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CASE SUMMARY: COURT DECLINED TO EXERCISE ITS DISCRETION TO EXTEND THE DEADLINE FOR FILING AN APPLICATION FOR JUDICIAL REVIEW

Administrative law – Decisions of administrative tribunals – Board of Examiners of Psychologists; Psychologists – Governance – Competence – Licence to practice – Registration; Judicial review – Delay – Limitations – Extension of time

Yates v. Nova Scotia Board of Examiners in Psychology

An application for judicial review of a Board of Examiners in Psychology's decision was dismissed for being brought out of time, as the applicant had the Board's full decision and did not file the application by the deadline to file.

[2016] N.S.J. No. 245

2016 NSSC 152

Nova Scotia Supreme Court

June 15, 2016

A.J. LeBlanc J.

The applicant brought an application for judicial review of the Nova Scotia Board of Examiners in Psychology's (the "Board") decision to deny the applicant's application for registration. The application was rejected on the basis that the Board did not consider the applicant to be eligible for a transfer registration under the *Psychologists Act*, S.N.S. 2000, c. 32, as she did not have the necessary credentials.

The application was initially submitted on December 17, 2014, and the Board provided the applicant with a rejection letter dated January 15, 2015. The application was automatically forwarded to the Internal Review Committee of the Board for review and the applicant was invited to provide further information. The Committee agreed with the Board's assessment and the Board communicated the Committee's decision to the applicant in a letter dated April 1, 2015. In this letter, the Board confirmed that the applicant's file would be closed at that time.

The applicant retained counsel who corresponded with the Board on her behalf. Over the next several months the applicant's counsel continued to correspond with the Board and suggested compromises to allow for the applicant's registration, including that she work under supervision for a period of time. During this time, information came to the Board's attention that the applicant may have provided incorrect information to the Board in her application and subsequent letters. The Board sought some clarification from the applicant with respect to this information to confirm whether the Board needed to report the applicant to a College in another province for misrepresentation. A final letter was sent to the applicant on December 21, 2015 confirming that the Board's substantive decision was not changed and that the applicant remained ineligible for registration.

The applicant filed an application for judicial review on January 26, 2016. The Board brought a motion to dismiss the application for judicial review on the basis that it was brought out of time. The question in this case was at what time the Board made and communicated its decision to the applicant. The applicant argued that the application was brought in time given that correspondence with the Board was ongoing and that the application for registration was an ongoing process that did not culminate in a final decision until their last letter dated December 21, 2015.

The court considered an earlier decision, *Specter v. Nova Scotia (Minister of Fisheries and Aquaculture)*, 2011 NSCC 333, wherein it was decided that the limitation period to file a judicial review did not begin to run until the appellants were provided with the details of the decision. The court distinguished this case from the case at hand as the applicant was provided with the Board's full reasons for its decision on April 1, 2015, and subsequent communications from the Board related to the applicant's alleged misrepresentation, rather than her application for registration. The application was therefore held to have been filed out of time.

The applicant alternatively requested an extension of time to file an application for judicial review. The court evaluated whether the applicant had fulfilled the three part test for extension of time, which required an applicant to satisfy the court that (1) the applicant had a bona fide intention to appeal when the right to appeal existed; (2) the applicant had a reasonable excuse for the delay in not having launched the appeal within the prescribed time; and (3) there are compelling or exceptional circumstances present which would warrant an extension of time, not the least of which being that there is a strong case for error at trial and real grounds justifying appellate interference.

The court held that the applicant did not show any evidence that she intended to apply for judicial review within the deadline, and did not contact the Board again until two months after the decision. The court noted that this delay was lengthy. She also did not provide any reason for why she did not contact the Board sooner and she was provided with the Board's reasons for its decision in the Board's April 1, 2015 letter. The court noted that though the applicant may suffer some prejudice if the extension is not granted, as she will continue to be prohibited from practising in Nova Scotia, she did not argue that there were no other avenues available to challenge the Board's decision, or that she will be prevented from re-applying for registration. On balancing the Board's interest in certainty and finality and the prejudice experienced by the applicant, the court declined to exercise its discretion to extend the deadline for filing.

This case was digested by [JoAnne Barnum](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at jbarnum@harpergrey.com or review her biography at <http://www.harpergrey.com>.