CASE COMMENT: A.C. V. MANITOBA
(DIRECTOR OF CHILD AND FAMILY SERVICES),
2009 SCC 30
[Area of Coverage - Clinical Advising, Defense of Malpractice Claims]

The pertinent facts of this case can be summarized as follows: a 14 year old Jehovah's Witness minor who had an "advance medical directive" specifying that she was not to be given blood products in any circumstances, suffered from gastrointestinal bleeding as a result of Crohn's disease and had been assessed as being in imminent danger by her treating physician. A psychiatric assessment at the hospital found that A.C. neither suffered from a mental illness, failed to understand the reason for the proposed blood transfusion would be recommended, nor failed to comprehend the potential result of not accepting the transfusion. A.C. was deemed a "mature minor"; however, the Director of Child and Family Services apprehended her as a "child in need of protection" and sought a treatment order enabling blood products to be administered pursuant to the child welfare legislation. The application judge granted the order that the blood be given; the minor recovered once administered 3 units of blood.

The order was appealed on the grounds that the child welfare legislation violated s.2(a) ("freedom of conscience and religion"), s.7 ("right to life, liberty and security of the person" and the accompanying "right not to be deprived thereof except in accordance with the principles of fundamental justice"), and s.15 (equality before and under the law, with equal benefit and protection and without discrimination based on "...race, national or ethnic origin, colour, religion, sex, age or mental or physical disability") of the Charter of Rights and Freedoms.

The majority judgment of the Supreme Court of Canada ["SCC"] upheld the order of the trial court and focused on whether the child welfare legislation was worded such that "the young person's best interests are interpreted in a way that sufficiently respects his or her maturity in a particular medical decision-making context...." The majority judgment of the SCC described a continual struggle between adolescents who claim autonomy and the legislated protective function of the state; how the analysis, to be proper, must account for each particular minor involved as well as each particular medical treatment. Consequentially, the result is a "sliding scale" of maturity.
[patient autonomy] and state intervention depending on the seriousness and potential impact of the medical treatment. The SCC held that the ruling was novel and they directed that the legal costs of the Appellant be paid by the Province of Manitoba.

The novel component of the SCC ruling is presumably that the SCC directed that the wishes of the "mature minor" should be taken into consideration in determining whether the medical treatment was in her "best interests". We suspect that in practice; however, when medical treatment is deemed to be "essential" the court will find that it is necessarily in the "best interests" of the "mature minor" despite their wishes.

It is important to recognize that there was also a strong dissent in the SCC minority, which stated that true autonomy decision-making with respect to medical intervention must not be derailed in situations where society might not recognize a particular decision as wise. Further, once a minor is found to be mature the discretion of the court should end. It is apparent that there remains divergent thought on this difficult issue and, in all probability, the jurisprudence will continue to evolve.

As it now stands, the SCC ruling arguably applies to all Provinces that have child welfare legislation permitting the court to medically treat "mature minors" against their wishes, including Alberta. Accordingly, the practice of healthcare providers in Alberta is informed by SCC decision as follows:

- Mentally competent patients over the age of 18 have the ability to refuse all medical treatment, regardless of the consequences of that decision;
- Mentally competent patients under the age of 18 that are "mature minors" probably have the ability to refuse "non-essential" medical treatment if it is deemed to be in the "best interests" of the patient [taking the wishes of the "mature minor" into consideration]; and
- In the event the medical treatment is deemed "essential" the court will likely authorize the medical treatment, against the wishes of the "mature minor".

Any member of our Health Law Group would be happy to provide further advice on the recent SCC ruling and how it potentially impacts clinical practice.

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