

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Yates v. Nova Scotia Board of Examiners in Psychology*,  
2016 NSSC 152

**Date:** 2016-06-15

**Docket:** *Halifax*, No. 447643

**Registry:** Halifax

**Between:**

Pamela Yates

*Applicant*

v.

Nova Scotia Board of Examiners in Psychology

*Respondent*

**Judge:** The Honourable Justice Arthur J. LeBlanc

**Heard:** April 21, 2016, in Halifax, Nova Scotia

**Counsel:** Dennis James QC, for the Applicant  
Marjorie Hickey QC, for the Respondent

**By the Court:**

[1] Pamela Yates applied for registration as a psychologist in Nova Scotia. The Nova Scotia Board of Examiners in Psychology (the "Board") rejected her application. Dr. Yates has applied for judicial review of the Board's actions. This decision deals with two motions—one by each party—brought in advance of the judicial review hearing. The Board has brought a motion to dismiss or set aside Dr. Yates' application for judicial review because, it says, Dr. Yates was out of time. Dr. Yates has brought a motion for the admission of fresh evidence.

**Background**

[2] Dr. Yates submitted her application on December 17, 2014. Her application included a completed registration form, transcripts, a *curriculum vitae*, references, and letters of support.

[3] The Board considered Dr. Yates' application during its meeting on January 9, 2015. The Board decided to reject the application because, as they explained to Dr. Yates in a letter dated January 15, 2015 (the "January Letter"):

- They did not consider her to be eligible for a transfer registration pursuant to s. 15(5) of the *Psychologists Act*, S.N.S. 2000, c. 32; and
- She does not hold "a doctoral or equivalent degree in psychology that is acceptable to the Board" as required under s. 15(1)(a) of the *Psychologists Act*.

[4] In the January Letter, Registrar Allan Wilson further explained that Dr. Yates' application, and the Board's decision to reject the application, would be automatically forwarded to the Internal Review Committee for review. This process is designed to meet the requirements of s. 10(1) of the *Fair Registration Practices Act*, S.N.S. 2008, c. 38. Registrar Wilson indicated that Dr. Yates could submit additional materials for the Committee's consideration. Further to that invitation, Dr. Yates submitted a letter dated February 17, 2015, wherein she provided additional information and explanation about her education and experience.

[5] The Internal Review Committee met on March 23, 2015. It reviewed Dr. Yates' original application materials, as well as the additional information provided

by Dr. Yates. The Committee wrote to the Board on March 24, 2015, indicating its agreement with the Board's decision to reject Dr. Yates' application. The Committee agreed that Dr. Yates is ineligible for a transfer registration, and that her degree is not satisfactory.

[6] By letter dated April 1, 2015, the Board communicated the Committee's decision to Dr. Yates (the "April Letter"). "Consequently," Registrar Wilson explained, "your file with NSBEP will now be closed."

[7] Dr. Yates filed a notice for judicial review of the Board's decision on January 26, 2016, asking this Court to overturn the Board's decision and to order the Board to recognize her degree as acceptable.

### **Issue 1: Time**

[8] The Board has brought a motion to dismiss or set aside the application for judicial review. The Board says Dr. Yates was out of time. I must first consider whether Dr. Yates met the filing deadline. If I find she did not meet the deadline, I must decide whether to give Dr. Yates an extension.

#### Did Dr. Yates meet the filing deadline?

[9] The parties agree that *Civil Procedure Rule* 7.05(1) sets the applicable filing deadline. Rule 7.05(1) provides:

7.05 (1) A person may seek judicial review of a decision by filing a notice for judicial review before the earlier of the following:

- (a) twenty-five days after the day the decision is communicated to the person;
- (b) six months after the day the decision is made.

[10] The point of disagreement is at what point the Board made and communicated its decision to Dr. Yates. The April Letter is not the end of the story. Following receipt of that letter, Dr. Yates retained counsel. On July 7, 2015, Dr. Yates' counsel, Mr. James, wrote to the Board expressing disagreement with the Board's and the Committee's decisions, and asking the Board to reconsider. Ten days later, the Board responded through counsel. Ms. Hickey's response was substantive and not merely cursory; however, Ms. Hickey ultimately concluded as follows:

... [T]he Board continues to take the position that Dr. Yates does not meet the statutory requirements for registration and the Board is not prepared to reconsider this matter further.

[11] Over the next few months, the parties had further communications. On November 6, 2015, Mr. James wrote to Ms. Hickey. Among other things, Mr. James indicated that Dr. Yates "wishes to reach a compromise that responds to the Board's concern". He proposed that Dr. Yates complete "a reasonable period of supervised practice" of 750 hours. On November 30, 2015, Registrar Wilson responded, in part, as follows:

Thank you for your letter of November 6, 2015 regarding Dr. Yates. As you requested, The Board reviewed its decision regarding the application for registration with N.S.B.E.P. by Dr. Yates. The Board affirmed its decision that Dr. Yates's doctoral program in psychology from Carleton University does not meet at least two of the requirements for registration. ...

In her letter of application for registration ... Dr. Yates stated that she: "was on the candidate registry in British Columbia..." I have been advised by the Registrar of the College of Psychologists of British Columbia that the College has never had a candidate register. The Deputy Registrar subsequently confirmed that the College has no record of a current or former registrant by the name of Pamela Yates.

Please provide Dr. Yates' response to this information we have obtained from British Columbia, as on its face she appears to have misrepresented information to this Board. In the absence of a response by December 11, 2015 we will be advising the Saskatchewan College of Psychologists where Dr. Yates is registered. ...

[12] Mr. James' response on behalf of Dr. Yates is dated December 11, 2015. On December 21, 2015, Ms. Hickey wrote on behalf of the Board:

... I am advised that the content of your letter of December 11, 2015 does not change in any way the substantive decision that was made by the Board and confirmed by the Internal Review Committee. The decision remains that Dr. Yates is not eligible for registration with NSBEP.

... [P]lease convey to Dr. Yates the continued position of NSBEP that she is not eligible for registration in Nova Scotia.

[13] The Board takes the position that its final decision was communicated to Dr. Yates on April 1, 2015 (the April Letter). Dr. Yates submits that her application for registration was an ongoing process that did not culminate in a final decision until the letter of December 21, 2015.

[14] The Board points to the definition of "decision" set out in Rule 7.01, which provides that a "decision" includes "an action taken ... under legislation" or "an omission to take action required ... by legislation". The Board says it has authority to make registration decisions from s. 16(1) of the *Psychologists Act*. The Internal Review Committee has authority to make review decisions from s. 10(1) of the *Fair Registration Practices Act*. The Board and the Committee exercised those statutory powers in January 2015 and March 2015, respectively. Neither the Board nor the Committee had authority to vary their decisions. Thus, the final "decision", as that term is defined in Rule 7, was the Committee's March 2015 decision.

[15] In the notice for judicial review, Dr. Yates stated that the decision to be reviewed "is dated January 15, 2015". This is the date of the January Letter. This suggests that Dr. Yates herself recognized that the decision to be reviewed was first communicated to her via the January Letter.

[16] In his letter on November 30, 2015, Dr. Wilson indicated that per Mr. James' request (presumably referring to Mr. James' letter of November 6), "The Board reviewed its decision regarding the application for registration." Dr. Wilson then said, "The Board affirmed its decision..." I find this wording to be somewhat misplaced. However, I do not think it goes so far as to indicate that the decision-making process was ongoing or re-opened.

[17] I reached the opposite conclusion in *Specter v. Nova Scotia (Minister of Fisheries and Aquaculture)*, 2011 NSSC 333 [*Specter*]. That case dealt with an appeal from the Minister's decision to grant a fish farm's request for amendments to its aquaculture licenses. The appellants, who were nearby property owners, challenged the amendments. The respondents argued that the appellants had not filed their appeal in time. The Minister's decision was made on March 9, 2011. The Minister emailed the appellants on March 24, 2011, to inform them that the amendments had been granted. On April 5 and 9, 2011, the appellants wrote to the Minister requesting further details, such as the date the amended licenses were approved and copies of the amended licenses. The appellants received the Minister's response enclosing the requested information on May 12, 2011. They filed their appeal on June 13, 2011. The statutory deadline for an appeal was thirty days.

[18] Following the logic of this Court in *Brighton v. Nova Scotia (Minister of Agriculture and Fisheries)*, 2002 NSSC 160, I concluded that the limitation period did not begin until the appellants were provided with the details of the decision. I

found that those details formed an "integral part" of the decision, and without them the appellants could not make a reasoned decision on whether to appeal.

[19] *Specter* is distinguishable. In this case, Dr. Yates had the full reasons for the decision as of April 1, 2015. She was not seeking further details so that she could make a reasoned decision on whether to apply for judicial review. It seems Dr. Yates was simply hoping that, with further explanation and information, the Board would change its mind. But as I concluded in *Rockwood Community Assn. Ltd. v. Halifax (Regional Municipality)*, 2011 NSSC 91, [2011] N.S.J. No. 253 at paras. 25-35 [*Rockwood*], post-decision discussions and exchanges of information with the administrative decision-maker do not extend the timeline.

[20] I must also consider the fact that in his November 30 letter, Dr. Wilson invited Dr. Yates to make further submissions. Dr. Wilson stated, "Please provide Dr. Yates' response to this information we have obtained from British Columbia ..." While somewhat lacking in clarity, I find that this invitation relates only to the Board's suggestion that absent a response, it would be advising the Saskatchewan College of Psychologists of Dr. Yates' alleged misrepresentation. In other words, any information received from Dr. Yates would be considered in relation to the Board's decision whether to report Dr. Yates to the Saskatchewan College, but it would not impact Dr. Yates' application for registration. That process was already closed.

[21] In conclusion, a decision is "communicated" within the meaning of Rule 7.05(1) when the recipient is first provided with all of the information necessary to make a reasoned decision on whether to apply for judicial review. Although I question some of the language used in the Board's continued communication with Dr. Yates, this communication did not change the fact that Dr. Yates had the Board's final decision, and the full reasons for that decision, when she received the April Letter.

[22] Accordingly, I find that the deadline for filing an application for judicial review of the decision was 25 days thereafter. Dr. Yates' was clearly out of time when she filed her application documents on January 26, 2016.

Should Dr. Yates be granted an extension of time?

[23] Dr. Yates asks for an extension of time under Rule 2.03(1)(c). Rule 2.03(1)(c) states:

2.03 (1) A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:

...

(c) excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party.

[24] Saunders J.A. set out a three-part test for determining whether to grant an extension in *Jollymore v. Jollymore Estate*, 2001 NSCA 116, [2001] N.S.J. No. 296 at para. 22:

22 In this province, reference is often made to the so-called three part test for extensions of time in cases such as this. It is said that in order to qualify for such relief the court must be satisfied 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.

[25] This three-part test has "morphed into being more properly considered as guidelines or factors which a Chambers judge should consider in determining the ultimate question as to whether or not justice requires that an extension of time be granted": *Farrell v. Casavant*, 2010 NSCA 71 at para. 17 [*Farrell*]. Thus, the so-called three-part test is a useful but not exhaustive guide: *Deveau v. Fawson Estate*, 2013 NSCA 54 at para. 15. Other factors for consideration may include the length of the delay and the presence or absence of prejudice: *Farrell, supra*.

[26] Dr. Yates has not provided any evidence to demonstrate an intention to apply for judicial review within the 25-day deadline. After the April Letter, it appears Dr. Yates did not contact the Board until July 7, 2015. This was well after the 25-day deadline, and even then, there was no mention of judicial review. As I found in *Rockwood, supra*, the post-decision discussions and information-seeking do not substantiate Dr. Yates' claim that she had a *bona fide* intention to seek judicial review.

[27] Dr. Yates has not provided any reasonable excuse for having missed the deadline. Although a judicial review applicant may be entitled to wait for details

that are integral to the decision, Dr. Yates was not waiting for any such details. She had enough information to make a reasoned decision about whether to apply for judicial review. I adopt Robertson J.'s reasoning in *Eco Awareness Society v. Antigonish (County)*, 2010 NSSC 461, [2010] N.S.J. No. 663, where she stated at para. 24:

In my view Ms. Overmyer's suggestion that her group was waiting for legal opinions, or had difficulty in assembling their group for a meeting during the summer are not sufficient reasons for delay. I note that the applicant never argued inadvertence or mistake or any occurrence that preventing filing an appeal on time. Indeed the applicant appears to have decided not to file the appeal within the requisite time -- but chose to seek more information and more opinion notwithstanding this deadline. Simply put, there is no reasonable excuse.

[28] Although Dr. Yates argues that the Board never informed her of the option of bringing an application for judicial review, I find that the Board had no such duty to Dr. Yates.

[29] Further, the delay in this case was lengthy. The 25-day deadline expired at the beginning of May. Dr. Yates did not file the application for judicial review until over eight months later.

[30] The strength of Dr. Yates' case is the only factor that could weigh in favour of an extension. I disagree with the Board's argument that the registration requirements are "objectively stated". Rather, s. 15(1) of the *Psychologists Act* provides that an applicant must possess "a doctoral or equivalent degree in psychology that is acceptable to the Board..." In the January Letter, Registrar Wilson outlined the criteria the Board considers when determining whether a degree is acceptable. Some of the criteria are not objectively stated, but rather, use words such as "adequate" and "sufficient".

[31] However, Dr. Yates has not established that she will suffer significant prejudice if I do not grant the extension. She has not argued that there are no other avenues available to her to challenge the Board's decision. She has not argued that she will be prevented from re-applying for registration. Of course, being prevented from pursuing this application for judicial review of the Board's 2015 decision will cause some measure of prejudice to Dr. Yates. She will continue to be prohibited from practicing in Nova Scotia. This must be balanced against the Board's interest in certainty and finality in the application decision-making process.



[32] On balance, I find that the factors weigh against granting the extension. Thus, I decline to exercise my discretion to extend the deadline for filing the notice for judicial review. The Board's motion for setting aside Dr. Yates' application for judicial review is granted.

**Issue 2: Fresh Evidence**

[33] The application for judicial review having been set aside, Dr. Yates' motion for the admission of fresh evidence is moot.

**Conclusion**

[34] The Board's motion is granted. The parties may make written submissions on costs within 30 days of this decision, if they are unable to reach an agreement.

A. LeBlanc, J.