

COURT OF APPEAL FOR ONTARIO

CITATION: Shaulov v. Law Society of Ontario, 2025 ONCA 613

DATE: 20250908

DOCKET: COA-24-CV-1343

Sossin, Favreau and Wilson JJ.A.

BETWEEN

Alexander Shaulov

Plaintiff (Appellant)

and

Law Society of Ontario, Performance Assessment Group Inc., John Braham,
and Michael Williams

Defendants (Respondents)

Alexander Shaulov, acting in person

Stephen Aylward and Sarah Fooks for the respondents

Heard: August 26, 2025

On appeal from the order of Justice Lisa Brownstone of the Superior Court of Justice dated November 12, 2024, with reasons reported at 2024 ONSC 6226.

REASONS FOR DECISION

[1] This matter has a long procedural history which is set out in prior decisions dealing with this dispute, and in particular in the reasons of the motion judge at paras. 7-14. In these reasons, we only address the history as necessary to respond to the issues on appeal.

[2] The appellant applied for a licence to practise law in October of 2017, after successfully completing the Law Society of Ontario's (LSO) Law Practice Program. While he passed his solicitor examination, he failed the barrister examination four times. As a result, in accordance with its bylaws, the respondent LSO advised the appellant on October 1, 2020, that his application for a licence was deemed abandoned.

[3] On April 6, 2021, the appellant issued the statement of claim in this proceeding against the LSO and three other defendants: Performance Assessment Group Inc., John Braham and Michael Williams (collectively, "the non-LSO defendants"). The non-LSO defendants are consultants who were involved with the design of the LSO's licensing examinations. In his original statement of claim, the appellant's only claims against the non-LSO defendants were alleged violations of the *Human Rights Code*, R.S.O. 1990, c. H.19.

[4] The defendants to the appellant's original action, including the non-LSO defendants, brought a motion to strike the claim. Vermette J., the former case management judge, struck the claims against the non-LSO defendants and some of the claims against the LSO without leave to amend, and she struck the balance of the claims against the LSO with leave to amend: *Shaulov v. Law Society of Ontario*, 2022 ONSC 2732, 512 C.R.R. (2d) 1. The appellant appealed that decision to this court, which, in a decision by Roberts J.A., upheld Vermette J.'s order striking the claims against the non-LSO defendants without leave to amend:

Shaulov v. Law Society of Ontario, 2023 ONCA 95, 166 O.R. (3d) 241. However, in allowing the appeal in part, this court referred part of the claim against the LSO struck by Vermette J. back to the Superior Court.

[5] Following this court's decision, the appellant sought to amend his statement of claim to make a claim in negligence against the non-LSO defendants. He also took the position that the non-LSO defendants were necessary parties to the claim against the LSO pursuant to r. 5 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[6] Vermette J. subsequently ruled that the non-LSO defendants were not necessary parties to the action and that the appellant could not amend his claim to add a new claim against them in negligence as of right. Instead, he was required to bring a motion pursuant to r. 26.02 of the *Rules of Civil Procedure* and seek leave to plead negligence.

[7] The appellant subsequently brought a motion under rr. 5 and 26.02 to add the non-LSO defendants as necessary parties and to amend the claim for the purpose of pleading negligence against the non-LSO defendants.

[8] Brownstone J. dismissed the appellant's motion. This is the order currently under appeal. The motion judge held that previous decisions, including the decision of Roberts J.A. from this court, confirmed that the action against the non-LSO defendants was dismissed. She found that the appellant's attempt to add the

non-LSO defendants as necessary parties was an abuse of process because this issue had already been decided. She further found that the appellant's negligence claim against the non-LSO defendants was statute-barred under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B.

[9] The appellant raises three grounds of appeal:

1. Whether the motion judge erred in ruling that the appellant's motion to add the non-LSO defendants under r. 5 was already decided and therefore constituted an abuse of process?
2. Whether the motion judge misapplied the *Limitations Act* in concluding that the appellant's claim of negligence against the non-LSO defendants was statute-barred?
3. Whether the motion judge erred in not granting the appellant leave to amend his pleadings to add the negligence claim against the non-LSO defendants under r. 26.02?

[10] In our view, the appellant's grounds of appeal lack merit, and we would accordingly dismiss the appeal.

[11] The doctrine of abuse of process is rooted in a court's inherent and residual discretion to prevent abuse of its process: *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4, 500 D.L.R. (4th) 279, at para. 33; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 SCR 220, at

para. 33; and *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 SCR 77, at para. 35.

[12] The motion judge concluded that the issue of whether the non-LSO defendants could be added to the appellant's claim against the LSO as necessary parties had been finally resolved. She held, at para. 25, that "Mr. Shaulov raises the same arguments under Rule 5 that he made twice to Vermette J. and once to the Court of Appeal. I agree with the responding parties that this issue has been finally determined, and it is an abuse of process to raise it again."

[13] The appellant takes a different view of the scope of the earlier decisions of Vermette J. and this court. However, the motion judge's decision that the question of whether the non-LSO defendants were necessary parties pursuant to r. 5 had been "finally determined" is evident from the record. We see no basis to interfere with the motion judge's determination, which was rooted in the record and the procedural history of the litigation.

[14] With respect to the argument that the appellant's attempt to add the non-LSO defendants to his claim in negligence was statute-barred by the *Limitations Act*, as it was brought more than two years after the allegedly negligent conduct, the appellant submitted that he only discovered the facts necessary for such an action more recently. The motion judge rejected these submissions:

I do not accept Mr. Shaulov's discoverability argument. His complaint about the non-LSO defendants has been,

from the outset, that they manufacture discriminatory examinations, and that they are not qualified to prepare proper examinations. I note that on December 3, 2020, less than three months after he received notice from the LSO that his application for a license was deemed abandoned, and several months before his first statement of claim was issued against all the parties, Mr. Shaulov wrote to the LSO as follows:

I would like also to inform you as well that I just discovered that LSO was using, a private provider, Performance Assessment Group Inc. that was incorporated in the year 2000 without having any background or expertise in developing law related competencies examination. However, in the Guide to Examination, LSO alleges to engage experts in that field.

...

I do not accept that he did not have the facts until recently that would have permitted him to plead negligence. I therefore do not give effect to his argument that the discoverability principle extends the limitation period in this case: at paras. 27, 30.

[15] The motion judge found that June 16, 2023, the date the proposed amended statement of claim was served on the non-LSO defendants, was well past two years after the appellant discovered all relevant facts regarding the non-LSO defendants' involvement in his licensing application.

[16] The appellant asserts that the motion judge erred by making a finding as to whether the claim was statute-barred without a full evidentiary record and before pleadings had closed.

[17] We are not persuaded by these submissions.

[18] In a motion for leave to amend a claim, it is open to a motion judge to assess the record to determine whether, as a question of fact, there is a reasonable explanation on proper evidence as to why the plaintiff could not have discovered its claim through the exercise of reasonable diligence: *Mancinelli v. Royal Bank of Canada*, 2018 ONCA 544, at para. 23. The motion judge's finding in this case that the appellant had actual knowledge of the claims against the non-LSO defendants by December 2020, is entitled to deference.

[19] The motion judge also rejected the appellant's alternative argument that he had already pled the material facts underlying his negligence claim against the non-LSO defendants in the earlier version of his claim and that it was therefore not a new claim against them. She noted that since the action against the non-LSO defendants was dismissed, the appellant cannot rely on those prior pleadings, and the appellant's purported amendment constituted a new claim against the non-LSO defendants. Accordingly, the motion judge concluded that this new claim would necessarily be statute-barred.

[20] We see no error with respect to the motion judge's conclusion that the appellant's attempt to amend his claim to include the non-LSO defendants was statute-barred under the *Limitations Act*.

[21] We also agree with the non-LSO defendants that the proposed claim in negligence against them is an abuse of process because it is a claim the appellant

could have made in his original statement of claim. As this court has recognized, the doctrine of abuse of process applies to claims that were made or that *could* have been made in a prior proceeding: *Aba-Alkhail v. University of Ottawa*, 2013 ONCA 633, 363 D.L.R. (4th) 470, at para. 12, leave to appeal refused, [2013] S.C.C.A. No. 491; *Winter v. Sherman Estate*, 2018 ONCA 703, 42 E.T.R. (4th) 181, at para. 7, leave to appeal refused, [2019] S.C.C.A. No. 438; *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 67, leave to appeal refused, [2019] S.C.C.A. No. 284. While the motion judge did not deal directly with this argument, it is an additional compelling reason why the appellant should not be allowed to proceed with his claim in negligence against the non-LSO defendants.

[22] For these reasons, we dismiss the appeal.

[23] The respondent is entitled to costs, in the amount of \$5,000, all-inclusive.

“L. Sossin J.A.”
“L. Favreau J.A.”
“D.A. Wilson J.A.”