Confinement in an establishment: establishments must exercise caution before making an application

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In a decision rendered on March 13, 2018[1], the Court of Appeal reiterated that caution is in order when making an application for confinement. The Court also took the opportunity to review the topic of confinement orders and the supervision and safety requirements that healthcare establishments have towards their users.

The Court of Appeal's reasoning is based on the following elements:

where two doctors conclude on the need for confinement in an establishment, the user cannot be kept without his or her consent or the Court's authorization for more than 48 hours;

the hospital's decision to make an application for confinement in an establishment does not constitute a simple blind or purely mechanical application of the conclusions presented in the psychiatric examinations conducted by the psychiatrists. It is the responsibility of the healthcare establishment in question to verify whether the legal obligations have been met prior to initiating the legal proceedings. Accordingly, the establishment must act with caution and transparency throughout this type of process, since the basic rights of the user subject to an application for confinement are at stake;

the *Civil Code of Québec*, the *Code of Civil Procedure* and the *Act Respecting the Protection of Persons Whose Mental State Presents a Danger to Themselves or to Others*[2] impose very specific and strict provisions that must be complied with in connection with an application for confinement in an establishment;

the establishment may likely be held liable if it neglects to verify and control compliance with the requisite conditions for confinement;

failure to verify whether the two psychiatric examinations justifying the application for confinement comply with the legal requirements may also potentially engage the establishment's civil liability;

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any incident or accident must be declared in good and due form in accordance with the *Act respecting health services and social services*[3] to determine whether the establishment fulfilled its supervision and safety obligations as regards its confined users.

It is therefore important to remember that healthcare establishments are obliged to demonstrate caution, transparency and verification when making an application for confinement and preparing such an application.

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1. *G.D. v. Sir Mortimer B. Davis Jewish General Hospital, 2018 QCCA 379.*
2. CQLR, c. P-38.001.
3. CQLR, c. S-4.2, Sec. 8 par.2 and 233.1.

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