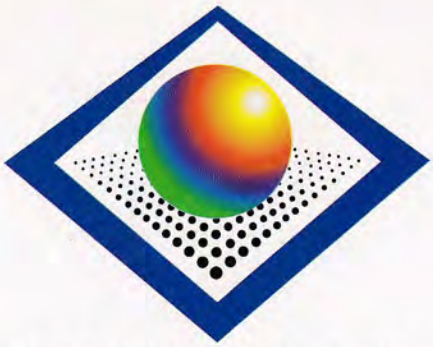

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Abstracts

"MEDICO-LEGAL ISSUES IN THE CARE OF JEHOVAH'S WITNESSES"

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Legal issues surrounding the choice of medical alternatives to blood transfusions have brought Jehovah's Witnesses before Canadian courts on matters of both constitutional and civil law. Canada's constitution provides that every person has the right to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."[1] Accordingly, courts have held that where a patient has capacity the patient's choice of medical treatment must be respected.

A. Adult Patients

A competent adult can consent or refuse medical treatment for any reason. The Ontario Court of Appeal in Malette v. Shulman [2]stated: "The right of self-determination which underlies the doctrine of informed consent also obviously encompasses the right to refuse medical treatment." [3]

The right of an unconscious adult patient to have previous wishes respected, as expressed in an advance directive, was also upheld in Malette, supra.[4] The Court of Appeal held: "To transfuse a Jehovah's Witness in the face of her explicit instructions to the contrary would, in my opinion, violate her right to control her own body and show disrespect for the religious values by which she has chosen to live her life."

Jurisdictions outside of the United States and Canada have recently ruled similarly. For example, in Takeda[5] (Japan), the plaintiff initiated a lawsuit for damages arising from a blood transfusion administered without consent. The Tokyo High Court held "the patient's right to choose treatment should be respected. It was illegal to administer the blood transfusion", reversed the decision of the lower court and awarded damages.

B. 'Mature Minors'

The statutory age in Canada at which a person has capacity to consent to medical treatment is usually 16 years. However, Canadian courts declare minors under the age of 16 'mature' where the minor has capacity to understand both the nature of the proposed treatment and the consequences of consenting or refusing treatment.

In Re L.D.K.[6] an Ontario provincial court judge found a 12-year-old girl mature and had a "firm and clear religious belief." The proposed alternative without blood gave her "the opportunity to fight this disease with dignity and peace of mind."

In Re A.Y.,[7] a Newfoundland superior court found a 15-year-old boy was also a mature minor. The "holistic approach" of the attending physician was in his best interests as it was consistent with his devout religious convictions.

Walker[8] was the first appellate review of the 'mature minor' principle. In this case, although the physicians had found 15-year-old Joshua competent, an application was made by the hospital to determine if he had the capacity to choose medical treatment.

The New Brunswick Court of Appeal set aside the decision of the trial judge (who placed Joshua in the care of the State after refusing to hear his hospital room testimony), ruling that once the physicians had found Joshua competent, no court proceedings should have been brought.

In Kennett Estate,[9] the Manitoba Court of Appeal, incorporating Walker, re-affirmed mature minors have the common law right to make medical decisions and held that a physician is under an obligation "to act upon the directions of a minor if the doctor believes the minor is capable of making mature decisions."

C. Infant Patients

In B. (R.),[10] the Supreme Court of Canada ruled that where the state is seeking to apprehend an infant it must provide the child's parents with a hearing that "accords with the principles of fundamental justice." Further, physicians must be prepared to establish in evidence that they have fully investigated alternatives that employ treatment without blood transfusions.

D. Civil Liability

In Grenci,[11] a young mother died after experiencing a severe post-partum hemorrhage that went undiagnosed for over six hours. At the coroner's inquest, the jury made 11 recommendations, including: "That the Canadian Medical Association undertake a comprehensive study in order to develop a framework of guidelines for the development and implementation of Bloodless Medicine Programs for the consideration of all Ontario Hospitals."[12] A subsequent civil action was settled out of court.

References

1. Canadian Charter of Rights and Freedoms, s. 7, Part I of the Constitutional Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.
2. Malette v. Shulman (1990), 72 O.R. (2d) 417 (C.A.).
3. Malette, supra at 424.
4. Malette, supra at 426. Malette, supra at 424.
5. Takeda v. State (9 February 1998), Tokyo High Court.
6. Re L.D.K. (1985), 48 R.F.L. (2d) 164 at 171 (Ont. Prov. Ct. Fam. Div.).
7. Re A.Y. (1993), 111 Nfld. & P.E.I.R. and 348 A.P.R. 91 (Nfld. S.C. Unif. Fam. Ct.).
8. Walker (Litigation Guardian of) v. Region 2 Hospital Corp. (1994), 4 R.F.L. (4th) 321, 150 N.B.R. (2d) and 385 A.P.R. 366 (N.B.C.A.).
9. Kennett Estate v. Manitoba (Attorney-General), [1998] M.J. No. 337 (QL) (Man. C.A.).
10. B. (R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315. B.(R.), supra at 377.
11. Cathy Grenci—Inquest by Dr. A. E. Lauwers, Coroner for the Province of Ontario. Report dated May 24, 1996.
12. Grenci, supra.