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CASE SUMMARY: COURT DISMISSES AN APPLICATION CONCERNING THE CONDITION OF A RESIDENCE ON THE BASIS THAT THE APPLICATION WAS OUT OF TIME AND THE ORDERS WITHIN THE DISCRETION OF THE RESPONDENT

Administrative law – Decisions reviewed – Public Health Appeal Board – Judicial review – Limitations – Standard of review – Reasonableness – Charter of Rights and Freedoms – Human rights complaints – Jurisdiction

Peter v. Public Health Appeal Board of Alberta, [2019] A.J. No. 1761, 2019 ABQB 989, Alberta Court of Queen’s Bench, December 20, 2019, R.A. Graesser J.

The applicant was the owner of residences that he shared with roommates. He also lived simultaneously at other residences. A person who lived in a residence owned by the applicant complained to the Alberta Health Services (AHS) about the condition of the properties owned by the applicant. AHS conducted a review of the residence and found several deficiencies, including headroom height, that AHS requested to be addressed. The applicant declined to remediate the deficiencies. AHS ordered that the deficiencies be remediated. A subsequent order closed the residence and ordered that the premises be vacated. The applicant asserted that the residence was his private dwelling and that his rights were violated.

On appeal to the Public Health Appeal Board (PHAB), the applicant argued that the orders infringed the Charter of Rights and Alberta Bill of Rights. He also asserted that the residence was his private dwelling and the deficiencies were not dangerous to public health. PHAB declined to consider the Charter and Bill of Rights issues due to a lack of jurisdiction. PHAB confirmed the orders of AHS on December 27, 2016.

The applicant filed an application on June 28, 2017. AHS argued that the application was filed out of time (over 6 months) and objected to constitutional arguments because the Attorney General of Canada or Alberta Solicitor General were not given notice. As the matter was adjourned once before, the Court declined to order a second adjournment and heard arguments on constitutional issues and, if there was merit, would adjourn the matter to enable the proper parties to participate.

The Court held that the applicant’s application was filed out of time and did not have jurisdiction to extend the time for filing his application. Nonetheless, the Court considered the applicant’s arguments regarding his rights and the merits of the orders.

With respect to the arguments concerning the Charter and Bill of Rights, the Court noted that neither are absolute and subject to justifiable limits. The Court held that there was no violation of the Charter or Bill of Rights. The Court observed that the applicant allowed the AHS into the premises and, further, there was no violation of his personal space as the applicant did not identify any personal space in the residence. The Court held that there was no unreasonable infringement on his rights and the AHS acted within the applicable Act and Regulations. The Court rejected the applicant's argument that the PHAB was biased, finding that the PHAB was properly constituted under the applicable legislation.

The Court confirmed the orders of PHAB. The Court was satisfied that PHAB had "discretion as to what it wanted to do with the executive officer's decision on the point. Their decision was within the range of possible justifiable and acceptable outcomes available. There is no basis to set aside their decision on the headroom clearance. It too was based on health and safety considerations." The Court dismissed the application.

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.