

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RICHARD BARGEN

Appellant/Applicant

- and -

HER MAJESTY THE QUEEN, in right of the NORTHWEST  
TERRITORIES, as represented by THE MINISTER OF  
HEALTH AND SOCIAL SERVICES (“the Minister”)

Respondent

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Application to set aside the interim suspension of the applicant’s medical practitioner’s licence.

Heard at Yellowknife, NT: February 13, 2004

Reasons filed: February 17, 2004

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REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Appellant/Applicant:  
Counsel for the Respondent:

Jonathan P. Rossall  
William R. McKay

*Bargen v. Minister*, 2004 NWTSC 6

Date: 2004 02 17

Docket: S-0001-002004000056

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REASONS FOR JUDGMENT

[1] The applicant is a medical practitioner who was licensed to practice medicine in this jurisdiction in November 2003. On February 5, 2004 his licence was suspended pending an investigation under the *Medical Profession Act* into allegations of improper conduct. He asks this Court to set aside the interim suspension of his licence.

[2] The right to practice medicine in this jurisdiction is governed by the provisions of the *Medical Profession Act*. The Act deals generally with the registration, licensing, suspension and discipline of members of the medical profession. The Minister of Health has a central role in the administrative regime established by the Act. Under the Act, the Minister of Health establishes a Medical Registration Committee. The Medical Registration Committee receives and reviews applications from persons seeking to be licensed to practice medicine. Any decision of the Medical Registration Committee can be appealed to the Minister and the Minister’s decision is final (s.18).

[3] The Act also provides a regime to deal with any complaints of improper conduct by medical practitioners who are licensed under the Act. The Act establishes a Board of Inquiry to investigate such complaints. The Minister appoints the President and the members of the Board of Inquiry, the majority of whom are medical practitioners. The Act provides direction to the President and the Board of Inquiry in the investigation of complaints, including the holding of a formal hearing when necessary. The Board of Inquiry is required to conduct its proceedings in accordance with the rules of natural justice (s.36). The Act grants to the Board of Inquiry certain powers upon completion of its investigation, including the cancellation of a medical practitioner's licence on account of improper conduct. Improper conduct is defined in the Act as follows:

20. A person registered under this Act is guilty of improper conduct if the person

- (a) engages or has engaged in unbecoming or criminal conduct, whether in a professional capacity or otherwise;
- (b) is incapable of practising or is unfit to practise medicine or is suffering from an ailment either organic or mental that might, if the person continues to practise, constitute a danger to the public;
- (c) is convicted of an offence under this Act or of an indictable offence under the *Criminal Code*;
- (d) engages or has engaged in conduct that is inimical to the best interests of the public or the medical profession;
- (e) uses or has used fraud, misrepresentation or falsification of records to obtain registration under this act.

[4] The Act provides that any medical practitioner who is aggrieved by a decision of the Board of Inquiry may appeal to this Court (s.40).

[5] Finally, the Act provides that, pending an investigation into a complaint of improper conduct, the Minister can temporarily suspend the medical practitioner's licence (s.42). It is this section of the Act that is the focus of the present application:

42. Notwithstanding anything in this Act, the Minister may suspend a medical practitioner pending an investigation as to whether the medical practitioner has been guilty of improper conduct, but the suspension shall not exceed a period of six weeks.

[6] Thus the legislature has given the Minister of Health a very broad discretion, in any given case, to temporarily suspend a doctor's licence pending an investigation of the merits of a complaint. The Legislature has not set forth specific factors or considerations to guide the Minister in exercising his discretion so presumably he is constrained only by the purposes and objects of the *Medical Profession Act* and would take into consideration such factors as the protection of the public, the public interest in the integrity of the medical profession, the nature of the allegation, and the apparent strength of the evidence supporting the allegation. There is no appeal from the Minister's decision on a temporary suspension. The legislature, in not providing for an appeal (as it has for the eventual disciplinary decision on the merits) has expressed its intention on deferring to the Minister's discretion. Accordingly, on this application the Court ought to extend considerable deference to the Minister's decision. On this application for judicial review, the Court should only interfere if the Minister's decision is unreasonable, or, as some case authority would have it, patently unreasonable.

[7] In support of this application, the applicant filed his affidavit sworn February 10, 2004. In response, the Minister filed the sworn affidavit of Gregory Cummings who is the Chief Executive Officer of the Yellowknife Health and Social Services Authority (the applicant's employer), sworn February 12, 2004. At the hearing of this application on short notice on February 13, the applicant presented a second or supplemental affidavit. A review of these affidavits reveals no serious factual dispute regarding the circumstances immediately preceding the temporary suspension (i.e., the applicant clearly disputes some of the allegations in the initial complaint, but there is no dispute regarding the events of February 4 and February 5, 2004).

[8] Mr. Cummings states that on January 22, 2004 he, Dr. Affleck and a nurse met with an unnamed informant who made a complaint regarding the applicant's ethical conduct. The complaint included "allegations that Dr. Barga was involved in a relationship with a seventeen year old girl, was in possession of child pornography and had breached a patient's confidentiality."

[9] On February 4, 2004, Mr. Cummings met with the applicant and advised him of these complaints made against him. At that time the applicant "acknowledged that he had

requested confidential information concerning a third party from Dr. John Morse and an emergency physician and relayed this information to an acquaintance of his who was not a relative of the third party. Dr. Bargen further admitted to taking a 17 year old girl, who was not related to him, to Ottawa and Winnipeg while on duty travel and sharing a hotel room with her”.

[10] On February 5, 2004 Mr. Cummings met with other officials in the Department of Health and the Department of Justice, including the Deputy Minister of Health. Mr. Cummings shared with the others his concerns arising out of the February 4, 2004 meeting with the applicant. Subsequently, Mr. Cummings, as Chief Executive Officer of the applicant’s employer, decided to put the applicant on leave with pay pending a final decision regarding his continued employment. Mr. Cummings so advised the applicant by delivery of a written letter to him on February 5, 2004. In that letter the employer specifically states that it is considering termination of employment on account of breach of the employment contract provisions regarding patient confidentiality.

[11] Concurrently, the Deputy Minister of Health apparently informed the Minister of Health of the concerns discussed at the February 5, 2004 meeting, following which the Minister decided to temporarily suspend the applicant’s licence pending an investigation under the *Medical Profession Act*.

[12] The letter from the Minister to the applicant, delivered to him on February 5, 2004, simply reads:

“I am writing to inform you that I am suspending your licence to practice medicine in the NWT, pursuant to section 42 of the *Medical Profession Act*, R.S.N.W.T. 1988, c.M-9, pending investigation into allegations of improper conduct. This suspension is effective as of 5:00 p.m. February 5, 2004 and will remain in effect for a period of 6 weeks unless you are notified otherwise.”

[13] On February 6, 2004 a formal written complaint was sent to the President of the Board of Inquiry by Dr. Affleck, another doctor with the Yellowknife Health and Social Services Authority.

[14] In his initial affidavit filed with this application on February 10, 2004, the applicant states: “I have not been provided with reasons for the decision of the Minister to suspend my licence, nor am I aware of any circumstances which might justify the suspension of

my licence”. This is disingenuous, given the meeting of February 4, 2004, and the receipt of the two letters from the Minister and from his employer on February 5, 2004.

[15] Also in his initial affidavit sworn February 10, 2004, he states he has not seen a written complaint to the President of the Board of Inquiry. In his second affidavit sworn February 13, 2004, he says he has now seen the letter of complaint dated February 6, 2004.

[16] The applicant has not satisfied me that the Minister acted unreasonably or made an unreasonable decision. The Minister had before him (a) allegations of serious improper conduct including breach of patient confidentiality, possession of child pornography, and involvement with a 17 year old girl, (b) an admission by a newly-licenced medical practitioner of a breach of doctor/patient confidentiality, (c) an acknowledgment that he was in a relationship, though platonic, with a 17 year old girl, who had accompanied him and shared hotel accommodation with him while on duty travel.

[17] For the Minister to decide, on balance, to temporarily suspend the doctor’s right to practice medicine pending an investigation cannot be said to be unreasonable. It was clearly within the Minister’s discretion to do so. There is no suggestion that the Minister considered any improper factors in exercising his discretion.

[18] It cannot be said that the procedural steps leading to the Minister’s decision were unfair to the applicant. The very nature of interim suspension pending an investigation requires a prompt decision.

[19] For these reasons I find there is no merit in the request to set aside the Minister’s temporary suspension of the applicant’s licence.

[20] Accordingly, an Order will issue:

- (a) abridging the time within which to bring this application, pursuant to Rule 713;
- (b) dismissing the application.

J.E. Richard,  
J.S.C.

Dated at Yellowknife, NT  
this 17 day of February 2004

Counsel for the Appellant/Applicant: Jonathan P. Rossall  
Counsel for the Respondent: William R. McKay

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