



Glegg v Smith & Nephew Inc

[2005] SCC 31

Country: Canada

Region: Americas

Year: 2005

Court: The Supreme Court of Canada

Health Topics: Disabilities, Health care and health services, Health information, Hospitals, Medicines, Mental health

Human Rights: Right of access to information, Right to due process/fair trial, Right to privacy

Facts

Glegg was injured in a bicycle accident and required surgical repair of fractured bones with metal implants. She alleged that following surgery, she experienced extremely painful allergic reactions to metal surgical implants manufactured by Smith & Nephew, causing her physical disability and depression. She sued her physicians and Smith & Nephew in tort. It was revealed at examination for discovery that Glegg consulted a psychiatrist before her accident. She refused disclosure of her psychiatric record.

A series of appeals in the lower courts resulted in an order that the motions court should decide which portions of the psychiatric record are relevant and should be disclosed. Smith & Nephew appealed this decision to the Supreme Court of Canada.

Decision and Reasoning

The court allowed the appeal. It held that psychiatrist-patient secrecy is very important, but is not absolute.

Section 9 of the Quebec Charter of human rights and freedoms recognizes every person's right to professional secrecy. Physicians are bound to guard the confidentiality of information obtained from a patient during the course of a professional relationship with that patient.

Nevertheless, disclosure of confidential information may be required to protect competing interests. In medical malpractice litigation, it is well established that a plaintiff who raises his or her medical record or state of health as a factor relevant to the case impliedly waives his or her right to confidentiality of the medical record. To proceed in the litigation, Glegg would have had to waive her right to protection of her privacy.

In the context of civil litigation, the party seeking access to information must establish its relevance. Access to relevant evidence is linked to the defendant's right to make full answer and defence. The analysis of relevance must take into consideration the recognition of the physician's duty of professional secrecy. In this case, the appellants had demonstrated the relevance of the requested information and the implied waiver of privacy by Glegg. Accordingly, the psychiatric records should have been disclosed.

Decision Excerpts

“Thus, as is the case with lawyers, the physician's duty of professional secrecy includes both an obligation of confidentiality and an immunity from disclosure (Foster Wheeler, at paras. 28-29). [Para 16]

“The Court of Appeal emphasized the importance of the physician's duty of professional secrecy. It properly noted the importance of the right to privacy implicit in the psychiatrist-patient relationship. However, as important as professional secrecy may be, it is not absolute. Despite the protection afforded it, particularly under the Quebec Charter and statutes governing professional orders, it has limits. Disclosure of confidential information may be required to protect competing interests. Also, the holder of the right may implicitly or explicitly waive it (Royer, at pp. 954-59). [Para 17]

“An implied waiver is inferred from actions of the holder of the right that are inconsistent with an intent to maintain professional secrecy or, rather, to avoid the disclosure of confidential information protected by professional secrecy. The rule in respect of medical malpractice is well established, as Royer observes:

[translation] In the health care sphere, a litigant who raises his or her medical record or state of health as a factor relevant to the case tacitly waives the confidentiality of his or her medical record and the right to professional secrecy. [p. 960] [Para 19]

Because of the meaning ascribed to "relevance" by the courts, the test of relevance plays a central role in this area. It requires that the importance of the right to privacy which is already protected by the Quebec Charter "implicit in the legislative recognition of the physician's duty of professional secrecy be taken into account. It requires the party seeking access to the information to establish the apparent relevance of the requested information to the exploration of the merits of the case and to the conduct of the defence. A court assessing the impact of disclosure must bear in mind that this issue has arisen in the context of the examination on discovery, a stage at which the parties are under an implied obligation of confidentiality (Lac d'Amiante). [Para 25]

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