IN FACT AND IN LAW

Health Law

**January 2001**

# The dispute between l'Hôpital Laval and the cardiologists: the final outcome of ten years of legal wrangling

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On October 23, 2000, the Québec Court of Appeal rendered a unanimous decision in favour of l'Hôpital Laval de Québec, thus putting an end to ten years of legal proceedings initiated by certain Hôpital Laval cardiologists.

The dispute began in 1984 and 1985, when certain clinical cardiologists, referred to as the Group of Seven by the Court of Appeal, resolved to distinguish themselves from their full-time academic colleagues and to cease complying with the exclusive assignment system that prevailed in the care units and laboratories of the cardiology department of the Québec Heart Institute, specifically, the emergency clinic, the coronary unit, the teaching unit, and the echocardiography, vascular flow and exercise laboratories.

The Group of Seven wanted to be able to regard all patients being treated by them as their own patients and to make referrals within the group, regardless of the assignments determined by the head of the cardiology department. The members of the group no longer wanted to comply with the assignment system. Their stated objective was to keep earnings within the new "pool" they had recently formed, which was comprised exclusively of the members of their group.

In the interests of achieving their objective, they argued that the assignment system infringed a patient's freedom to choose his attending physician in the hospital and that it also infringed the attending physician's prerogative to hospitalize, treat, and discharge his own patients.

The dispute between the Group of Seven and the hospital lasted from 1984 to 1990, until it reached proportions that adversely affected the institution's users. The Hôpital Laval reacted by formally adopting rules pertaining to the use of hospital resources entitled *Règles d'utilisation des ressources*. Under the rules, compliance with the assignment system in the cardiology care units and service laboratories became mandatory.

## The beginning of legal proceedings

In early 1990, the Group of Seven began to use pressure tactics culminating in what a witness described as chaos and total anarchy in the emergency clinic. Disciplinary sanctions were imposed.

On May 7, 1990, the Group of Seven cardiologists applied to the Superior Court for a declaratory judgement that the *Règles d'utilisation des ressources* were unlawful.

On June 6, 1991, the Superior Court declared null and void three of the 29 rules, two of which prescribed absolute exclusivity of assignment. The Court was of the view that a health care facility could not, by the adoption of rules, infringe a patient's freedom to choose his attending physician.

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However, many of the other *Règles* were upheld, including rules 9, 12, 16 and 22, which read as follows: [translation]

> **"9. A cardiologist assigned to the emergency clinic is, for the duration of his assignment, responsible for admitting, treating and following-up all patients requiring cardiology care in the clinic. Upon termination of the assignment, the cardiologist subsequently assigned to the clinic shall assume responsibility for the admission, treatment and follow-up of all such patients.**
>
> **12. A cardiologist assigned to the coronary unit is, for the duration of his assignment, responsible for admitting, treating and transferring all patients in the unit. Upon termination of the assignment, the cardiologist subsequently assigned to the clinic shall assume responsibility for the treatment of all such patients.**
>
> **16. A cardiologist assigned to the teaching unit is, for the duration of his assignment, responsible for treating all patients in the unit. Upon termination of the assignment, the cardiologist subsequently assigned to the clinic shall assume responsibility for the treatment of all such patients.**
>
> **22. A cardiologist who contravenes any of the provisions of these Rules, and specifically, but without limitation, a cardiologist who does not respect the exclusivity of a colleague's assignment as described in these Rules, may be subject to administrative sanctions limiting or suspending his right to use the resources of the activity centres listed in section 3. "**

The assignment system applicable to the care units was basically maintained.

Meanwhile, four cardiologists in the Group of Seven received disciplinary sanctions (two of whom received three-month suspensions) for contravening the *Règles d'utilisation des ressources*.

On December 12, 1990, the hospital's board of directors, having followed the procedure stipulated in the *Act respecting health services and social services* and in the *Regulation respecting the organization and administration of health-care institutions* decided that the status and practising privileges of four cardiologists would not be renewed in 1991 and 1992 on the grounds of improper conduct.

The four cardiologists then lodged eight appeals with the Commission des affaires sociales (the "CAS"). Each doctor appealed the disciplinary sanctions imposed upon him and the decision to not renew his status and practising privileges.

Various legal arguments were put forward. In the main, the cardiologists claimed that the Court's judgement declaring invalid two rules regarding exclusivity of assignment had stripped the *Règles d'utilisation des ressources* of all substantive content and enforceability and accordingly, the disciplinary sanctions imposed and the non-renewal of privileges should be reversed.

On February 8, 1994, the CAS rendered four 300-page decisions dismissing the eight appeals filed by the four cardiologists.

On August 22, 1995, the Superior Court dismissed the cardiologists' application for judicial review (writ of evocation) of the CAS decisions.

On October 23, 2000, the Court of Appeal dismissed the appeals lodged against the August 22, 1995 Superior Court decision.

Given this long history of legal proceedings, we thought it would be a worthwhile exercise to analyze and extrapolate the lessons to be learned from the five decisions.

## Lessons to be learned from the Superior Court and Court of Appeal decisions on the issues of freedom of choice and the legality of the rules on the use of resources

- A patient's freedom to choose his or her attending physician must be respected insofar as that choice is freely exercised and not influenced or manipulated by a physician seeking to gain personally from the patient's choice.
- Sections 4, 5 and 6 of the *Act respecting health services and social services* (R.S.Q., 1977, c. S-5), now sections 5 and 6 (R.S.Q., c. S-4.2), clearly validate the existence of administrative constraints and freedom of choice.
- A patient's choice of physician and a physician's professional freedom are limited by the availability of hospital resources and any rules that may validly be made under the Act.
- However, the *Règles d'utilisation des ressources* may not exclude completely the physician chosen by the patient.
- A patient may not require that a hospital provide a service it does not offer nor may the patient demand to be treated by a physician who does not have the appropriate practising privileges.
- Given the situation prevailing at the Hôpital Laval, the assignment rules in the *Règles d'utilisation des ressources* were necessary to ensure patient care while respecting all user care requirements, taking into account hospital resources.

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- The fact that the *Règles d'utilisation des ressources* apply only to three units in the cardiology department does not render the rules discriminatory. However, the health-care facility must be able to justify the rules on the grounds that sufficiently distinctive features exist in the individual units.
- The self-interested intervention of a physician in the normal process of patient choice of physician may amount to improper conduct on the part of the physician.

## Lessons to be drawn from the CAS decisions upheld by the Superior Court and the Court of Appeal

- In substance, the *Règles d'utilisation des ressources* are lawful. They affirm that an assigned physician is, for the duration of his assignment to the unit concerned, responsible for ensuring all patients receive treatment for their length of stay in the unit.
- The Superior Court decision held that the one exception pertaining to exclusivity of assignment was if a patient asked to be treated by a cardiologist other than the one assigned.

### Regarding the workings of discipline committees

- Refusal by a discipline committee to grant a postponement may amount to a breach of the duty of procedural fairness, but it is not a fatal error because it is rectifiable at subsequent hearings.
- Objections based on bias must be raised contemporaneously with events to allow the persons concerned to disqualify themselves, as the case may be.
- An examination of the disciplinary process followed by the hospital in handling the disciplinary complaints indicated full compliance with the requirements of the Act and its Regulations. It was important that they had conducted the matter properly.

### Regarding good faith and "freedom of choice"

- In all the cases, the CAS found that no acceptable evidence had been submitted that the freedom to choose a cardiologist other than the one assigned had actually been exercised by any of the patients.

### Regarding the fact that all the internal rules of a health-care institution constitute a single body of rules that come within the specialized jurisdiction of the CAS

- It is within CAS jurisdiction to interpret the *Act respecting health services and social services,* the regulations enacted by the government and the internal rules of a health-care institution. This is the very basis of its jurisdiction.
- Therefore, without disregarding the effect of any particular statute or a regulation, the CAS was competent to interpret the *Règles d'utilisation des ressources* in conjunction with other internal rules, the *Act respecting health services and social services* and its regulations. Taking into consideration the other provisions governing the conduct of physicians and hospitals, the CAS held that the rules prohibited the conduct for which the appellants were reproached. A decision on how to harmonize the applicable legislation, regulations and institutional rules goes to the very heart of its jurisdiction and is subject to judicial review only in the event of manifest and material error.
- Furthermore, the decision of an administrative tribunal to disregard a legislative provision in favour of an internal rule adopted without the involvement of the legislator would be subject to review on the basis of simple error. But this was not the situation in this case.

### Regarding the appellants' claims that non-renewal of their status and privileges is exclusively the subject of the disciplinary process

- Since 1973, renewal of the status and privileges of a physician has always been a legislative matter distinct from disciplinary measures, and is governed by its own rules and procedure.

### Regarding the appellants' claims that the non-renewal amounted to a second punishment for contraventions that had already been the subject of disciplinary sanctions

- It is well-established that the same facts may involve several categories of decisions. For example, an act or omission by a professional may simultaneously give rise to ethical or administrative proceedings, to penal prosecution and to civil action.

- Had the appellants' claims been allowed, such a decision would necessarily imply that a physician who had been the subject of continuing disciplinary sanctions for two years, would be entitled to renewal of his status and privileges at the end of the two years, despite his unacceptable conduct evidenced by the numerous disciplinary sanctions.
- Although the results of the refusal to renew and of the disciplinary sanction are the same, they are nevertheless two totally distinct juridical processes.

## Conclusion

Each case is unique. But overall, given the emergency situation where the consequences could have been detrimental to the prevailing interests of patients, the authorities at Hôpital Laval acted properly throughout, whether it was the institution's director general, its director of professional services, its head of the cardiology department, the disciplinary committees, the CDMP, the CDMP executive committee or the board of directors.

Should you wish to discuss this matter further, or if you would like copies of any of the judgements or decisions mentioned in this article, please contact either of the undersigned members of our health law practice in our Montreal or Quebec City offices.

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