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Legal brief *

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I AM NOT DANGEROUS: WHEN WILL MY CONFINEMENT IN AN INSTITUTION END?

An individual suffering from mental illness may be placed in confinement in a health care institution if he presents a danger to himself or to others due to his mental state. However, if the individual in question opposes the confinement, a court authorization is required. In order to obtain such an order, the hospital must prove that the individual is dangerous and that his confinement in an institution is necessary. If the judge is convinced that confinement in an institution is required, he must set a duration for the confinement in his order. What happens if the confinement period has expired or the periodic psychiatric evaluations have not been done in a timely manner?

THE FACTS

The individual in question was subject to an order of confinement in an institution issued by a judge of the Court of Québec for a maximum period of 30 days. At the hearing, the judge had concluded that the individual presented a danger to herself or to others due to her mental state and that her confinement in an institution was necessary. Acting through her lawyer, the individual filed an application for review with the Administrative Tribunal of Québec in order to have her confinement in an institution lifted on the ground that she no longer presented a danger to herself or to others.

THE ISSUE

Did the individual still present a danger to herself or to others due to her mental state and was her confinement in an institution still necessary?

THE DECISION

The motion to lift the confinement in an institution was granted.

THE GROUNDS

In addition to the legislative provisions of the *Civil Code of Québec*, the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* governs confinement of persons against their will. As regards termination of confinement in an institution, the law expressly provides how confinement may be terminated. The physician treating the patient may issue a certificate stating that the confinement is no longer required or the order of confinement may expire. The Administrative Tribunal of Québec may also order termination of confinement after at hearing at which the evidence reveals that the person is no longer dangerous. Lastly, confinement in an institution may also terminate if no psychiatric examination report has been produced in a timely manner where the confinement is for a period of 30 days or more.

As regards the individual in question, her lawyer argued that no clinical psychiatric examination had been carried out on the 21st day of her confinement, as required by law. The lawyer for the hospital argued that progress notes had been placed in the individual's medical record on the 21st day and a written report had been prepared for the hearing. The tribunal concluded that the report submitted to it had been prepared too late. Consequently, the Administrative Tribunal of Québec ordered that the order of confinement in an institution imposed on the individual be lifted immediately and it refused to hear any evidence regarding her dangerousness. The fact that the hospital had not respected the time limits imposed by law was fatal and led immediately to the end of confinement in an institution without any other formality.

References

W.H. v. Hôpital A, Administrative Tribunal of Québec (T.A.Q.) SAS-M 155 578-0902, May 25, 2009, Decision rendered by Martine Lavoie, Louise M. Blain and Pierre Migneault (2009 QCTAQ 05267; www.jugements.qc.ca).

An Act respecting the protection of persons whose mental state presents a danger to themselves or to others, (R.S.Q., c. P-38.001), ss. 10 and 12.

Civil Code of Québec, (S.Q. 1991, c. 64), ss. 26 and following.

The jugement 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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