

Abstract:

Informed consent is one of the most discussed issues of medical law. This thesis tries to contribute to the discussion through a comparative study between Czech law and Canadian law (the common law part of Canadian law), focusing on the basic components of the subject matter.

The thesis is divided into six parts. The first one deals with information disclosure and consent to treatment in the paternalistic model and the participatory model of a doctor-patient relationship. The second part provides an overview of relevant Czech and Canadian legal sources and also of key milestones in the development of informed consent in both countries. The third part of the thesis discusses the concept of informed consent. The fourth part is focused on the disclosure – its content and scope, form and other related aspects. The fifth part of the thesis deals with the consent itself – its elements, the withdrawal of consent and the refusal to give consent. Finally, the sixth part deals with the specifics of minors.

With regard to the basic features of informed consent, it can be clearly stated that the compared legal systems are fundamentally the same. Differences can be seen only when analysing the subject matter into very great detail and those differences are usually various technicalities (e.g. determination of persons to be informed instead of or next to a patient). Exceptionally, however, it is possible to find completely different approaches to solving some legal issues (e.g. regarding the question of who informs the patient). In these matters, it can be summed up that Canadian law leaves more scope for the autonomy of individuals and also allows a more flexible approach according to the circumstances of the case. However, this also implies a more stringent concept of liability, worse predictability of law, and, ultimately, a higher capacity utilisation of the judicial system.

Besides, in Canada, the doctrine of informed consent has a very long tradition, it can stem from a much more extensive and sophisticated judicial practice, plus it has evolved naturally in response to changes in society. On the other hand, in the Czech Republic, the institute emerged much later – firstly in the form of an ethical and legal norm to which the local society had to respond.