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CASE SUMMARY: COURT FOUND THE APPLICANT FAILED TO EXERCISE ALL AVAILABLE REMEDIES AVAILABLE TO HIM UNDER THE LEGISLATIVE SCHEME AND DISMISSED THE JUDICIAL REVIEW ACCORDINGLY

Administrative law – Decisions of administrative tribunals – Conflict of interest – Judicial intervention – Remedies – Alternative remedies – Statutory provisions

Obouhov v. Lunn, [2018] O.J. No. 630, 2018 ONSC 772, Ontario Superior Court of Justice, February 6, 2018, H.J. Wilton-Siegel, F.L. Myers and R. Charney JJ.

This case considers the issue of prematurity – namely, whether Mr. Obouhov’s application for judicial review was premature because he failed to exhaust the other remedies available to him under the legislation.

Mr. Obouhov is a lawyer. He applied to have his name entered on the Legal Aid criminal duty counsel panel and the criminal certificate panel for Durham. He applied on May 9, 2016. On December 8, 2016, he was told that his application had been referred to the Central District to Toronto for review. A few days later, Legal Aid’s Toronto office delivered a Notice of Refusal, denying Mr. Obouhov’s application. The basis for the refusal was that he failed to meet the standards in relation to courtesy, civility, and good faith in his communications in that he used “language that is aggressive, abusive, threatening and profane”. On the same day, Legal Aid Ontario denied his application to be added to the criminal certificate panel. The same reasons were cited. With respect to both denials, Mr. Obouhov was advised of his ability to challenge the decision and request a hearing.

Mr. Obouhov declined to seek a further review of the decisions, but instead indicated that he would be proceeding to judicial review. He alleged conflict of interest and bad faith on the part of Legal Aid Ontario. In 2015, Mr. Obouhov was employed as duty counsel with Legal Ontario, but was dismissed for cause following two investigations into his conduct. He believed that these same allegations were influencing the current decisions.

As a preliminary matter, Legal Aid argued that Mr. Obouhov ought not to be able to bypass the statutory scheme by seeking judicial review prior to availing himself of the alternative review process that was open to him under the legislation. Mr. Obouhov said he did not need to pursue these remedies since he was challenging the validity of the underlying order. The court disagreed. With respect to the charge of bad faith and bias, the court concluded this was not a sufficient basis to justify hearing an application for judicial review where all available remedies had not been expired. The court, relying on previous jurisprudence to substantiate this proposition, concluded that the claim for bias and bad faith can and ought to be raised with the President of Legal Aid Ontario first (the remedy available). In essence if there is an adequate alternative remedy, which there was in this case, the courts should not intervene before the administrative process had run its course.

In light of the foregoing, the court dismissed Mr. Obouhov's application for judicial review as premature. He was also ordered to pay costs to the respondents in the amount of \$2,000.

This case was digested by [Adam R. Way](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Adam R. Way at away@harpergrey.com.