# Dispositions ordering treatment for patients found unfit to stand trial: health institutions must provide prior consent to all components of the order, including the date of admission

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On October 3, 2014, the Supreme Court of Canada, by a majority decision of 5 to 4,[1] confirmed that a disposition ordering the treatment of an accused who is found unfit to stand trial requires the prior consent of the designated hospital to all the terms of the disposition order, inclusive of the date on which the treatment is to begin.

In this case, the Ontario provincial court had declared the accused unfit to stand trial and was permitted, in accordance with the powers granted under the *Criminal Code*,[2] to render an order for involuntary treatment for a period not exceeding 60 days (section 672.58). Under the applicable provisions, a court may also include in the disposition any conditions of treatment that it considers appropriate. However, before a court can render the disposition order, the designated hospital must provide its consent (section 672.62 (1)(a)).

During the hearing, the court heard evidence that the accused could be admitted to the designated hospital but only after a period of six (6) days, since no bed would be available before that time. The hearing judge was mindful of the fact that the accused was psychotic, and she wished to avoid sending him to a detention facility in the intervening time. The court therefore ordered that he be brought “forthwith” for treatment at the Centre for Addiction and Mental Health or “a designate (preferably Oak Ridge).” Following the hearing, the accused was delivered to the “designate” facility and left in the corridor by court services. Both hospitals appealed the decision to the Ontario Court of Appeal, which allowed the appeal.

The matter before the Supreme Court turned on the scope of the consent required by the designated hospital under the *Criminal Code*: is consent fulfilled once the hospital has agreed to treat the patient, or must the hospital also give its consent to the timing of the treatment order?

The Supreme Court held that the relevant provisions of the *Criminal Code* must be interpreted as requiring the hospital’s consent to all components of the disposition ordering treatment, including any conditions of treatment that the court might consider appropriate to order. Absent such consent, the disposition order cannot be issued. A hospital may therefore withhold its consent where it lacks the personnel or facilities to safely treat the accused at the time in question. However, the Supreme Court imparts a certain nuance in indicating that the consent requirement can be limited by the courts in exceptional cases where the accused can show that the hospital’s refusal to provide

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immediate treatment might compromise the likelihood that he would become fit to stand trial within the 60-day window provided in the *Criminal Code*, thereby infringing on his Charter right to life, liberty, and security of the person. In such exceptional cases, the courts could decide that an order for immediate treatment is an appropriate and just remedy for the breach.

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[1] *R.* v. *Conception*, 2014 SCC 60.

[2] RSC 1985, c C 46.

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