Processing Users Complaints in Health Institutions : the Court of Appeal Confirms that the 45-Day Time Limit Is Not Mandatory

September 8, 2014

In an unanimous decision dated September 4, 2014[1] , the Court of Appeal confirmed that the 45-day time limit under the *Act Respecting Health Services and Social Services*[2] (ARHSSS) to allow the medical examiner and the local service quality and complaints commissioner to process a user complaint is not mandatory but rather serves to indicate that the Legislator intends the complaint to be diligently processed.

This judgment is further to a judgment of the Superior Court issued in April 2013, in which the Court had come to the same conclusion[3].

The facts are simple : a physician who was the subject of a complaint maintained that at the expiry of a 45-day period, the medical examiner who had not yet processed the complaint and had not issued conclusions loses jurisdiction. For all intents and purposes, this complaint then becomes null and void, unless the complainant exercises his right to submit it to a review committee. In the present case, the medical examiner had decided that the complaint had to be investigated for disciplinary purposes and had sent the file to the appropriate authorities 22 days after the time limit had expired.

It must be noted that the ARHSSS contains no other provision which provides for a time limit within which the various competent disciplinary bodies would be required to decide on imposing sanctions to a physician. Moreover, the ARHSSS does not indicate a time period within which a complaint may be made. If the position of the physician had been successful, the result would have been that during a process to which no particular time limit applies, exceeding the initial 45-day time limit would constitute such a determining event that the complaint would no longer be allowed to be processed.

As the Superior Court did, the Court of Appeal acknowledged that the main purpose of the regime for processing user complaints is [TRANSLATION] "*the simple and efficient exercise of their rights by the users*". Interpreting the 45-day time limit for processing a complaint in the manner suggested by the physician would deprive the complainant – who did nothing wrong – of his right to have his complaint processed. This would defeat the objective sought by the Legislator, who used no wording which would allow one to conclude that he intended to make this time limit mandatory.

In fact, the Court of Appeal was of the view that the time limit has rather been set to indicate that a person subject to it must act diligently, but also was mainly intended to trigger the right of the

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complainant to accelerate the processing of his complaint. Indeed, at the expiry of the time limit, the complainant can seize the review committee, which – to use the wording of the Court – acts as a "*supervisory committee*".

The scope of the judgment of the Court of Appeal well exceeds that of the case under review since all the user complaints, and not only those in respect of physicians, dentists or pharmacists, should be processed within the provided time limits. The Court's decision does reflect the reality observed in many environments whereby many factors can explain why the medical examiner or the complaints commissioner could not provide the conclusions sought within the 45-day time limit. These factors may be attributable to the complainant, the person against whom the complaint is made, or events of any nature. The Court noted that in this respect, the medical examiner has no actual enforcement authority and that despite the fact that he may want to proceed diligently, the behaviour of third parties may prevent him from doing so.

This being said, one must keep in mind that the 45-day time limit, despite being only indicative in nature, remains the expression of the Legislator's intent that users' complaints be processed quickly. The judgment of the Court of Appeal recognizes that the medical examiner retains jurisdiction to deal with a complaint despite the expiry of this time limit, but it is well specified that he is required to act as diligently as possible.

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[1] *Liu* v. *Comité de discipline du Centre de santé et de services sociaux Haut-Richelieu-Rouville*, 500-09-023569-130, September 4, 2014.

[2] CQLR, c. S-4.2.

[3] *Liu* v. *Comité de discipline du Centre de santé et de services sociaux Haut-Richelieu-Rouville*, 2013 QCCS 1856.

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