

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0139

**IN THE MATTER OF AN APPLICATION BY STAFF NURSES DEBRA CHAMBERS, SHIRLAN RODNEY,
HARTIE JOHNSON AND PRUDENCE JEFFERY FOR JUDICIAL REVIEW**

and

**IN THE MATTER OF AN APPLICATION BY STAFF NURSES DEBRA CHAMBERS, SHIRLAN RODNEY,
HARTIE JOHNSON AND PRUDENCE JEFFERY FOR JUDICIAL REVIEW OF THE DECISION OF THE
GENERAL NURSING COUNCIL REQUIRING THEY RE-DO PRACTICUM II OF THE MIDWIFERY
PROGRAM 1617**

BETWEEN

**STAFF NURSE DEBRA CHAMBERS
STAFF NURSE SHIRLAN RODNEY
STAFF NURSE HARTIE JOHNSON
STAFF NURSE PRUDENCE JEFFERY**

APPLICANTS/ INTENDED CLAIMANTS

and

**GENERAL NURSING COUNCIL
SAINT VINCENT AND THE GRENADINES COMMUNITY COLLEGE**

RESPONDENTS/INTENDED DEFENDANTS

Appearances:

Mr. Joseph Delves for the applicants/intended claimants.

Honourable Attorney General Mr. Jaundy Martin for the first respondents/intended defendants.

Mrs. Rochelle Forde-Duncan for the second respondents/intended defendants.

2017: Oct. 10

AMENDED DECISION⁹

BACKGROUND

- [1] **Henry, J.:** This is an application by staff nurses Debra Chambers, Shirlan Rodney, Hartie Johnson and Prudence Jeffery for a stay or interim injunction to restrain the General Nursing Council ('GNC') and the Saint Vincent and the Grenadines Community College ('Community College') from carrying out or administering any further examination or examinations in the Midwifery Program 1617 which does not include the referenced staff nurses.
- [2] The staff nurses allege that they have satisfactorily completed all aspects of the training programme including practicum II. They claim that the GNC notified them verbally and by email that they were required to re-do practicum II. They contend that they should not be required to re-sit that part of their training since they successfully completed it as certified by the second respondent. The final license examination is scheduled to be conducted on 11th October, 2017.
- [3] The applicant nurses claim that the GNC and the Community College have unfairly sought to exclude them from taking that final license examination. They contend that they have a right to take the examination and they have therefore applied to the court for interlocutory injunctive relief. The GNC and the Community College oppose the application. The instant application for a stay or injunction is dismissed for the reasons outlined below.

ISSUE

- [4] The only issue is whether a stay or interim injunction should be granted to restrain the GNC and the Community College from carrying out or administering any further examination or examinations in the Midwifery Program 1617 which does not include staff nurses Debra Chambers, Shirlan Rodney, Hartie Johnson and Prudence Jeffery.

ANALYSIS

Should a stay or interim injunction be granted to restrain the GNC and the Community College from carrying out or administering further examinations in the Midwifery Program 1617 which do not include staff nurses Debra Chambers, Shirlan Rodney, Hartie Johnson and Prudence Jeffery?

- [5] The applicants refer to the course of study as the Midwifery Program 1617 while the GNC and Community College describe it as the Midwifery Program 2016/2017. The expression 'Midwifery Program' is common among the parties and will be used throughout this decision, when referring to the ongoing training programme for the present batch of trainee midwives including the applicants.
- [6] The court is empowered by rules of court to grant interim injunctions.¹ Such relief may be conferred even before a claim is made² as is contemplated in case at bar. When evaluating an application for an injunction, the court considers whether there is a serious issue to be tried between the parties. If there is none, the court will refuse the injunction. If there is a triable issue, the court must decide whether damages would be an adequate remedy and whether the respective parties are financially able to satisfy such an order.
- [7] In a doubtful case, the court must determine where the balance of convenience lies, after having assessed the parties' respective needs. The court must throughout its deliberations, remain mindful of the overriding objective of the CPR to act justly³. These discretionary principles were expounded in the case of **American Cyanamid Co. v Ethicon Ltd.**⁴ which is considered to be the leading case on this issue. The principles were subsequently applied in a number of cases, notable of which is **National Commercial Bank Jamaica Limited v. Olint Corp. Limited**⁵.
- [8] In the case at bar, the applicants have sought the alternative remedy of a stay couched as an order restraining the GNC and the Community College from carrying out the said examinations. Although described differently from an injunction, the requested stay seems to have the same objective. Accordingly, similar considerations would apply as those for an interim injunction.

¹ Civil Procedure Rules 2000 ('CPR') 17.1 (1) (b).

² CPR 17.2(1)(b).

³ CPR 1.2.

⁴ [1975] A.C. 396.

⁵ [2008] UKPC 61.

- [9] The Community College through its director Mr. Nigel Scott averred that the applicants are enrolled in the Midwifery program which commenced on 4th January 2016. He indicated that the programme has component parts including practicum I and II. He deposed further that the applicants successfully graduated from the Community College with Associate Degrees in midwifery at the end of the practicum, ostensibly both practicum I or practicum II. He did not indicate which one(s).
- [10] Mr. Scott deposed that the Community College presented the applicants to the GNC for acceptance to write the GNC licensure examination. He added that the Community College is not responsible for administration of that exam. He attested that the GNC took the decision not to accept the applicants for the final licensure examination and instead asked the Community College to re-assess them in the presence of a monitor, in respect of certain aspects of practicum II.
- [11] He indicated that a meeting was convened with the applicants and another date was scheduled for that examination within the week of August 28, 2017. He added that all of the applicants submitted medical certificates for the period during which the re-sit was scheduled to take place.
- [12] The applicants all gave written testimony by affidavit filed on 4th October, 2017. Staff nurse Prudence Jeffery testified orally and was cross-examined. She stated that on 7th August, 2017 Sister Wyllie, Supervisor of the Maternity Unit informed her that she would have to re-do the practicum II examination and further that she was invited to a meeting on 10th August 2017 to discuss the re-sit. She acknowledged receipt of an email from the GNC which was forwarded to her by a colleague.
- [13] Ms. Jeffery admitted under cross-examination that she was given a date – 29th August 2017 - to re-do a procedure in the practicum II examination. She indicated that Sister Lucine Edwards communicated this information to her through a colleague. Ms. Jeffery stated that she did not take that exam because she was ill.
- [14] The applicants swore to a single affidavit which formed the bulk of the testimony on which they relied. They deposed that Practicum II commenced in or about January 2017 and was scheduled to end around March 2017. It is not disputed that this practicum had five components: care for a woman in active labour; delivery; performance of an episiotomy; repair of an episiotomy; and, examination of the placenta; or that it was conducted at assorted hours, as it required an expectant mother who was

about to deliver, and partly on the Applicant's own time. The applicants therefore attended this programme at odd and lengthy hours in addition to their regular shifts at the Hospital. It was a requirement that the procedures be monitored by someone appointed or nominated by the GNC.

[15] They testified that the GNC r monitor was Sister C. Cato, who upon monitoring one batch left, after indicated that it was not necessary for her to witness any more of the procedures. The deposed that on the day scheduled for the exam by the school, they attended the exam and were told by Mr. H. James, Assigned Clinical Instructor and School Assessor, that the GNC's monitor, Sister Cato, said that she did not have to be present whereupon Mr. James, the Milton Cato Memorial Hospital, the Community College and the GNC proceeded to conduct the exam.

[16] They maintain that they have successfully completed practicum II of the Midwifery Program and were informed that the results were acceptable. They deposed that they later attended the School of Nursing of the Community College's Division of Nursing Education where they signed their final evaluation and were graduated as trained midwives.

[17] The applicants indicated that they had the Public Service Union ('PSU') write to the GNC on their behalf seeking to convene a meeting to resolve their concerns as to the unfairness of the decision that they must re-take part of practicum II examination. Learned counsel for the applicants, Mr. Joseph Delves indicated that the PSU is authorized⁹ to represent the applicants' interests. The⁹ court will discount any purported intervention by the PSU on the applicants' behalves.

[18] The GNC Chairman deposed that the applicants were given that opportunity to re-do the exam but did not disclose this in their application or that uncannily all the applicants reported sick for that period. She asserted that the GNC and the Community College are two distinct entities that function autonomously. She stated that while the GNC ensures that students are properly trained and monitored before being licensed as midwives while the Community College generally educates midwifery students.

[19] She averred that practicum II is the part of the program whereby the GNC monitors student midwives in collaboration with the Community College and determines whether they are fit to take the final

licensure exam which the applicants are seeking to restrain by the present application. She conceded (as alleged by the applicants) that the GNC accepts that the programme was an involved one as on quite a few occasions although mothers were on the ward in labour and expecting to deliver, they would fail to deliver as expected. She acknowledged that this is often frustrating and time consuming but rejoined that the psychology of nurses such as the applicants is that of patience and understanding.

[20] Mrs. Edwards deposed that the course is viewed as an advance course for already qualified nurses and was extended from 12 months to 15 months for this reason. She accepted that there were 13 students with one monitor but contended that it was not required for the monitor to monitor all of the procedures all of the time. She testified that the monitor ensures that the procedures are successfully completed and would monitor several different students performing deliveries at the same time.

[21] Mrs. Edwards averred that the GNC received reports from the Community College and its monitor which indicated that the applicants had not completed the requisite procedures. She deposed that on receipt of the reports, the GNC in pursuance of its statutory function wrote a letter to the Community College dated 20th of June 2017 pointing out that the 5 students had not been monitored.

[22] She alleged further that the exam cannot be conducted if the GNC's monitor is not present. Both the GNC and the Community College reported that the 4 applicants together with a 5th did not complete certain procedures. She insisted that no other authority at the Community College can declare that the applicants had passed the Practicum II exams without collaborating with the GNC.

[23] She contended that if this was done as alleged then it would be in breach of Section 3a of the Nurses, Midwives and Nursing Assistants Act ('the Act'),⁶ because the GNC was not consulted prior to the applicants' graduation. She maintained that for college purposes, perhaps the students can be declared to have passed the exam and even graduated but not for the GNC's purposes. She also declared that she knows of no instance where any student who was not monitored was passed. She averred that the GNC takes its monitoring role very seriously as this aspect of healthcare is particularly sensitive and is not fitting for the untrained or the improperly trained person

⁶ Cap. 373 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

- [24] She testified that the GNC maintained that the applicants in the GNC's judgment failed to meet the criteria and the GNC has quite properly acted upon the reports presented to it. She indicated that the GNC is prepared to offer the applicants an opportunity to meet the requisite criteria in collaboration. She opined that the injunctive relief that the applicants seek will however cripple the GNC's functions and prejudice the 8 students that the GNC has determined have met the relevant criteria for Practicum II.
- [25] Mrs. Edwards averred that the applicants have simply chosen to file their application at the last minute and serve it the day before the application and thereby seek to create a situation of urgency. She contended that the application ought to be refused in all the circumstances. She stated that the GNC maintains that the situation is not urgent so as to restrain the exam and thereby prejudice 8 students in the interest of 4. She deposed that even at this stage the GNC is prepared in collaboration with the Community College and with the guidance of the court to have a separate final exam to accommodate the applicants and have the required aspects of Practicum II done in collaboration with the Community College.
- [26] In a nutshell, the court must decide whether the applicants have established that it is just and equitable to grant a stay or the interim injunction sought. The parties have all accepted that the guiding principles are as enunciated in the **American Cyanamid** and **Olint** cases. The court remains mindful that it is not required to conduct an evaluation or fact finding exercise in order to make a determination. Although the court's role at this stage, is not to make findings on 'conflicts of evidence' or 'difficult questions of law'⁷, the parties' respective factual positions were outlined in some detail to provide context. They conceal to a certain extent the public interest in arriving at a correct decision.
- [27] In this regard, it is noteworthy that the applicants have submitted that a grant of the interim injunction would necessarily import or imply that the GNC and/or Community College would be duty bound to grade their papers. It logically follows that if the interim injunction is granted and the applicants are successful at the final licensure examination, they would expect and perhaps legitimately so, to be certified and licensed by the GNC in accordance with the provisions of the Act.

⁷ American Cyanamid Co. case at pg. 407 per Lord Diplock.

[28] In such a case, they would be able to practise throughout the State of Saint Vincent and the Grenadines as midwives and indeed in any other jurisdiction which accepts or recognizes the said certification or registration. In the event of any malpractice by such successful applicant, a natural consequence could potentially be liability attaching to the GNC, the Community College and the State for what could be deemed a failure to rigorously and scrupulously monitor the new 'licensees' during their training period and exercises. These are some of the considerations which the court will bring to bear on making its decision in this case, along with the principles outlined earlier.

Serious Issue to be tried

[29] It cannot be gainsaid that there is a serious issue to be tried among the parties. They have all accepted as much. The central issue is whether the applicant staff nurses should be granted an interim injunction to prevent the GNC and the Community College from proceeding with the final licensure examination on 11th October, 2017 or other subsequent date, in the applicants' absence, i.e without giving them an opportunity to take that examination(s). That indeed is a serious issue to be tried. I so conclude.

[30] The Act sets out the regulatory regime governing the training, licensing and registration of midwives. It provides that the GNC in collaboration with the Community College shall regulate the education and qualification of midwives. It therefore imposes a statutory duty on those two institutions to ensure that before a midwife is certified and registered as such, he or she must have undergone a course of training and education, including practical exercises which would have prepared him or her to competently and independently undertake all aspects of midwifery as a professional midwife.

[31] Registration in the midwife register kept under the Act, signals that each person named therein is so qualified. The same does not apply to an unregistered practitioner, such as the applicant. In fact, the Act⁸ imposes a penalty for anyone who practices midwifery unless he or she is so registered. An exception is made in the case of midwives in training, under certain circumstances. The scheme of the Act and the requirement for such training and registration suggests that Parliament intended that the profession like others in the medical field should be strictly regulated. It does not escape the court that anything less could conceivably result in situations where mothers-to-be and their unborn children are

⁸ Section 14.

exposed to unsafe practices at the hands of unregistered and unsupervised persons, with catastrophic consequences. The Act serves as a safety net in this regard.

Adequacy of damages

[32] The staff nurses argue that it would be difficult to assess damages and provide them adequate monetary compensation if their application is denied. The GNC on the other hand argue that damages would be adequate compensation and is quantifiable if the application is denied. I agree. None of the parties addressed whether damages would be an adequate relief for the GNC or the Community College if the application is granted.

[33] In my opinion, it would not be. Firstly, if the staff nurses succeed and pass the examination this could lead to them being licensed as midwives, without more. Secondly, in such eventuality, if harm is occasioned to one or more midwifery patient in the immediate or distant future, the GNC and/or Community College may be held liable for breach of statutory duty and/or negligence.

[34] The legal and financial ramifications are myriad and uncontainable by the stroke of a pen. There is no evidence of an insurance scheme to indemnify such persons. While there is no guarantee that a duly licensed midwife would not find himself or herself in such a situation, the issue of breach of statutory duty is not likely to be as glaring as in the instant case where the applicants have admitted that they were unsupervised for aspects of their training and examination. The court can neither ignore nor sanction such action or inaction by the grant of an interim injunction or a stay as requested.

Balance of convenience

[35] The GNC has represented that it stands ready to negotiate with the applicants a resolution which would allow them to complete the final licensure examination before the feared mid-2018 projected timeline. The applicants insist that taking the examination tomorrow is the only outcome which would satisfy their demands.

[36] I note that there are 8 other students who are scheduled to take their examination tomorrow. It would not be just to deprive them of that opportunity in favour of the 4 applicants who admittedly were not subjected to the requisite monitoring system which the other 8 seemed to or were alleged to have

been by the GNC; and the GNC and Community College have allegedly crafted to secure satisfactory evaluation of student midwives. I am of the considered opinion that the balance of convenience lies with the GNC and Community College.

[37] I must also indicate that the applicants' unexplained failure to disclose to the court that they were afforded an earlier opportunity to re-take the vexed practicum II module, is worrisome and operates against them. The court cannot ignore the stark public interest in ensuring that only thoroughly trained medical personnel are licensed after a rigorous specified period of training under adequate supervision, to take care of members of the public. The balance of convenience favours the GNC and the Community College. For the foregoing reasons, I deny the applicants' application for grant of a stay or interim injunction.

ORDER⁹

[38] It is accordingly ordered:

1. The application by staff nurses Debra Chambers, Shirlan Rodney, Hartie Johnson and Prudence Jeffery for a stay or interim injunction to restrain the General Nursing Council and the Saint Vincent and the Grenadines Community College from carrying out or administering any further examination or examinations in the Midwifery Program 1617 which does not include the referenced staff nurses, is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

⁹ Paragraph 17 corrected at a hearing conducted on 11th day of October 2017 with the agreement of all parties. An audio recording of even date is available.