

JOSEPH SAINÉAPPELLANT;

1963
*Mar. 19
June 24

AND

ARMAND BEAUCHESNE AND L. J. }
GOBEIL } RESPONDENTS;

AND

THE COLLEGE OF PHYSICIANS }
AND SURGEONS OF THE PROV- }
INCE OF QUEBEC AND GERALD } MIS-EN-CAUSE.
LASALLE }

ON APPEAL FROM THE SUPERIOR COURT OF QUEBEC

Physicians and Surgeons—Acts derogatory to medical profession—Writ of certiorari while proceedings before Council on Discipline—Whether premature—The Quebec Medical Act, R.S.Q. 1941, c. 264, ss. 62, 71, 74—Code of Civil Procedure, art. 1292.

The appellant, a member of the College of Physicians and Surgeons, was summoned before the Council on Discipline to answer a complaint alleging that he had committed acts derogatory to the honour and dignity of his profession. During their course of the hearing, the appellant's request for a suspension of the proceedings in order to apply for a writ of certiorari, was granted. The Superior Court judge held that the writ was premature. The appellant was granted leave to appeal to this Court from that judgment.

Held: The appeal should be dismissed.

The sole question was whether the provisions of the *Quebec Medical Act*, R.S.Q. 1941, c. 264, as amended, deprived the appellant of any remedy by way of certiorari while proceedings were pending before the Council on Discipline. To accede the appellant's contention would render otiose the words contained in s. 62 of the Act "and to the exclusion of any Court". In that section the Legislature has provided in clear terms that the Council on Discipline has jurisdiction to proceed with and complete, without judicial interference, an inquiry into the matters therein specified. The application for a writ of certiorari was, therefore, premature.

APPEAL by leave from a judgment of Montpetit J. of the Superior Court of Quebec dismissing an application for a writ of certiorari. Appeal dismissed.

Guy Favreau, Q.C., for the appellant.

L. C. Trudel and Georges Pelletier, Q.C., for the respondent.

*PRESENT: Taschereau, Fauteux, Abbott, Judson and Hall JJ.

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The judgment of the Court was delivered by

ABBOTT J.:—Appellant is a member of the College of Physicians and Surgeons of the Province of Quebec. On August 24, 1961, he was summoned to appear before the Council on Discipline of the said College to answer a complaint made by the Registrar, alleging that appellant had committed certain acts derogatory to the honour and dignity of his profession. On the date fixed for the hearing, September 14, 1961, appellant appeared, assisted by counsel, before the respondents Gobeil and Beauchesne sitting as members of the said Council.

At the outset of the hearing, appellant through his counsel raised certain legal objections to the complaint which were rejected by the Council. The hearing proceeded. During the course of the hearing, appellant asked that the proceedings be suspended in order that he might apply for a writ of certiorari to evoke the proceedings to the Superior Court. The hearing was suspended and on September 28, 1961, appellant, by petition, applied to the Superior Court for the issue of a writ of certiorari, alleging among other things that the respondents were acting without jurisdiction or had exceeded their jurisdiction, that the by-laws in virtue of which the complaint had been made were null and void, and that the proceedings contained grave irregularities.

By judgment rendered October 23, 1961, Mr. Justice André Montpetit dismissed the application for a writ of certiorari as being premature. The present appeal by leave, is from that judgment.

The sole question which arises on this appeal is one of law, namely whether the provisions of the *Quebec Medical Act*, R.S.Q. 1941, c. 264, as amended, deprived appellant of any remedy by way of certiorari while proceedings were pending before the said Council on Discipline. This question turns, primarily, upon the effect to be given to ss. 62, 71 and 74 of the said Act which read:

62. It shall be the duty of the Council on Discipline to inquire into, to consider, hear and decide finally and to the exclusion of any court, subject to appeal to the Provincial Medical Board, every charge or complaint against any member of the College, for infraction of his professional duties or for any act derogatory to the honor and dignity of the profession.

71. The disciplinary penalties which may be imposed by the Provincial Medical Board or by the Council shall be:

1. Deprivation, for a certain time, of the right to vote at elections of governors and at all general meetings of the members of the College;
2. Deprivation of the right to be elected to the office of governor;
3. Deprivation of the right of a member of the Provincial Medical Board to sit at one or more sittings;
4. Censure;
5. Dismissal from the Provincial Medical Board;
6. Suspension from the practice of the profession of medicine and surgery, which entails during suspension the dismissal of such member from the College;
7. Dismissal from the College.

74. 1. Every decision of the Council on Discipline entailing suspension or dismissal, shall be subject to appeal to the Provincial Medical Board. Notice of such appeal shall be served by a bailiff upon the registrar who has reported the decision to the member of the College who has been suspended or dismissed, within fifteen days following the date of the service. Such appeal shall be taken into consideration only at a regular session of the Provincial Medical Board.

2. No member of the Council may sit in appeal from a judgment rendered by the Council of which he is a member.

3. Articles 237 and 238 of the Code of Civil Procedure shall apply to the members of the Provincial Medical Board sitting in appeal.

4. The quorum of the members of the Provincial Medical Board sitting in appeal shall be eight members.

5. The appellant shall deposit with his notice of appeal the sum of fifty dollars on account of the costs occasioned by such appeal.

If he succeeds in such appeal the said sum shall be returned to him. The losing party shall be condemned to pay it to the Provincial Medical Board with the other costs occasioned by such appeal.

6. The Provincial Medical Board shall decide the appeal summarily, and the registrar shall within eight days forward a certified copy of such decision to the appellant, by registered letter.

7. The only mode of evoking the case before judgment or of having the judgment rendered revised is by means of a writ of certiorari.

In essence appellant's contention is that notwithstanding the provisions of s. 62 of the Act, the remedy of certiorari is available to him under art. 1292 of the *Code of Civil Procedure* while proceedings are pending before the Council on Discipline and that s. 74(7) applies to such proceedings, as well as to those before the Provincial Medical Board.

I am unable to agree with that contention. To do so it seems to me, would render otiose the words "and to the exclusion of any court" contained in s. 62. In my opinion, in that section the Legislature has provided in clear terms that the Council on Discipline has jurisdiction to proceed with and complete, without judicial interference, an inquiry

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into the matters therein specified. It is not necessary to express any opinion as to what the situation might be after the Council has completed its inquiry and rendered a decision but before an appeal, if any, is taken to the Provincial Medical Board, and I therefore refrain from doing so.

Subsection 7 of s. 74 must be read in the context in which it is found. It is contained in a section which deals exclusively with appeals to the Provincial Medical Board, from decisions of the Council on discipline which entail suspension or dismissal. The language of the subsection is clear and unambiguous and in my opinion it relates exclusively to proceedings before the Provincial Medical Board either before or after judgment.

I am in respectful agreement with the learned trial judge that the application for a writ of certiorari while proceedings were pending before the Council on Discipline was premature, and I would dismiss the appeal with costs.

Appeal dismissed with costs.

Attorneys for the appellant: Roger Beaulieu and Guy Favreau, Montreal.

Attorneys for the respondents and mis-en-cause: Louis-Claude Trudel, Montreal.
