Practice in a specialized medical centre: limits to the freedom of association of physicians based on their status as participants or non participants

August 1, 2017

Author

Catherine Pariseault

Senior Associate

On June 1 of this year, the Québec Court of Appeal[1] confirmed a decision of the Superior Court of Québec which had ruled that physicians who participate in the health insurance regime and physicians who do not cannot work together in a same specialized medical centre.

In this case, the plaintiffs were seeking to have section 333.3 of the *Act respecting Health Services and Social Services*[2] ("**ARHSSS**"), which prevents physicians who participate in the health insurance regime from practicing together with physicians who do not in a specialized medical centre ("**SMC**") declared null and void. The plaintiffs were maintaining that the restrictions imposed on them by the above referenced section and related sections undermined their fundamental rights and liberties and should be declared unconstitutional. More precisely, the plaintiffs were arguing that their right of association and to choose colleagues of their choice was violated by these provisions.

It must be noted that section 333.3 ARHSSS provides that a SMC can only be operated under two forms, namely, either exclusively by physicians who participate in the health insurance regime and are compensated on the basis of the agreement entered into pursuant to section 9 of the *Health Insurance Act*[3], or exclusively by physicians who do not participate in the regime. This provision results in participating physicians not being allowed to offer their services in a SMC where non participating physicians practice.

In the first instance, the Superior Court[4] had concluded that the practice of medicine in a SMC was not protected by freedom of association.

> **[Translation]**

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

> **“[102] The guarantee of freedom of association conferred on members of a profession is not compromised only because they are governed by a legislative regime. Physicians are free to associate, but they simply have not the constitutional right to do so without being subject to the restrictions on SMCs established pursuant to the ARHSSS.”**

Furthermore, the Superior Court had noted that section 333.3 ARHSSS regulates the functioning of SMCs but does not prohibit or hinder the establishment of an association, so a person cannot claim the constitutional right to work as he or she pleases, outside of any organized framework, which is not protected under the charters. Accordingly, a physician cannot claim the right to establish business relations with persons of his or her choice for the same reason.

The Court of Appeal took the same stance. As the Superior Court did, it acknowledged that:

> **[Translation]**
>
> **“[35] The appellants cannot, under the cover of freedom of association, claim absolute and unconditional liberty to associate as they please and practice medicine under the conditions of exercise which suit them on the grounds that they wish to practice medicine with others […][5].**

The Court of Appeal thus agreed with the reasons of the trial judge and unanimously considered that the contested provisions do not violate the liberty of association. Physicians can choose their status and associate with others to practice medecine according to the terms set out in section 333.3 ARHSSS without being able to claim an absolute right to do so as they wish, without complying with the legal provisions governing SMCs.

---

1. *Fédération des médecins spécialistes du Québec c. Bolduc* 2017 QCCA 860.
2. CQLR, c. S-4.2.
3. CQLR, c. A-29.
4. *Fédération des médecins spécialistes du Québec c. Bolduc 2015 QCCS 2680.*
5. *See above*, note 1.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.