steps had been taken for six months to restore the struck appeal to the record.

[12] On October 10, 2024, Mr Okuns sought assistance from the Registry about how he should proceed in the face of his abandoned appeal. On November 28, 2024, Mr Okuns attempted to file an application to restore the appeal, but it was rejected for irregularities on December 3, 2024. The Registry provided advice again to Mr Okuns on December 3, 2024 and August 20, 2025 on how to proceed to bring the current application, which application was filed on August 21, 2025, two years after the filing of the Notice of Appeal.

III. Restoration of an Appeal

[13] The applicable rules are rr 14.47 and 14.65:

> **Application to restore an appeal**
> 14.47 An application to restore an appeal that has been struck, dismissed, or deemed abandoned
> (a) must be filed and served as soon as reasonably possible, and
> (b) must be returnable no later than
> (i) for a standard appeal, 6 months after having been struck, dismissed or deemed abandoned, … .
> …
> **Restoring appeals**
> 14.65(1) An appeal … that has been struck … may be restored
> (a) … by order of a single appeal judge on application under rule 14.47 … .
> …
> (3) An appeal or application is deemed to have been abandoned if no application to restore an appeal … has been filed, served and granted
> (a) for a standard appeal, within 6 months after having been struck, dismissed or deemed abandoned, … .

[14] The test for restoring an appeal is discretionary and engages the following considerations:

(a) arguable merit to the appeal;

(b) an explanation for the defect or delay which caused the appeal to be taken off the list;
(c) reasonable promptness in moving to cure the defect and have the appeal restored to the list;
(d) intention in time to proceed with the appeal; and
(e) lack of prejudice to the respondents, including the length of delay.

Li v Morgan, 2020 ABCA 186, para 8; ***Prairie West Homes Inc v Baraka Homes Ltd***, 2023 ABCA 256, paras 9, 10; ***JE v KE***, 2025 ABCA 298, para 7.

[15] None of these factors are determinative. The failure by the applicant to meet one of them is not fatal, because all the factors are weighed to determine whether, overall, it is in the interests of justice to permit the appeal to proceed: ***Prochazka v Alberta (Maintenance Enforcement Program)***, 2014 ABCA 448, para 4; ***Clark v Institute of Chartered Accountants of Alberta (Complaints Inquiry Committee)***, 2015 ABCA 271, para 5, 607 AR 1. A restoration order may not be in the interests of justice even if all five factors are met: ***Warren v Warren***, 2019 ABCA 20, para 15, 82 Alta LR (6th) 213; ***Prairie West***, para 10.

[16] The test for restoring an appeal involves the same considerations whether the appeal has been struck or deemed abandoned: ***Mylonas v Kadman***, 2019 ABCA 39, para 3; ***Rana v Rana***, 2018 ABCA 347, para 8. However, in the case of an appeal deemed abandoned, the threshold for restoration is heightened and the discretion to restore such an appeal is to be "exercised sparingly and always with a view to the interest of justice": ***Allen v Alberta (Seniors and Community Supports)***, 2015 ABCA 238, para 5; ***Prairie West***, para 11.

[17] Some cases have required "exceptional circumstances over which the appellant had no control [which] made it impossible for the appellant to prosecute the appeal", "a very onerous obligation that will seldom be discharged": ***Scarlett v Wang***, 2019 ABCA 72, paras 28, 29. It has been held that when an application to restore is not filed "as soon as reasonably possible", it must be dismissed: ***Holden v Holden***, 2022 ABCA 341, para 42; ***Prairie West***, para 12.

[18] Prejudice to the respondent can be assumed, as "at some point the successful party has a legitimate expectation that the judgment is final": ***Li***, para 9; ***Prairie West***, para 13.

IV. Analysis

[19] Mr Okuns submits his appeal has merit "given the underlying questions about CUPE's duty to fairly represent [him] and [the Labour Relations Board's] decision to summarily dismiss without thorough consideration of the video evidence".

[20] The history of this matter puts merit into consideration. While the Union filed a grievance on behalf of Mr Okuns, it decided on September 21, 2020 not to proceed to arbitration after it had reviewed the video evidence of the incident in question, as the grievance had a poor prospect of

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success. Likewise, on December 7, 2021, the Labour Relations Board summarily dismissed the complaint against the Union saying it lacked merit and had no reasonable prospect of success.

[21] Mr Okuns says that the video was not authentic and "it may have been doctored" but that the Labour Relations Board took the video at face value and "failed to investigate the authenticity of the video". He also alleges the transcript of the video "may not be an accurate representation of the video evidence". However, the Labour Relations Board found the video was authentic and relied upon the transcript of the video, and they were entitled to do so without some significant evidence that the video had somehow been doctored or was inauthentic, and the transcript was inaccurate.

[22] It appears there is little merit to Mr Okuns' appeal.

[23] As to the reason for delay, Mr Okuns says there were "multiple unforeseen counsel withdrawals and procedural obstacles" beyond his control. He says his lawyer withdrew on December 10, 2022. While that is true, his King's Bench application for judicial review was not struck until January 17, 2023, more than a month later. An application to extend deadlines and reinstate his application was made on May 25, 2023, four months later and dismissed on July 27, 2023.

[24] The timing, however, critical to the current application involved delays at the appellate level. Mr Okuns' new counsel filed a Notice of Appeal on August 25, 2023, but no Appeal Record had been filed by January 3, 2024 when the appeal was struck, more than four months later. There has been no explanation for that four-month delay when Mr Okuns had counsel. Immediately after the appeal was struck, Mr Okuns' new counsel withdrew on January 12, 2024, and no explanation has been provided for the withdrawal of this counsel.

[25] In the Struck Certificate-Late Appeal Record of January 3, 2024, the Registrar provided Mr Okuns with detailed instructions on how to apply to restore the appeal. She specifically said:

> If you intend to apply to restore this appeal, you must apply as quickly as is reasonably possible. Failure to act diligently will hurt your position.

[26] The Registrar also advised that if no application was filed to restore the appeal within six months, it would be deemed abandoned. She said "you cannot wait until the last minute if you want to restore this appeal. You must act without delay". No steps were taken during that six month period between the striking of the appeal on January 3, 2023 and the appeal being deemed abandoned on July 4, 2024.

[27] On July 4, 2024, the Registrar provided Mr Okuns with a Report of Civil Appeal indicating his appeal had been abandoned. Again, a three month period expired before Mr Okuns took any further steps.

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[28] On October 10, 2024, Mr Okuns contacted the Registry to seek information about how to restore his appeal. The Registry provided detailed advice on the application that needed to be made. On November 28, 2024 Mr Okuns filed an application to restore the appeal but it was rejected on December 3, 2024 for non-compliance with the rules. Again, on December 3, 2024 and August 20, 2025, the Registry provided advice on how to restore the appeal. This application to restore the appeal to the Record was not made until August 21, 2025, 17 months after it had been struck and 11 months after it had been deemed abandoned. No adequate explanation has been given for those lengthy periods of delay in the appeal process. It is not an excuse that after January 12, 2024, Mr Okuns was self-represented: ***Xu v Ma***, 2024 ABCA 29, para 16; ***Raymond James Ltd v Kostic***, 2025 ABCA 296, para 17.

[29] No reasonable promptness has been exhibited by Mr Okuns in moving to cure the defect and have the appeal restored to the list. Likewise, there has been no explanation of positive intention to progress this matter by Mr Okuns during the period between August 25, 2023 and July 4, 2024, when he took no steps in this Court.

[30] Mr Okuns blames the periods of delay on his inability to maintain legal representation and because he says he "was exhausted with the entire proceeding". In oral submissions, Mr Okuns also said he was suffering from obstructive sleep disorder over this period of time. The Union says in oral submissions that over this time, Mr Okuns never communicated with it, gave reasons for the delay, or expressed his intention to proceed. While Mr Okuns may subjectively have intended to progress this matter over the periods of delay, that is not objectively evident from the record.

[31] As indicated in the case law, prejudice to the respondent is to be presumed, given the lengthy delay in this matter, and in particular, the delay in bringing this application to restore the appeal after it was deemed abandoned. Mr Okuns has not overcome this presumption.

V. Conclusion

[32] The application is dismissed.

[33] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on September 25, 2025

Reasons filed at Edmonton, Alberta
this 29th day of September, 2025

Feehan J.A.

Appearances:

Applicant, P. Okuns

K. McGreer
for the Respondent, Alberta Labour Relations Board

S. Longo
for the Respondent, Canadian Union of Public Employees (Local 1505)

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