

Court Order for Blood Transfusions Found Constitutional

The Supreme Court of British Columbia recently gave the parents of sextuplets the opportunity to challenge the science that authorized blood transfusions for four of their infants.[1] As Jehovah's Witnesses, blood transfusions are against the couple's religious views. The key arguments were that:

- 1) The transfusions were not medically necessary at the time when they were administered.
- 2) Their rights, under ss. 2(a) and 7 of the Charter of Rights and Freedoms ("Charter"),[2] were unjustifiably infringed.

These sections of the Charter read as follows:

s. 2(a): Everyone has the following fundamental freedoms: (a) freedom of conscience and religion.

s. 7: Everyone 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.

In order to address the first question, the court considered extensive medical evidence. It was brought to the attention of the court that blood transfusion practices differ widely throughout Canada.[3] The doctors who ordered the transfusions in this case, however, based their decisions on the latest, randomized, controlled study available.[4] The Premature Infants in Need of Transfusion (PINT) study found that 85g/L of haemoglobin in red blood cells provides a safe low threshold for providing oxygen to vital organs.[5] Arguments for lower threshold levels were either based on surveys, which do not hold as much weight as the controlled study,[6] or on a definition of "medically necessary" that is not in accord with B.C. legislation (which considers "medically necessary" to include seriously harmful levels of haemoglobin, and not just life-threatening levels).[7] Since no study had adequately proven that a lower threshold would be safe, the court considered the doctors' choice, to administer blood transfusions where haemoglobin was below 85g/L, the most ethical option.[8]

With regards to the Charter argument, the court ruled that neither the parents' freedom of religion (section 2(a)), nor the parents' right to liberty (section 7), were unjustifiably violated. The parents argued that La Forest's judgment

in *B.(R.) v. Children's Aid Society of Metropolitan Toronto* ("B.(R.)") suggests that "[a] parent's right to decide their child's medical treatment cannot be overturned 'simply because a professional thinks it is necessary to do so.'"[9] In other words, those alleging that a transfusion is needed have the burden to supply a very "strong case." [10] However, the court pointed out that in the same case it was decided that, "While it is difficult to conceive of any limitation on religious beliefs, the same cannot be said of religious practices, notably when they impact on the fundamental rights and freedoms of others." [11] Both [B.\(R.\)](#) and [B.\(S.J.\) v. British Columbia \(Director of Child, Family and Community Service\)](#), [12] emphasized that the child's best interests will override the parents' freedom of religion.

The parents also argued that their liberty had been infringed because they were denied procedural rights guaranteed under the Charter. [13] The court found that the parents were incorrect in their assumption that the phrase "in accordance with principles of fundamental justice," from section 7 of the Charter, connotes that there be full hearings and full disclosure prior to the hearings. [14] It was decided that "[w]here legislation permits the state to proceed in an ex parte fashion (for example, where the child is at risk of death or serious permanent injury), it does not offend the principles of fundamental justice that the parents were given short notice." [15] In an emergency, the requirements of fundamental justice are met more easily. [16]

Further Reading

Elizabeth Liu, "[Seizure of 3 Sextuplets For Blood Transfusion Rekindles Charter Debate](#)" Centre for Constitutional Studies (February 2007).

[1] [V.M. v. British Columbia \(The Director of Child, Family and Community Service\)](#), 2008 BCSC 449 at 79.

[2] [Canadian Charter of Rights and Freedoms](#), Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 2(a) and 7, online: <http://www.canlii.org/en/ca/const/const1982.html>.

[3] *Supra* note 1 at para. 32.

[4] *Ibid.* at para. 34.

[5] *Ibid.*

[6] *Ibid.* at para. 53.

[7] *Ibid.* at para. 57.

[8] *Ibid.* at para. 58.

[9] *Ibid.* at para. 84.

[10] *Ibid.*

[11] *Ibid.* at para. 87.

[12] 2005 BCSC 573.

[13] Ibid. at para. 97.

[14] Ibid. at para. 108.

[15] Ibid. at para. 106.

[16] Ibid. at para. 102.