



A COURT HAS ORDERED THAT I BE PLACED IN A DETOXIFICATION CENTRE

In principle, every person is free to accept or refuse to submit to health care. Exceptionally, a hospital centre may go to court to compel an unfit person to receive treatment despite the person's categorical refusal, that is, against the person's will. When dealing with treatment against a person's will, can a judge go as far as ordering that a person be placed in a detoxification centre?

THE FACTS

A 19-year-old man suffered from mental health problems: schizophrenia and an antisocial personality disorder. In addition, he had a severe drug addiction problem. The psychiatrist and the social worker who were dealing with the young man believed that it would be beneficial and advisable that he stay in a detoxification centre to solve his addiction problem. However, the young man categorically refused to be placed in a detoxification centre and stated that he could stop taking drugs on his own. He had enrolled in CEGEP and was worried that a long-term stay in a detoxification centre would prevent him from pursuing his studies. Under these circumstances, the hospital went to court asking the court to order the young man to submit to care for a period of three years. The issue in dispute dealt solely with his placement in a detoxification centre, given that the young man did not seem to be refusing to take the medication prescribed for his medical condition.

THE ISSUE

Was the young man incapable of consenting to care? If so, was the proposed care advisable and beneficial in the circumstances?

THE DECISION

The motion for authorization to administer care was granted in part.

THE GROUNDS

The *Civil Code of Québec* states that no one may be made to undergo care without his or her prior free and enlightened consent. It should be noted that the courts in Québec equate placement with care. If the individual targeted by the application is unfit and categorically refuses the care, the court's authorization is required before treatment can be administered. When faced with such an application, the court must first rule on the individual's capacity to consent to the care according to certain criteria, such as the person's understanding of the nature of

his illness, the nature and purpose of the treatment as well as the risks and advantages of undergoing or not undergoing treatment. Lastly, the court must determine whether the person's ability to understand is affected by his illness.

In the present case, the judge concluded that the evidence presented to him proved that the young man was unfit to consent to care, in particular, because he did not seem to understand the nature of his illness, the purpose of the treatment or the risks of not receiving treatment. The fact that he did not think he needed help in order to stop consuming drugs led the court to conclude that he was incapable of consenting. Evidence had been presented to the effect that, even when hospitalized, the young man had succeeded in obtaining and consuming drugs. In this regard, the judge emphasized that the young man was in denial about his situation. In the court's opinion, the fact that the young man might miss a year of school if he were placed in a detoxification centre was not an overriding argument.

Given the evidence of his incapacity and proof that the care was advisable and would be beneficial to the young man, the court granted the motion. However, the judge considered that the order should be for a period of 18 months rather than three years. She justified the reduced time period on the basis that this was the first order to be issued. Accordingly, the young man was to be placed in a detoxification centre and once his therapy was complete, he was to be placed in a location tailored to his needs for the balance of the order.

References

Centre hospitalier universitaire de Québec v. T.R., Québec Superior Court (C.S.), 200-05-018725-080, November 18, 2008, Judge Suzanne Hardy-Lemieux (EYB 2008-15087; www.jugements.qc.ca)

Institut Philippe-Pinel v. A.G., Montreal Court of Appeal (C.A.), 500-08-000021-933, October 17, 1994, Judges Delisle, Beauregard and Steinberg (EYB 1994-64538; www.jugements.qc.ca)

Civil Code of Québec, (S.Q. 1991, c. 64), article 16 and articles 10 et seq.

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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