

SUPREME COURT OF NOVA SCOTIA

Citation: *Nova Scotia College of Nursing v. McCannel*, 2022 NSSC 318

Date: 20221102

Docket: *Hfx*, No. 510952

Registry: Halifax

Between:

Nova Scotia College of Nursing

Applicant

v.

Adam Kiril McCannel

Respondent

Judge: The Honourable Justice Gail L. Gatchalian

Heard: October 31, 2022, in Halifax, Nova Scotia

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

By the Court:

Introduction

[1] The Applicant, the Nova Scotia College of Nursing, is the professional regulator of the nursing profession in Nova Scotia under the *Nursing Act*, S.N.S. 2019, c.8. The Respondent, Adam McCannel, is a complainant who filed complaints against two nurses under the *Nursing Act*. The College is seeking a permanent injunction against Mr. McCannel to prevent him from disclosing confidential information regarding the complaints he filed with the College.

[2] Section 130 of the *Nursing Act* prohibits a person who *receives or has knowledge* of information *as a result of a regulatory process* under the *Act* from publishing, releasing or disclosing the information and requires that person to maintain the confidentiality of such information. Section 130 sets out some exceptions, which do not apply in this case.

[3] The College is seeking the injunction against Mr. McCannel under s.155(1) of the *Nursing Act*. That section allows the College to apply for an injunction to restrain a person from violating the *Act* where there is a threatened or continuing

violation of the *Act*. A judge may grant such an injunction “where the judge deems it to be just”.

[4] An interim injunction was granted in this matter by the Honourable Justice John A. Keith on December 2, 2021. I heard the College’s motion for an interlocutory injunction and its application for a permanent injunction at the same time on October 31, 2022.

[5] The College relied on the Affidavit of Heather Totton, Senior Director, Governance and General Counsel for the College. Mr. McCannel relied on his own affidavit. Mr. McCannel represented himself. He cross-examined Ms. Totton. Counsel for the College cross-examined Mr. McCannel.

[6] The issue in this matter is whether there is a threatened or continuing violation of the *Nursing Act* being committed by Mr. McCannel and whether it is just that a permanent injunction be granted. The College says that Mr. McCannel has violated the confidentiality provisions of the *Act* numerous times. Mr. McCannel argues that he is justified in disclosing confidential information because he feels that the College itself breached the confidentiality requirements by forwarding a copy of his complaint against the first nurse to the College of Paramedics of Nova Scotia, Mr. McCannel’s regulatory body.

[7] In order to determine whether a permanent injunction should be granted, I will consider:

- whether Mr. McCannel violated the *Nursing Act* by disclosing confidential information contrary to the *Act*,
- whether Mr. McCannel disclosed confidential information contrary to the *Act* after the interim injunction, and
- whether it would be just to grant a permanent injunction against Mr. McCannel.

Disclosure of Confidential Information Contrary to *Nursing Act*?

[8] Mr. McCannel filed a complaint against “RN 1,” a complaint against “RN 2,” and filed two additional complaints against “RN 1.”

[9] The College dismissed Mr. McCannel’s initial complaints against RN 1 and RN 2. Mr. McCannel requested a review of those decisions by the College’s Complaints Committee. In two separate decisions, the Complaints Committee upheld the decisions of the College to dismiss the complaints. The College dismissed Mr. McCannel’s second and third complaints against RN 1.

[10] The College informed Mr. McCannel several times during the complaints process over the almost nine months from November 18, 2020 to August 4, 2021 that he was required to keep strictly confidential any information or documents received by him or that he had knowledge of as a result of the complaints process, including the complaints themselves:

- Each of the four complaint forms completed by Mr. McCannel and submitted to the College included an information sheet with the following wording:

We take confidentiality seriously throughout the complaints process. If you submit a complaint, you are not prevented from discussing the subject matter of the complaint. However, *information or documents we provide to you during the course of the complaints process must not be shared*. There are some exceptions, such as if the material is otherwise publically [sic] available.

If you obtain documents or information in the course of the investigation and resolution of this matter, the documents and information must be kept strictly confidential and cannot be used in legal proceedings such as civil lawsuits or arbitration processes.

[emphasis added]

- In each of three letters the College sent to Mr. McCannel acknowledging receipt of his complaints, the College wrote that “the professional conduct process is confidential and *all people who obtain information through this*

process ... are required by law to keep that information confidential unless the *Nursing Act* specifically permits otherwise” (emphasis added).

- In each of three letters the College sent to Mr. McCannel informing him that his complaints were dismissed and providing reasons for the dismissal, the College wrote that the professional conduct process is confidential and that ***“[y]ou ... are required by law to keep confidential all information you receive or have knowledge of through the professional conduct process,*** unless the *Nursing Act* specifically permits otherwise,” and that “[t]his confidentiality applies to, without limitation, the complaint and this decision” [emphasis added]
- In a letter from the College informing Mr. McCannel that his requests for review of the dismissal of his complaints against RN 1 and RN 2 would be sent to the College’s Complaints Committee, the College wrote that the professional conduct process is confidential and that “[t]his is a requirement of Section 130 of the *Nursing Act*.” The College wrote that ***“[y]ou ... are required by law to keep confidential all information you receive or have knowledge of through the professional conduct process,*** unless the *Nursing Act* specifically permits otherwise” (emphasis added). The College wrote that “[t]his confidentiality applies to, without limitation, all correspondence

that you receive from [the College] in the professional conduct process.”

The College informed Mr. McCannel in this letter that it is an offence to violate the confidentiality provisions of the *Nursing Act*, and that under s.152(1)(d), any person who contravenes the *Act* “is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both fine and imprisonment.” The College wrote that, in the event of a threatened or continuing violation of the *Act*, the College may apply to a judge for an injunction.

- In each of two letters to Mr. McCannel attaching the Complaints Committee decisions to dismiss his initial complaints against RN 1 and RN 2, the College wrote that the professional conduct process is confidential and that “*[y]ou ... are required by law to keep confidential all information you receive or have knowledge of through the professional conduct process, unless the Nursing Act specifically permits otherwise*” [emphasis added]. The College wrote that “[t]his confidentiality applies to, without limitation, the complaint, the dismissal decision, this correspondence, and this decision.”

[11] On June 21, 2021, Mr. McCannel emailed College staff, writing that “[a]s for confidential information, I have not been asked a single question or otherwise committed to an official investigation or sat in front of a committee, nor am I a member of your college, so your unless, which you won’t apply to your own members or abide by, mean nothing to me.”

[12] On November 2, 2021, Mr. McCannel posted the following on his publicly-available Facebook timeline:

Every shred of my correspondence with CPNS, NSCN, the Cronicly Horrid ... and the RCMP will come to light.

Every shred of notes and electronic documents not provided to me but related in those same institutions and others will also come to light and be made public. I have a right and duty to report such things. ...

...

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 and 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....

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...

...

[emphasis added]

[13] On November 3, 2021, Mr. McCannel posted images of the following documents from the College's professional conduct process on his publicly-accessible Facebook timeline:

(1) A picture of the letter from the College to Mr. McCannel acknowledging receipt of his initial complaint against RN 1. The letter names RN 1 twice.

(2) A picture of the letter from the College to Mr. McCannel advising of the College's decision to dismiss his initial complaint against RN 1. RN 1's name is found 17 times in the letter.

[14] On November 8, 2021, Mr. McCannel posted on his publicly-accessible Facebook timeline a discussion of his College complaints against RN 1 and RN 2, including their names. In this post, Mr. McCannel posted an image of the College's letter dismissing his complaint against RN 2, which discloses the name of RN 2 eighteen times.

[15] On November 9, 2021, Mr. McCannel once again disclosed the name of RN 2 on his publicly-accessible Facebook timeline, stating in part, "[i]f I am guilty of violating the Paramedic Act and the Nursing Act then both bodies have a 'duty' to

enforce their acts and prosecute myself in a real court, seeking maximum punishment under the law ...”

[16] On November 10, 2021, Ms. Totton sent a letter to Mr. McCannel about his posting of the College’s letters on his Facebook timeline. Ms. Totton informed Mr. McCannel that the disclosure, release or publication of any information received by him in the course of the College’s professional conduct process is a violation of s.130 of the *Nursing Act*. Ms. Totten informed Mr. McCannel that the *Act* permits the College to apply to the Nova Scotia Supreme Court for an injunction to prohibit him from continuing to violate the *Act*. Ms. Totten stated that, in order to avoid the College seeking a remedy in the courts, he needed to confirm that he would immediately cease and desist any action that violates the *Act*, and in particular, he would have to remove the offending posts from his Facebook page by November 12, 2021.

[17] Having received no response, Ms. Totten again wrote to Mr. McCannel on November 18, 2021. Ms. Totton acknowledged that Mr. McCannel had removed his November 8, 2021 Facebook post, but that the November 3, 2021 post remained online, along with the pictures of College letters. Ms. Totton provided Mr. McCannel with a revised deadline of November 22, 2021 to remove the post.

[18] Having received no response from Mr. McCannel, Ms. Totton emailed Mr. McCannel on November 23, 2021, acknowledging that he had removed some of his Facebook posts, but that the November 3, 2021 post remained online. Ms. Totton provided him with an extended deadline of 9:00 a.m. on November 24, 2021 to remove these posts.

[19] Ms. Totton did not receive a response from Mr. McCannel.

[20] On November 24, 2021, Mr. McCannel disclosed the identity of RN 1 and RN 2 several times in a post on his Facebook timeline, while discussing the fact of his complaints against them to the College.

Violation of the Act After Interim Injunction?

[21] On November 29, 2021, the College applied for an Interim Injunction against Mr. McCannel.

[22] On December 2, 2021, an Interim Injunction was granted by Keith J.

[23] On January 16, 2022, Mr. McCannel sent a lengthy email to counsel for the College as well as third parties in which he discussed, in part, his College complaint against RN 1, naming RN 1.

[24] On March 30, 2022, in a post to his Facebook timeline, Mr. McCannel discusses in part his College complaint against RN 1, not naming her but including sufficient personal details that could reasonably lead to her identification.

[25] In an email dated September 29, 2022, addressed to a number of third parties, Mr. McCannel disclosed the identity of RN 1 and his College complaint against her.

Would it be Just to Order a Permanent Injunction?

[26] When a statute provides a remedy by way of an injunction, the court's discretion is more limited than when an injunction is sought at common law. 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: see *College of Paramedics (Nova Scotia) v. McCannel*, 2022 NSSC 110 at para.33, citing *Canada v. IPSCO Recycling Inc. (F.C.)*, 2003 FC 1518 and *Nova Scotia (Real Estate Commission) v. Robinson*, 2018 NSSC 339.

[27] The *Act* allows for an injunction to be granted when there is a violation of the *Act* or a threatened violation 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: see *College of Paramedics (Nova Scotia), supra* at para.34, citing *Law Society of Saskatchewan v. Mattison*, 2015 SKQB 323.

[28] Mr. McCannel has repeatedly breached the *Nursing Act* provisions respecting the confidentiality of the professional conduct process, despite repeated warnings that he was prohibited from doing so and despite the interim injunction being in place. His own writing makes it clear that he knew that what he was doing was in a violation of the legislation. There is no exception under the *Act* that allows Mr. McCannel to contravene the confidentiality provisions of the *Act* because he feels that the College itself breached the confidentiality obligations. There is no prejudice to Mr. McCannel of having an injunction in place to prevent him from disclosing information that the *Act* says he cannot disclose in the first place. I find that, in these circumstances, it would be just to order a permanent injunction.

[29] A permanent injunction will issue restraining Mr. McCannel from publishing, releasing or disclosing information that he received or has knowledge of as a result of his complaints and the resulting regulatory processes under the *Nursing Act*, including but not limited to:

- the fact that he filed College complaints against RN 1 and RN 2,
- the nature of his College complaints against RN 1 and RN 2,
- any correspondence from the College relating to his complaints against RN 1 and RN 2, and
- the names of RN 1 and RN 2, or any information that could reasonably lead to their identification, in any way that reasonably connects them to the College complaints that Mr. McCannel filed against them.

[30] Mr. McCannel will also be required to forthwith remove and erase all social media posts disclosing this information.

[31] The permanent injunction will be subject to the exceptions set out in ss.130(a) to (h) of the *Act*.

[32] Mr. McCannel will also be required to provide reasonable notice to the College's legal counsel in the event that he seeks leave of a court of competent jurisdiction to admit any of this information in another legal proceeding, other than an appeal or a process under the *Nursing Act*, in accordance with s.132 of the *Act*.

[33] If the parties cannot agree on costs, I will receive written submissions on costs from the College within two weeks of this decision, and written submissions

on costs from Mr. McCannel within one month of this decision. The written submissions are to be no more than 15 pages in length, double-spaced.

Gatchalian, J.