

SUPREME COURT OF YUKON

Citation: *Stamp v Yukon (Government of)*,
2025 YKSC 8

Date: 20250206
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 Chief Justice S.M. Duncan

Counsel for the Plaintiff

Peter J. Roberts, KC and
Louise McLeod
(by videoconference)

Counsel for the Defendant Government of Yukon

I.H. Fraser

Counsel for the Defendant Yukon Hospital Corporation

J. Mark Jackson, KC

REASONS FOR DECISION

Overview

[1] This is an application for an interim prohibitive interlocutory injunction by the plaintiff, Dr. John Stamp, for an order precluding the Yukon Hospital Corporation (“YHC”) from selecting and granting privileges and a medical appointment to another obstetrician/gynecologist (“OB/GYN”), pending the full hearing of his application for a permanent mandatory injunction. The application is brought against the YHC, not the Yukon government. Dr. Stamp seeks to retain the *status quo* of three OB/GYN medical

appointments with privileges at Whitehorse General Hospital (“WGH”), including him, without a fourth OB/GYN receiving a medical appointment and a grant of privileges.

[2] To succeed in this application, Dr. Stamp must satisfy the Court on a balance of probabilities he has met all three parts of the test for injunctive relief: i) there is a serious issue to be tried; ii) he will suffer irreparable harm without the relief sought; and iii) the balance of convenience favours him, not the YHC.

[3] I find that Dr. Stamp has not met this test. Although I accept there is a serious issue or issues to be tried, any harm he has suffered or will suffer is compensable by damages, and thus not irreparable. The balance of convenience favours the YHC because its legislated object is to provide hospital and medical care and services so as to meet the needs of the people of the Yukon.

Preliminary Matters

[4] In Dr. Stamp’s notice of application, he seeks the above interim interlocutory prohibitive injunction as well as an interim interlocutory mandatory injunction, requiring YHC to consider Dr. Stamp’s application for the OB/GYN position posted in December 2024. However, this mandatory injunctive relief was not pursued in argument at the hearing, so I will not address it.

[5] Although not a respondent on this application, the Yukon government is a defendant in the underlying action. They appeared through counsel at the hearing and made legal and factual submissions opposing the relief, without objection by the other parties. They say no injunctive relief may be obtained against the Crown, with two narrow exceptions, while conceding this position has legal complexities. Counsel for Dr. Stamp, although not pursuing this interim interlocutory injunction against the Yukon

government, does not concede the Yukon government's immunity, and reserves their right to argue the issue at the full hearing of the injunction application.

[6] This interim application was brought urgently and on short notice. An application for a permanent mandatory injunction was filed on January 20, 2025. No date has been set for its hearing. Counsel for Dr. Stamp was unable to obtain assurances from YHC and Yukon government that they would not appoint and grant privileges to a fourth OB/GYN pending the hearing of that permanent injunction application. As a result, he brought this interim application on an urgent short notice basis. Counsel for YHC and Yukon government provided responding materials, appeared at the hearing, made submissions, and did not object to the short notice application.

[7] Counsel for Dr. Stamp confirmed that the proposed duration of the requested interim interlocutory relief is to the hearing of the permanent mandatory injunction application, not to the end of trial.

Background

[8] Dr. Stamp was certified as an OB/GYN by the Royal College of Physicians and Surgeons of Canada in 2014. He has a medical appointment and privileges from the YHC to provide OB/GYN care in the Yukon.

[9] The YHC is a corporation, established under the *Hospital Act*, RSY 2002, c 111. It is not an institution or agent of the Yukon government (s. 10). It establishes rules and procedures, through the Medical Staff Bylaws, for the appointment of persons to the medical staff of the hospital(s) and determines the qualifications for and the privileges attached to appointment to the medical staff (s. 3).

[10] The *Hospital Act* does not authorize the YHC to contract with or remunerate medical staff. Instead, the Department of Health and Social Services of the Yukon government enters into contracts with physicians and remunerates them for their services under the authority of the *Regulations Respecting Health Care Insurance Services*, CO 1971/275, made under the *Health Care Insurance Plan Act*, RSY 2002, c. 107, either through a fee for service model or by contract. The contract is called a Service Agreement. It is entered into at the discretion of the Yukon government and negotiated with the physician. Most physician specialists in the Yukon have Service Agreements with the Yukon government. Physicians are independent contractors, not employees of the YHC or the Yukon government.

[11] Dr. Stamp's medical appointment and privileges with the YHC allow him to admit and treat patients at the WGH. He does not currently have a Service Agreement with the Yukon government, nor does he have access to leased clinic space at the WGH. He can bill the Yukon government for services provided on the fee for service model.

[12] Dr. Stamp has been working in the Yukon as a fully qualified OB/GYN since 2015. He has been remunerated under Service Agreements that lasted three years, until March 2021, when his Service Agreement was renewed for one year, ending March 2022, due to the election period. He says there was an expectation it would be renewed for an additional two years.

[13] In October 2021, Dr. Stamp took a leave of absence from his work at YHC to allow the implementation of a resolution process developed to address complaints against him from other physicians relating to challenging interpersonal interactions. On

November 29, 2021, as part of the resolution process, YHC made recommendations for his re-integration to practice, to occur over the following months.

[14] In January 2022, the Yukon government, through the Deputy Minister of Health and Social Services, advised Dr. Stamp in writing that they did not intend to enter into negotiations with him for a Service Agreement. No reasons were provided.

[15] Dr. Stamp has not returned to work at WGH, through the recommended resolution process of re-integration in stages, because he says remuneration through the fee for service model is not financially viable for him.

[16] Currently there are two other OB/GYNs resident in the Yukon with privileges granted by YHC and Service Agreements with the Yukon government. The Yukon government has committed to Service Agreements with three OB/GYNs in the Yukon. In 2022, they received a recommendation from a physician reviewer based on the 2022 population of the Yukon of approximately 44,000, that at least three OB/GYNs are required.

[17] This situation gave rise to Dr. Stamp's statement of claim, filed in July 2024, seeking specific performance of the Yukon government's obligation to contract with him on equal terms to similarly situated physicians, and in the alternative a declaration of the Yukon government's requirement to do so, and damages. As well he claims damages for breach of contract, misfeasance in public office, and other special, aggravated, and punitive damages.

[18] In October 2024, a posting for another OB/GYN full-time position in the Yukon, remunerated through a Service Agreement, appeared on YukonDOCS website, belonging to the Yukon Medical Association ("YMA"). A new tripartite selection process,

consisting of YHC, Yukon government, and the YMA, established in the fall of 2024, is being used to recruit for this position.

[19] Dr. Stamp applied for the position in response to this posting. He was notified on November 14, 2024 by the Yukon government that his application would not be considered, without reasons.

[20] On January 10, 2025, Dr. Stamp was advised by counsel to the Yukon government that they had identified a suitable candidate to provide OB/GYN services at WGH and that a formal offer would be made in the next month or two. Counsel told Dr. Stamp that the Yukon government will not rely on the filling of this position to oppose his claim for specific performance. If he were successful in obtaining that relief, and there were three privileged and practising OB/GYNs already, the Yukon government would increase the complement to four.

[21] Dr. Stamp has continued to pursue this interim interlocutory application, however, because he says a fourth OB/GYN would significantly impact his practice by reducing his share of the work and his remuneration.

Issue

[22] Has Dr. Stamp met the test for an interim interlocutory prohibitive injunction?

Law and Analysis

[23] The parties agree on the applicability of the test for an interim interlocutory prohibitive injunction set out in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 (“*RJR-MacDonald*”). The test is conjunctive, meaning all three parts must be met. Generally, the granting of an injunction is discretionary. A court must

determine whether it is just and equitable in the circumstances (*British Columbia (Attorney General) v Wale* (1986), 9 BCLR (2d) 333 (CA) at para. 20).

i. There is a serious issue to be tried

[24] A preliminary, not prolonged, assessment of the merits of the case must be made. The threshold for serious issue is low, unlike the test for a mandatory injunction which requires a strong *prima facie* case and a consequent closer scrutiny of the merits. A prohibitive interim injunction does not require a determination that the applicant will likely succeed at trial to meet this test.

[25] Accepting this low threshold, I find there is a serious issue to be tried here, based on the consequences of the divided responsibilities between the YHC and the Yukon government with respect to medical staffing and physician remuneration, and the process issues that may arise.

[26] The applicant identifies the following serious issues:

- The enforceability of the obligations of YHC to its physicians as codified in the YHC Medical Staff Bylaws, including: establishing a transparent, consistent, and fair approach to dispute resolution; participation in planning that promotes and supports a healthy and respectful workplace; promoting the efficient and sustainable provision of health services in a manner that is responsive to the needs of individuals and communities, as well as the employees and all medical staff; and developing and maintaining bylaws for medical staff governance and medical staff rules that among other things facilitate the meaningful and effective participation of the medical staff in the affairs of YHC.

- The nature of the relationship between the YHC and the Yukon government in the context of physician appointment and remuneration: the grant of a medical appointment and hospital privileges to a physician specialist and, as in this case, a facilitation and encouragement by YHC of the physician's re-integration into practice may be compromised if the Yukon government does not offer the physician a Service Agreement.

[27] The thrust of Dr. Stamp's argument is that without a Service Agreement the privileges and medical appointment granted to him by YHC are thwarted. He is unable practically to exercise his privileges because he says it is not financially viable for him to do so.

[28] YHC argues there is no serious issue to be tried. YHC reiterates that Dr. Stamp's privileges and medical appointment remain intact, and they were prepared to facilitate his re-integration into practice. He has chosen not to return to practice because he has no Service Agreement. The negotiation of a Service Agreement is within the discretion of the Yukon government, not the obligation of YHC. To characterize the issue in dispute as the inability to exercise his privileges granted by YHC is a collateral issue and not a serious question to be tried. YHC says that because it has no involvement in the Service Agreement and the main claim focuses on the absence of a Service Agreement, there is no nexus between the grounds for this application and the main action, contributing to the absence of a serious issue.

[29] The Yukon government agrees with YHC that the target of the main claim, and by extension this application, is the Service Agreement. The Yukon government says there can be no mandatory order by this Court that the Yukon government, as the

Crown, must enter into a Service Agreement with Dr. Stamp. Therefore, they say there is no serious issue to be tried.

[30] While I agree with YHC and the Yukon government that the focus of the main action and this application is the Service Agreement, and that Dr. Stamp is not seeking to enjoin the Yukon government on an interim interlocutory basis, I do not agree that this is sufficient to refute the serious issue aspect of the test. The responsibilities for i) ensuring medical staff are qualified; and ii) appropriately remunerated are in many jurisdictions assumed by one entity. In the Yukon, these responsibilities are divided between the YHC and the Yukon government. Privileges and a medical appointment are necessary pre-conditions to the Yukon government's offer of a Service Agreement to a physician. A Service Agreement is a discretionary contract, with many components, and negotiable. Whether and how it is provided, renewed, and terminated; the existence of any procedural safeguards in the process; and its relationship to the YHC's decisions may affect a physician's livelihood and work life. These two aspects of a physician specialist's work – medical appointment and hospital privileges, and remuneration – are inextricably connected. The recent tripartite recruitment and selection process for hospital physicians to be implemented by YHC, Yukon government, and the Yukon Medical Association confirms this notion of shared responsibilities for a hospital physician's work in the Yukon. The implications these shared responsibilities between YHC and the Yukon government raises serious issues to be tried in this case.

ii. Dr. Stamp has not suffered irreparable harm

[31] The Supreme Court of Canada described irreparable harm in the interlocutory injunction test as referring “to the nature of the harm suffered rather than its magnitude.

It is harm which either cannot be quantified in monetary terms, or which cannot be cured, usually because one party cannot collect damages from the other” (*RJR-MacDonald* at 341).

[32] This test is not met because the harm suffered by Dr. Stamp is compensable in monetary damages if he is successful at trial.

[33] Dr. Stamp says if a fourth OB/GYN is granted a medical appointment and privileges by YHC, he will in effect be denied the full exercise of his privileges because he will not have the same access to patients, on call opportunities, and hospital resources including operating room time. Instead of three physicians sharing the work, there will be four, and the Yukon population is insufficient to support four, according to advice received by the Yukon government and Canadian national average figures. Dr. Stamp says this irreversible harm is not monetarily compensable because it affects his ability to exercise his privileges fully. Dr. Stamp further says he has been forced to practice temporarily at a hospital in Cranbrook, BC, in order to maintain his skill set and his livelihood, a hardship that has taken him away from his family in the Yukon and which cannot be compensated through damages.

[34] YHC says there is no authority to support a claim of irreparable harm from interference with employment and livelihood; by contrast, such interference is usually compensable by monetary damages. Counsel for YHC referred to two previous decisions where physicians who were deprived of earnings from a clinical practice, or had privileges terminated improperly, were found not to have suffered irreparable harm because their losses could be calculated monetarily (*Modry v Alberta Health*, 2015 ABCA 265 at para. 68; and *Saba v Interlake*, 2016 MBQB 78 at paras. 84-85).

[35] The Yukon government agrees that Dr. Stamp's concern is financial only and does not amount to irreparable harm.

[36] I agree with YHC and the Yukon government that Dr. Stamp has not suffered irreparable harm. His situation is unlike the cases he relies on (*Provincial Health Services Authority v Campbell*, 2021 BCSC 823 and cases cited within) where the physicians have not been provided access to hospital resources, patient lists, on call schedules and operating room time, and in at least one case, prohibited from entering hospital property. Dr. Stamp provides no evidence of denial of access to these resources or lists. YHC counsel confirmed that Dr. Stamp has full access to all of these items and could return to work tomorrow at WGH on a fee for service basis. Dr. Stamp has been denied clinic space at the hospital, but YHC counsel confirmed that no OB/GYN can now practice out of leased WGH space. Dr. Stamp is being treated no differently than the other two OB/GYNs in that respect.

[37] Without diminishing Dr. Stamp's claim of financial and logistical challenges in continuing to practice at WGH, I agree that his decision to work at a hospital in Cranbrook over the last several years and on an ongoing basis was his choice. If he is successful in his claim for damages for failure to be provided a Service Agreement, his damages can, and no doubt will, include any loss of income claim, mental distress, reputational harm, and other related costs.

iii. Balance of convenience favours YHC

[38] This third part of the interlocutory injunction test was described by the Supreme Court of Canada as "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on

the merits” (*RJR-MacDonald* at 342, quoting from *Manitoba (Attorney General) v Metropolitan Stores (MTS) Ltd*, [1987] 1 SCR 110). Many factors are considered in this assessment, including the public interest, meaning the concerns of society generally and the particular interests of identifiable groups (*RJR-MacDonald* at 344).

[39] This part of the test is also not met. The balance of convenience favours YHC. The legislated object of YHC is to provide hospital and medical care and services so as to meet the needs of the people of the Yukon (s. 2(a) of the *Hospital Act*). Dr. Stamp, although qualified, currently chooses not to provide OB/GYN services for financial reasons. Whatever the merits of his case, about which I have insufficient knowledge at this stage, the public interest of the Yukon population having the appropriate number of OB/GYNs willing and able to provide services prevails at this time.

[40] Dr. Stamp says the balance of convenience rests with him because he seeks this interim interlocutory injunction for a short time – only until the full hearing on the permanent mandatory injunction. The current recruitment process is scheduled to take several more months, during which time the full injunction hearing may occur. Dr. Stamp says he is available to provide services to the Yukon as long as he is properly remunerated; and his presence in the Yukon with the ability to work should prevent YHC from proceeding through a selection process for another OB/GYN. The appointment and privileging of another OB/GYN, even if Dr. Stamp can become the fourth, is unnecessary and prejudicial to him, as he says it would reduce his share of patients, on-call time, ability to access the operating room, and remuneration. His counsel further notes he has undertaken to abide by any order the Court may make to pay damages (Rule 51(5) of the *Rules of Court* of the Supreme Court of Yukon).

[41] YHC says that Dr. Stamp is acting out of pure financial self-interest and is not considering the public interest or the needs of patients in the Yukon. The offer from counsel to the Yukon government that the appointment and privileging of a third OB/GYN would not prejudice Dr. Stamp's legal argument and his eventual return to practice in the Yukon if he were successful in his claim reduces the potential harm to him. His undertaking to pay damages is meaningless in the face of YHC being prevented from hiring a third OB/GYN to serve Yukon patients until the full hearing of this matter. The balance of convenience favours the continuation by YHC of the process of securing another OB/GYN for the Yukon population.

[42] The Yukon government agrees with the YHC that the inability to put another OB/GYN in place means that the public interest is harmed as the Yukon will not have enough doctors. Even though the time during which the interim injunction may be in place may be relatively short, the uncertainty created by pausing the recruitment process may result in the loss of the current candidates. If Dr. Stamp is unsuccessful in his claim, then the Yukon will likely be without a third OB/GYN to fill the needs for a longer period, as the recruitment process would likely have to recommence. The consultant recommended 'at least' three OB/GYNs for the Yukon, taking into account holiday time and continuing medical educational courses.

[43] Dr. Stamp may have a legitimate claim against the Yukon government and YHC. If he is successful, he can become the fourth OB/GYN, with a Service Agreement. The negative impact on his practice of splitting patient lists, access to resources and on call duties four ways instead of three ways, is at this time speculative. The consultant's recommendation that at least three OB/GYNs were necessary was based on the 2022

population of 44,000. Already by June 2024, the population of the Yukon had grown to 46,640, according to the Yukon Bureau of Statistics (and of which I take judicial notice). There is no conclusive evidence at this time that the addition of a fourth OB/GYN will have the effect of preventing Dr. Stamp from effectively exercising his privileges.

[44] In the meantime, Dr. Stamp says he cannot work at the WGH on the basis of the fee for service model, meaning the Yukon may be without a needed OB/GYN at least until after the full injunction has been heard and decided. If he is unsuccessful in the injunction, the recruitment process is likely to have to recommence, further delaying the provision of OB/GYN services in the Yukon. The balance of convenience is in favour of YHC.

Conclusion

[45] For the above reasons, I deny Dr. Stamp's request for an interim interlocutory injunction prohibiting YHC from selecting, appointing, and granting privileges to an obstetrician/gynecologist pending the full hearing of his injunction application.



DUNCAN C.J.