

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: LIMITATION PERIOD OF ADMINISTRATIVE JUDICIAL REVIEW DECISIONS IN NB BEGINS AT NOTIFICATION OF DECISION OR “PUBLIC AVAILABILITY” OF DECISION

Court determined that limitation period for judicial review of administrative decisions in New Brunswick begins when the affected parties are notified of the decision or when there is “public availability” of the decision, not from the date of the decision itself.

Administrative law – Decisions reviewed – Human Rights Commission – Judicial review – Application – Appeals – Limitations

Laliberté v. Kedgwick (Rural Community), [2019] N.B.J. No. 116, 2019 NBCA 38, New Brunswick Court of Appeal, May 16, 2019, J.C.M. Richard, M.E.L. Larlee and K.A. Quigg JJ.A.

In New Brunswick, judicial review of administrative action is governed by Rule 69 of the *Rules of Court*. Rule 69.03 provides that, unless the time limit is extended, an application for judicial review must be commenced within three months “from the date of the order, conviction, commitment, warrant, decision, award or refusal to act” that is sought to be reviewed.

Mr. Laliberté applied for judicial review of a decision issued by the Human Rights Commission. On December 9, 2016, the Commission prepared a letter informing Mr. Laliberté of its decision. Mr. Laliberté’s lawyer received this letter on December 12, 2016. Mr. Laliberté commenced his application for judicial review on March 10, 2017.

Before hearing the case on the merits, the application judge addressed two preliminary issues, namely whether Mr. Laliberté’s application was commenced too late and, if so, whether the time should be extended. The application judge determined that the time within which to apply for judicial review began to run on the date of the Commission’s decision and not when it was communicated to Mr. Laliberté and dismissed his claim.

The New Brunswick Court of Appeal overturned the application judge’s decision, finding that the Nova Scotia Court of Appeal’s decision in *Central Halifax Community Association v. Halifax (Regional Municipality)*, 2007 NSCA 39, had not been adopted in New Brunswick. In Halifax, the Nova Scotia Court of Appeal found that the time to file an application for judicial review begins on the date the decision is made and not the date upon which it is communicated to the parties.

The New Brunswick Court of Appeal affirmed the law in the province: “in the case of a decision, the three-month time limit to apply for judicial review usually begins to run when the decision is pronounced either at a hearing or by notification to the parties.”

Mr. Laliberté’s appeal was allowed.

This case was digested by [Jackson C. Doyle](#), 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 Jackson C. Doyle at jdoyle@harpergrey.com.