

Supreme Court to rule on rights of "mature minors"

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Canwest News Service

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Monday, May 19, 2008

OTTAWA -- When she was almost 15, a hospitalized teen from Winnipeg was apprehended by child welfare authorities and forced against her religious beliefs to undergo a blood transfusion that she compared to "being raped and violated."

The surgery kicked off an intense legal dispute that reaches the Supreme Court of Canada today in a test of the rights of "mature minors" to make their own decisions when stacked against the competing interest of the state in protecting children.

Legal clashes over court-ordered blood transfusions and other medical treatments have played out nationwide and the Supreme Court's judgment in the case is expected to set a standard on when children are considered capable of making their own calls.

The girl, a Jehovah's Witness identified as A.C., is now almost 17 years old, has moved to Ontario and plans to attend today's hearing.

She is described in a court document as a top, award-winning student who is bilingual, loves to read Jane Austen and John Grisham, and suffers from Crohn's disease, a chronic, incurable disease that inflames the intestinal tract.

"The central issue on this appeal is whether A.C. has the legal right to make autonomous medical treatment decisions," says a written court brief from her legal team.

Two years ago, A.C. was admitted to hospital to be treated for bleeding of her bowel. After she refused a transfusion because it is forbidden in her religion, her doctor tipped off Winnipeg Child and Family Services, who immediately apprehended her from her parents, who are also Jehovah's Witnesses.

Child welfare authorities obtained a judge's approval for a transfusion after satisfying him that A.C. was in immediate danger of death or serious injury.

A.C. contends that children's services did not have the "right or obligation " to interfere, just as her parents did not have the right because she had the capacity to make her own decision.

"Having someone else's blood pumping through my veins, stressing my body, caused me to reflect on how my rights over my body had been taken away by a judge who did not care enough to talk with me," she wrote in a 2006 affidavit filed in the Supreme Court.

"That day, my tears flowed non-stop. Nothing can properly describe how I was feeling and still feel today. I could liken it to being raped and violated but even those words do not express my feelings strong enough."

A.C. says she had the right to pursue other medical treatment that respected her religious conscience, including iron pumped into her body intravenously to help it produce red blood

cells.

She wants the Supreme Court to rule that the government violated her charter rights to equality, religious freedom, and life, liberty and security of the person and that Manitoba's child welfare law, applying to all children under age 16, is therefore, unconstitutional. The case no longer affects A.C. personally because she is no longer a minor.

Unlike some provinces, Manitoba does not make exceptions for "mature minors" -- older children who are deemed capable of understanding the nature and consequences of their medical decisions.

A.C.'s lawyers say that Ontario, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and the Yukon all permit capable persons of any age to decide their own medical treatment without state interference.

The Manitoba government and Child and Family Services want the Supreme Court to view the case through the lens of the "best interests of the child" and reinforce a 1995 benchmark ruling that ordered a blood transfusion for a Toronto toddler, against the wishes of her Jehovah's Witness parents.

"Age as a prerequisite for the ability to make important decisions is a pervasive feature of the law throughout Canada," government lawyers wrote in a court submission.

"These distinctions are based on the common sense appreciation that there is a correlation between age and maturity in decision making, particularly where decisions may have irreversible consequences."

Alberta, British Columbia and Nova Scotia are intervening in the case on Manitoba's side.

A.C. is bringing the case to the Supreme Court after losing in the Manitoba Court of Appeal.

One of her lawyers, Shane Brady, also represented the parents of four Vancouver infants - the survivors of a set of sextuplets - in a failed court challenge two years ago against them receiving blood transfusions.

There have been other high-profile cases of Jehovah's Witness teens who have unsuccessfully challenged blood transfusions, but this is the first time the Supreme Court has decided to weigh in on the issue.

In 2001, 16-year-old Bethany Hughes of Calgary refused to undergo blood transfusions because of her faith. After receiving 38 transfusions, she died of leukemia in September 2002, sparking a court battle between her father and the Jehovah's Witnesses.

Three years ago, a B.C. Supreme Court judge ruled against a 14-year-old Jehovah's Witness decision to refuse life-saving blood transfusions. The teen suffered from a potentially fatal form of bone cancer and the court said that the rights of a mature minor to make her own medical decisions did not trump the court's authority to protect her life and safety.

In another more recent case, an 11-year-old boy from Hamilton, Ont., was apprehended by the Children's Aid Society this month and is being forced to undergo chemotherapy against him and his family's wishes, after a judge ruled that the child is not capable of understanding the implications of his refusal.

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