

CV 04709
CV 04712

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES

- AND -

UMATHEVAN VISWALINGAM

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- AND -

HELEN ROBERTS, ET AL

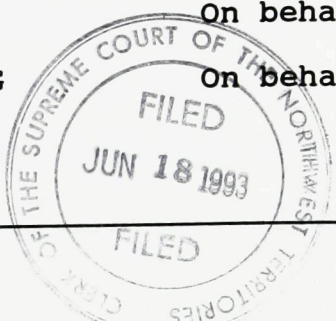


Transcript of the Reasons for Judgment delivered by
the Honourable Mr. Justice J. E. Richard, sitting at
Yellowknife, in the Northwest Territories, on Thursday,
June 10, A.D. 1993.

APPEARANCES:

MR. B. WILLIS On behalf of Dr. Viswalingam

MS. S. GULLBERG On behalf of the G.N.W.T.



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IN THE SUPREME COURT OF THE STATE OF NEW YORK
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1 THE COURT: On the two matters before the Court I
2 find that I am able to make a decision on these
3 applications today. In my view the issues are
4 straightforward, the evidence that is before the Court
5 is not in dispute, and there is no disagreement
6 between counsel as to the legal principles that are
7 applicable in connection with these matters.

8 On the first application in Action CV 4709, Dr.
9 Viswalingam seeks an order of mandamus requiring the
10 Minister and/or the Registrar to issue the renewal of
11 his license following his successful appeal to the
12 Minister pursuant to Section 18 of the Medical
13 Profession Act. The objections of counsel on behalf
14 of the Registrar and the Minister essentially revolve
15 around the proposition that the Minister did not reach
16 her decision under Section 18 of the Act, or did not
17 necessarily reach her decision under that Act or the
18 appeal section. I find on the evidence presented that
19 the Minister clearly did make her decision on Dr.
20 Viswalingam's appeal, and that he is entitled to have
21 her decision acted upon and complied with. Upon my
22 reading of the legislation it was not open to the
23 Minister to change her mind, or to revisit her
24 decision. I find that the prerequisites for a
25 mandamus order, as set out in the case law cited to
26 me, have been met in this case and that Dr.
27 Viswalingam is entitled to the order sought.

... in fact a decision on these 2

... by view the issues are 3

... the evidence that is before the court 4

... and there is no suggestion 5

... as to the legal principle, or that the 6

... application is consistent with those matters 7

... On the first application a motion for 8

... was made on the basis of the material 9

... and the Registrar is asked to make the removal of 10

... his license following the withdrawal of appeal in the 11

... Minister pursuant to Section 10 of the National 12

... Registrar Act. The question at issue on which 13

... of the Registrar and the Minister essentially revolves 14

... around the proper construction of the Registrar Act and whether 15

... his decision under Section 10 of the Act, or did not 16

... necessarily result in the Registrar's removal and act on the 17

... appeal, notwithstanding the evidence presented that 18

... the Minister's decision was not based on the 19

... Registrar's appeal, and that he is entitled to have 20

... his appeal allowed and his license reinstated upon any 21

... result of the Registrar's decision. It is submitted that the 22

... Minister's decision is not based on the Registrar's 23

... decision, but that it is based on the Registrar's 24

... ministerial order, and that the Registrar is entitled to 25

... have his appeal allowed and his license reinstated upon any 26

... Registrar's appeal, and that he is entitled to have 27

1 With respect to the application of the Government
2 of the Northwest Territories in Action number CV 4712,
3 in paragraph two of the originating notice of motion,
4 the relief that is requested requires the Court to
5 give an interpretation to paragraph 10 of the
6 settlement agreement, it requires the Court to give an
7 interpretation to that paragraph which, with respect,
8 I am unable to give to it. The implication or
9 inference that that agreement means that the doctor
10 was agreeing not to practice medicine in the interim
11 is one that cannot be made, in my respectful view, on
12 a reading of the agreement. In paragraph three of the
13 originating notice of motion where the GNWT seeks an
14 injunction, an interim injunction, I find that upon a
15 consideration of the case law that is referred to me
16 by the government counsel, I find that Section 42 of
17 the Medical Profession Act is a bar to the granting of
18 the injunction. Therefore I dismiss that application
19 without prejudice to the right of that applicant,
20 which is the Minister of Health, to renew the
21 application for an injunction after the Minister's
22 Section 42 remedy has been exhausted. And I should
23 say I am not suggesting for a moment that the Minister
24 reapply, I am simply saying my decision today does not
25 preclude the Court entertaining a further application
26 after the Section 42 avenue has been utilized.

27 So, in Action CV 4709 there will be an order

1 With respect to the applicant's...
2 of the applicant's...
3 in paragraph two of the...
4 the relief that is...
5 give an...
6 sufficient...
7 identification...
8 I am unable to...
9 information...
10 not...
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1 directing the Minister, the Registrar and/or the
2 Medical Registration Committee to forthwith issue the
3 renewal of Dr. Vizwalingam's license under the Medical
4 Profession Act. And the applicant, Dr. Viswalingam,
5 will be entitled to his costs, his costs of that
6 application.

7 In the second proceeding, CV 4712, there will be
8 an order denying the relief requested in paragraph two
9 and paragraph three of the originating notice of
10 motion filed, and there will be no costs to either
11 party in that action.

12 Now counsel, any clarification required?

13 MR. WILLIS: Sir, if I may speak briefly to costs.

14 Might the costs specifically include the disbursement
15 for my airfare in coming up here, that was something
16 in excess of \$800?

17 THE COURT: I had considered that that might be
18 asked for, Mrs. Gullberg, do you have any submission
19 on that?

20 MS. GULLBERG: My Lord, I would submit that this is a
21 case that could properly be argued by a resident
22 lawyer upon instructions by Mr. Willis, it was his
23 decision to come and argue it, and therefore I submit
24 that the costs should not be granted.

25 THE COURT: I have given consideration to this
26 issue because it has come up before when non-resident
27 counsel appear. In my view, given the background of

1 directing the Minister, the Registrar and/or the
2 Medical Registration Commission to furnish the
3 renewal of Dr. Visselberg's license under the Medical
4 Profession Act. And the applicant, Dr. Visselberg,
5 will be entitled to his costs, his costs of that
6 application.
7 In the second paragraph, it is stated that there will be
8 an order denying the relief requested in paragraph two
9 and paragraph three of the respondent's motion and
10 notice filed, and there will be no order as to
11 party in that order.

12 Now again, my dissertation requested?
13 MR. WILSON: Yes, is it any more likely to occur.
14 Might the court specifically require the disbursement
15 for us either in coming up here, that was something
16 in excess of \$200?

17 THE COURT: I had considered that that might be
18 asked by Mr. Guilberg, do you have any objection
19 on that?
20 MR. GUILBERG: My lord, I would submit that this is a
21 case that could properly be argued by a resident
22 lawyer upon instructions by Mr. Willie, it was his
23 decision to come and argue it, and therefore I submit
24 that the cost should not be granted.

25 THE COURT: I have given consideration to this
26 issue because it has come up before when non-resident
27 counsel appear. In my view, given the background of

1 this matter which appears from the affidavit evidence,
2 it was not unreasonable in my view for Dr. Viswalingam
3 to maintain the services of his counsel Mr. Willis
4 through this application. I am going to direct that
5 costs awarded to Dr. Viswalingam in Action CV 4709
6 will include the necessary disbursements for counsel's
7 travel to Yellowknife for this hearing.

8 MR. WILLIS: Thank you, sir.

9 THE COURT: Anything further?

10 MR. WILLIS: Nothing further, sir.

11 THE COURT: Thank you counsel, we will adjourn.

12 (AT WHICH TIME THIS MATTER WAS ADJOURNED)

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Certified a correct transcript,

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Loretta Mott
Court Reporter

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1 this matter which appears to be somewhat extensive.
2 It was not understood in view of the time taken
3 to maintain the services of the court, Mr. Williams
4 through this application. It is being so direct that
5 other-extended to Dr. Williams in person on 4/25
6 will include the necessary observations for counsel's
7 travel to Philadelphia in this morning.

8 MR. WILLIAMS: Thank you, sir.
9 THE COURT: Anything further?
10 MR. WILLIAMS: Nothing further, sir.
11 THE COURT: Thank you do well, we will adjourn.

12 AND WITH THIS CASE WILL BE ADJUDICATED

13 Certified a correct transcript.

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18 JAMES H. ROSE
19 Court Reporter