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# Authorization of care and placement: the Québec Court of Appeal rules on alternative therapies, the duration of orders and provisional enforcement notwithstanding appeal

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**On February 17, 2017, the Québec Court of Appeal[1] upheld a decision of the Superior Court of Québec granting an application for authorization of care presented by the Centre intégré de santé et de services sociaux du Bas-Saint-Laurent.**

In this case, the patient attempted to assert the following grounds of appeal, each of which were unanimously dismissed by the Court of Appeal. First, the patient argued that the judge in first instance could not conclude that there had been a categorical refusal by the patient without first ensuring that he had received all the necessary information to make a free and informed decision. Moreover, the duration of the order obtained had to be as short as possible. Finally, based on the decision in M.M.*Centre intégré de santé et de services sociaux du Bas-Saint-Laurent* c. *M.M.*[2] the immediate enforcement of the order ought not to have been ordered.

In this case, it was admitted that only the treatment that was initially planned had been considered and discussed with the patient, and he had not been provided with any additional explanation with respect to the proposed second and third alternative treatments. However, during the hearing before the Superior Court, the treating psychiatrist provided the Court with explanations regarding the alternative treatments. On this point, the Court of Appeal found that the explanations provided during the hearing met the requirements and that the patient had had the opportunity to request an adjournment of the hearing to obtain additional information, which he had not done. Therefore, while the information discussed with the patient regarding the alternative treatments being considered was incomplete, the Court of Appeal held that the judge in first instance could infer that there had been a

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categorical refusal by the patient, because it was clear that any discussion with him about medication was doomed to fail. In addition, the Court of Appeal took the opportunity to distinguish an authorization of care which is purely preventative in nature from the presentation of a full plan of care which includes alternative therapies based on the evolution of the patient's specific situation. The Court noted that there is a real difficulty in determining which medication is more suitable for treating a patient. The difficulty is, in fact, compounded where the patient refuses to grant access to his medical files, therefore resulting in a lack of information on the medicinal trials attempted in the past.

Regarding the duration of the care order, the Court noted that the *D.A.* case[3] did not stand for the proposition that the duration of such an order must be as short as possible, but rather, [translation] "[…] the shortest possible duration that is reasonably feasible [4] and, in the case of *F.D.*[5], the Court instead defined the duration as [translation] "a sufficient period to ensure that the treatment produces the beneficial effects that are expected."[6] For these reasons, the Court did not modify the duration of the order set by the Superior Court at three years, particularly in light of the complex and resistant nature of the illness, as well as the patient's lack of diligence in taking his medication.

In closing, the Court of Appeal noted that, in matters involving care orders, immediate enforcement must be explicitly requested, and respect for the dignity of the patient requires that there be proof in each case of a grave and imminent risk to the patient's health for such an order can be issued. However, in fact, the Court found that this burden had been met because any delay in administering the medication was likely to increase the patient's resistance to the proposed treatment plan.

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1. C.R. c. *Centre intégré de santé et de services sociaux du Bas-Saint-Laurent*, 2017 QCCA 328.
2. *Centre intégré de santé et de services sociaux du Bas-Saint-Laurent* c. *M.M.*, 2016 QCCS 5572.
3. *D.A.* c. *Centre intégré de santé et de services sociaux des Laurentides*, 2016 QCCA 1734.
4. *Ibid.*, para. 31.
5. *F.D.* c. *Centre universitaire de santé McGill (Hôpital Royal-Victoria)*, 2015 QCCA 1139.
6. *Ibid.*, para. 54.

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