

SUPREME COURT OF NOVA SCOTIA

Citation: *Barnaby v. Phoenix House*, 2025 NSSC 280

Date: 20250903

Docket: Hfx No. 544940

Registry: Halifax

Between:

Brandon Barnaby

Appellant

v.

Phoenix House

Respondent

and

Brandon Barnaby

Hfx No. 544941

Appellant

v.

The Governing Council of the Salvation Army of Canada

Respondent

**DECISION ON MOTION TO EXTEND TIME TO FILE APPEAL FROM
SMALL CLAIMS COURT**

Judge: The Honourable Justice Scott C. Norton

Heard: August 29, 2025, in Halifax, Nova Scotia

Decision: September 3, 2025

Counsel: Brandon Bardaby, self-represented Appellant
Tyler White, for the Respondent, Phoenix House
James Downie, for the Respondent, Salvation Army

By the Court:

[1] Mr. Barnaby has filed a Notice of Motion seeking an extension of time for filing an appeal in each of these matters from a decision of the Small Claims Court filed on April 15, 2024 (SCCH 523446 Phoenix House and SCCH 523445 Salvation Army). I heard both motions at the same time with the consent of the parties.

[2] The impugned decisions by the Small Claims Court addressed a preliminary issue of whether Mr. Barnaby's claim for damages, resulting from the alleged destruction or disposal of his personal property by the respondents, was barred by a limitation period.

[3] As the adjudicator stated in the decision, there was significant overlap in the legal argument however the facts differed slightly. In Phoenix House, the adjudicator determined that Mr. Barnaby discovered the possible claim on January 11, or 12, 2013. He filed his claim with the Small Claims Court on May 4, 2023, long after the limitation period expired on September 1, 2017. Accordingly, the adjudicator determined the claim was barred by the passage of time and dismissed the claim.

[4] In Salvation Army, the adjudicator determined that Mr. Barnaby discovered the possible claim by August 15, 2015. He filed the claim with the Small Claims Court on May 4, 2023, long after the limitation period expired on September 1, 2017. Accordingly, the adjudicator determined that the claim was barred by the passage of time and dismissed the claim.

[5] The *Small Claims Court Forms and Procedures Regulations*, N.S. Reg. 17/93, section 22(2), requires that an appeal be commenced "not later than 30 days after the adjudicator's order or determination is filed". In these cases that would have been not later than May 15, 2024. Subsection 22 (12) provides that: "Noncompliance with this Section shall not render any proceeding void, but the proceeding may be amended, set aside as irregular or otherwise dealt with as the Court may direct".

[6] Neither the *Small Claims Court Act*, R.S.N.S. 1989, c. 430, Regulations, nor the *Nova Scotia Civil Procedure Rules* provide any guidance on how a judge should exercise their discretion to grant an extension of time in the context of a Small Claims Court Appeal.

[7] The legal authorities and principles applicable to this motion are set out at paragraphs 13-16 of the Phoenix House Brief and in the Salvation Army Brief at paragraphs 15-18. I incorporate them herein by reference.

[8] The affidavit evidence filed by the applicant does not establish that he had a bona fide intention to appeal the adjudicator's decision. The evidence of the Respondent, Phoenix House, is that a correction's officer requested information on how to appeal the decision at the time of receipt of the adjudicator's decision. It is reasonable to infer that this information was passed along to the Applicant. As found by Justice Brothers in *Goulden v. Fownes*, [2021 NSSC 261](#), more than a bare statement of intent is required.

[9] I am also not satisfied there is a reasonable excuse for the delay in filing the appeal. The applicant was incarcerated from November 14, 2022, up to June 13, 2025. However, he was able to file the Claim in the Small Claims Court while incarcerated and was able to participate in the hearing in the Small Claims Court. None of the other reasons offered by the Applicant provide a reasonable excuse.

[10] The applicant has not demonstrated a persuasive case for error or identified real grounds of appeal that would justify appellate interference. It is notable that the alleged error of law relates to the finding that the applicant failed to file his claim within the time limits required.

[11] The ultimate question is whether I am satisfied that justice requires that the requested extension of time be granted. Taking all the factors identified by the authorities into account, the applicant has not satisfied me that justice requires this application to be granted.

[12] Accordingly, the application to extend time to commence appeal proceedings against Phoenix House and Salvation Army are each dismissed without costs.

Norton, J.