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**Legal
brief***

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FOR HOW LONG CAN I BE OBLIGED TO REMAIN IN A RESIDENTIAL FACILITY?

What is the maximum duration of a residential placement order forcing a person to live in a residential facility? What happens if the person contemplated in the residential placement order suffers severely from various health problems, including a degenerative disease with irreversible consequences?

THE FACTS

A judge of the Superior Court issued a residential placement order against the individual in question without specifying how long she would have to remain in the facility, and she opposed the order. The Public Curator of Québec believed the judge had committed an error and brought the case before the Québec Court of Appeal. It should be noted that the individual in question suffered from several health problems, including diabetes, high blood pressure and obesity. Following a stroke, she had also developed dementia which caused her to suffer memory loss. She lived with her mother, who was 86 years old and also suffered from dementia.

The individual in question categorically refused to leave her home and go live in a residential facility that would be better suited to her medical condition. According to her doctors, she was incapable of consenting to, or refusing the care required by her state of health. Given her incapacity and her categorical refusal, the hospital filed a motion to have her placed in a residential facility without, however, specifying how long the care would be necessary. The appeal dealt solely with the duration of the residential placement order.

THE ISSUE

Did the judge of first instance commit an error by failing to set a time limit for the residential placement order?

THE DECISION

The appeal was allowed.

THE GROUNDS

The medical evidence revealed that the dementia from which the individual suffered was an irreversible degenerative disease. Given that her condition would not improve, but, on the contrary, might deteriorate, the judge of first instance

had agreed to issue a residential placement order without setting a time limit.

Conversely, the judges of the Court of Appeal were of the opinion that it would have been appropriate to set a time limit for such an order. According to them, the spirit of the law requires the courts, not the players within the health sector, to set the duration of orders for care. In this regard, the courts are, in a sense, the guardians of the rights of incapable persons who are subject to such orders, because the courts can be called upon to review such cases if new applications are submitted to them at a later time. According to the Court of Appeal, [TRANSLATION] “the only real way in which a court can ensure it fulfils its mission is to set a time limit for its order. In this way, it can ensure that the person will not fall between the cracks.”

Despite the fact that the individual’s condition was irreversible, the Court of Appeal set a time limit of three years for the residential placement order. Upon the expiry of that time period, the hospital would still have the option to file a new application, if necessary.

References

Le Curateur public du Québec v. Centre de santé et de services sociaux de Laval and N.D., 2008 QCCA 833, Court of Appeal (C.A.) 500-09-018216-077, May 5, 2008, Judges Chamberland, Morin, and Rochon. (www.jugements.qc.ca)

Civil Code of Québec, (S.Q. 1991, c. 64), section 16.

Charter of Human Rights and Freedoms, (R.S.Q., c. C-12).

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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