SUPREME COURT OF YUKON

Citation: *Beaugie v. Yukon Medical Council*, 2012 YKSC 96

Date: 20121129
S.C. No. 12-AP005
Registry: Whitehorse

Between:

DAVID BEAUGIE

PETITIONER

And

YUKON MEDICAL COUNCIL

RESPONDENT

Before: Mr. Justice L.F. Gower

Appearances:

David Beaugie — Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is a without-notice application for indigency status by David Beaugie for the purpose of commencing an appeal from a decision of the Yukon Medical Council (the "Medical Council") involving a Whitehorse physician. Because I am dismissing this application, I will refer to the physician as Dr. S., in order to protect his reputation. The decision follows two complaints to the Medical Council by Mr. Beaugie on September 10 and October 6, 2011.

[2] The authority for granting indigency status is found in Appendix C, Schedule 1, S1 (1) of the Yukon *Rules of Court*, which provides as follows:

> "If the court, on summary application before or after the commencement of a proceeding, finds that a person is indigent, the court may order that no fee is payable to the Territorial Treasurer by the person to commence, defend or continue the whole or any part of the proceeding unless the court considers that the claim or defence
> (a) discloses no reasonable claim or defence, as the case may be,
> (b) is scandalous, frivolous or vexatious, or
> (c) is otherwise an abuse of the process of the court."

[3] Based on the financial information provided by Mr. Beaugie, I am satisfied that he is indigent for the purposes of this rule. Rather, the issue on this application is whether Mr. Beaugie's appeal discloses any reasonable claim under paragraph (a) of the rule. For reasons which will become obvious, it is unnecessary for me to consider the questions arising under paragraphs (b) or (c) of the rule.

BACKGROUND

[4] Mr. Beaugie filed an affidavit in support of his application, in which he indicates that he is a "pensioner" receiving social assistance because of a health problem rendering him unfit for employment. He says that he needs to see a doctor once per month, and annually must submit a doctor's form to continue to receive the social assistance. The affidavit also has a number of documents attached as exhibits.

[5] The first document is a draft petition in Form 2. Mr. Beaugie has left blank that part of the draft petition where the petitioner is invited to specify the nature of the order sought. However, in the following paragraph, Mr. Beaugie has indicated that he intends to rely on Rule 54 of the *Rules of Court*, which deals with applications for judicial review.

In the next part of the petition, where the petitioner is invited to specify the facts upon which the petition is based, Mr. Beaugie has handwritten the following:

> "Yukon Medical Council did nothing about (Dr. [S.] has no License) Dr. [S.'s] Refusal to hand over Medical Records when asked also banned from Clinic." (as written)

[6] The second document attached to the draft petition is a letter from the Registrar of the Yukon Medical Council to Mr. Beaugie, dated October 4, 2012, entitled "Re: Complaints against Dr.[S.]". The letter indicates that the Council appointed an investigator from the College of Physicians and Surgeons of Alberta ("CPSA") to investigate Mr. Beaugie's complaints, which focused on two issues: (1) the alleged refusal of Dr. S. to release Mr. Beaugie's medical records; and (2) the availability of Dr. S. as Mr. Beaugie's family physician. The letter also informed Mr. Beaugie that the Yukon Medical Council routinely employs the investigation team from CPSA in complaints involving medical practices and procedures. I note that the appointment of such an investigator is authorized under s. 32 of the *Medical Profession Act*, R.S.Y. 2002, c. 149 (the "*Act*").

[7] As for the first issue, the Registrar stated that the findings of the investigator were as follows:

> "
> - Dr. [S.] is not the custodian of Mr. Beaugie's medical records at River Valley Medical.
> - The River Valley Medical clinic is a group practice, which is owned and operated by Dr. Tadros, who is also the custodian of Mr. Beaugie's medical records.
> - On October 6, 2011 Mr. Beaugie did not receive his entire medical records from the River Valley Medical clinic.
> - The record custodian has located the remainder of Mr. Beaugie's medical records; on June 6, 2012 Mr. Beaugie was made aware by CPSA that the records are presently available to him."

[8] As for the second issue about Dr. S.'s availability to act as Mr. Beaugie's family physician, the Registrar reported the investigator's findings as follows:

> "• Dr. [S.] informed Mr. Beaugie that he was unable to establish a long-term doctor/patient relationship with him and that he should attempt to establish a relationship with a primary care physician.
> • Mr. Beaugie was seen on a walk-in basis during 2011.
> • It is unclear why Mr. Beaugie was discharged as a patient from the clinic.
> • The administrators of the River Valley Medical and Dr. [S.] should have a clear and consistent policy with respect to the discharge of patients. The policy should include a process for written notification to be provided to the patient with an explanation for the rationale behind the decision."

[9] Based on this evidence, the Medical Council determined that the investigation did not support findings of professional misconduct against Dr. S. The Registrar's letter informed Mr. Beaugie of this and further referred him to his right to appeal the decision of the Medical Council, pursuant to s. 36(1) of the *Act*, "…at any time within 30 days from the date of the decision…". Finally, the Registrar invited Mr. Beaugie to contact her if he had any questions about the Medical Council's decision.

[10] Also attached to Mr. Beaugie's affidavit is a copy of his complaint to the Medical Council dated September 10, 2011. That complaint has a typewritten attachment entitled "Statement of David Beaugie" and it is signed by Mr. Beaugie at the bottom. The statement indicates that Mr. Beaugie was the patient of a physician at the River Valley Medical clinic, until that physician left Whitehorse. According to Mr. Beaugie, the departing physician had him sign a form confirming that Dr. S. would be his new family doctor. However, Mr. Beaugie says that months after the departing physician left Whitehorse, Dr. S. indicated to Mr. Beaugie that he would only see him on a walk-in basis

and that he would need to find another physician to act as his family doctor. Mr. Beaugie's statement finally indicated that, notwithstanding that the form confirming Dr. S.'s relationship with him was not found on his file, he believes that it should be there.

[11] Presumably, this last point was the reason why Mr. Beaugie sought copies of his medical records.

[12] The balance of the documents attached to Mr. Beaugie's affidavit include financial information supporting his claim for indigency status and a large volume of information taken from the Internet regarding the provision of healthcare in Canada, including issues arising with foreign doctors seeking certification to practice in Canada.

[13] As with his statement of the facts in support of the draft petition, in the body of the affidavit, Mr. Beaugie alleges what appear to be two new complaints, not the subject of his earlier complaints to the Medical Council. In essence, these are that:

> 1) Because he complained to the Medical Council, the River Valley Medical clinic has "banned" him (presumably from their premises) from asking for his medical records; and
>
> 2) It is an offence under the *Criminal Code of Canada* to practice medicine without a proper license, and that "…Local Law has no Jurisdiction over this" (as written).

ANALYSIS

[14] The first part of the "Indigency Status" rule requires the applicant to satisfy the court that he or she is indigent. *The Dictionary of Canadian Law*, 4th ed., defines "indigent" as follows:

> "In law, the word "indigent" does not mean a person without any means, namely a pauper, but a person possessed of some means but such scanty means that he or she is needy and poor."

[15] While some of the financial information provided by Mr. Beaugie is unclear, it appears that the bulk of his monthly income is a disability pension from the Canada Pension Plan in the amount of $663.09. His rent and utilities are paid directly by Yukon Social Services, and the balance of his modest monthly expenses appear to be covered by a small monthly social assistance cheque. I am satisfied that, while he is not a person entirely without means, the $140 filing fee he would otherwise be required to pay to commence this proceeding would likely cause him significant financial hardship. Thus, I find Mr. Beaugie to be indigent under the first part of the rule.

[16] However, the second part of the "Indigency Status" rule at issue in this case additionally requires the applicant to satisfy the court that the proceeding to be commenced discloses a "reasonable claim or defence, as the case may be". Identical language was used in Rule 19(24)(a) of the former British Columbia *Rules of Court*, B.C. Reg. 221/90, which stated:

> "At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that
> (a) it <u>discloses no reasonable claim or defence as the case may be</u>…"

In *Odhavi Estate v. Woodhouse* (2003), 233 D.L.R. (4th) 193 (S.C.C.), the Supreme Court held that the test for striking out a statement of claim as disclosing no reasonable cause of action is whether it is plain and obvious that no reasonable cause of action is disclosed. If there is a chance that the plaintiff might succeed, then he should not be

"driven from the judgment seat". The action should be dismissed only if it is certain or sure to fail because it contains a radical defect. This has become known as the "plain and obvious test" and it is stringently applied.

[17] Although that test was enunciated in a slightly different context from the case at bar, I find that it is nevertheless applicable to applications for indigency status.

[18] In *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress* (1999), 36 C.P.C. (4th) 266, the British Columbia Supreme Court held, at paras. 34 and 37, that any doubt on the plain and obvious test must be resolved in favour of permitting the pleading (or other document) to stand.

[19] While the indigency status rule does not specifically address appeals, it does refer to "the commencement of a proceeding". Rule 1(13) defines "proceeding" as including "an action, suit, cause, matter, appeal or originating application". Therefore, the "Indigency Status" rule is broad enough to include an appeal. Thus, although the rule uses the words "claim or defence", suggesting a proceeding in the first instance, I interpret "reasonable claim or defence" to mean a proceeding, including an appeal, in which it is plain and obvious that it is bound to fail.

[20] Accordingly, in the circumstances of the present application, there is an onus on Mr. Beaugie to satisfy this Court that, at a minimum, his intended appeal might succeed. I conclude that he has failed to do so. My reasons for this conclusion as follows:

1) Mr. Beaugie failed to commence this appeal within thirty days from the date of the decision of the Medical Council. The decision was dated October 4, 2012 and he was specifically advised of the appeal period. However, Mr. Beaugie did not file the present application until November 13, 2012 - ten days past the

deadline. He has provided no reasons for this delay, nor has he indicated an intention to apply for an extension of time to commence the appeal. In *Associates Realty Credit Ltd. v. Insurance Corporation of British Columbia* (1979), 16 B.C.L.R. 54, at p. 55, the Supreme Court of British Columbia held that, if the plaintiff's claim is plainly and obviously barred by a limitation period, it can be struck out.

2) Further, it appears that Mr. Beaugie is attempting to argue new and different issues which were not before the Medical Council. Mr. Beaugie's complaint of October 6, 2011 has not been attached to his affidavit. Therefore, I do not know what it contained. However, I can infer from the Registrar's letter of October 4, 2012 that it likely dealt with the issue of the release of Mr. Beaugie's medical records. I say that because there were only two issues identified by the Registrar in the letter, and the second issue, namely Dr. S.'s availability to act as Mr. Beaugie's family physician, was clearly the subject of the earlier complaint, dated September 10, 2011. Nowhere in the Registrar's letter is there <u>any</u> reference to the new issues raised by Mr. Beaugie on this appeal, i.e. the allegations that: (1) Mr. Beaugie has been "banned" from the River Valley Medical clinic; and (2) that Dr. S. was practicing medicine without a license. I therefore conclude, on a balance of probabilities, that it is more likely than not that these are fresh issues which were not considered by the Medical Council. To the extent that Mr. Beaugie may intend to proceed by way of judicial review, he clearly cannot succeed in arguing such new issues, since they were not before the Medical Council and therefore formed no part of its decision.

3) Similarly, it appears that Mr. Beaugie is attempting to adduce fresh evidence. To the extent that this appeal might have proceeded as an appeal on the record before the Medical Council, to be determined “on the merits”, as appears to be what is intended under s. 39 of the *Medical Profession Act*, it would clearly fail in the absence of a successful application to adduce fresh evidence. Not only has Mr. Beaugie made no such application, he has indicated he has no intention of doing so.

4) Finally, Mr. Beaugie’s allusion to the continuing refusal by Dr. S. to provide him with his medical records is simply nonsensical. The Registrar’s letter of October 4, 2012 makes it very clear that, on October 6, 2011, Mr. Beaugie received some of his medical records from the River Valley Medical clinic, and that when the remainder of his records were located, CPSA expressly notified him on June 6, 2012 that those records were “available to him”. If indeed Mr. Beaugie is being denied access to the clinic for the purposes of picking up copies of these remaining records, then that would seem to me to be the subject of a further complaint to the Medical Council, and not properly an issue on this proposed appeal.

CONCLUSION

[21] Mr. Beaugie’s application for indigency status is dismissed. Therefore, if he wishes to pursue his appeal, he will have to pay the $140 filing fee.

Gower J.