Freedom of association of physicians practising at a specialized medical centre: the Supreme Court of Canada declines to intervene

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On February 8, 2019, the Supreme Court of Canada dismissed the application by the *Fédération des médecins spécialistes du Québec* for leave to appeal from the judgment of the Court of Appeal of Quebec[1] in a case concerning the freedom of association of physicians practising at a specialized medical centre ("SMC"). In that decision, dated June 1, 2017, the Court of Appeal unanimously concluded that physicians' right to associate was not violated by section 333.3 of the *Act respecting health services and social services*[2] ("AHSSS"). The effect of that section is to prevent participating and non-participating physicians under Quebec's public health insurance plan from practising together at an SMC.

In accordance with its usual practice, the Supreme Court stated no reasons in its judgment on the leave application. However, based on that decision, the decision of the Court of Appeal can now be said to be settled law on this point. At this point, the law is clear on the question of physicians' freedom of association: it is not absolute and physicians' practice at SMCs remains subject to the statutory constraints imposed by the AHSSS.

We would note that the applicants claimed that the restrictions imposed by the section in question and the provisions adopted under it infringed their fundamental rights and freedoms and should be declared to be unconstitutional. More specifically, the applicants argued that their right of association and their right to choose their colleagues were violated by those provisions.

It must be noted that section 333.3 of the AHSSS provides that an SMC may be operated in only two forms: either exclusively by physicians who participate in the health insurance plan and are paid under the agreement entered into pursuant to section 19 of the *Health Insurance Act*[3] or only by physicians who do not participate in that plan. The result is that participating physicians may not

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offer their services at an SMC where non-participating physicians practise.

At trial, the Superior Court[4] had concluded that the practice of medicine at an SMC was not protected by freedom of association.

> [TRANSLATION] [102] The guarantee of freedom of association given to members of a profession is not jeopardized by the mere fact that they are regulated by a statutory scheme. Physicians are free to join together, but they simply do not have the constitutional right to do so without being subject to the restrictions on SMCs established by the AHSSS.

The Superior Court had further found that the effect of section 333.3 of the AHSSS is to regulate the SMC's operating activity and not to prohibit, prevent or interfere with the formation of an association. Accordingly, a person cannot claim a constitutional right to do a job the way he or she wishes, outside of any organized framework; that is not protected by the charters. A physician may therefore not claim the right to create business relationships with the persons of his or her choice, for that reason.

The Court of Appeal adopted the same position. As had the Superior Court, the Court of Appeal held:

> [TRANSLATION] [35] The appellants may not rely on freedom of association to claim absolute and unconditional freedom to associate as they choose and to practise medicine on the terms that suit them, on the ground that they want to practise medicine with others ….[5]

The Court of Appeal therefore adopted the reasons stated by the trial judge and unanimously held that the impugned provisions did not violate freedom of association. Physicians may choose their status and associate for the purpose of practising medicine on the terms set out in section 333.3 of the AHSSS but may not claim a constitutional right to do so as they wish.

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

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