

MENTAL HEALTH LAW MOOT QUESTION

L.C. is a young woman who has been admitted involuntarily to a psychiatric hospital. During her admission she had been found to be incapable to make treatment decisions for anti-psychotic medication. L.C. is French speaking and migrated to Canada from Haiti 5 years ago. L.C. speaks English but does not read or write it well. She is married and lives with her husband in Toronto. She has a long-standing bipolar disorder diagnosis but is high functioning, working full-time remotely for a financial services company based in Quebec. She has had two brief psychiatric admissions in the past, but recovered quickly and was discharged.

Prior to her current admission, L.C. had been treated by a psychiatrist in the community. She was taking medication and seeing her doctor regularly, but had missed her last few appointments. Her admission note indicated that she was brought to the hospital by the police because she left her house abruptly and was not dressed properly for the -10 degree Celsius weather and snow. L.C.'s husband called the police saying that his spouse left the house in a manic state. The police found her an hour later in a bus shelter, a few kilometers from her home. They spoke with her and eventually decided to take her to the hospital because she appeared to be in mental health crisis and not dressed appropriately for the weather, under the authority of section 17 of the *Mental Health Act (MHA)*.

At the hospital L.C. was placed on a Form 1, an application for psychiatric examination that enables her to be held for up to 72 hours, pursuant to section 15 of the *MHA*. In her hospital records it was documented that upon arrival at the hospital she told the emergency room doctor that she was running away from her husband because she wanted to leave him. Prior to the expiration of the Form 1, she was formally committed into the hospital on a Form 3 certificate of involuntary admission, pursuant to section 20 of the *MHA*. The ground identified on the certificate was that the patient is suffering from a mental disorder of a nature or quality that likely will result in serious physical impairment of the patient (known as a "Box A" ground). This form gives authority to detain a patient for up to two weeks.

Just after the Form 3 was completed L.C. was found to be incapable to make treatment decisions based on an assessment by her treating doctor at the hospital. From the progress note in her health records the doctor documented that she was agitated and was uncooperative with the assessment. The doctor wanted to try her on a new antipsychotic medication but she did not want to take that medication. The doctor further wrote that he tried explaining details about the medication, such as risks and benefits, but opted to give her pamphlets and literature instead, given her agitation. The materials provided to her were in English. The doctor states that although she has insight into her psychiatric diagnosis, she does not accept that she is currently having a manic episode. Based on the substitute decision maker (SDM) hierarchy contained in section 20 of the *Health Care Consent Act (HCCA)*, the doctor appointed her husband as her SDM, to consent to her new treatment regime (L.C. does not have a guardian appointed or a Power of Attorney for Personal Care).

Upon the completion of the Form 3, her detention was further extended by a Form 4 certificate of renewal. This Form provides authority for her to be detained at the hospital for up to one month. As ground for the renewal, the doctor now cites there being a likelihood that the patient will suffer substantial mental or physical deterioration, if the patient's certificate of involuntary admission is not renewed, pursuant to section 20 (1.1)(d) of the *MHA*, also known as a "Box B" ground.

Facing the prospect of a prolonged detention, L.C. decided to apply to the Consent and Capacity Board (CCB) to review both her involuntary patient status and her incapacity to consent to treatment finding. She had her hearing a week later. At the hearing L.C. testified that she recalls meeting with the doctor on the day she was found to be incapable to make treatment decisions, but did not know the doctor was performing a formal assessment that would take away her ability to make treatment decisions for herself. She says that the conversation was brief and that she expressed concern about changing her medication and that the doctor did not tell her that he was going to do an assessment. Also, she did not understand all of the papers he had given her because they were in English. The doctor did not check to see if she understood them. She also says he did not ask follow up questions to understand why she did not want to take the new medication.

L.C. tells the tribunal that her doctor is not engaged with her as he is with other patients. She expresses concern that this may be attributed to discrimination because she is black. She says she noticed that the black patients on her unit do not receive the same level of medical attention as non-racialized patients.

L.C. further testified that she found out she had been made incapable the following day when the doctor explained that they were going to be administering the new medication and that her husband had already consented to the new treatment. She was surprised he was her SDM because she told the emergency room doctor when she was first admitted that she had intended to end her marriage with him, which is why she left under the circumstances she did. This was corroborated in the admission note in her health records. She also testified she believes it is highly inappropriate for her husband to be deciding her medication and believes the medication's side effects will hamper her ability to litigate a divorce.

L.C. also testifies that although she has a bipolar diagnosis, she is not in a manic state. She stated that her appearing to be manic is attributed to the fact that her husband did not allow her to leave their house and that the breakdown of her marriage is upsetting. She is also concerned about her employment status, which contributes to her agitation. Furthermore, being detained against her will in a psychiatric facility is agitating, in and of itself. She states that she would not stay at the hospital even as a voluntary patient.

Following the hearing the tribunal found in favour of the doctor, confirming her involuntary status as well as the finding that she is incapable to make treatment decisions for anti-psychotic medication. In the written reasons the Board confirms that the doctor obtained lawful consent for treatment from L.C.'s spouse because they had not been legally separated and there was no

court order preventing him from having access to her. The Board found that although the doctor did not inform L.C. that an assessment of capacity was going to be performed prior to commencement of the assessment, it is not a requirement under the *Health Care and Consent Act*. Furthermore, her agitated state prevented the doctor from completing a more fulsome assessment. The doctor made best efforts and provided her with literature for her to review. They also found that L.C. lacked capacity, because she did not acknowledge the possibility that she was in a manic state.

With respect to her involuntary admission, they found that Box B grounds, articulated in section 20 (1.1) of the *MHA*, were satisfied: she had prior admissions with clinical improvements in the past, she was found incapable to make treatment decisions and the doctor had obtained consent from her husband prior to her being placed on the Form 4. Furthermore, the Board found on a balance of probabilities that she would not take her new medication in the community if she were to be released and therefore would experience mental deterioration.

L.C. has retained you to appeal the Board's decision in Superior Court. What are the possible grounds and/or Charter challenges that you can present to overturn the Board's decision? L.C. also wishes to advance a claim that her rights under the United Nation's Convention on the Rights of Persons with Disabilities (CRPD) has been contravened. How might you use the CRPD in her appeal?