

# SUPREME COURT OF YUKON

Citation: *Human Resources v. Myttenar*,  
2009 YKSC 31

Date: 20090408  
Docket S.C. No.: 08-AP015  
Registry: Whitehorse

BETWEEN:

**DIRECTOR OF HUMAN RESOURCES**

Petitioner

AND:

**CLIFFORD B. MYTTENAR  
SOCIAL ASSISTANCE APPEAL BOARD**

Respondents

Before: Mr. Justice R. Foisy

Appearances:  
Stephanie Schorr  
Colleen Harrington

Appearing for the Petitioner  
Appearing for the Respondents

## **REASONS FOR JUDGMENT DELIVERED FROM THE BENCH**

[1] FOISY J. (Oral): It is clear that the relevant legislation, now and at the time that this matter came to life in 2003, that any decision had to be in writing and advising the applicant of the reasons and advising him of the right to appeal. In my view, a verbal decision, communicated verbally, is not a decision within the meaning of the legislation.

[2] Since the decision must also advise of the right of appeal, as I have indicated, this, in this case, did not happen until 2008, and the affidavit filed by the respondent indicates that he filed his notice of appeal within the 30-day period.

[3] Counsel for the Director took the position that the limitation period cannot be extended artificially, or not for any time past the 30-day period. But the limitation period, in my view, does not start to run until the statute has been complied with; in other words, there has been a written decision given accompanied by the notice of the right to appeal. The time starts to run from then, and in this case it is clear that the respondent was well within the time limits.

[4] So in fact, the Board had jurisdiction. It is not something fanciful that it gave to itself. It had jurisdiction because the appeal was filed within the proper time, as I understand it.

[5] I now deal with Ms. Schorr's second point, that the test of reasonableness applies here. When one looks at the decision, which is committed to writing in some extent in that there is an attempt to recall what went on by Mr. Simpson in his letter dated August the 20th, that letter is far from certain and precise in that it is unclear - which is important - it is unclear how the decision was arrived at; in other words, his reasons for arriving at this decision. This type of decision, if it is a decision, does not attract the deference sought by the Director. There is nothing in writing, as required, and no notice of the right of appeal.

[6] Accordingly and very briefly, I think the Board was correct; firstly, in dealing with the matter; and, secondly, in dealing with it the way it did. That being the case, I have come to the conclusion that the Director's petition should be dismissed.

[7] I thank you both. It is an interesting scenario. Is there anything to say about costs?

[8] MS. HARRINGTON: I noticed last time in the *Myttenar* case that the parties decided to carry their own costs. I am prepared to do so this time.

[9] THE COURT: You are not asking for costs, all right.

[10] MS. SCHORR: Yes, and I never sought costs originally, either way, so.

[11] THE COURT: You are not prepared to volunteer them? All right, no costs.

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FOISY J.