

SUPREME COURT OF QUEENSLAND

CITATION: *Harding-Price v Medical Board of Queensland* [2010] QCA 19

PARTIES: **JOHN HARDING PRICE**
(registrant/applicant)
v
MEDICAL BOARD OF QUEENSLAND
(registrant's board/respondent)

FILE NO/S: Appeal No 7390 of 2009
DC No 2954 of 2006

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time / General Civil Appeal

ORIGINATING COURT: Health Practitioners Tribunal at Brisbane

DELIVERED EX TEMPORE ON: 17 February 2010

DELIVERED AT: Brisbane

HEARING DATE: 17 February 2010

JUDGES: McMurdo P and Fraser and Chesterman JJA
Separate reasons for judgment of each member of the Court each concurring as to the orders made

ORDERS: **1. Application for extension of time to appeal from the orders of the Health Practitioners Tribunal on 28 August 2008 and 19 January 2009 is refused;**
2. The unsuccessful Applicant should pay the Respondent's costs of the application, to be assessed;
3. The Court notes that the point on which the application floundered was clearly articulated in the Respondent's outline of argument filed in October 2009.

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – LICENCES AND REGISTRATION – APPEALS AND APPLICATIONS FOR ORDER DIRECTING REGISTRATION – where the applicant was registered in Queensland by the respondent – where the applicant was granted full registration and relied on documents issued by the General Medical Council of the United Kingdom – where the applicant's name was erased from the United Kingdom register – where the respondent resolved that the applicant's registration be suspended and cancelled – where the applicant appealed to the Health Practitioners Tribunal against the decisions of the respondent – whether the decision of the Health Practitioners Tribunal

was an appealable decision to this Court under the *Health Practitioners (Professional Standards) Act 1999* (Qld)

Health Practitioners (Professional Standards) Act 1999 (Qld), s 311, s 336(1)(b)(i), s 337, s 345, s 346

COUNSEL: The applicant appeared on his own behalf
R J Ashton for the respondent

SOLICITORS: The applicant appeared on his own behalf
Minter Ellison for the respondent

FRASER JA: The applicant applies for an extension of time to appeal from a decision of the Health Practitioners Tribunal which was made on 28 August 2008 and from a further decision made by that Tribunal concerning costs on 19 January 2009.

The extension of time is necessary because the proposed appeal, if one is available, is out of time by many months. The application is opposed by the respondent Medical Board of Queensland on the ground that there are no prospects of success in the appeal, principally because there is no right of appeal. In order to explain why that submission should be accepted, it is necessary to say something about the background.

The applicant was registered in Queensland by the respondent as a medical practitioner and a specialist in the field of psychiatry. He was granted full registration in that respect on 17 July 1991 with effect from 29 June 1990.

In obtaining registration, the applicant relied upon documents which included a Certificate of Good Standing issued by the General Medical Council of the United Kingdom confirming his status as a registered medical practitioner of good standing in the United Kingdom.

On 16 December 2000, the Professional Conduct Committee of the General Medical Council, after a hearing, found the applicant guilty of conduct falling seriously below the standard which patients are entitled to expect of registered medical practitioners and ordered the erasure of his name from the United Kingdom register.

Subsequently, the respondent took action under a provision of the *Health Practitioners (Professional Standards) Act 1999* (Qld), which I will mention later, to resolve that the

applicant's registration be suspended. Later, on 25 July 2006, the respondent resolved to cancel the applicant's registration as to which he was advised in writing on 28 July 2006.

The applicant exercised his right to appeal, both against the suspension decision and against the decision to cancel his registration, to the Health Practitioners Tribunal. That Tribunal, after a hearing, dismissed the appeals and confirmed the respondent's decision on 28 August 2008. It is those decisions which the applicant wishes to appeal, together with, as I have mentioned, the Tribunal's further decision concerning costs.

Section 346 of the *Health Practitioners (Professional Standards) Act 1999* sets out those decisions of the Tribunal which are "appealable decisions", that is to say, those decisions which may be appealed to this Court. On the face of it, the decisions there identified do not include the decisions of the Tribunal which I have mentioned.

The applicant, however, contended in his oral submissions that this was an appealable decision, a decision which may be appealed to this Court, because it was a decision made under s 345 of the Act. Section 346 does provide that a decision under s 345 of the Act is an appealable decision. It seems clear to me, however, that this decision of the Tribunal was not made under s 345.

The decision by the Board to cancel the applicant's registration was made under s 311 of the Act. That section provides, so far as relevant here, as follows:

"(1) This section applies if –

(a) after a registrant is registered under the health practitioner registration Act establishing the registrant's board –

(i) the registrant's registration, licence or certification under a foreign law relating to the registrant's profession is suspended or cancelled for a reason relating to a matter for which disciplinary action could be taken under this Act

(b) the Board reasonably believes that, to achieve the objects of this Act, it is necessary for the registrant's registration in Queensland to be affected in the same way."

That provision concerns when the section applies. Subsequent provisions of s 311 empower the Board to suspend or cancel or impose conditions on the registration. It was that provision upon which the Board relied in cancelling the applicant's registration in this State. That decision made under s 311 was then one which was appealable to the Tribunal under s 325(1)(b) of the Act. As I have mentioned, the applicant exercised that right of appeal.

The Tribunal then exercised the power given by s 336(1)(b)(i) to confirm the decision under appeal. As I have mentioned, that confirmation is not a decision under any of the provisions identified in s 346. The provision in s 345 upon which the appellant relied concerns a decision by the Tribunal made after reviewing what is called a "reviewable decision". Reviewable decisions are set out comprehensively in s 337 of the Act. It is sufficient here to say that the decision against which the applicant seeks to appeal is not included in any of the subparagraphs of s 337 as a reviewable decision.

It follows that it is quite clear that s 346 of the Act does not confer upon the applicant any right to appeal to this Court. The applicant was unable to identify any other provision of the Act which conferred such a right of appeal and I have found none.

The applicant's proposed appeal is put only as an appeal and he does not seek to bring any other form of proceeding in order to vindicate what he claims are his rights to have corrected a faulty decision made below.

The respondent has opposed the application for an extension of time on the basis that it cannot be shown to have any prospects of success. For the reasons I have given, that submission must be accepted.

This Court has no jurisdiction to hear the proposed appeal and, accordingly, the application should be refused.

THE PRESIDENT: I agree.

CHESTERMAN JA: I agree.

THE PRESIDENT: The orders are the application for an extension of time to appeal from the orders of the Health Practitioners Tribunal of 28 August 2008 and 19 January 2009 is refused.

There is no reason in this case why the unsuccessful applicant should not pay the respondent's costs of the application, to be assessed.

We note in particular that the point on which his application floundered was clearly articulated in the respondent's outline of argument filed in October last year.

So those are the orders.