CITATION: Brooks v. The Alcohol and Gaming Commission of Ontario, 2026 ONSC 826
DIVISIONAL COURT FILE NO.: 032/20
DATE: 20260519

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: JEFFREY BROOKS and BULLETPROOF ENTERPRISES, Applicants

AND:

THE ALCOHOL AND GAMING COMMISSION OF ONTARIO and THE REGISTRAR OF THE ALCOHOL AND GAMING COMMISSION OF ONTARIO, Respondents

BEFORE: Matheson, Schreck and O'Brien JJ.

COUNSEL: *David C. Moore*, for the Applicant

Brendan van Niejenhuis and Sarah Fooks, for the Respondents

HEARD: May 12, 2026, in Toronto

ENDORSEMENT

[1] The applicants seek judicial review of the decision of the Alcohol and Gaming Commission of Ontario dated September 25, 2019 (the "Standardbred Directive"). That Directive dealt with the distribution of certain funds that were the subject of a forfeiture order in 2014.

[2] The applicants submit that only some of their funds were forfeited and there are therefore jurisdictional and procedural fairness issues with the Directive purporting to redirect all their funds. The respondents take the position that the applicants have no right or interest to challenge the Directive, having already exhausted their appeal rights from the 2014 forfeiture order. The respondents further submit that this application should, in any event, be dismissed for delay.

[3] We agree with both the respondents' positions above. This application was therefore dismissed at the hearing, with reasons to follow. These are those reasons.

[4] The applicant Jeffery Brooks was a licensed racehorse owner who operated the applicant Bulletproof Enterprises Ltd. In 2010, the applicants' licenses were suspended, and all funds, purse accounts and other monies held in Bulletproof's accounts at Woodbine Entertainment Group

("WEG") were frozen, pending a full hearing on allegations of misconduct (the "Freezing Order").[1] Roughly $890,000 was frozen.

[5] The hearing took place in 2013. A panel of the Ontario Racing Commission heard from numerous witnesses and received extensive documentary evidence. The Panel made findings of wrongdoing against the applicants, suspended their licenses for ten years, ordered forfeiture (the "Forfeiture Order"), and imposed a fine.[2] The Vice-Chair found that 119 horses were ineligible to compete for purse money and were disqualified. That finding related to a total of 1,025 races in 2009 and 2010.

[6] As set out in the Forfeiture Order, the frozen funds were forfeited and to be redistributed pursuant to the *Rules of Standardbred Racing* among the other qualified participants, such as other owners, trainers, and jockeys. However, most of the purse money had been paid out already. As held by the Panel when considering penalty:

> A secondary penalty element is that this wrongdoing deprived rule-abiding licensees of their lawful purse entitlements. In some measure this is corrected by disqualification of the horses racing in 2009 and 2010 and redistribution of the purse money currently subject to ORC seizure. Redistribution will occur only on the $890,000 currently held at WEB. About 5.5 million in purses, in the two-year time frame having been paid out is not available to be redistributed. No Order was sought relating to those purses – a decision probably premised on futility and common sense. [Emphasis added.]

[7] Before this court, the applicants submit an analysis of various banking documents in the record shows that some of the $890,000 was not purse money. However, at the forfeiture hearing the applicants did not seek nor obtain a finding that only a portion of the frozen funds held by WEG were purse funds. A similar issue was raised by another party at the forfeiture hearing, through the Director's notice of proposed order. A ruling was requested that any money held by the Ontario Sires Stakes program, other than purse money, be forfeited to that program. The applicants did not request such a ruling.

[8] In preparing to challenge the Freezing and Forfeiture Orders in the Divisional Court in 2016, counsel for the applicants emailed Commission counsel about whether all the funds in the WEG account were subject to the Commission's order. However, the grounds ultimately asserted in the Divisional Court did not include a challenge to the Commission orders on the grounds that a portion of the funds held by WEG were not purse funds.

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[1] Freezing Order, SB 14/2010, dated January 28, 2010; other parties to this and later Commission orders are not parties to the current Divisional Court proceeding.
[2] Forfeiture Order, SB 024/2013, dated August 29, 2013

[9] At the Divisional Court, the Freezing Order was found to lack jurisdiction, and the applicants did not seek any remedy in relation to that Order. The Court upheld that Forfeiture Order on the merits. [3]

[10] The applicants appealed unsuccessfully to the Court of Appeal[4] in 2017. Again, no issue was raised about the scope of the Commission order or the nature of the funds in the WEG account. The Court noted that the Forfeiture Order related to "the frozen accounts."

[11] In 2019, the Commission[5] released the Standardbred Direction. The Registrar found as follows:

(i) that re-seeding and re-distribution in accord with the Rules would require the identification, notification and participation of each owner, trainer and driver (jockey) entitled to participate in the purse distribution with respect to every horse that participated in every one of the 1025 races;

(ii) the passage of time due to the court proceedings prejudiced the Registrar's ability to accurately identify, locate and direct payment of the appropriate share of the purse distributions to the participants in the affected races;

(iii) that the administrative cost of re-seeding and re-distributing the frozen purse monies to participants was likely to exceed the frozen purse monies; and,

(iv) that it was in the best interests of racing to direct those funds to the benefit of the Ontario racing industry as a whole (rather than unwinding all of the purse distributions from the affected races).

[12] The Registrar therefore decided, under r. 1.09 of the *Rules of Standardbred Racing*, to exercise his discretion to waive the re-seeding rule and the rule that would otherwise permit an appeal to the Horse Racing Appeal Panel. The resulting Standardbred Direction implemented the decision to redirect the frozen funds to the Commission.

[13] In January 2020, the applicants commenced this application for judicial review seeking to quash the Standardbred Directive and related relief. Despite the COVID-19 Pandemic, the respondent delivered a record of proceedings in June 2020. The applicants did not take steps to move their application forward in court.

[14] In March 2023, in response to a motion to dismiss for delay, the applicants wrote a letter to the court and the parties with a lengthy explanation for the time that had passed. The letter

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[3] 2016 ONSC 1136
[4] 2017 ONCA 833
[5] In 2016, the powers and duties of the Commission were transferred to the Alcohol and Gaming Commission of Ontario. That legislative change is not at issue. For readability, these reasons for decision continue to refer to the Commission.

indicated that they would were in the position to set an early date for the hearing of their application. In the circumstances, the respondent did not pursue the motion.

[15] The applicants did not proceed to move their matter forward expeditiously or otherwise. No court materials were delivered. Then, over a year later, the respondents contacted the court about the continuing delay. The application then moved forward under case management.

[16] This application raises the following issues:

(i) whether the applicants can now challenge the Standardbred Directive

(ii) if so, whether there was a breach of procedural fairness in failing to give the applicants notice and an opportunity to be heard, and whether the Registrar had jurisdiction to make the orders in the Directive, and,

(iii) whether the application should be dismissed for delay.

[17] Issues (i) and (iii) determine this application. There is therefore no standard of review.

[18] The applicants submit that they do have the requisite right and interest to challenge the Standardbred Directive because it addressed only a portion of the frozen funds. They submit that about $140,000 in the WEG account came from other sources such as sales of their horses, not purses. They submit that those funds are unaffected by the Forfeiture Order and they therefore have an interest in challenging the Directive.

[19] In support of this position, the applicants rely on a selective reading of the reasons for decision of the Commission and the Divisional Court to submit that their scope is limited to only part of the frozen bank account. They further attempt to rely on evidence from the forfeiture hearing even though it is not properly before this Court.

[20] Addressing the evidence first, the applicants have attached bank records from the forfeiture hearing to a lawyer's affidavit, noting entries on them. That hearing record from 2013 is not properly before this Court on this judicial review. But the attempt to use that record does show that evidence was before the forfeiture hearing and the applicants could have raised that issue at that time or in the court proceedings arising from the Forfeiture Order.

[21] On the scope of the decisions, we accept that the order section of the Forfeiture Order refers to the forfeiture of "purse funds". However, a full reading of the lengthy decision makes it clear that the phrase referred to the frozen funds in the WEG account, not some portion of those funds. As quoted above, the decision stated that: "Redistribution will occur only on the $890,000 currently held at WEB" in contrast to the $5.5 million that had already been paid. It is also apparent that the applicants did not ask the Panel for an order that limited its forfeiture order, as was done by the Ontario Sires Stakes program. Further, to the extent that the question was raised in counsel's email before the judicial review, it was not pursued in the court proceedings or otherwise, until now.

[22] The applicants also rely on selected phrases from the Divisional Court decision, such as a reference to the funds being "largely derived" from purse funds. Again, a fair reading of that decision shows what was at issue, specifically "the bank accounts that had been frozen" which were forfeited, as set out in para. 8 of the Divisional Court decision. Similarly, the Court of Appeal referred to the forfeiture of the "frozen accounts".

[23] Although we do not agree that the various decisions provide otherwise, if there was any lack of clarity, it should have been pursued at the Commission and in the court proceedings in 2013-2016.

[24] The Forfeiture Order is final as against the applicants and addressed the entire WEG account. The Standardbred Direction did not affect the applicants' rights and interests. They have no basis to pursue judicial review.

[25] We also would not exercise the court's discretion to judicially review the Directive because of the applicants' delay in perfecting their application.

[26] Judicial review is a discretionary remedy that can be denied in the face of excessive delay. Failure to perfect an application for judicial review is an independent basis to dismiss an application regardless of the merits of the case: *None of the Above Direct Democracy Party v. Chief Electoral Officer of Ontario*, 2022 ONSC 3498, at para. 31. The test for determining whether an application for judicial review should be dismissed for delay is:

> Has the delay been excessive?
>
> Is there a reasonable explanation for the delay?
>
> Is there prejudice arising from the delay?
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> *Savic v. College of Physicians and Surgeons of Ontario*, 2021 ONSC 4756, at paras. 41-42.

[27] Turning to the first factor, the delay in this case has been excessive. This court has consistently held that delays of more than twelve months in perfecting an application for judicial review are excessive and can be serious enough to warrant dismissal for delay: *None of the Above Direct Democracy Party*, at para. 32, *Savic*, at para. 43, *Gigliotti v. Conseil d'administration du Collège des Grands Lacs (*2005), 76 O.R. (3d) 561 (Div. Ct.), at paras. 29-30. Here, the applicants started the application on January 23, 2020. The application was perfected on February 5, 2026, over six years later.

[28] We are also not satisfied that the explanation for the delay is reasonable. The applicants rely on the letter provided to counsel for the respondent on March 15, 2023, in which applicants' counsel raised concerns about the contents of the record of proceeding. Counsel took the position that additional documents needed to be added to the record.

[29] There are two problems with the reliance on this letter. First, the letter was only sent after the respondents brought a motion to dismiss the application for delay in January 2023. By that point, there had already been a delay of over three years since the application was started. The applicants had received the record of proceeding in June 2020 and had taken no steps to raise any concerns with it for over two and a half years. Even if the COVID-19 pandemic could account for some part of that period, it did not justify inactivity for well over two years.

[30] Second, after sending the letter, the applicants did not take any steps to move the application forward. It would have been open to them, for example, to file an application record including material they say was missing. They had the documents they sought to have added to the record in their possession.

[31] The next period of delay also is not adequately explained. Nothing further happened until almost two and a half years after the March 15, 2023 letter. On August 7, 2025, respondents' counsel wrote to the court requesting a case conference. Justice Faieta issued directions requiring the applicants to file their material by January 12, 2026, with a hearing date scheduled for February 25, 2026. The applicants did not comply with the January 12, 2026 deadline for their materials.

[32] Counsel for the applicants provided an explanation for failing to meet the deadline, which related to his health and a failure in his office to diarize the deadline. Even if these explanations are accepted, they do not adequately explain the delay from March 2023 until the respondents again attempted to move the matter forward in August 2025.

[33] The applicants submit there was no specific prejudice, since most of the delay in the distribution of the funds was caused by the judicial review and appeal they legitimately pursued. They also point to a delay of almost two years between the date of the Court of Appeal decision and the Directive.

[34] This argument is inconsistent with the applicants' submission that it was clear that the Forfeiture Order did not apply to the funds at issue in this application. On the applicants' own position, they could have made a claim to the funds following the Forfeiture Order in 2013, rather than waiting to start an application in 2020 and perfecting it in 2026. Indeed, as set out above, counsel for the applicants wrote to then-counsel for the respondents about pursuing those funds in 2014 but then took no further steps to do so.

[35] In any event, prejudice is presumed by the length of the delay in this case. In *Knot v. State Farm Automobile Insurance Company*, 2020 ONSC 7672, this court dismissed an application due to a delay of over 30 months in perfecting the application, noting that "prejudice is presumed where the delay is lengthy" and that the delay was "sufficiently long to be prejudicial on its face": *Knot*, at paras. 31, 3. The over six years of delay in this case attracts this presumption.

[36] Further, it was in the public interest for the respondents to distribute the funds that had been frozen in 2010 and ordered forfeited in 2013. The Directive itself explains that the forfeiture order was long overdue to be implemented. Instead of moving their application forward at a reasonable pace, the applicants excessively delayed perfecting the application and only took steps after being

prompted to do so by the respondents. In all the circumstances, we would not exercise our discretion to undertake judicial review in this case.

[37] The application has therefore been dismissed, with costs in the agreed-upon amount of $20,000, all inclusive.

Matheson J.

Schreck J.

O'Brien J.

Date: May 19, 2026