

SUPREME COURT OF NOVA SCOTIA

Citation: *College of Paramedics (Nova Scotia) v. McCannel*, 2022 NSSC 110

Date: 20220421

Docket: Hfx No. 510461

Registry: Halifax

Between:

The College of Paramedics of Nova Scotia

Applicant

and

Adam Kiril McCannel

Respondent

DECISION – INJUNCTION

Judge: The Honourable Justice Jamie Campbell

Heard: April 11, 2022, in Halifax, Nova Scotia

Counsel: Ryan Baxter and Raylene Langor, for the Applicant
Adam McCannel, self-represented

By the Court:

[1] The College of Paramedics of Nova Scotia is seeking a permanent injunction against Adam McCannel to prevent him from holding himself out as a paramedic and to prevent him from disclosing confidential information, including the identity of the person who reported concerns about his conduct to the College. The injunction is being sought under section 97 of the *Paramedics Act*, S.N.S. 2017, c. 33. That section allows the College to apply for an injunction to restrain a person from contravening the *Act*. A judge may grant such an injunction “where the judge considers it just”.

[2] An interim injunction was granted by Justice Coughlan on November 11, 2021. Mr. McCannel was found by Justice Keith to have been in contempt of that order on December 22, 2021.

[3] It is important to define what this case is about. And, importantly, what it is not about. It is about whether there is a threatened or continuing contravention of the *Paramedics Act* being committed by Mr. McCannel and whether it is just that a permanent injunction be granted. It is not a judicial review of the process used by the College to suspend Mr. McCannel’s ability to obtain a license to practice paramedicine. This is not a judicial review.

Background

[4] The College is the professional regulator for the paramedic profession under the *Paramedics Act*. Mr. McCannel is a member of the College. A report was provided to the College by another health professional raising potential issues about Mr. McCannel’s capacity to practice paramedicine. The report was sent to Mr. McCannel, and he was invited to respond. An investigator was appointed to conduct an investigation. On July 19, 2021, the Investigation Committee of the College imposed an interim suspension on Mr. McCannel’s ability to obtain a license to practice paramedicine. That interim suspension remains in place.

[5] The next day Ryan Baxter, legal counsel for the College, wrote to Mr. McCannel. That letter enclosed the Investigation Committee’s interim decision. Mr. McCannel was advised of his right to request a meeting with the committee about the decision. Mr. Baxter went on in that letter to say that the College’s professional conduct process is confidential. Those who obtain information as part of the process, including Mr. McCannel himself, are required by the *Act* to keep that information confidential unless the College specifically permits otherwise.

[6] Again, on July 26, 2021, Mr. Baxter wrote to Mr. McCannel and told him that the professional conduct process is confidential. He drew Mr. McCannel's attention to section 39(1) of the *Act* which says that all complaints or investigations and all information gathered during the professional conduct process must be kept confidential by any person who possesses that information. Mr. Baxter told Mr. McCannel that he could not use the Investigation Committee's July 19, 2021 decision in any other legal proceeding to which the College was not a party unless otherwise determined by a court.

[7] Mr. McCannel was undeterred by those warnings. On July 30, 2021, he told Mr. Baxter that he intended to forward his communication about the College's process on to third parties. He did send information to third parties by email.

[8] Once again, on August 19, 2021, Mr. Baxter wrote to Mr. McCannel and told him that the professional conduct process is confidential. But then, on September 14, 2021, Mr. McCannel started posting information about the process on Facebook. He made posts on his Facebook account disclosing the name of the person who reported the initial concerns to the College about his capacity. It included photographs of a redacted document from the College's investigatory process entitled "Acknowledgement and Consent". Screenshots of those posts were taken.

[9] On September 21, 2021, Mr. Baxter wrote to Mr. McCannel to tell him that the Facebook posts had come to the attention of the College. Mr. Baxter told Mr. McCannel that this was a contravention of section 39(1) of the *Act*. Mr. Baxter told Mr. McCannel that he should remove those posts.

[10] On October 8, 2021, Mr. McCannel wrote an email to Ryan Baxter. He copied third parties on the email and within that email named the person who had made the complaint against him.

[11] On October 12, 2021, Mr. Baxter wrote to Mr. McCannel again. This time it was to tell him that section 34(1) of the *Act* prohibited him from holding himself out as a paramedic. At that time, Mr. McCannel did not hold a licence to practice paramedicine. On July 19, 2021, the Investigation Committee of the College had issued an interim suspension on his ability to obtain a license. In that decision Mr. McCannel had been informed that he did not have the right to use the title paramedic. Mr. McCannel had included in his Facebook profile a reference to him being a paramedic.

[12] On November 2, 2021, Mr. McCannel made another Facebook post about the issue. It says the following in part:

I have been at it for a year and there may be a number of people in the public who might have an interest in how Paramedics and Nurses are regulated and how enforcement or the very Paramedics Nurses is conducted.

This is supposed to be super secret and private stuff. I face 6 months in jail and a 2000.00 fine per and I don't give one last fuck for the standing of such hollow and corrupt people who parades themselves around in "Salmon" coloured shirts on our dime.... Mr. Karl Kowalsczyk loves a good salmon coloured shirt...

This is very much in keeping with all the posted ethics and code of conducts in both colleges, but not in practice...

Adam McCannel, who has had enough and if the system is going to keep me down, then at least I can describe how it works...

Even that may be illegal...so much for free speech and whistle blower protection...

[13] On that same day, November 2, 2021, Mr. Baxter wrote to tell Mr. McCannel that his failure to comply with the confidentiality requirement of the *Act* would result in the College starting legal action against him. He was also told in that letter that he could not use the title paramedic while not holding a licence to practice paramedicine.

[14] Once again, on November 3, 2021, Mr. McCannel disclosed the identity of the complainant in a post on his Facebook timeline. He also posted a copy of the complainant's letter of report.

[15] During the months of November and December 2021 Mr. McCannel continued to post on Facebook information that was part of the confidential process within the College.

Legal Process

[16] On November 12, 2021, an Interim Injunction was granted by Justice Coughlan upon application by the College. That interim injunction was, in part, to prevent Mr. McCannel from disclosing confidential information from the College's professional conduct process. Then, in a Facebook post on November 24, 2021, Mr. McCannel disclosed the identity of the person who had complained about him, referred to the injunction that prohibited him from doing just that and indicated that he was advising other healthcare professionals to write to the Nova Scotia College

of Nursing to inquire about the conduct of the person who had complained about his conduct.

[17] On November 24, 2021, the College brought an emergency motion seeking an order finding Mr. McCannel in contempt of court for breaching the interim injunction. A few days after that motion was filed, November 28, 2021, Mr. McCannel wrote to a representative of the Nova Scotia College of Nursing, which is involved in a similar matter with Mr. McCannel, that he had disclosed confidential information about the professional conduct processes of both colleges to “over 70 paramedics, doctors and others”.

[18] On December 2, 2021, the College’s contempt motion was heard before Justice Keith. The decision was reserved.

[19] On December 12, 2021, Mr. McCannel made another Facebook post. In it he said that he wanted to make his issues public and would be asking for a judicial inquiry.

Technically this may be a violation of the court order, but since the lawyer who got that court order failed to disclose his obvious conflict of interest when he presented a very incomplete submission to the court without this declaration or complete documents.

So I am calling his hand. Court and poker, play them the same way.

[20] On December 23, 2021, Justice Keith issued a decision in which he held Mr. McCannel in contempt of the Interim Injunction Order issued by Justice Coughlan. The implications of Justice Keith’s ruling are somewhat in dispute. But it is clear that Justice Keith found Mr. McCannel to be in contempt with respect to the part of the injunction enjoining him from disclosing confidential information from the professional conduct process. Justice Keith did not find Mr. McCannel in contempt of the part of the injunction preventing him from holding himself out as a paramedic. There was evidence provided that Mr. McCannel had taken down the social media post in which he referred to himself as a paramedic.

[21] The College filed this motion for a permanent injunction.

Evidence on the Motion

[22] The College has filed the affidavit of Karl Kowalczyk, the Executive Director and Registrar of the College of Paramedics of Nova Scotia. The affidavit is 34 paragraphs long and is, essentially, a means by which 24 exhibits could be

entered in evidence. It provides the dates on which certain procedural matters took place.

[23] Mr. McCannel is self-represented. He filed extensive materials that he has affirmed before a Commissioner of the Supreme Court. The documents do not comply with the requirements for affidavits. They contain large portions of legal argument, opinion, and unsupported allegations. To a large extent they dealt with issues that were not relevant to the application for an injunction. Those portions of Mr. McCannel's affidavit have been struck: *College of Paramedics (Nova Scotia) v. McCannel*, 2022 NSSC 109.

[24] Judges have an obligation to help litigants who chose to represent themselves in court. That obligation has become increasingly significant as more people find themselves in court, without the benefit of a lawyer. It does not amount to acting as their lawyer but does include an obligation to assist them in identifying the issues involved in the case. Mr. McCannel was told about the legal issues involved in this case and about what evidence would be relevant. Mr. McCannel appears to have had an entirely different idea as to what would be relevant and what the case was about.

[25] Mr. McCannel argued that the injunction was being used as a "gag order" to prevent him from exposing what he perceives as the many injustices that have been perpetrated against him. He believed that the process was entirely unfair and set up against him. Because it was so unfair, he wants medical professionals to know about what he says was done to him. The confidentiality provisions of the *Act* are in his view being used to prevent him from making his plight known to the public.

[26] The provisions of the *Act* were being used, he argued, to limit his human rights and his rights under the *Canadian Charter of Rights and Freedoms*. No notice had been given to the Attorney General of Nova Scotia and no brief was filed, to support the contention that the legislation was unconstitutional.

Issues

[27] As stated at the outset, it is important in this case to define the issues by saying what they are, and what they are not.

[28] The College is seeking a declaration that Mr. McCannel has contravened the *Paramedics Act* by disclosing confidential information pertaining to the professional conduct process and by representing himself as a paramedic when he

did not hold a license to practice paramedicine in Nova Scotia. The College is also seeking a permanent injunction to prevent Mr. McCannel from continuing to do those things.

[29] The issues are whether the declaration and permanent injunction should be granted.

[30] The question of whether the College had the right to issue an interim suspension of Mr. McCannel's ability to obtain a licence to practice paramedicine is not an issue in this motion and is not relevant to the issues in this motion. The question of whether the provision in the *Act* that requires information from the professional conduct process to be kept confidential is fair or operates as an unfair restraint any right that Mr. McCannel's may have to make his grievances public is not an issue on this motion.

[31] The issue is whether the test for an injunction under the *Act* has been met.

Statutory Injunction

[32] Section 97 of the *Act* provides that in the event of a threatened or continuing contravention of the *Act* the College may apply to the court for an injunction to restrain the person from continuing or committing that contravention. The judge may grant the injunction where it is considered just to do that. An injunction may be granted when a contravention is threatened so it is not necessary to show that a contravention of the *Act* has taken place.

[33] When a statute provides a remedy by way of an injunction different considerations apply than apply when an injunction is sought at common law. The court's discretion is more limited. The factors to be considered are not as broad in scope as in the context of a common law injunction. The applicant does not have to prove that damages would be an inadequate remedy or that irreparable harm would result if the injunction were not granted. There is no need for other methods of enforcement to have been tried. The court retains discretion as to whether the injunction is granted: *Canada v. Ipsco Recycling Inc. (F.C.)*, 2003 FC 1518, and *Nova Scotia (Real Estate Commission) v. Robinson*, 2018 NSSC 339.

[34] The *Act* allows for an injunction to be granted when there is a contravention of the *Act* or a threatened contravention of the *Act*. That assertion must be supported by evidence. Mere suspicion is not enough. But there is no requirement

for proof on a balance of probabilities: *Law Society of Saskatchewan v. Mattison*, 2015 SKQB 323.

[35] It is worth noting in this context that an injunction, if granted, enjoins a person from doing precisely what the legislation says they cannot do. It does have a consequence though. If a person is entitled to practice paramedicine, it would be wrong to issue an injunction to prevent them from putting themselves forward in public as a paramedic. If however a person is not entitled to practice paramedicine an injunction might be issued to prevent them from holding themselves out as a paramedic even if they have not yet done so but have threatened to do that.

The *Paramedics Act*, S.N.S. 2017, c. 33

[36] Paramedics are one of several self regulating professions. The purpose of the College is to serve and protect the public interest in the practice of paramedicine, to preserve the integrity of the profession and to maintain public and member confidence in the ability of the profession to regulate the practice of paramedicine.

[37] The *Act* provides that complaints and information gathered as part of the complaint process must be kept confidential. There are valid public policy reasons underlying that, though it is not an issue for this motion. People who make complaints against paramedics are offered the protection of confidentiality. Without it, potential complainants may be more hesitant to come forward.

[38] The *Act* also provides that only people who are licensed or otherwise authorized to practice paramedicine may hold themselves out as being entitled to practice. It protects the title “paramedic” as signifying a person who can legally practice paramedicine. The purpose of that, of course, is to maintain public confidence in the profession so that just anyone cannot call themselves a paramedic.

[39] Mr. McCannel was told that the information in the professional conduct process had to be kept confidential. He was left in no doubt whatsoever about that. He was told several times by counsel for the College about that requirement. Yet, he persisted in copying that information to others and publishing it on his Facebook page. His own writing makes it clear that he understood that what he was doing was in contravention of the legislation, but he felt justified in his actions. Even an interim injunction did not stop him.

[40] Mr. McCannel has breached the *Paramedics Act* provisions respecting the confidentiality of the conduct process. He has been found in contempt of court for failing to abide by the provisions of the interim injunction that was supposed to prevent him from doing that. The prejudice to Mr. McCannel of having an injunction to prevent him from disclosing information that the *Act* says he cannot disclose in the first place is negligible. A permanent injunction will issue.

[41] Mr. McCannel does not hold a license to practice as a paramedic in Nova Scotia. That is a fact. He is not permitted to hold himself out to the public as a paramedic. On his Facebook profile page, he held himself out to be an Advanced Care Paramedic at EMC Inc. On November 2, 2021, Mr. Baxter told him that the description was in contravention of section 34(1). Mr. McCannel later removed that reference. There is no evidence that he is now in breach of that section.

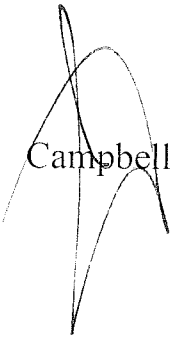
[42] Justice Keith did not find Mr. McCannel to be in contempt of the interim injunction because Mr. McCannel had taken down the offending social media post. The test for granting a statutory injunction is quite different to the test for a finding of civil contempt.

[43] Mr. McCannel acted in contravention of the *Paramedics Act* when he referred to himself as “paramedic”. It does not matter that he said he was unemployed. The licensing of paramedics and the employment of paramedics are not the same thing. A person may be licensed to practice paramedicine but still be unemployed. That post was taken down. Mr. McCannel knows that he cannot hold himself out to be a paramedic. In some situations that might be enough, and no further injunctive relief would be required.

[44] Mr. McCannel’s situation is not one of those. Mr. McCannel has demonstrated that with respect to the use of confidential material he will not be deterred by the legislation, or by a court order. Mr. McCannel’s perspective on these matters has been limited by his perceived sense of being unjustly suspended. Whether his suspension from practice as a paramedic was undertaken properly is not an issue in this application but his approach to dealing with the matter is. He has identified himself as a paramedic and he acknowledges that doing so was a mistake. His behaviour suggests however that there remains a risk that he will do so again. And the simple fact is that, as of now, it is illegal for Mr. McCannel to refer to himself as a paramedic. The *Act* provides for that. An injunction to prevent him from doing that is hardly an attack on his civil liberties. The injunction is granted.

[45] Mr. McCannel has persisted in an unreasonable course of action that has required the College take legal action against him. An injunction should not be needed to prevent a person from doing what the law says they cannot do.

[46] Costs in this matter are awarded against Mr. McCannel. He is not able to work now as a paramedic. He may not have much money at all. That does not justify his actions and should not excuse him from having costs awarded against him. This matter took a full day. Costs are awarded to the College of Paramedics of Nova Scotia in the amount of \$2,000.00.



Campbell, J.