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IN THE PRIVY COUNCIL

No. 45 of 1984

ON APPEAL FROM THE HEALTH COMMITTEE

OF THE GENERAL MEDICAL COUNCIL

B E T W E E N :

AYLMER JAMES CROMPTON

Appellant

-and-

THE GENERAL MEDICAL COUNCIL

Respondent

CASE FOR THE RESPONDENT
COUNCIL

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1. The Appellant, Aylmer James Crompton, appeals from a decision of the Health Committee (hereinafter the Committee) of the Respondent Council that by reason of the fitness to practise of the Appellant being judged to be seriously impaired the registration of the Appellant be conditional, for a period of 12 months, upon the Appellant's compliance with the following requirements namely:

86/31

- 87/14

(a) that the Appellant should practise only in laboratory posts within the National Health Service in which his work would be supervised by another fully registered medical practitioner.

(b) that the Appellant should consult a psychiatrist chosen on behalf of the Committee at such intervals as the psychiatrist might require and follow any medical advice and/or treatment he might offer.

(c) that the Appellant should consult a neurologist and undergo such tests as the neurologist might direct with a view to his submitting a report to the Respondent Council.

2. The Committee was first established under the Medical Act, 1978, which Act came into effect on the 1st August, 1980. On the same date the General Medical Council Health Committee (Procedure) Rules Order of Council 1980 ("The Procedure Rules") came into force. These rules provide amongst other things for the reference of cases to the Committee and for the procedure to be followed.

3. A general power of adjournment is provided to the Committee by rule 29 of the Procedure Rules. Further in the event of the Committee exercising their powers to suspend a registration or make it subject to conditions, the Committee have at a subsequent date to resume consideration of the case.

4. The brief chronology in relation to this matter is:

(i) 18th March 1982; The Appellant was neither present nor represented. It was decided that the case should be adjourned for a period of three months

so that the Appellant could have an opportunity to consider and answer that part of the evidence which he had not then seen or heard.

(ii) 23rd June 1982: The Appellant was neither present nor represented. The Appellant's fitness to practise was judged to be seriously impaired. The Committee directed that his registration be suspended for 12 months. App p2

(iii) 13th June 1983: Consideration of the Appellant's case was resumed. The Appellant was neither present nor represented. The Appellant's fitness to practise was judged to be seriously impaired. The Appellant's registration was directed to be suspended for 12 months. App p3

(iv) 19th October 1983: Her Majesty in Council dismissed the appeal of the Appellant against the direction of the 13th June 1983 by reason of non prosecution of the appeal. App p3

(v) 18th June 1984: Consideration of the Appellant's case was resumed. The Appellant was present but not represented. The hearing of the case was, on the Appellant's application, adjourned to the 25th July 1984. App p92-131

(vi) 25th July 1984: The direction referred to at paragraph 1 hereof was given.

5. It is the direction given on the 25th July 1984 against which the Appellant appeals. By virtue of section 40(i)(b) of the Medical Act, 1983, subject to a restriction imposed by section 40(5), such a decision can be appealed to Her Majesty in Council. There is no provision enabling appeals to be made from the Health Committee other than under section 40.

6. The restriction imposed by section 40(5) is that no appeal from a decision of the Committee shall lie except on a question of law. The Respondent Council contends that in the circumstances of the Appellant's case no question of law arises.

7. The Respondent Council further or alternatively contends that in the circumstances of the Appellant's case there is no error or question of law sufficient to warrant interfering with the determination of the Committee.

8. The Procedure Rules provide, in Part II, for the initial consideration of cases. One way (provided in rule 5(i)) in which cases can come to be considered by the Committee follows a reference by the person appointed under rule 5(2). That person, referred to in the rules as the President, will act in the first place upon information, raising a question as to fitness to practise, passed to him, pursuant to rule 6(1) by the Registrar of the Respondent Council.

9. Rule 6(2) provides inter alia that unless the information has been received from certain persons including

those acting in a public capacity the matter shall not proceed further unless statutory declarations are furnished. In this case information had been submitted to the Respondent Council from the Solicitor to the Respondent Council in the course of earlier proceedings before the Professional Conduct Committee of the General Medical Council being those proceedings taken on appeal to the Privy Council in 1981. Such information included the reports of Dr. J.J. Fleminger and Dr. C. Herridge. By virtue of rule 2 the Solicitor to the Respondent Council is a person acting in a public capacity.

App p87

App p32-33

App p31

10. The President in accordance with Rule 8(5) referred the information to the Committee and the Registrar consequently sent in the form of a letter dated the 11th February 1982, a notice of referral to the Appellant. That letter indicated amongst other things that the Appellant's case would be considered at a meeting of the Committee on the 18th March 1982.

App p2

App p29

11. Thereafter the case proceeded as recited in the chronology set out in paragraph 4 hereof.

12. By letter dated the 18th May 1984 the Appellant was informed that consideration of his case would be resumed on the 18th June 1984. Enclosed with the letter were copies of the information which was to be presented to the Committee in advance of the hearing. Preliminary circulation of evidence is provided for by rules 28 and 12 of the Rules. The Appellant was enabled to require the attendance those persons on whose testimony on opinion such information or reports depend.

App p53

13. At the hearing on the 18th June 1984 the Appellant was present but not represented. Mr. A.P.P. Honigmann of Messrs. Waterhouse & Co., solicitors to the Respondent Council, was present.

14. The Appellant proceeded to address the Committee making points of order in relation to the proceedings. App p93
- p108

15. These points were considered by the Committee after hearing from Mr. Honigmann and the Legal Assessor. The Chairman recited the views of the Committee as to the points raised by the Appellant. App p129

16. As to the first point namely that one of the medical assessors should be chosen from the specialty of clinical pathology (preferably chemical pathology), it was stated that at the adjourned hearing it would be useful to have an additional assessor in clinical pathology. App p129

17. As to the second point, namely whether reference to mental disorder is sufficient compliance with rule 11(1)(a), which requires the notice of referral to indicate the mental condition by reason of which fitness to practise is impaired, the Committee considered the provisions of the rules to be fulfilled and that such a description was in the circumstances of the case, the only indication which could reasonably have been used in guiding the Appellant and the Committee in approaching the case. App p129

18. The third point was an objection to the presence of Mr. Honigmann. The legal assessor advised that it was clear from rule 15 that he was entitled to be present: such advice was accepted. The legal assessor's advice was also accepted in relation to the fourth point. The legal assessor had indicated, in respect of it, that the notice of referral was pursuant to rule 11 to be sent by the Registrar. App p114
App p130
App p118
19. The advice of the legal assessor was also accepted in respect of points 6 to 10. As to the fifth point, which related to the attendance of Drs Fleminger and Herridge who had on the 18th March 1982 given evidence and provided reports relating to the Appellant, the Registrar was directed to secure their attendance on the 25th July 1984. App p130
App p130
20. On the 25th July 1984 Dr. John Fleminger gave evidence to the Committee. He identified a letter which he had written to the Respondent Council on the 6th March 1981 and confirmed that he had appeared before the Committee in March 1982. As far as he could recall the transcript of the evidence which he had seen was an accurate record of it. 2/1
App p32-33
App p38-39
21. The Appellant proceeded to cross-examine Dr. Fleminger. He was also asked questions by the Committee. 2/29
24/1
22. Dr. Anthony Edwards also gave evidence. He stated that he was the general practitioner of the Appellant and has, at the Appellant's request written to the Respondent Council on the 15th June 1984. He was then questioned by 25/42
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the Appellant. The Committee also asked questions of Dr. Edwards. 26/17

23. Dr. Herridge then gave evidence. He confirmed having made a report about the Appellant dated the 16th February 1981 and remembered giving evidence in March 1982. He was shown the transcript of his evidence which accorded with what he could recall. Dr. Herridge was cross-examined by the Appellant. 37/41 48/10 App p31 App p36-38 49/9

24. Dr. Crompton proceeded to address the Committee which then deliberated in camera. The Chairman then announced that the Committee, having carefully considered the further evidence presented to them of the Appellant's physical and mental condition, had judged his fitness to practise to be seriously impaired. The Chairman went on to give the direction recited at paragraph 1 hereof. 72/39 86/32

25. The Respondent Council therefore humbly submits that this Appeal should be dismissed with costs against the Appellant for the following, among other, reasons.

REASONS

1. BECAUSE the fitness to practise of the Appellant was judged to be seriously impaired by reason of his mental condition.
2. BECAUSE in the circumstances of the case the Committee was entitled to reach the aforesaid judgment.
3. BECAUSE the aforesaid judgment was a proper judgment.

4. BECAUSE in the proper exercise of their discretion the Committee were entitled to direct that for a period of 12 months the Appellant's registration be conditional upon compliance with certain specified requirements.

5. BECAUSE the aforesaid direction of the Committee was a proper decision.

TIMOTHY STRAKER

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RECEIVED

25 OCT 1984

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