



Lalonde v. Ontario (Commission de Restructuration des Services de Santé)

56 OR (3d) 505; 208 DLR (4th) 577 (Ont CA)

Country: Canada

Region: Americas

Year: 2001

Court: Ontario Court of Appeal

Health Topics: Health care and health services, Health information, Health systems and financing, Hospitals

Human Rights: Freedom from discrimination, Right of access to information, Rights to the benefits of culture

Facts

Montfort Hospital appealed the Healthcare Services Restructuring Committee's (HSRC) decision to transfer services away from the hospital. Montfort was a full-service, general hospital in Ontario that operated, trained health-care professionals and provided services in French on a full-time basis, servicing a large francophone population in eastern Ontario.

Exercising its authority under the Public Hospitals Act, the HSRC recommended that Montfort Hospital be closed and its services transferred to four regional hospitals. The community protested that the closure would negatively affect eastern Ontario's francophone community and access to healthcare services in French. The HSRC maintained that it was sensitive to these concerns. However, although some services, including psychiatry, cardiology, and low-risk obstetrics, remained open, all other inpatient activity at Montfort was transferred to other regional hospitals. Montfort's teaching functions were preserved, but parts of its program were spread to other Ottawa teaching hospitals because it was no longer a complete community hospital.

The Ontario Divisional Court quashed the HSRC's orders on the grounds that the HSRC's orders did not respect an unwritten principle of the Canadian Constitution: respect for and protection of minority cultures.

Decision and Reasoning

The Ontario Court of Appeal sustained the order and remitted the matter to the Minister of Health for reconsideration in accordance with the Court's reasoning.

The Court upheld three key factual findings of the Divisional Court: (1) the HSRC's directions would reduce the availability of health care services in French; (2) the HSRC's directions placed insurmountable barriers to the ability of medical personnel to receive training in French; and (3) the HSRC did not adequately assess the importance of continued French language medical service in preserving the Ontario's francophone population.

The Court rejected Montfort's claim that its status was protected by section 16(3) of the Charter of Rights and Freedoms that affirms legislatures' ability to advance the equal status of French and English. The Court also rejected the claim that Montfort was protected by section 15 of the Charter concerning equality rights. It held that neither section required the government to grant privileges to French-language minority populations or to continue those privileges when voluntarily given.

The Court nevertheless sustained the Divisional Court's use of the unwritten constitutional principle of respect for and protection for minorities in interpreting provisions of the French Language Services Act (Act) and reviewing the HSRC's decision. The Court held that the HSRC's decision failed to respect provisions of the Act. Montfort's designation as a public agency under the Act guaranteed the right to receive health care services from this facility and could only be abridged under section 7 of the Act if there were no alternative options.

The Court also held that the Commission was required to take into account the principle of respect for and protection of minorities and did not address the importance of Montfort to the continued survival of the surrounding francophone communities.

Decision Excerpts

“The preservation and promotion of the French language in regard to community health care by the only francophone institution performing this role was part of the public interest to which the Commission ought to have had regard. The Commission should also have had regard to the public interest raised by the fact that Montfort's institutional role had province-wide implications that went beyond the local health care concerns of Ottawa-Carleton.” Para. 74.

“The principle of respect for and protection of minorities is a fundamental structural feature of the Canadian Constitution that both explains and transcends the minority rights that are specifically guaranteed in the constitutional text. This is an area where, as the Supreme Court of Canada explained in the Secession Reference at p. 292 S.C.R., '[a] superficial reading of selected provisions of the written constitutional enactment, without more, may be misleading.' This structural feature of the Constitution is reflected not only in the specific guarantees in favour of minorities. It infuses the entire text and, as we have explained, plays a vital role in shaping the content and contours of the Constitution's other structural features: federalism, constitutionalism and the rule of law, and democracy.” Para. 114.

“Before limiting Montfort's services as a community hospital, Ontario must also have taken ‘all reasonable measures’ to comply with the [Act]. It is possible to state with greater precision what falls short of ‘all reasonable measures.’ ‘All reasonable measures’ does not simply mean giving a direction to the transfer hospital to attain F.L.S.A. designation and then transferring the French services before that designation has been attained. Nor does ‘all reasonable measures’ mean creating a seemingly insurmountable problem for the training of health care professionals in French and leaving the affected community to solve the problem itself. The Commission's directions do not comply with s. 7 of the Act. 166 Although it is impossible to specify precisely what is encompassed by the words ‘reasonable and necessary’ and ‘all reasonable measures,’ at minimum they require some justification or explanation for the directions limiting the rights of francophones to benefit from Montfort as a community hospital.” Paras. 165-166.