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Authorizations of care and placement: the Québec Court of Appeal imposes parameters on requests for adjournment and reaffirms the admissibility of hearsay in expert evidence

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On October 28, 2016, the Québec Court of Appeal[1] affirmed a decision of the Superior Court of Québec granting an application for the authorization of care presented by the Centre intégré de santé et de services sociaux des Laurentides (the "CISSS").

Essentially, the patient submitted three grounds for contesting the application. First, he argued that the refusal of the first instance judge to grant the patient's request for an adjournment deprived him of his right to present expert evidence, thereby denying his right to a full answer and defence. Next, the patient claimed that the conditions prescribed by the legislation and case law for granting the CISSS's application had not been met. Finally, he submitted that the duration of the order obtained was excessive and should be reduced to one year.

As in the case of *F.D.* c. *Centre universitaire de santé McGill*,[2] the Court held that the decision of whether or not to postpone a hearing is a matter of case management. The Court of Appeal must show great deference to the judge hearing the matter, who has broad discretionary powers to ensure the proper conduct of the proceeding of which they are seized.[3] Therefore, a decision on a request for an adjournment can only be overturned if it is unreasonable given the circumstances of the case and if it is contrary to the best interests of justice.[4]

In this case, the patient, who at the time, was being held at the St-Jérôme Hospital, had already waited several months for a hearing before the Review Board for Mental Disorder ("**RBMD**") at the

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time the CISSS filed its application for authorization of care with the Superior Court. Moreover, due to the patient's level of agitation, it was necessary to adjourn the hearing before the RBMD and to keep the patient in detention until a decision was made by the Superior Court on the application for authorization of care, which was presentable on May 19, 2016. On that date, the patient made an initial request for an adjournment so that he could retain a lawyer, which was granted. Even at that time, the Court noted that the matter was an urgent one — to ensure the patient's rights were respected. On May 26th, the Court adjourned the file for a second time and set a date for a hearing on the merits for July 21st, which was agreed to by the parties. Even before the file was heard, the patient's lawyer asked that the case be postponed for a third time on the grounds that the psychologist he wanted to call as a witness was not available, without providing more information as to whether another expert could be called. After suggesting a one week adjournment, which was also refused by the patient's lawyer, the first instance judge dismissed the third request for a postponement.

In this context, the Court of Appeal held that this decision was not unreasonable, noting that applications dealing with personal integrity take priority over all others,[5] which is indicative of their inherent urgency. Indeed, the Court stated as follows: [translation] "files dealing with the integrity of persons must proceed expeditiously and everyone is required to cooperate to this end, including the party who is the subject of the application".[6] Here, the urgency was even greater because the patient was being kept in detention at the St-Jérôme Hospital pending his hearing before the RBMD. Furthermore, the patient's lawyer had not facilitated the progress of the patient's file and admitted that he had only contacted one expert. The Court held that the context of an application for an adjournment requires more details from the person seeking it, who cannot simply satisfy himself by saying that other unidentified people could potentially be contacted, without providing more details. In short, the Court held that this application for a postponement was dilatory in nature.

As to whether the Superior Court erred in granting the CISSS's application for authorization of care, the Court of Appeal answered no. One could not necessarily conclude, based on the fact that the judge's judgment was rather short, that he had ignored the criteria set out in the case law in his analysis. In his assessment of the criteria, the judge committed no error in law in accepting the expert's testimony, which was in fact largely based on hearsay. Citing the authors, Royer and Lavallée,[7] the Court held that the case law created an exception to the rule against hearsay in expert evidence in cases involving necessity and convenience. Expert witnesses are therefore permitted to provide an opinion based on facts that they have gathered out of court without requiring that such facts be established by evidence in court in order to add opinion probative value to their opinion. This was the sense in which the Court held that such evidence is admissible and relevant.

Despite the appellant's request to reduce the duration of the order to two years, the Court of Appeal kept the duration of the treatment at three years, noting that the time period requested in this type of file cannot be set based on general standards, but must instead be assessed and personalized according to the specific situation of each patient.

Furthermore, the Court pointed out that there are two review mechanisms in such matters, namely, the bi-annual review by the council of physicians, dentists and pharmacists of the particular institution, and the review provided in article 322 of the *Code of Civil Procedure*, which permits the Superior Court to reassess a decision at any time upon the presentation of new facts.

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1. *D.A.* c. *Centre intégré de santé et de services sociaux des Laurentides*, 2016 QCCA 1734.
2. *F.D.* c. *Centre universitaire de santé McGill* (Hôpital Royal Victoria), 2015 QCCA 1139.
3. *Ibid.*, para. 30.
4. *Code of Civil Procedure*, CQLR, c. C-25.01, art. 9, para. 3, and 17-20 (hereinafter the "C.C.P.").
5. Art. 395 C.C.P.
6. *D.A.* c. *Centre intégré de santé et de services sociaux des Laurentides*, *supra*, note 1, para. 15.
7. Jean-Claude Royer, La preuve civile, 4th ed., by Jean-Claude Royer and Sophie Lavallée, Cowansville, Éditions Yvon Blais, 2008, p. 339.

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