Lavery HEALTH LAW

NUMBER 3, APRIL 2015

Legal newsletter for the health and social services network and health-care professionals

lavery Lawyers

CONFINEMENT ORDERS: PSYCHIATRIC EXAMINATION REPORTS NOT AUTOMATICALLY EXCLUDED WHEN A PATIENT'S FUNDAMENTAL RIGHTS AND FREEDOMS ARE VIOLATED

CATHERINE PARISEAULT and MAGALI COURNOYER-PROULX

IN A JUDGMENT HANDED DOWN ON JANUARY 30, 2015, THE COURT OF QUÉBEC HELD THAT THE FAILURE TO RESPECT THE PRESCRIBED TIME LIMITS OR THE VIOLATION OF A PATIENT'S FUNDAMENTAL RIGHTS AND FREEDOMS DOES NOT LEAD TO THE AUTOMATIC EXCLUSION OF A PSYCHIATRIC EXAMINATION REPORT CONCLUDING THAT THE PATIENT SHOULD BE CONFINED.[1] THE COURT CLARIFIED ANOTHER DECISION RENDERED BY THE SAME COURT A FEW MONTHS EARLIER IN WHICH A MOTION FOR A CONFINEMENT ORDER HAD BEEN DISMISSED FOR SIMILAR REASONS.[2]

The first case[3] involved a patient who had expressed a desire to leave the hospital but had undergone two psychiatric assessments which concluded that there was some danger and that she should be confined against her will. Relying on the following excerpt of the medical report, the Court held that the patient had clearly manifested her objection to the interview and that she had therefore submitted to the doctor's "interrogation" against her will:

> [TRANSLATION] "[9] [...] Patient reticent during interview. Seems apprehensive. Refuses to sit down in the office. Hostile. Denies the information in the file. Does not answer questions about her symptoms."
>
> [References Omitted]

After referring to legislative provisions recognizing that every person has a right to personal security and inviolability and setting forth the obligation to obtain a person's consent to an examination,[4] the Court held that allowing the report and using it as evidence would bring the administration of justice into disrepute. It therefore dismissed the motion for a confinement order on the grounds that the motion was based on only one report rather than the two reports required by law.

In the next case,[5] the patient's attorney requested that the second psychiatric examination report be excluded on the grounds that the examination had been conducted after the expiry of the 72-hour period during which an institution may place a person under preventive confinement.[6] She argued that the Court had to rule on the violation of a constitutional right involving the legitimacy of consent, and that admitting the report into evidence would tend to bring the administration of justice into disrepute pursuant to article 2858 of the *Civil Code of Québec*[7] ("C.C.Q.").

1 *Centre hospitalier de l'Université de Montréal* v. *H.L.*, 2015 QCCQ 1831.

2 *Centre hospitalier de l'Université de Montréal* v. *J.F.*, 2014 QCCQ 12997.

3 *Id.*

4 *Charter of Human Rights and Freedoms*, CQLR c C-12, art. 1 and 4 (the "Charter"); *Civil Code of Québec*, CQLR c C-1991, art. 10 and 11 ("C.C.Q."); *An Act respecting health services and social services*, CQLR, c S-4.2, s. 6 and 9.

5 Supra, note 1.

6 *An Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, CQLR, c P-38.001, s. 7.

The Court held that the same steps should be followed as in the previous case.[8] After hearing the patient's testimony, the Court rules that she had cooperated in, and consented to, the examination and her fundamental rights were therefore not violated. In the Court's view, in the absence of such a violation, there is no reason to move on to the next step and decide whether evidence gathered in violation of her rights should be struck from the record pursuant to article 2858 C.C.Q.

The Court added that the violation of fundamental human rights and freedoms should not automatically lead to the exclusion of a psychiatric report that is carried out after the expiration of the applicable time limits. A balance must be struck between the respect for patients' rights and freedoms taking into consideration an institution's available resources and the need for society to protect itself. Finally, on the issue of deadlines, the Court simply held that it could not condone failing to meet the deadlines but, given the circumstances, it nonetheless allowed the motion.

[7] Supra, note 4.

[8] Supra, note 2.

CATHERINE PARISEAULT

514 878-5448
cpariseault@lavery.ca

MAGALI COURNOYER-PROULX

514 877-2930
mproulx@lavery.ca

HEALTH LAW TEAM
UNDER THE DIRECTION OF SYLVAIN POIRIER

PIERRE-L. BARIBEAU	514 877-2965	pbaribeau@lavery.ca
PIERRE BEAUDOIN	418 266-3068	pbeaudoin@lavery.ca
ANNE BÉLANGER	514 877-3091	abelanger@lavery.ca
JÉRÔME BÉLANGER	514 877-3012	jebelanger@lavery.ca
CLAUDIA BÉRUBÉ	819 346-3661	cberube@lavery.ca
DAVE BOUCHARD	819 346-3411	dabouchard@lavery.ca
JULES BRIÈRE	418 266-3093	jbriere@lavery.ca
GENEVIÈVE CHAMBERLAND	819 346-2562	gchamberland@lavery.ca
MAGALI COURNOYER-PROULX	514 877-2930	mproulx@lavery.ca
MARIKA COUTURE-HOULE	819 346-0340	mcouturehoule@lavery.ca
RAYMOND DORAY	514 877-2913	rdoray@lavery.ca
SIMON GAGNÉ	514 877-2916	sgagne@lavery.ca
DANIELLE GAUTHIER	819 346-8073	dgauthier@lavery.ca
HÉLÈNE GAUVIN	418 266-3053	hgauvin@lavery.ca
CHERYL GILBERT	819 346-2207	cgilbert@lavery.ca
RHONDA GRINTUCH	514 877-3068	rgrintuch@lavery.ca
MARIE-JOSÉE HÉTU	819 373-4274	mjhetu@lavery.ca
VÉRONIQUE IEZZONI	514 877-3003	viezzoni@lavery.ca
MARIE-HÉLÈNE JOLICOEUR	514 877-2955	mhjolicoeur@lavery.ca
MAUDE LAFORTUNE-BÉLAIR	514 877-3077	mlafortunebelair@lavery.ca
ARIANE LAUZIÈRE	819 373-1881	alauziere@lavery.ca
MYRIAM LAVALLÉE	819 373-0339	mlavallee@lavery.ca
JOHN N. MCFARLANE	613 233-2674	jmcfarlane@lavery.ca
ZEÏNEB MELLOULI	514 877-3056	zmellouli@lavery.ca
PATRICK A. MOLINARI, MSRC	514 877-3079	pmolinari@lavery.ca
VÉRONIQUE MORIN, CRIA	514 877-3082	vmorin@lavery.ca
JEAN-FRANÇOIS PAGÉ	819 346-7999	jfpage@lavery.ca
CATHERINE PARISEAULT	514 878-5448	cpariseault@lavery.ca
SYLVAIN POIRIER	514 877-2942	spoirier@lavery.ca
LOUIS ROCHETTE	418 266-3077	lrochette@lavery.ca
VIRGINIE SIMARD	514 877-2931	vsimard@lavery.ca
LOUIS THIBAULT-GERMAIN	418 266-3067	lthibaultgermain@lavery.ca
CHARLES OLIVIER THIBEAULT	514 877-3086	cothibeault@lavery.ca
CLAUDE VILLENEUVE	819 346-4117	cvilleneuve@lavery.ca