Confinement in an institution: a judge must intervene where evidence is insufficient

June 14, 2022

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In a judgement rendered on June 3, 2022,[1] the Court of Appeal of Quebec reiterated that a judge who has an application for confinement in an institution before them must inform the parties when they consider that the psychiatric reports filed are insufficiently detailed. In these circumstances, the Court must allow the parties to remedy deficiencies in the evidence rather than dismissing the application.

The Court of Appeal based its reasoning on the following articles:

> Article 268 of the C.C.P.[2] allows a judge to draw a lawyer's attention to any deficiency in the proof of procedure and authorize the parties to remedy it, especially when the judge notes that the insufficient evidence concerns an essential element and could affect the outcome of the dispute.
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> Article 50 of the C.C.P. gives judges the power, even on their own initiative, to require the attendance of witnesses or the presentation of evidence.

Given the importance for a judge to make an informed decision, both with respect to a patient's personal integrity and in assessing the danger they may pose to themselves or to others, the Court of Appeal considers that a judge has an obligation to exercise their discretionary power and require the attendance of one or even both psychiatrists who signed the reports filed in support of an application.

In 2009, the Court had previously concluded that a judge in charge of ruling on an application for confinement in an institution is at liberty to [translation] "report, at the time of the hearing, that the references indicated in two sections of the form used by physicians to prepare a psychiatric examination report for an order of confinement in an institution—one concerning the reasons and facts upon which the physician has based their opinion and the other the assessment of the seriousness of the condition and its likely consequences for the patient and for others—appear to

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them to be insufficient."[3]

It appears that this issue has been taken a step further, as the Court has concluded that the discretion granted by articles 50 and 268 of the C.C.P. must be exercised in order to give the health institution applying for confinement the opportunity to complete its evidence.

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1. *Centre* intégré de santé et de services sociaux de l'Outaouais v. J.L., 2022 QCCA 792
2. *Code of Civil Procedure*, CQLR c. C-25.01. (C.C.P.)
3. *Centre de santé et de services sociaux Pierre Boucher v. A.G.*, 2009 QCCA 2395, para. 38.

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