

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Todd's Taxi v. MacIntosh*, 2024 NSCA 52

**Date:** 20240508

**Docket:** CA 527629

**Registry:** Halifax

**Between:**

Todd MacKenzie c.o.b. as Todd's Taxi

Appellant

v.

William MacIntosh, Attorney General of Nova Scotia and  
Nova Scotia Labour Board

Respondents

**Judge:** Bourgeois, J.A.

**Motion Heard:** May 2, 2024, in Halifax, Nova Scotia in Chambers

**Held:** Registrar's motion to dismiss appeal granted

**Counsel:** Todd MacKenzie, appellant, not appearing  
William McIntosh, respondent, not appearing  
Edward A. Gores, K.C., for the Attorney General of Nova  
Scotia and the Nova Scotia Labour Board  
Caroline McInnes, Registrar

## **Decision:**

[1] On May 2, 2024 I heard a motion brought by Caroline McInnes, Registrar of the Court, for the dismissal of an appeal brought by Todd MacKenzie. In addition to the Registrar, I heard from Mr. Edward Gores, K.C., counsel on behalf of the Nova Scotia Labour Board. The appellant, Todd MacKenzie did not appear, nor did the respondent William McIntosh.

[2] Given the Court has received email communications from both Mr. MacKenzie and Mr. McIntosh, I am satisfied they were served with notice of the motion.

[3] At the end of submissions, I advised the Registrar's motion was granted and the appeal dismissed, with written reasons to follow. These are my reasons.

## **Background**

[4] The appellant filed a Notice of Appeal (Tribunal) on October 18, 2023 in which he sought to challenge a decision and order of the Nova Scotia Labour Board issued on September 1, 2023. The appellant's Notice of Appeal indicated he would be representing himself on the appeal.

[5] According to *Civil Procedure Rule* 90.25(2), the appellant was required to have a Motion for Date and Directions filed and heard no later than November 24, 2023 and to file a Certificate of Readiness in support thereof.

[6] The appellant did not file a Motion for Directions as required, nor a Certificate of Readiness. Indeed, it appears the appellant made no further contact with the Court until after receiving the Registrar's Motion to Dismiss.

[7] On May 1, 2024, the appellant forwarded the following email to the Registrar:

I'm an writing the court to express my disappointment on my case. I have requested a transcript which I never received to use in my defense. However I have run out of funds to pay an attorney or the judgement against me. I have made efforts to reach Mr. McIntosh which have been unsuccessful in my efforts. I will therefore not be attending the hearing May 2<sup>nd</sup> for Case #: 527629. Once again a small business must cease to exist due to government interference.

[8] At the hearing of the motion, counsel for the Nova Scotia Labour Board advised it did not oppose the Registrar's motion to dismiss. Counsel further confirmed, in response to the appellant's email, that there are no transcript or electronic recordings of proceedings before the Nova Scotia Labour Board.

### **Governing Principles**

[9] The Registrar's motion was brought pursuant to *Nova Scotia Civil Procedure Rule* 90.43(3) and (4). Rule 90.43 provides:

#### **90.43 Appellant failing to perfect appeal**

(1) In this Rule 90.43 a "perfected appeal" means one in which the appellant has complied with the Rules as to each of the following:

- (a) the form and service of the notice of appeal;
- (b) applying for a date and directions in conformity with Rule 90.25;
- (c) filing the certificate of readiness in conformity with Rule 90.26;
- (d) the ordering of copies of the transcript of evidence, in compliance with Rule 90.29;
- (e) filing and delivery of the appeal book and of the appellant's factum.

(2) A respondent in an appeal not perfected by an appellant may make a motion to a judge to set down the appeal for hearing or, if five days notice is given to the respondent, to dismiss the appeal.

(3) In an appeal not perfected before 80 days from the date of the filing of the notice of appeal, or before any other time ordered by a judge, the registrar must make a motion to a judge for an order to dismiss the appeal on five days notice to the parties.

(4) A judge, on motion of a party or the registrar, may direct perfection of an appeal, set the appeal down for hearing, or, on five days notice to the parties, dismiss the appeal.

[10] Rule 90.43(3) places an obligation on the Registrar to monitor appeals filed with the Court and act when they have not been perfected. When a motion to dismiss is brought a judge may provide further directions to move a stalled appeal toward conclusion, or grant dismissal.

[11] I would further note Rule 90.40(2) which states:

(2) A judge of the Court of Appeal may dismiss an appeal if the appeal is not conducted in compliance with this Rule 90 for any reason, such as, failing to comply with Rules respecting any of the following:

- (a) the form of the notice of appeal,
- (b) notifying a person of the appeal,
- (c) making a motion for directions,
- (d) setting the appeal down for a hearing,
- (e) filing the certificate of readiness.

[12] In *Islam v. Sevgur*, 2011 NSCA 114, Justice Saunders summarized the principles governing a chambers judge's discretion to dismiss for failure to perfect the appeal. He wrote:

[36] The approach I take in such matters is this. Once the Registrar shows that the rules for perfecting an appeal have been breached, and that proper notice of her intended motion has been given, **the defaulting appellant must satisfy me, on a balance of probabilities, that the Registrar's motions ought to be denied.** To make the case **I would expect the appellant to produce evidence** that it would not be in the interests of justice to dismiss the appeal for non-compliance. While in no way intended to constitute a complete list, some of the factors I would consider important are the following:

- (i) whether there is a good reason for the appellant's default, sufficient to excuse the failure.
- (ii) whether the grounds of appeal raise legitimate, arguable issues.
- (iii) whether the appeal is taken in good faith and not to delay or deny the respondent's success at trial.
- (iv) whether the appellant has the willingness and ability to comply with future deadlines and requirements under the **Rules**.
- (v) prejudice to the appellant if the Registrar's motion to dismiss the appeal were granted.

- (vi) prejudice to the respondent if the Registrar's motion to dismiss were denied.
- (vii) the Court's finite time and resources, coupled with the deleterious impact of delay on the public purse, which require that appeals be perfected and heard expeditiously.
- (viii) whether there are any procedural or substantive impediments that prevent the appellant from resuscitating his stalled appeal.

[37] It seems to me that when considering a Registrar's motion to dismiss, a judge will wish to weigh and balance this assortment of factors, together with any other circumstances the judge may consider relevant in the exercise of his or her discretion.

(Emphasis added)

[13] As noted by Justice Saunders, the above factors do not constitute a finite list. Further, the unique circumstances of each appeal will make certain factors more or less relevant to the exercise of a chambers judge's discretion.

### **Analysis**

[14] The intention behind the appellant's May 1<sup>st</sup> email to the Registrar is uncertain. It could be interpreted as an abandonment of his appeal, although that is not clear.

[15] What is clear, is that the appellant has not filed any evidence in response to the motion to dismiss. He has provided nothing on which this Court could assess the various factors as outlined above. Given the contents of his email however, I take the opportunity to stress that the filing of a Notice of Appeal in this Court obligates appellants, even those who are self-represented, to inform themselves of, and follow the requirements set out in, the *Civil Procedure Rules*. Those who fail to do so risk, as occurred in this matter, having their appeal dismissed.

### **Disposition**

[16] The Registrar's motion is granted. The appeal is dismissed.

Bourgeois, J.A.