

SUPREME COURT OF YUKON

Citation: *Stamp v Yukon (Government of)*,
2026 YKSC 56

Date: 20260720
S.C. No. 24-A0093
Registry: Whitehorse

BETWEEN

DR. JOHN PATRICK STAMP

PLAINTIFF

AND

GOVERNMENT OF YUKON, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,
AND YUKON HOSPITAL CORPORATION

DEFENDANTS

Before Justice K. Wenckebach

Counsel for the Plaintiff

Peter Roberts and
Louise McLeod (by videoconference)

Counsel for the Yukon Hospital
Corporation

Jason Mark Jackson

REASONS FOR DECISION

OVERVIEW

[1] In this application, one of the defendants, the Yukon Hospital Corporation, seeks that part of this action be stayed until an administrative body, the Hospital Privileges Appeal Board, completes an appeal that will address issues related to those arising in the action.

[2] For the reasons provided below, I deny YHC's application.

INTRODUCTION

[3] The plaintiff, Dr. John Patrick Stamp, is an obstetrician and gynecologist. In 2015, Dr. Stamp moved to the Yukon to practice medicine. Before he started practicing medicine, Dr. Stamp entered into agreements with the defendant, the Government of Yukon, Department of Health and Social Services, and with YHC. With YG, he entered into a service agreement, through which YG paid him for providing medical services to patients. With YHC, Dr. Stamp entered into a potentially broader relationship. First, YHC (which operates the Whitehorse General Hospital) granted Dr. Stamp permission to practice at WGH and to use its resources, such as giving him access to operating rooms and equipment (called “privileges”). The granting of privileges, along with recruitment and discipline of medical staff by YHC, is governed by the Medical Staff Bylaws (the “Bylaws”). In 2018, as well, Dr. Stamp and another OB-GYN entered into a lease agreement with YHC to rent clinic space at WGH.

[4] In about 2020, complaints were made about Dr. Stamp’s conduct toward colleagues, staff and patients. In October 2021, in light of the complaints, Dr. Stamp took a leave of absence from WGH. A dispute resolution process took place, at the end of which recommendations were made, including that Dr. Stamp be gradually reintroduced to WGH to resume clinical activities. There appears to be dispute about when Dr. Stamp was to be reintroduced to clinic practice: the Statement of Claim states this was to occur in April 2022, while YHC states that Dr. Stamp’s reintroduction was to occur in January 2024. At all times, Dr. Stamp retained his hospital privileges.

[5] In about January 2022, YG decided to not renew Dr. Stamp’s service agreement.

[6] In the fall of 2022, YHC terminated the lease agreement for clinic space with Dr. Stamp and the other OB-GYN, effective March 17, 2023. Starting on about March 17, 2023, YHC leased clinic space to the other two OB-GYNs at WGH. These OB-GYNs were not interested in sharing clinic space with Dr. Stamp. YHC also advised Dr. Stamp that it did not have other clinic space for him at WGH.

[7] In July 2024, Dr. Stamp commenced this action against YG. In December 2024, Dr. Stamp commenced an appeal at the Hospital Privileges Appeal Board, challenging YHC's refusal to give him clinic space at WGH, amongst other things. The Hospital Privileges Appeal Board has not yet made a final decision on Dr. Stamp's appeal.

[8] In April 2025, Dr. Stamp amended the Statement of Claim to include YHC as a defendant. Dr. Stamp makes claims in both tort and contract against YHC. The tort allegations that are relevant to this application are that YHC was negligent in terminating the lease with Dr. Stamp, while continuing to provide the other OB-GYNs with clinic space. Furthermore, it was negligent in not telling Dr. Stamp it provided the other OB-GYNs with clinic space. It was also negligent for failing to provide clinic space to Dr. Stamp while at the same time providing it to the other OB-GYNs. Finally, it was negligent in failing to resolve the other OB-GYNs' unwillingness to share their clinic space and implement the hearing committee's recommendations to reintegrate Dr. Stamp into WGH. The contractual allegations are that YHC breached the duty of honest performance by misleading Dr. Stamp into believing that the lease was terminated when, in fact, YHC continued the lease agreement with the other OB-GYNs.

[9] YHC argues that part of the Statement of Claim should be stayed until the Hospital Privileges Appeal Board makes a decision because the issues raised in the

Statement of Claim and in the appeal are essentially the same. YHC states that Dr. Stamp should exhaust the appeal process before pursuing his action, and the action is a collateral attack on the appeal. Dr. Stamp opposes YHC's application. YG takes no position.

ISSUES

[10] The issues are:

- A. Should the action be temporarily stayed because Dr. Stamp has not exhausted the Hospital Privileges Appeal Board process?
- B. Should the action be temporarily stayed because it constitutes a collateral attack on the Hospital Privileges Appeal Board process?

ANALYSIS

- A. Should the action be temporarily stayed because Dr. Stamp has not exhausted the Hospital Privileges Appeal Board process?

[11] YHC argues that Dr. Stamp must exhaust the Hospital Privileges Appeal Board process before proceeding with part of his court claim against it. I conclude, however, that Dr. Stamp does not need to exhaust the Hospital Privileges Appeal Board process before proceeding with this action because the doctrine of exhaustion does not apply to the facts of this case.

Law

[12] Under the doctrine of exhaustion, a party cannot seek review of a decision made in an administrative process until the party has pursued all effective remedies available in that process. This means, absent exceptional circumstances, a party cannot ask the court to review an interlocutory decision. Additionally, where an administrative process

provides internal appeals or reviews, a party cannot skip those appeals or reviews and apply directly to the court for judicial review (*CB Powell Ltd v Canada (Border Services Agency)*, [2011] 2 FCR 332 at paras. 30-31).

Analysis

[13] In this case, the doctrine of exhaustion does not apply because Dr. Stamp is not asking the Court to judicially review a decision made by YHC or the Hospital Privileges Appeal Board. The doctrine of exhaustion does not bar a claimant from bringing any court proceeding at the same time as it pursues a remedy through an administrative process; rather, it prohibits claimants from asking the court to review a decision from an administrative process until the claimant has completed all the steps of the administrative process. Here, Dr. Stamp appealed the decision of the YHC to the Hospital Privileges Appeal Board, and he also brought a statement of claim against YHC arising from the same acts. There is no application for judicial review. The doctrine of exhaustion is therefore irrelevant.

B. Should the action be temporarily stayed because it constitutes a collateral attack on the Hospital Privileges Appeal Board process?

[14] I conclude that the court proceedings are not a collateral attack on the appeal before the Hospital Privileges Appeal Board. Dr. Stamp's action should not, therefore, be stayed.

Legal Principles

[15] A collateral attack occurs where a party seeks to invalidate or render inoperative an order or decision other than in the proper setting. It generally arises when a party does not appeal or judicially review an order or decision, but, instead, attacks it in

another forum as a way to avoid the impact of the order or decision. An essential issue in identifying collateral attack is the claimant's intent. Collateral attack only arises if the claimant's intent, in attacking the order or decision, is to invalidate it or render it inoperative. Thus, for example, collateral attack does not apply where the claimant attacks the factual findings underpinning a decision (*Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62 at para. 60, 64-65 ("*TeleZone Inc.*"); *Garland v Consumers' Gas Co.*, 2004 SCC 25 ("*Garland*") at para. 71).

[16] A collateral attack also does not arise simply when there is overlap in facts between an action and administrative proceedings (*TeleZone Inc.*, at para. 30). In determining whether a proceeding constitutes a collateral attack, the fundamental question the court must consider is "...whether the claimant has pleaded a reasonable private cause of action for damages" (at para. 78).

Analysis

[17] YHC submits that proceeding with this action at the same time as the appeal before the Hospital Privileges Appeal Board constitutes a collateral attack on the Hospital Privileges Appeal Board process because Dr. Stamp is pursuing the same issues, on the same set of facts and seeking relief through an administrative process and a court proceeding at the same time.

[18] I am not persuaded by YHC's arguments. I am not convinced that the principles of collateral attack apply in this case. As I understand it, collateral attack only applies when the administrative body or court being attacked has made a decision or order. The rationale for the rule is to preserve the integrity of the justice system. "... [T]he doctrine is intended to prevent a party from circumventing the effect of a decision rendered

against it” (*Garland* at para. 72). Where a party brings proceedings in a different forum while the first decision maker is still deciding its case, the party is not trying to circumvent a decision. Collateral attack does not, therefore arise.

[19] In the case at bar, Dr. Stamp is in the midst of challenging YHC’s decision before the Hospital Privileges Appeal Board. The Hospital Privileges Appeal Board has not rendered a final decision or issued an order. Thus, in bringing this action, Dr. Stamp is not attempting to circumvent the effects of an order from the Hospital Privileges Appeal Board.

[20] However, even if the principles of collateral attack do apply, this is not a case of collateral attack. Dr. Stamp has pleaded a reasonable cause of action for damages. He argues that the Bylaws create a specific relationship between YHC and medical practitioners that impose certain obligations on YHC with regard to medical practitioners. Because of the Bylaws, YHC has a duty of care towards medical practitioners, requiring, for example, that YHC treat medical practitioners equitably. Dr. Stamp’s position is that YHC breached the standard of care by not treating Dr. Stamp equitably with the other OB-GYNs in allocation of clinic space. This may be a novel cause of action, but it is a reasonable one.

[21] Similarly, the allegation of breach of contract is that, contrary to what YHC told Dr. Stamp at the time, YHC did not terminate the lease for clinic space with the OB-GYNs; it continued the lease with two other OB-GYNs, but without Dr. Stamp. In doing this, YHC breached its duty of honest performance of its contract with Dr. Stamp. Again, this is a reasonable cause of action for damages.

[22] The appeal, on the other hand, is on a much narrower issue. The Hospital Privileges Appeal Board has authority only to hear appeals regarding hospital privileges granted to medical practitioners (*Hospital Act*, RSY 2002, c.111, s. 21(1)). Here, the Hospital Privileges Appeal Board has stated that the issue before it is whether YHC's decision in denying Dr. Stamp clinic space at WGH is an operational decision or one which involves the granting of privileges. If it does involve the granting of privileges, the question will then be whether YHC improperly revoked, suspended, altered or failed to renew Dr. Stamp's privileges when it refused to give Dr. Stamp clinic space.

[23] There may be overlap between some of the questions addressed during the two proceedings. The Bylaws address privileges; consideration of the tort claim may involve consideration of whether allocation of clinic space forms part of Dr. Stamp's privileges. The legal issues at the heart of the proceedings remain distinct, however; this is not a case in which the claims in tort and contract are the same as the appeal but are artfully repackaged to look different.

[24] There may also be some overlap in the remedies available to Dr. Stamp in the two proceedings. If Dr. Stamp is successful on appeal, the Hospital Privileges Appeal Board can direct YHC to provide him with clinic space. Dr. Stamp is not seeking specific performance against YHC in the action, but rather, seeks damages. Nevertheless, if Dr. Stamp receives clinic space as a result of his appeal, it will have an impact on a damages award he may receive in court. At the same time, the provision of clinic space may not compensate for the entirety of special damages award Dr. Stamp may be entitled to, nor would it necessarily address his claims for general and aggravated and punitive damages.

[25] The action is, therefore, not a collateral attack on the appeal.

Conclusion

[26] I dismiss YHC's application.

WENCKEBACH J.