

**In the matter of an appeal to the Hospital Appeal Board**

**Between:**

**Dr. C**

**Appellant**

**And:**

**X, a Health Authority**

**Respondent**

**Decision on Interim Stay Application**

Appearing for the Appellant:	Peter Willcock, Counsel
Appearing for the Respondent:	Penny Washington, Counsel
Heard by a panel of the Hospital Appeal Board:	Derek Brindle, QC, Board Chair
Decision issued:	June 5, 2009

Dr. C appealed a decision of X, a Health Authority (the “Respondent”), to immediately cancel Dr. C’s medical staff membership and privileges at a hospital. As a preliminary matter, Dr. C requested that the Hospital Appeal Board (the “Board”) order an interim stay of the Respondent’s decision, so that Dr. C could continue to practice at the hospital pending the Board’s decision on the merits of the appeal. The stay application was conducted by way of written submissions.

First, the Board considered whether a polygraph report that the Dr. C sought to introduce should be admitted in evidence. The Respondent objected to the admission of the polygraph report. After reviewing the relevant statutory provisions and case law, the Board held that the polygraph report was inadmissible for the purposes of the stay application. Specifically, the Board found that, pursuant to section 46.1(1) of the *Hospital Act*, it may receive and accept evidence that it considers “relevant, necessary and appropriate”, regardless of whether the evidence would be admissible in court proceedings. However, the Board found that its consideration of what is “relevant, necessary and appropriate” is informed by the principles set out by the majority in *R. v. Beland*, [1987] 2 SCR 398. In cases such as this stay application, where the polygraph report is sought to be introduced to bolster Dr. C’s affidavit evidence, the policy and practice concerns which inform the majority’s reasoning in *R. v. Beland* are fully engaged. Specifically, introduction of the polygraph report would offend the long established rule against adducing evidence solely for the purpose of bolstering a witnesses’ credibility.

In determining whether to grant the stay application, the Board applied the test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)* (1994), 111 DLR (4) 285 (S.C.C.). That test requires that the applicant for a stay must demonstrate that:

1. there is a serious issue to be tried;
2. the applicant will suffer irreparable harm if the stay is not granted; and
3. the balance of convenience favours denying the stay.

Applying the *RJR-MacDonald* test, the Board found that the appeal raises serious issues to be tried, and is not frivolous or vexatious. The Board also found that Dr. C would suffer irreparable harm if the stay is denied pending a decision on the appeal. In particular, the Board found that, as a result of Dr. C's inability to treat patients at the hospital during the period pending a decision on the appeal, Dr. C would suffer non-compensable financial losses, reputational loss, and practice deterioration. The Board noted that, although Dr. C's submissions on those losses were somewhat speculative and were not supported by detailed financial information, this stage of the *RJR-MacDonald* test focuses on the type of harm suffered rather than the quantum, and the Board found that on balance, the evidence as a whole satisfied this stage of the test.

However, the Board found that Dr. C failed to establish that the balance of convenience favours granting the stay application. In that regard, the Board found that Dr. C has not treated patients at the hospital since mid-2008 when he began a leave of absence, and he continues to treat patients at his office. There is no evidence that his patients have suffered or will suffer harm if he does not have hospital privileges during the months before the appeal is decided. Moreover, the Board found that granting the stay and allowing Dr. C to exercise hospital privileges during that time would disrupt the hospital's medical staff and operations. For these reasons, the Board concluded that the harm to Dr. C's interests if the stay is denied does not outweigh the harm to the Respondent's interests if the stay is granted. Finally, the Board noted that its findings on the stay application have no bearing on the merits of the appeal.

Accordingly, the application for a stay was denied.