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Equal rights for children under the law



*Justices of the Supreme Court of Canada
Photographer: Philippe Landreville © SCC*

Supreme Court of Canada upholds transfusion order, offers guidance for assessing adolescent maturity

In June the Supreme Court of Canada ruled for the first time on an adolescent's right to refuse medical treatment. The Court upheld Manitoba's right to have a 14-year-old Jehovah's Witness transfused over her and her parents' religious objections.

The girl, identified as AC, had Crohn's disease, a manageable but incurable condition. She signed advance medical directives refusing blood products. Three months later she had loss of blood from internal bleeding and dilution of hemoglobin from treatment with IV fluids.

Her doctor felt she was at significant risk of damage to her brain and other vital organs if they continued to be deprived of oxygen.

The hospital reported the case to Child and Family Services (CFS), which obtained a court order for transfusions. AC was transfused and

recovered, but she remains at risk of blood loss in the future.

Canada's Child and Family Services Act provides that courts may order medical care for minors when it is in their best interest. Canadian law also, however, allows persons 16 years old and older to refuse or consent to any medical care if they understand their medical condition, the nature and purpose of the proposed treatment, and the consequences of refusing or accepting it.

Psychiatrists interviewing AC found she had that understanding. The judge acknowledged her decision-making capacity but held that, given the immediate danger, it was in AC's best interest to order the transfusion.

Religious freedom not absolute

AC and her parents then sued the Manitoba CFS, charging that the law was arbitrary and unconstitutional for not giving her the same rights as the 16-year-olds have. They also argued that Canada's Charter of Rights and Freedoms guaranteed her the right to practice her religious beliefs.

Like U.S. courts, the Supreme Court ruled that AC's religious freedom rights are not absolute and must instead be balanced against society's interest in safeguarding the lives and health of children.

The Canadian Court also ruled that the government had a right to have different rules for different age groups, determine the best interests of the child, and order medical care on the basis of best interests.

The Supreme Court did, however, rule that a child's views and maturity must be weighed in

INSIDE

Fatal quackery in Australia	3
Surgery ordered for Amish child.....	4
Baby starved on cult leader's orders	5
Book on abuse and neglect in Christian Science..	7
Other books of interest.....	8

determining the best interests of the child.

No reported decision evaluating maturity

The Court did not rule on whether AC herself was adequately mature to be allowed to refuse a transfusion, and we are still without a reported decision either in the U.S. or Canada that evaluates an adolescent's maturity to make a life-or-death decision to refuse medical care.

Does family, peers, culture, or illness affect youth's judgment?

The Supreme Court's ruling, however, does name many aspects that could be factored into the decision. It offers a list of questions courts could ask, including:

Are the adolescent's views a stable and true reflection of his or her core values and beliefs? What is the potential impact of the adolescent's lifestyle, family relationships and broader social affiliations on his or her ability to exercise independent judgment?

Are there any existing emotional or psychiatric vulnerabilities?

Does the adolescent's illness or condition have an impact on his or her decision-making ability?

Cognitive ability does not guarantee independent decisions

The Court cited a lower court ruling ordering transfusions for Bethany Hughes, a Jehovah's Witness teen with acute myeloid leukemia. The lower court held that she had

not had the life or developmental experience which would allow her to question her faith and/or its teachings and that such experience is an essential step in arriving at a personal level of development such that she can be considered to be a mature minor who has the capacity to refuse medical treatment which is necessary to save her life. Intelligence, thoughtfulness, exemplary behaviour and notable academic achievement are not sufficient when the magnitude of the decision faced by a 16 year-old involves a certain risk of death. *Alberta (Director of Child Welfare) v. H. (B.)*, [2002 ABPC 39](#), [\[2002\] 11 W.W.R. 752](#) (Alta. Prov. Ct.)



Bethany and her nurse

The Supreme Court also cites many academics who point out that cognitive ability to make a complex decision is not the same as mature, independent judgment. "Minors," Saul Levine writes, "may be competent according to the . . . developmental and cognitive criteria," and yet be highly vulnerable to the opinions of their peer group and adults. "Informed Consent of Minors in Crucial and Critical Health Care Decisions," *25 Adolescent Psychiatry: The Annals of the American Society for Adolescent Psychiatry* (2000): 211.

"Many children," he continues, "do not wish to counter their parents' wishes for fear of hurting them, of losing favor with them, or of engendering feelings of guilt in themselves." Levine, *op. cit.*, 212

Priscilla Alderson declares, "Competence is more than a skill, it is a way of relating, and can be understood more clearly when each child's inner qualities are seen within a network of relationships and cultural influences." "In the genes or in the stars? Children's competence to consent," in *Children, Medicine and the Law*, ed. M.D. Freeman (Ashgate, 2005):553.

Different evaluations for refusal and consent

Another scholar quoted by the Court states that, given a physician's extensive training and experience, courts should hold an adolescent's judgment to a much higher standard of scrutiny when the youth is refusing treatment recommended by a doctor than when he or she is accepting treatment recommended by a doctor. J. K. Mason, *Medico-Legal Aspects of Reproduction and Parenthood*, popline document # 104787 (1998):321.

Minor's maturity and view must be considered

The Supreme Court emphasized that maturity and autonomy can never be precisely determined, but courts must carefully try to evaluate them and consider the minor's views rather than automatically ordering treatment over his objection. This evaluation is necessary because all persons have a right to bodily integrity and because society needs for adolescents to develop into capable, autonomous adults.

In the case of children, their rights to bodily integrity and liberty must be balanced with society's interest in protecting their lives and health.

Sect's coercion and misinformation prevent voluntary, independent decision-making

Dr. Juliet Guichon, a bioethics professor at the University of Calgary, was disappointed that the Court did not describe the coercion in the Jehovah's Witness faith. (E-mail August 9, 2009) She feels that the coaching, misinformation about blood and blood substitutes, shunning, threats, and other coercive features of the Jehovah's Witness religion prevent their children from making truly voluntary, independent decisions. J. Guichon and I. Mitchell, "Medical emergencies in children of orthodox Jehovah's Witness families: Three legal cases, ethical issues and proposals for management," 11 *Paediatric Child Health* (December, 2006): 655-58.

The Supreme Court did, though, at least allude to the issue in recommending that judges assess the impact of the youth's "social affiliations" on his or her capacity for independent decision making.

The ruling is *A.C. v. Manitoba* (Director of Child and Family Services), 2009 SCC 30.

Australian parents convicted in quackery case

In June an Australian Supreme Court jury convicted Thomas and Manju Sam of manslaughter by gross criminal negligence in the 2002 death of their nine-month-old baby, Gloria Thomas.

The baby developed widespread eczema at about four months old. The Sydney parents took her to doctors but would not follow through with their prescriptions and instead trusted in homeopathic remedies.

Mr. Sam, his brother, and his uncle are homeopaths. Mr. Sam taught at the Sydney College of Homeopathic Medicine.

Grotesque symptoms and extreme suffering

The suffering of the baby was horrific. For the last four months of her life the eczema was weeping and caused skin to stick to her clothing and diapers—skin that peeled off when she was changed.

The loss of skin caused agonizing pain and likely allowed the infections to enter her bloodstream. She lost weight from the constant battle against infections. At her death she was in the bottom 3% on growth charts. Her black hair turned white.

The Sams had gone back to India with Gloria to visit family (including the homeopath) even though a pediatrician told them it was "cruel" to do that to the baby. Passengers testified that Gloria screamed for hours during the flight.

Septicemia attacked her eyes; her cornea "melted." Although she had an adequate diet, the infections caused an extreme Vitamin A deficiency usually seen only in Third World countries. In the last days of her life she was nearly blind in one eye and suffering ulceration in the other.

She squealed in pain when touched and when she moved her limbs.

Culture defense offered

At the trial their attorney offered a "culture" defense for the Indian-born parents. He said homeopathy was widely used in India and considered as effective as conventional medicine. India has homeopathic hospitals, some of which are even government-run. The attorney pointed out that the Queen has a homeopath. He also blamed a pediatrician for not warning the Sams that the baby's malnutrition could weaken her ability to fight infections.

Doctor had effective remedy

The pediatrician had made an appointment for a dermatologist to see the baby, but the Sams did not keep the appointment. The dermatologist testified at trial that she would have applied an aggressive treatment program that would have given the baby relief and partial recovery within 24 hours. "Not

completely cured, but her skin would look better very, very quickly,” she said.



Gloria's picture on her tombstone
© Newspix / Cameron Richardson

Homeopaths testified against the Sams at trial, saying that their code of conduct required advising patients to seek conventional medical treatment if homeopathy fails. Sam's boss at the college testified, "Homeopaths are not primary caregivers at the end of the day."

But homeopathy is especially popular for treating eczema and other skin complaints.

Parents believed homeopathy was curing baby

Eczema surges and retreats. Each time it ebbed the Sams believed their homeopathic remedies were winning. When it returned, they believed it was because of a weak immune system that conventional medicine could not help.

Even after Gloria died, Thomas Sam maintained his belief that homeopathy was the appropriate treatment. "Conventional medicine would have prolonged her life . . . with more misery," he told police, but it was "not going to cure her."

At a sentencing hearing in August, however, Sam's barrister said his client had "learnt his lesson from this tragic event" and was treating his second child with conventional medicine. "It is easy to say 'I am sorry,' but it is a very different thing to act out with a change of heart, a change of attitude, a change of approach," the barrister said.

Parents use homeopathy again for next baby with eczema

The change of heart is, however, a very recent development. Gloria died in 2002. Four years later the Sams had a baby boy who developed eczema. The Sams chose to have him treated with homeopathy and nutritional supplements. The boy, now three, is currently being treated for another condition by conventional medicine.

Should homeopaths & naturopaths be licensed?

The Sams' case has renewed a call for registration and accreditation of more alternative therapy providers, particularly naturopaths who commonly prescribe homeopathic remedies.

Such registration schemes, however, have their own problems. Often they are controlled by boards of alternative medicine practitioners, and the providers' credentials may be only in alternative methods.

No evidence of effectiveness needed

The U.S. Congress has directed the Food and Drug Administration to let all homeopathic remedies be marketed as drugs without any proof of their effectiveness. They are sold over the counter in drug stores, health food stores, etc.

At his webpage, www.quackwatch.com, Dr. Steve Barrett calls homeopathy "the ultimate fake." He says it has not been proven effective against any disease. Its potions are so extremely diluted that no therapeutic substance could possibly remain an active ingredient.

Taken in part from the *Sydney Morning Herald*, May 6, 7, 14, 16, June 5, and June 13, 2009; and *Sydney Daily Telegraph*, Aug. 14, 2009.

Court orders surgery for Amish baby

A rare conflict with the Amish over medical care of children was resolved by court-ordered surgery in February.

Eli Hershberger was born in 2007 with a condition called tetralogy of Fallot. Parents Gideon and Barbara Hershberger of rural Winthrop, New York, were taking Eli to doctors voluntarily, but balked

when the physicians recommended open-heart surgery.

Without the surgery the baby would have had only a 30% chance of living for ten years.

Religious beliefs against heart surgery

The Hershbergers, however, belong to a very conservative Amish sect known as the Swartzentruber congregation. They believe that the soul resides in the heart. They object to open-heart surgery because it involves stopping the heart and, in their minds, kills the soul and the baby's connection to God.

A physician testified that the heart was only "slowed" or "paralyzed" so that it did not beat for 30 to 40 minutes during the surgery, but the congregation considered that semantic distinction disingenuous.

According to Dr. Karen Johnson-Weiner, an anthropology professor at State University of New York in Potsdam, who has studied the Amish for many years, the Swartzentruber congregation also objected to the surgery because the child may have to have several more surgeries and be weak all his life.

The child may face, the scholar wrote, an "earthly life of suffering" that is less desirable to the Amish than death and an afterlife in heaven.

The Amish consider "death a natural part of life," she continued, "and neither fear it nor go to (what they see as) extremes to put it off."

Community decisions on care and payment

Decisions about medical care are often made through community discussions because the Amish have a strong tradition of the whole community helping with medical bills.

Amish children are not baptized into the faith until they can make their own informed decision to join the church.

The Cleveland Clinic has published "Treating the Amish and Addressing their Health Concerns," which appears to be based on extensive experience treating Amish patients. It states, "The Amish believe in folk medicine: faith healing, pow-wows, and herbal treatments. They believe that a higher level of medical science is simply not necessary."

"The Amish pay little attention to preventative care," the clinic states. "It is hard to impress upon

them the importance of immunizations, cancer screenings, PAP smears, and mammograms."

However, the clinic also says that the Amish do not have religious beliefs against getting modern medical care when they and their community think it is necessary. They accept organ transplants except for heart transplants and allow unbaptized children to receive heart transplants.

It is hard to find statements from the Amish themselves on their beliefs, but we recently obtained one entitled *1001 Questions and Answers on the Christian Life* published by Pathway Publishers in 1992. It has explanations for the Amish opposition to insurance, cars, and other features of modern society, but says nothing about health care.

Many Amish communities are finding it very difficult to maintain their traditional culture and support themselves on small, unmechanized farms. Many have started businesses. Twelve members of the Hershbergers' Amish community have been fined for building and moving buildings without a permit.

Taken in part from the *Watertown Daily Times*, March 21, 2009, and North Country Public Radio, Dec. 24, 2009.

Baby starved on cult leader's order; mom gets probation and counseling

Four members of a small religious group called One Mind Ministries in Baltimore will go on trial in October for first-degree murder, first-degree child abuse resulting in death, and the death of 16-month-old Javon Thompson. They are also charged with obstructing and hindering police when an ex-member and police tried to retrieve her children from the group.

Old Testament basis claimed

One Mind Ministries claims to follow a strict interpretation of the Old Testament. All members were given royal titles. It opposes both medical care and formal education for children.

Javon's mother, Ria Ramkissoon, an unwed teenager, was induced to join One Mind Ministries on a promise of free room and board.

Ria's mother begged her to leave the group or at least let her see Javon, but Ramkissoon just stood there blank-faced like "a complete stranger," her mother said.

Leader orders starvation of baby

In December, 2006, according to the charging documents, Javon stopped saying "Amen" at meal-times. The leader, called Queen Antoinette, allegedly ordered that the baby be deprived of food and water to cleanse him of a demon.

Ramkissoon found it "unbearable" to watch but followed instructions because she believed "an apostle of God had ordered this," her attorney said.

Resurrection fails because of non-believer

After his death the group prayed for his resurrection for a week, but then stuffed his body into a suitcase.

The group came to believe that the resurrection did not happen because one of them was not a true believer. Reduced to four adults and two children, One Mind Ministries left Baltimore with the suitcase and left it in a shed in Philadelphia.

In March, 2007, they tried to get help from Travelers Aid, but were denied because they refused to give their identities. Philadelphia Department of Social Services then took custody of the children.

In 2008 Ramkissoon's mother found her in New York. After Ria told her Javon was "lost," she alerted police, who found the suitcase two months later.

The police also unraveled the case with help from Tiffany Smith, who had been expelled from One Mind Ministries. She went to the police for help getting her one-year-old son and two-week-old daughter back from the group.

According to the charging documents, the children in foster care have provided "direct eyewitness accounts" of the starvation of baby Javon.

Ramkissoon insists that her son is still alive.

Religion can't be delusional?

In a sealed report psychiatrists who evaluated Ramkissoon for the court concluded that she was not criminally insane. "She wasn't delusional because she was following a religion," her attorney Steven Silverman told *The Washington Post*.

The doctors found that her beliefs were indistinguishable from religious beliefs, in part because they were shared by those around her, Silverman said.

Was mom responsible?

But while reporting that the doctors found the mother to be not delusional or criminally insane, Silverman also argues his own view that she was "brainwashed" and should not be held criminally responsible for her actions.

Sentenced to counseling and probation

In August, 2009, Ramkissoon pled guilty to child abuse in exchange for probation, testifying against the other defendants, and a provision allowing her to withdraw the plea if Javon is resurrected.

She is being sent to a farm for counseling. "It's not a correctional facility. It's a place for her to get re-acclimated. She'll be part of a community and have a job and responsibilities. She's very excited about the opportunity to do something positive," Silverman said.

Comment

These sorts of plea deals are common in the criminal justice system, yet there is something distasteful about one defendant "excited" about a new life and others on trial for first-degree murder.

Ramkissoon's mother says she was "naïve" and "easily influenced" when she joined the cult, but other defendants could say that too. And didn't Javon's mother have a higher duty to her baby than the others did?

Then there is the almost humorous claim that a person is not delusional if she follows religious beliefs shared by those around her. As Harvard psychiatry professor Robert Lifton says, "extreme religious conviction and delusion" can sometimes overlap.

Difference between a religion and a cult

This case prompted *The Washington Post* to invite essays by faith leaders on the difference between extreme religious conviction and delusion and between a religion and a cult.

Christian Science PR: we heal kids

The Christian Science church's international public relations manager, Phil Davis, wrote that the

difference is in whether the religion has a good record of healing children like his church.

A “system of healing is not delusional if it does what it says it can do. . . ,” he wrote. “And as it applies to children, it comes down to two words—results matter. Prayer, depending on how it’s practiced, can be naive or the epitome of awareness. It can be a fad or it can demonstrate a long track record of success. It can be dogmatic or fulfilling the demand for results.”

Rabbi: line between religion and cult is clear, but not static

Two days after publishing such empty-suit arrogance, the *Post* ran a far more insightful column by Rabbi Brad Hirschfield, president of the National Jewish Center for Learning and Leadership.

Hirschfield cites centralized power, absolute faith in a leader or doctrine, intolerance, isolation, and punishment of ex-members as characteristics of a cult.

He also, however, says that most religions have had those same characteristics at some point in their history for “the line between cults and religions is not fixed or static.”

Sources: *The Washington Post*, March 29, Apr. 2 and 4, and Aug. 11, 2009, and *Religion News Blog*.

Retired teacher writes of abusive Christian Science childhood

Carol-Ann Medina has written an engaging memoir in *Pretend You Don’t See the Elephant: the Family Secrets and Silence of Christian Science* (Bloomington: AuthorHouse, 2005).

Medina writes that she was “indoctrinated from birth” and never “allowed to entertain any free spontaneous thought that did not have the overtones of Christian Science. This religion infiltrates everything you are, everything you ascribe to be, and everything you become.” p. xi

Religion of denial

Her father was incredibly abusive to his children and wife, but the family pretended the cruelty was not happening. Her mother just immersed herself more in Christian Science and insisted to any

concerned relative that they were the perfect, happy family. With the religion’s mental discipline, the mother was able to ignore physical, emotional, and sexual abuse of her children.



Carol-Ann and her brother Jon

“I recognized early on that my mother was unavailable to help, save, or comfort me if my father was home,” she writes. “My mother could not intervene on my behalf. This was my worst nightmare. The Christian Science religion that provided solace for my mother all the years of my childhood would vehemently deny me the reality of the terror in their home.” p. 5-6

“Christian Science is a total immersion into a thought process that does not include sickness, disease, or even sin,” she continues. “The consequence of recognizing human reality for what it is, even for an instant, is to bring pain into your own experience. Consequently, I was held responsible for any imperfection in my own life. . . . p. 7

Denial of senses prevents empathy

“Mary Baker Eddy created a religion that denied humanity’s five senses, and early on, I was admonished to deny every sensory detail of my childhood, pleasant or unpleasant, whether it was a scratch or a cold, loneliness or hurt feelings. Any childhood malady was not real and therefore was not acknowledged with empathy or tenderness. The world was an abstract concept of only good. Nothing else was real. My daily experiences with life, I was told, were a false sense of existence. There is nothing to share with a mother who says it never really happened.” p. 8

A Christian Scientist, she says, must keep his mind filled with church platitudes to maintain control of his spiritual reality.

“This required absolute mental concentration,” she says. “My mother shielded herself from life, its problems, and her children by employing this mental hypnosis.” 9

Expelled from home for Sunday school comment

At Sunday dinners her mother always asked Carol-Ann and her brother Jon what they learned in Sunday school. One Sunday during Carol-Ann’s early teenage years, she replied that she had not learned anything new. Her father flew into a rage, breaking dishes and glasses and screaming that she was a worthless child. Her mother sat in a corner crying with her Bible and Christian Science textbook.

The parents decided that Carol-Ann could no longer live with them and the next day sent the fourteen-year-old from Chicago to San Diego to live with her aunt and uncle.

She was, however, precipitately sent back to her parents after her uncle sexually molested her.

Baptists save her life

Her parents then acted as if she hardly existed. They laid down no rules for her and took no interest in her life. Carol-Ann began walking miles to a Baptist church and attending its services, which saved her life when her appendix ruptured. She crawled across the floor to the phone and dialed the pastor begging for help, saying her mother would let her die rather than go against her church.

“Later they found me with the phone in my hand, lying on the floor,” she writes. “The Pastor and his wife had bravely taken it upon themselves to come and get me. I was told that they stood outside banging on the door, demanding to know where I was until my father opened it and let them in.” 100

Parents pretend girl never had disease or medical care

The pastor and his wife picked her up from the floor and took her to the Chicago Catholic Charities Hospital, which provided free care to the indigent. There Carol-Ann had emergency surgery and septic material was suctioned from her abdomen for days. Her parents never visited or even called.

After the pastor and his wife drove her home from the hospital, “it was,” she writes, “as if I had never been away. No questions were asked about my experience. No comments were made. Since sickness was not real, nothing had ever happened.” 104

Not all the Christian Scientists described in this book are zombie-like or cruel. One called Clara gives her practical help, love, and affirmation many years later when Medina is raising her own family. But Clara’s untimely death drives Medina to sever ties with the Christian Science church.

Medina’s mother remains a church-accredited Christian Science practitioner, who gives Christian Science credit for helping her “rise above” negatives. Medina’s brother Jon asked their father on his deathbed why he had abused the two of them so severely. The father replied, “Because I could.”

Books of interest

Graham Wilmer, *Conspiracy of Faith: Fighting for Justice after Child Abuse* (Lutterworth, 2007)

Innaiah Narisetti and Naveena Hemanth, *Forced into Faith: How Religion Abuses Children’s Rights* (Prometheus Books, 2008)

Kyria Abrahams, *I’m Perfect, You’re Doomed: Tales from a Jehovah’s Witness Upbringing* (Touchstone, 2009)

Julia Scheeres, *Jesus Land* (Counterpoint, 2005)

Michele Ulriksen, *Reform at Victory: a Survivor’s Story* (Pizan Media, 2008)

About CHILD Inc.

CHILD is an international membership organization working to stop child abuse and neglect related to culture, religion, or rigid secular belief systems. CHILD lobbies for equal protection of children within its tax-exempt limits. CHILD is a member of the National Child Abuse Coalition.

For more information on CHILD and a membership application form, visit our web page at www.childrenshealthcare.org.