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Top court urged to strike down law that forced blood transfusion for teen

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By Jim Brown, The Canadian Press

OTTAWA - A teenaged Jehovah's Witness who says she was traumatized by a blood transfusion that offended her religious principles wants the Supreme Court of Canada to overturn the legislation that forced her to undergo the procedure.

Lawyers for the teen told the court Tuesday that Manitoba child protection law is badly drafted and violates the guarantees of fundamental justice, equality before the law and religious freedom enshrined in the Charter of Rights.

The person at the heart of the case put things in more personal terms after the seven-judge panel had reserved their decision.

"What happened to me I wouldn't really like to happen to anyone else," she said outside the courtroom.

"It was painful - even physically it was painful - but mentally it was something that I believed shouldn't be happening."

Lawyers for the Manitoba government countered that there's nothing unconstitutional about the law, which allows for court-ordered treatment of minors in emergency situations.

"It could never, ever be in the best interests of a child that they make a decision that might cost them their life," Norm Cuddy, counsel for provincial Child and Family Services, told the court.

The saga began when the teenager, who can't be named and is identified for legal purposes only as A.C., went to a Winnipeg hospital in 2006 at age 14.

She was suffering from a flare-up of Crohn's disease, a chronic illness that can cause gastrointestinal bleeding. But in keeping with Jehovah's Witness teachings that forbid blood transfusions, she said she wanted to be treated without resorting to that procedure.

Child and Family Services went to court to obtain an order compelling her to have a transfusion after her doctor recommended that as the best course of treatment.

They acted under a provincial law that sets 16 as the cut-off age for medical decision-making. Counsel for A.C. say such choices should be made case-by-case, according to the intellectual capability of the person involved rather than by setting an arbitrary age.

There's no need to fear that more flexible rules would throw hospital emergency rooms into chaos, said lawyer David Day.

"The issue is not often going to arise," he told the court. "It will not be every person under 16 - it may be very few under the age of 16 - who can establish the competency to have their treatment choices respected."

That argument was seconded by Cheryl Milne, a lawyer for the group Justice for Children and Youth, who noted that Ontario already permits decisions on a case-by-case basis.

"The earth has not opened up in Ontario, the roof has not fallen down," said Milne. "It's a system that has worked and has protected the rights of children."

A.C., who now is nearly 17, moved with her family to Ontario after her 2006 difficulties in Winnipeg. She says her

illness is under control and she hasn't been hospitalized again, but she remains faithful to her religious beliefs and is ready for any future crisis.

"If it came to the point where I'd die - which I certainly hope not, because I want to live as much as the next person - it's like a decision that I've made already."

Deborah Carlson, representing the Manitoba Attorney General's Department, argued that setting 16 as the age for medical decisions was a legitimate policy choice by the provincial legislature.

She denied the law is arbitrary, saying the wishes of "mature minors" under 16 are taken into account in each case. But the final decision is up to a judge who also weighs the need to protect the child's life.

"The legislation in Manitoba, taken as a whole, is in fact a sensible and balanced approach to very, very difficult issues," said Carlson. "The legislation should survive constitutional scrutiny."

The decision by the Supreme Court, which likely won't come for several months, could have repercussions in other provinces. Several use age 16 as a legal benchmark in their child protection laws, while Alberta sets the cut-off at 18 and British Columbia at 19.

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