

GLOBAL HEALTH AND HUMAN RIGHTS DATABASE

JUDGMENT SUMMARY FORM

2021-2022

Welcome to the *Global Health and Human Rights Database* and thank you for contributing to this project! The Database aims to provide a systematic survey of health-related rights jurisprudence and instruments at the national, regional, and international levels, with a special focus on the right to health. Categorized by both rights and health issues, the organization of cases in this database allows for comparative legal analysis of similar claims in different national and regional contexts. You may visit the Database's website by visiting: www.globalhealthrights.org.

Please follow these steps for successfully summarizing the judgment and submitting your work:

1. Use the form provided on the next page to summarize, categorize by human right and health topic, and tag the judgment. *Please refer to the Case Processing Manual for human right and health topic definitions and health-related terms.*
2. Before you begin, check the status of the case on the website. If the case is already on the website, check which sections are missing. Often cases will be tagged and uploaded but not summarized. If the case is not on the website, please complete the entire form, otherwise complete as applicable.
3. Save your summary using the following format: Case Name-Country Involved-Year of Decision.

Please do not hesitate to ask ANY questions. Thank you!

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JUDGMENT SUMMARY FORM

2021-2022

YOUR NAME AND EMAIL: Erin Kim, aerin.kim@mail.utoronto.ca

TODAY'S DATE: December 3rd, 2021

WORD COUNT OF TRANSLATION (ONLY FOR TRANSLATORS):

JUDGMENT DETAILS

CASE TITLE: Thompson v. Ontario (Attorney General)

Enter the case title used by court. Names of parties or case reference/docket number. If this is not available, follow the format: last name of plaintiff (petitioner, appellant, claimant, etc.) v. last name of defendant (appellee, respondent, etc.). In case of multiple parties, use “, et al.”, unless the jurisdiction uses a particular format such as “and Ors.”.

CITATION: 2016 ONCA 676

Enter citation format used by the adjudicating court or how a lawyer in that country would cite the case.

COUNTRY: Canada

Enter name of country.

COURT: Ontario Court of Appeal

Enter the official name of the domestic, regional, or international court involved. If the official name is not in English, enter the English translation of the name of the court and then the court's official name in brackets.

YEAR THE JUDGMENT WAS PUBLISHED: 2016

DECISION

For the following two sections, DO NOT copy and paste from other sources (e.g., ESCR-Net or INTERIGHTS summaries). Use quotation marks around any sentences copied from the decision itself. Typically, the facts and decision and reasoning sections are about 500 words, but the length will vary on the length of the case.

FACTS:

Should generally include: one line about what the case is about, one or two paragraphs on the ‘story’ of the case, a one paragraph summary of the procedural history it took to reach its current level, and excerpts of any key legal provisions.

The applicants appealed the decision affirming the constitutionality of *Brian's Law*.

In 2000, *Brian's Law* amended the Mental Health Act (MHA) with provisions that expanded criteria for involuntary committal and introduced community treatment orders (CTOs). The expanded “Box B” criteria included individuals who would likely experience substantial deterioration or impairment without treatment. CTOs provide a form of compulsory, consensual treatment for individuals who meet the criteria for involuntary committal. Both require structured and individualized assessment, and provisions ensure that individuals receive rights information and the right to retain and instruct counsel.

The applicant, Karlene Thompson, had a history of mental illness. She had previously been involuntarily detained and was a subject of a CTO; while her function improved with treatment, she also experienced adverse side effects. Her application

was carried forward by the Empowerment Council, an advocacy group representing users of mental health and addiction services.

The applicants challenged the constitutionality of *Brian's Law*. Their primary assertion that the law's purpose to protect the public was based on the false assumption that people with mental illnesses pose greater risks to public safety and was therefore unjustifiable. The application judge accepted that the assumption was not supported, but held that the legislative purpose also included providing improved treatment for people with mental illnesses. In light of these objectives, the application judge held that the infringements on the right to liberty and security under s. 7 of the Canadian Charter of Rights and Freedoms ("the Charter") accorded with the principles of fundamental justice and dismissed the challenge.

On appeal, the focus of the applicant's challenge was that forced treatment with antipsychotic medication or CTOs was unjustifiable due to conflicting evidence regarding their efficacy, and the nature of the consent in CTOs.

DECISION AND REASONING:

Summarize the holding and the legal issues involved in the case. Separate key issues into different paragraphs using text similar to "The Court held that ..." followed by a sentence or two of the reasoning. Use your own words and minimize use of quotes. A short paragraph per dissent/minority concurring opinion should be included if a) it is a plurality judgment, or b) if they otherwise raise interesting arguments that add to our understanding of the case.

Factual findings and applying the principles of fundamental justice

A claim that a law is inconsistent with s. 7 of the Charter must demonstrate that "(1) the law limits the person's right to life, liberty or security of the person; and (2) the limits are not in accordance with the principles of fundamental justice" (para 31). The application judge conceded that the provisions limited an individual's liberty and security if they were subject to involuntary committal or a CTO. However, the Ontario Court of Appeal upheld his conclusion that the limitations accorded with the relevant principles of fundamental justice.

The Court held that *Brian's Law* was not arbitrary, overly broad, or grossly disproportionate. An individual can only be involuntarily admitted under Box B if their condition had previously improved from treatment, and the application judge referred to evidence that applying Box B improved prospects for long-term outcomes by facilitating earlier treatment. The CTO scheme also uses strict criteria to determine when it can be applied, and the application judge found that CTOs "bring stability" to many individuals. Thus, the s. 7 limitations were not arbitrary by being inconsistent or unrelated to the health and safety objectives of the legislation. Additionally, the fact that CTOs are not beneficial to everyone did not imply that the s. 7 infringements were unconnected to the legislative purpose, which is required to establish overbreadth. Furthermore, the application judge found that many patients in voluntary community treatment do not continue treatment and that notwithstanding differing professional views on antipsychotic medications, the evidence showed that they are able to successfully treat many patients. Therefore, the compulsory elements of the legislative response were not found grossly disproportionate to the health objectives. In conclusion, the Court held that the application judge made the necessary factual findings and appropriately applied the principles of fundamental justice.

Purpose of the legislation

The Court held that the application judge correctly characterized the law's dual objective of public safety and the improved treatment of individuals with mental illnesses. Regarding CTOs, the Court rejected the argument that there is no real consent when the only alternative is involuntary committal, rendering "improved treatment" as an invalid purpose. Coerced treatment may be an effect but is not a purpose of the legislation, and it is constitutionally valid for individuals without the capacity to make their own treatment decisions. Furthermore, a consensual CTO is a less restrictive option for individuals who meet the criteria for involuntary commitment. Therefore, the Court held that consent to a CTO is not effectively coerced and "improved treatment" was a valid legislative purpose.

Other Charter challenges

The Court agreed with the application judge's conclusion that *Brian's Law* did not violate ss. 9, 10, 12 and 15 of the Charter. As involuntary committal and CTOs require structured and individualized assessments, they do not constitute arbitrary

detention under s. 9. The procedures include notification of rights and other protections, preventing violations of the s.19(a) right to be informed promptly for detention and s.19(b) right to retain and instruct counsel. As *Brian's Law* survived the s. 7 analysis, neither involuntary committal under Box B criteria nor CTOs constitute cruel or unusual punishment under s. 12. Lastly, the required assessments include individualized considerations including one's clinical history and likelihood of deterioration, which precludes discrimination under s. 15(1) based on assumptions of mental disability.

The Court upheld the constitutionality of *Brian's Law* and the appeal was dismissed.

EXCERPTS FROM DECISION:

Include 2-4 key/meaningful excerpts on health-related rights. Use quotation marks and, where possible, pinpoint citation (paragraph number or page number). If the judgment is not in English, please provide the excerpts in the original language and an English version right below each.

"The mere fact that the law fails to fully achieve its purpose (here, "improved treatment") in some instances does not establish that, in those instances, the liberty infringement was unconnected to the law's purpose. In my view, the application judge had a proper foundation upon which he could conclude that even if antipsychotic or neuroleptic medication and forced treatment does not always work, the strict criteria of this legislation ensures to the extent possible that it will only be applied when, in the opinion of a physician, its effect will be beneficial in terms of health and public safety." (Para 42)

I agree with the Attorney General that to the extent the legislation does have a public safety purpose, that purpose cannot be viewed in isolation. It must be seen as part and parcel of an integrated scheme that promotes both improved treatment and public safety. The legislation does not rest upon unproven stereotypes or assumptions about mental health and violence. Its dual purpose of promoting health and public safety is achieved through a carefully balanced scheme that requires a highly specific and individualized assessment of the individual's mental health history, treatment needs and the risk that individual poses to him or herself and the public at large." (Para 51)

TAGGING AND CATEGORIZING

HEALTH TOPICS:

Please select (X or highlight) all topics that apply. For explanations of each topic, refer to Appendix I (Health Topics) of the Case Processing Manual provided to you.

- | | |
|---|---|
| <input type="checkbox"/> Aging | <input type="checkbox"/> Infectious diseases |
| <input type="checkbox"/> Child and adolescent health | <input checked="" type="checkbox"/> Informed consent |
| <input type="checkbox"/> Chronic and noncommunicable diseases | <input type="checkbox"/> Medical malpractice |
| <input type="checkbox"/> Controlled Substances | <input type="checkbox"/> Medicines |
| <input type="checkbox"/> Diet and nutrition | <input checked="" type="checkbox"/> Mental health |
| <input type="checkbox"/> Disabilities | <input type="checkbox"/> Occupational health |
| <input type="checkbox"/> Disasters and emergencies | <input type="checkbox"/> Poverty |
| <input type="checkbox"/> Environmental health | <input type="checkbox"/> Prisons |
| <input checked="" type="checkbox"/> Health care and health services | <input type="checkbox"/> Public safety |
| <input type="checkbox"/> Health information | <input type="checkbox"/> Sexual and reproductive health |
| <input type="checkbox"/> Health systems and financing | <input type="checkbox"/> Tobacco |
| <input type="checkbox"/> HIV/AIDS | <input type="checkbox"/> Violence |
| <input type="checkbox"/> Hospitals | <input type="checkbox"/> Water, sanitation, and hygiene |

HEALTH-RELATED TERMS:

Referring only to the list of related terms found in Appendix I (Health-Related Terms) of the Case Processing Manual (Copied below), enter all relevant terms mentioned in the case in more than a passing manner. Except for cross-cutting terms, all terms are defined by their health topic; don't select a term if its health topic does not apply. Please watch spelling and only capitalize the first word of a term.

Please enter only terms found in Appendix I, and don't forget to include any cross-cutting terms that may apply.

Compulsory examination
Compulsory treatment
Forced examination
Forced treatment
Informed choice
Involuntary examination
Community-based care
Compulsory commitment
Incapacity
Involuntary commitment
Mandatory commitment
Mental competence
Mental disability
Mental disorder
Mental illness
Mental institution
Psychiatry
Schizophrenia

HUMAN RIGHTS:

Please select (X or highlight) any rights that the court refers to in the judgment. This may be an explicit mention of the right ("right to life") or a reference to a legal standard or norm. **DO NOT** select rights that YOU think are/should be involved in the case. This is an objective, NOT a subjective, exercise. For explanation of each right, refer to Appendix II (Categorizing by Human Rights) of the Case Processing Manual provided to you.

- | | |
|--|--|
| <input type="checkbox"/> Right of Access to Information | <input checked="" type="checkbox"/> Right to Liberty and Security of Person |
| <input type="checkbox"/> Right to Acquire Nationality | <input type="checkbox"/> Right to Life |
| <input type="checkbox"/> Freedom of Association | <input type="checkbox"/> Freedom of Movement and Residence |
| <input type="checkbox"/> Right to Bodily Integrity | <input type="checkbox"/> Right to Participation |
| <input type="checkbox"/> Right to a Clean Environment | <input type="checkbox"/> Right to Privacy |
| <input type="checkbox"/> Rights to the Benefits of Culture | <input type="checkbox"/> Right to Property |
| <input type="checkbox"/> Right to Development | <input type="checkbox"/> Freedom of Religion |
| <input checked="" type="checkbox"/> Freedom from Discrimination | <input type="checkbox"/> Right to Social Security |
| <input type="checkbox"/> Right to Due Process/Fair Trial | <input type="checkbox"/> Freedom from Torture and Cruel, Inhuman or Degrading Treatment |
| <input type="checkbox"/> Right to Education | <input type="checkbox"/> Right to Water and Sanitation |
| <input type="checkbox"/> Freedom of Expression | <input type="checkbox"/> Right to Work |
| <input type="checkbox"/> Right to Family Life | <input type="checkbox"/> Right to Enjoyment of Favorable Working Conditions |
| <input type="checkbox"/> Right to Food | |
| <input checked="" type="checkbox"/> Right to Health | |
| <input type="checkbox"/> Right to Housing | |

QUESTIONS, COMMENTS AND CONCERNS

Please list any questions, comments, or concerns you have for your supervisor about the processing of this case, the processing of cases generally, or anything else that's related. If anything is confusing, please let us know.

Thank you for your help!

Appendix I: Health Topics and Health-Related Terms

Please only use the following health-related terms associated with the health topic(s) at issue.

HEALTH TOPICS	RELATED TERMS (TO BE USED AS TAGS)
Aging	Aged persons, Home care, Elderly, Long-term care, Older persons, Nursing home, Senior citizens
Child and adolescent health	Child development, Child marriage, Child mortality, Children, Infant health, Infant mortality, Minor, Pediatric health
Chronic and non-communicable diseases	Asthma, Cancer, Diabetes, Heart disease, Genetic disease, Kidney disease, Leukemia, Liver disease, Lung disease, Noncommunicable diseases, Neurological diseases, Pulmonary diseases, Respiratory diseases, Skin disease, Stroke
Controlled Substances	Addiction, Buprenorphine, Cocaine, Crack-cocaine, Drug abuse, Drug enforcement, Drug use, Heroin, IDUs, Injecting drug users, Alcohol, Marijuana, Methadone, Morphine, Opioids, Opium, Palliative care, People who use drugs, Performance-enhancing drugs, Psychotropic drugs, Rehabilitation, Substance abuse
Diet and nutrition	Dehydration, Diet, Drought, Food-borne diseases, Food, Food poisoning, Food safety, Food shortages, Genetically-modified food, Hunger, Hunger strike, Obesity, Malnutrition, Starvation, Stunting
Disabilities	Blind, Deaf, Disabled, Differently abled, Handicapped, Mute, Physically challenged
Disasters and emergencies	Flooding, Humanitarian crisis, Manmade disaster, Natural disaster, Nuclear disaster
Environmental health	Air pollution, Biohazard, Biosafety, Climate change, Contamination, Environmental degradation, Environmental hazards, Global warming, Herbicide, Industrial waste, Insecticide, Nuclear radiation, Nuclear waste, Pesticide, Pollution, Poisoning, Precautionary principle, Radiation, Toxic waste, Water pollution
Health care and health services	Access to health care, Access to treatment, Counseling, Diagnostics, Emergency care, Examination, Health care technology, Primary care, Secondary care, Tertiary care, Testing
Health information	Advertising, Awareness, Confidentiality, Disclosure, Electronic health information, Electronic health records, Freedom of information, Health data, Health education, Health promotion, Health records, Medical records, Non-disclosure, Notification, Secrecy
Health systems and financing	Budget, Health expenditures, Health funding, Health insurance, Health regulation, Health spending, Out-of-pocket expenditures, Reimbursement, Social security, Subsidies

HEALTH TOPICS	RELATED TERMS (TO BE USED AS TAGS)
HIV/AIDS	AIDS, Blood transfusion, HIV, HIV positive, HIV status, Most-at-risk, People living with HIV/AIDS, PLHIV, Transmission
Hospitals	Clinics, Health facilities, Private hospitals, Public hospitals
Infectious diseases	Avian influenza, Chagas, Cholera, Dengue, Dysentery, Hepatitis, Herpes, Influenza, Leprosy, Malaria, Measles, Meningitis, Pneumonia, Polio, Rubella, SARS, Sexually transmitted diseases, Sexually transmitted infections, Smallpox, STDs, STIs, Syphilis, TB, Tuberculosis, Typhoid
Informed consent	Clinical trials, Compulsory examination, Compulsory testing, Compulsory treatment, Experimental treatment, Forced examination, Forced treatment, Informed choice, Involuntary examination, Involuntary testing, Involuntary treatment, Mandatory examination, Mandatory testing, Mandatory treatment, Non-consensual testing and treatment, Non-evidence based treatment, Patient choice, Unauthorized treatment
Medical malpractice	Compensation, Damages, Duty of care, Inadequate treatment, Inappropriate treatment, Misdiagnosis, Negligence, Non-pecuniary damage, Remedies, Standard of care, Tort
Medicines	Access to drugs, Access to medicines, Alternative medicine, Antimalarial, Antiretrovirals, ARVs, Clinical testing, Clinical trials, Drug quality, Drug safety, Drug testing, Essential medicines, Faith-based medicine, First-line treatment, Generic drugs, Immunization, Indigenous medicine, Intellectual property, Labeling, Manufacturing, Patents, Pharmaceuticals, Pricing, Second-line treatment, Spurious medicines, Traditional medicine, TRIPS, Vaccination, Vaccines
Mental health	Bipolar, Community-based care, Compulsory commitment, Compulsory confinement, Depression, Incapacity, Incompetence, Insanity, Involuntary commitment, Involuntary confinement, Isolation, Mandatory commitment, Mandatory confinement, Mental competence, Mental disability, Mental disorder, Mental illness, Mental institution, Mental retardation, Paranoia, Psychiatry, Psychology, Psychosis, Schizophrenia, Seclusion, Sociopath, Suicide, Trauma
Occupational health	Asbestos, Industrial hygiene, Informal economy, Job safety, Occupational accident, Occupational disease, Occupational hazards, Occupational health and safety, Safe working conditions, Workers' compensation
Poverty	Indigent, Low income, Poor, Underprivileged
Prisons	Abuse, Cruel and unusual punishment, Cruel treatment, Custody, Degrading treatment, Detainee, Detention, Execution, Humiliating

HEALTH TOPICS	RELATED TERMS (TO BE USED AS TAGS)
	treatment, Imprisonment, Incarceration, Inhuman treatment, Inmate, Jail, Prison conditions, Solitary confinement, Torture
Public safety	Air safety, Mob, Safety regulation, Terrorism, Threat of violence, Traffic safety, Water safety
Sexual and reproductive health	Abortion, Abortion counseling, Abortion technique, Assisted reproductive technology, Birth control, Bisexual, Breast feeding, Buggery, Caesarean, Childbirth, Civil union, Compulsory sterilization, Condoms, Conscientious objection, Contraceptives, Contraception, Domestic partnership, Eclampsia, Family planning, Female genital mutilation, Fertility, Forced abortion, Forced sterilization, Gay, Gender identity, Gender identity disorder, Gender reassignment, Homosexual, Hormone therapy, Infertility, In utero fertilization, In vitro fertilization, Intersex, Involuntary sterilization, Judicial bypass, Late-term abortion, Lesbian, LGBTI, Mandatory sterilization, Maternal health, Maternal mortality, Midwifery, Miscarriage, Parental consent, Parental notification, Partial birth abortion, Pregnancy, Queer, Sex reassignment, Sex-selective abortion, Sexual orientation, Sodomy, Spousal consent, Spousal notification, Sterilization, Termination of pregnancy, Therapeutic abortion, Transgender, Transsexual, Unsafe abortion, Viability
Tobacco	Passive smoking, Second-hand smoke, Smoking, Smoking cessation, Tobacco control, Tobacco regulation
Violence	Assault, Bullying, Domestic abuse, Domestic violence, Hazing, Molestation, Ragging, Rape, Sexual abuse, Sexual assault, Sexual harassment, Sexual violence, Violence against women
Water, sanitation and hygiene	Clean water, Cleanliness, Drinking water, Garbage, Potable water, Safe drinking water, Sewage, Trash, Waste, Waste management, Water pollution, Water-borne disease
CROSS-CUTTING RELATED TERMS	
Armed conflict, Asylum, Conscientious Objection, Criminalization, Cruel and unusual punishment, Cruel treatment, Degrading treatment, Employment, Execution, Forced disappearance, Forced displacement, Forced labor, Harm reduction, Health care professionals, Health care workers, Humiliating treatment, Immigration, Immigrants, Indigenous groups, Inhuman treatment, Informal economy, Law enforcement, Migrants, Military, Militias, Police, Refugees, Sex workers, Terrorism, Torture	