Time limit for handling complaints from health care consumers: the Supreme Court of Canada refuses to intervene

February 27, 2015

On February 26, 2015, the Supreme Court of Canada dismissed Dr. Gilbert Liu's application for leave to appeal a Court of Appeal decision concerning the time limit for handling complaints from users of health institutions. In a unanimous decision rendered September 4, 2014, the Court of Appeal confirmed that the 45-day time limit prescribed by the *Act respecting health services and social services*[1], ("HSSSA") for handling complaints from users imposed on the medical examiner and the local service quality and complaints commissioner is not mandatory. The Court was of the view that the purpose of the time limit was to underscore the legislator's desire for the diligent handling of complaints[2].

In accordance with Supreme Court practice, the judgment does not give any reasons. However, it puts an end to the controversy over the actual scope of the Court of Appeal judgment confirming the April 2013 Superior Court decision[3].

The state of the law is now clear and the Court of Appeal judgment is authoritative. Currently pending cases, judicial and institutional, must now be handled in line with the conclusions of the Court of Appeal.

It should be noted that the physician's position was based on an interpretation of sections 47 and 49 of the HSSSA to the effect that if, at the end of the prescribed 45 days, a medical examiner had still not dealt with a complaint and had not issued any findings with respect thereto, he or she lost jurisdiction. The complaint then expired unless the complainant exercised his or her right to submit it to the review committee.

Like the Superior Court, the Court of Appeal acknowledged that the primary goal of a system for handing complaints from users is [translation:] "the simple and effective exercise of users' rights". To interpret the 45-day time limit as suggested by the physician, would penalize the complainant by depriving that person of the right to have the complaint dealt with. It would defeat the purpose sought by legislator.

The finding of the Court of Appeal can be extended to all user complaints, not only those concerning physicians, dentists or pharmacists. According to the HSSSA, complaints must be dealt with within a prescribed deadline. The Court reiterated that in reality, in many instances a variety of factors could explain why a medical examiner or local service quality and complaints commissioner would be unable to formulate the conclusions sought within the 45-day time limit. These factors could be

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attributed to the complainant, to the person who is the subject of the complaint or to all manner of events.

However, it must be emphasized that the 45-day time limit stated in the Act for handling a complaint expresses the legislator's intention that user complaints be dealt with expeditiously. The examining authorities would be well advised to document the reasons for their inability to act within that period to avoid unnecessarily contentious situations.

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[1] CQLR, c. S-4.2.

[2] *Liu* v. *Comité de discipline du Centre de santé et de services sociaux Haut-Richelieu-Rouville*, 2014 QCCA 1613.

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

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