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Confinement orders: Psychiatric examination reports not automatically excluded when a patient's fundamental rights and freedoms are violated

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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.

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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.").

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.

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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."); *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.

7 Supra, note 4.

8 Supra, note 2.

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