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Authorization of treatment and placement: The Québec Court of Appeal clarifies the meaning of article 393 C.C.P.

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On May 10, 2016, the Québec Court of Appeal[1] confirmed a Superior Court decision allowing an application for authorization of treatment and placement to a patient. The application had been brought by the Douglas Mental Health University Institute, commonly known as the Douglas, or the Douglas hospital.

Essentially, the patient was claiming that the Douglas's failure to serve a notice identical to the one prescribed by article 393, paragraph 2 of the *Code of Civil Procedure*[2] along with the application seeking his hospitalization and treatment was fatal to the application. According to the patient, this mistake resulted with the proceedings being undertaken by the Douglas, necessarily ensuing in an invalid judgment.

The notice referred to in article 393, para. 2 is a new legal requirement, resulting from the entry into force of Quebec's new *Code of Civil Procedure*. Its purpose is to remind respondents of their rights, including their right to legal representation.

Using a textual interpretation approach, the Court analyzed the terms "*conforme au*" and "in keeping with", and found that the notice must be similar to the model notice established by the Minister of Justice, but not necessarily identical. The Court added that if the notice needed to be identical, the legislator would have said so in unequivocal terms.

The Court held that in order to be in keeping with the provision, the notice must, in substance, meet the objective pursued by the legislator. That objective is to inform vulnerable people of their rights to enable them to exercise those rights and be heard. Thus, the notice is a protective procedural requirement and is of public order, and only the person in favour of whom it has been established can waive the notice.

The notice sent to the patient in this case made reference to his right to be heard and to be

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represented by a lawyer, but it did not state that any judgment ultimately rendered in the matter could be appealed. Nonetheless, the Court found that the type of objection made by the patient was a preliminary objection, which should have been made earlier. Furthermore, since the patient was heard at the hearing in the Superior Court, it would not have been appropriate to allow the patient to invoke this procedural irregularity at this subsequent stage.

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1. *N.C.* c. *Institut universitaire en santé mentale Douglas*, 2016 QCCA 856.
2. JUSTICE QUÉBEC. *« Avis accompagnant une demande concernant un majeur ou un mineur de 14 ans et plus qui touche son intégrité, son état ou sa capacité : Demande présentée devant le tribunal »*, (consulted June 3, 2016). The English version of the form, *"Notice accompanying an application to the court relating to the personal integrity, status or capacity of a minor 14 years of age or older"*, (consulted June 28, 2016).

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