

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Michel A. Monnin  
Madam Justice Freda M. Steel  
Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella  
Madam Justice Janice L. leMaistre

***BETWEEN:***

<b><i>JACK HIEBERT NEUFELD and THE JACK NEUFELD FAMILY CHARITABLE FOUNDATION</i></b>	)	<b><i>R. S. Literovich and R. E. Shannon</i></b>
	)	<b><i>for the Appellants</i></b>
	)	
<i>Appellants</i>	)	<b><i>S. A. Gingera and D. G. Guénette</i></b>
	)	<b><i>for the Respondent</i></b>
- and -	)	
	)	
<b><i>THE MANITOBA SECURITIES COMMISSION</i></b>	)	<b><i>A. W. Challis and B. Barnes</i></b>
	)	<b><i>for the Intervener</i></b>
<i>Respondent</i>	)	
	)	<b><i>Appeal heard and Decision pronounced: September 25, 2018</i></b>
- and -	)	
	)	
<b><i>ADVOCIS, THE FINANCIAL ADVISORS ASSOCIATION OF CANADA</i></b>	)	<b><i>Written reasons: October 4, 2018</i></b>
	)	
<i>Intervener</i>	)	

**LEMAISTRE JA** (for the Court):

[1] The appellants were granted leave to appeal the decision of the Manitoba Securities Commission (the Commission) on the following two questions:

1. Do the limitation periods found in *The Limitation of Actions Act*,

CCSM c L150 apply to the proceedings brought against the appellants?

2. Is the Commission entitled to apply sections 74.1 and 148.1(1.1) of *The Securities Act*, CCSM c S50 against the appellants given that those sections had not been enacted when the contraventions were alleged to have occurred?

[2] At the appeal hearing, the appeal was dismissed with brief reasons to follow. These are those reasons.

[3] In our view, the appeal is premature.

[4] The appellants sought to dismiss proceedings brought against them by the Commission on the basis that applicable limitation periods had expired and provisions in *The Securities Act* had not been enacted when some of the alleged contraventions occurred. The Commission held that *The Limitation of Actions Act* did not apply to the proceedings, that there were no limitation periods and that the sections of *The Securities Act* could apply retroactively.

[5] Courts are generally reluctant to intervene at the early stage of an administrative proceeding. As stated by Cromwell J in *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 (at para 36):

Early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a “correctness” standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes [citations omitted].

[6] Moreover, in an article by Gerald Heckman, “Developments in Remedial Discretion on Judicial Review: Prematurity and Adequate Alternative Remedies” (2017) 30 Can J Admin L & Prac 1, Heckman explains (at p 5):

Several considerations might factor into a court’s decision to decline a pre-emptive ruling. The issue may be dealt with or remedied by the tribunal later in the proceedings or on a statutory appeal. The tribunal may have greater relative expertise than the reviewing court regarding the issue; reluctance to intervene in such circumstances is “consistent with and supports the concept of judicial respect for administrative decision makers who, like judges, have decision making responsibilities to discharge”. Encouraging early recourse to the courts may fragment the administrative proceedings, frustrate the statutory objectives of the administrative regime or tax judicial resources. Early judicial review may also deprive the court of the decision maker’s careful accumulation and analysis of an evidentiary record--an important consideration given the evidentiary limitations of judicial review proceedings-- findings that may be “suffused with expertise, legitimate policy judgments and valuable regulatory experience”.

[footnotes omitted]

[7] Accordingly, appeals from interlocutory decisions by an administrative tribunal will not be permitted except in the most extraordinary or exceptional of circumstances (see *Canadian National Railway v Winnipeg (City) Assessor*, 1998 CarswellMan 594 at paras 31-32 (CA); and *Canada (Border Services Agency) v CB Powell Ltd*, 2010 FCA 61 at para 33).

[8] While we agree that the question of whether *The Limitation of Actions Act* applies to administrative proceedings under *The Securities Act* is an important legal issue, that fact alone is not sufficient reason to bypass completion of the administrative process (see *Canada (Border Services*

*Agency*) at para 33). We have not been persuaded that extraordinary or exceptional circumstances exist in this case.

[9] The fact that leave to appeal was granted by the chambers judge does not preclude a panel from determining that an appeal is premature, particularly when this issue was not raised by the parties nor considered by the chambers judge (see *Maplehurst Bakeries Inc v Brampton (City)*, 1999 CarswellOnt 1442 at para 2 (Sup Ct J (Div Ct)); and *Eastpine Kennedy-Steeles Ltd v Markham (Town)*, 2000 CarswellOnt 750 (Sup Ct J (Div Ct))).

[10] For these reasons, the appeal was dismissed.

leMaistre JA

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Monnin JA

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Steel JA

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Cameron JA

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Mainella JA

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