



Centre for Addiction and Mental Health v. Ontario

2012 ONCA 342

Country: Canada

Region: Americas

Year: 2012

Court: Court of Appeals for Ontario

Health Topics: Hospitals, Informed consent, Mental health, Prisons

Human Rights: Right to liberty and security of person

Facts

The Centre for Addition and Mental Health (CAMH) and the Mental Health Centre Penetanguichene (MHCP) appealed an order by the Mental Disorder Court to send a person accused of sexual assault to a hospital for psychiatric treatment. The judge knew that beds for treatment would not be available until six days later. The appeal was on the basis of a violation of section 672.62, requiring the hospital's consent to treatment. An amicus claimed that the hospital had consented to treatment but that section 672.62 was unconstitutional because it violated the accused's rights under section 7 of the Canadian Charter of Rights and Freedoms ("Charter"), which protects the right to life, liberty, and security of person.

In 2010, Mr. Conception (the accused) appeared in Mental Disorder Court to determine whether he was fit to stand trial for sexual assault charges. The Court is a specialized court that makes judgments regarding people with mental health concerns who have been accused of a crime. The judge found that he was not fit, and issued a treatment order to commit Mr. Conception to an institution to receive treatment that would make him fit for trial within 60 days. While CAMH agreed to treat the accused, they informed the judge that they would not have the resources—a bed—to accept the accused until six days later. Despite this knowledge, the judge continued to issue a treatment order that stated that the accused would be taken directly to the CAMH and could not be taken to a jail or correctional facility under any circumstances. Mr. Conception was then brought to MHCP and left in a hallway at 10:00pm. He ended up receiving treatment at MHCP and returned to court where his charges were stayed in June 2011.

The hospital brought suit against the Mental Disorder Court, appealing the treatment order. Though Mr. Conception's charges had been addressed, the appeal was allowed because the appeals judge found that the legal issues were important and likely to be repeated in other cases.

Decision and Reasoning

The Court overturned the treatment order, holding that consent to treat a patient in six days does not constitute consent to treat "forthwith," as required by the order, and does not satisfy the consent requirement of section 672.62. A hospital's consent to treat the patient provides that the hospital will have the necessary facilities, personnel, and beds available so that they can treat the patient at the time the order becomes operative. The consent can be withheld due to reasons of safety if a bed is unavailable, such as in Mr. Conception's situation.

The Court held that section 672.62—the requirement of the hospital's consent—did not violate section 7 of the Charter. The Court found that the few-day delay generally would not cause treatment to exceed the 60 day maximum or cause an adverse effect on the treatment outcome. Though waiting in a jail that is not equipped to handle mental health issues can aggravate the accused's health, the accused is not entitled to the "most favorable procedures" imaginable. Placing an accused into mental health facilities without the resources to accommodate him could also cause much injury to the accused. Furthermore, it is not practical to expect hospitals with limited resources to always be ready to accommodate an accused at the court's order, waiting few days for treatment is reasonable. Therefore, a slight delay in treatment was in line with the principles of justice.

The Court held that the consent requirement did not unconstitutionally delegate the power to decide whether to make a treatment order to hospitals by giving them a veto. The judge still made the order and the hospital's consent was only to balance the medical considerations within that decision.

The Court also noted that the purpose of treatment order was to make the accused fit to stand trial, rather than for the broad therapeutic or medical benefit of the accused.

The Court held that the consent requirement was not vague and arbitrary because the hospital administrators and staff were still bound by the patient admission criteria in regulations and legislation outside of section 672.58 to take custody of and treat the accused. The Court found that this framework sufficient to prevent hospitals from arbitrarily withholding consent.

Decision Excerpts

“The jurisprudence is clear, moreover, that principles of fundamental justice encompass not only the accused's interests but also collective, societal interests, and that an accused person is not entitled to the most favorable procedures possible.” Para. 49.

“[A]lthough the effect of s. 672.58 is to overcome the common law's unwillingness to compel someone to submit involuntarily to medical treatment the consent requirement in s. 672.62 provides an important safeguard for the unfit accused. A treatment order is, in itself, a profound interference with the unfit accused's security of the person. The consent requirement ensures that the designated psychiatric facility has the necessary bed and staff ready to execute the treatment order safely. Rather than stripping the hearing judge of authority, this requirement provides the hearing judge with some assurance that the treatment order process is initiated and more likely to produce positive results.” Para. 52.

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