

SUPREME COURT OF NOVA SCOTIA

Citation: Campbell v. Nova Scotia (Community Services), 2009 NSSC 176

Date: 20090603

Docket: Hfx No. 272059

Registry: Halifax

Between:

Sally Elizabeth Campbell

Applicant

and

Minister of Community Services

Respondent

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Judge: The Honourable Justice John D. Murphy

Heard: October 1, 2008, in Halifax, Nova Scotia

**Final Written
Submissions:** October 17, 2008

Subject: Judicial review of Decision of the Assistance Appeal Board - preliminary issue whether *res judicata* applies.

Summary: Ms. Campbell requested “special needs” assistance from the Department of Community Services to pay for medical marihuana. The Department denied her request, and the Assistance Appeal Board (“Board”) affirmed the denial in a 2005 Decision. The Applicant subsequently provided additional information; the Department did not change its conclusion and the Board dismissed a Second Appeal in 2006. Ms. Campbell sought judicial review of the Board’s 2006 Decision dismissing the Second Appeal, and the Court raised a preliminary issue whether the Board had jurisdiction to hear the Second Appeal, or whether *res judicata* barred it from doing so.

Issue: Is the Second Appeal before the Board *res judicata*, so that the judicial

review proceeding should not continue?

Result:

The Court declined to find the matter was *res judicata* before the second Board, and ruled that the judicial review proceeding may continue.

The standard of review with respect to the issue of *res judicata* is correctness.

Res judicata may apply in administrative matters.

Pre-conditions to application of issue estoppel (*res judicata*) are that the same question is to be decided, that the decision creating the estoppel was final, and that the parties to the proceedings are the same. Once the pre-conditions are established, application of issue estoppel/*res judicata* is discretionary, and the discretion is broad in relation to decisions by administrative tribunals.

In this case the Board did not rule on the operation of *res judicata*, which was first raised by the Judge who adjourned the judicial review proceeding for resolution of the preliminary issue. Although it may have been open to the Board to apply *res judicata* to the Second Appeal, when it did not address the issue it is not appropriate for the Court to determine whether the principle applied. If *res judicata* had been considered, the Board would have had discretion to decline to apply the doctrine, and in these circumstances the Court should not impose a finding of *res judicata* at the judicial review stage. Accordingly, the judicial review proceeding, seeking a *Certiorari* Order and Declaration, may continue.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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