

The End of an Age: Beyond Age Restrictions for Minors' Medical Treatment Decisions

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Executive Summary

This research paper explores one aspect of society's construction of aging – that the maturity to make decisions comes only with age. When considering the ways in which individuals can be discriminated against on the basis of their age, we tend to focus on the experiences of older Canadians. However, minors may equally suffer discrimination simply because they are below the age of legal majority. (We use the term “minors” only to reflect society's division through law of our lifespan into childhood and adulthood, and do not intend to endorse status-based categorisation in any way). We question whether denying a minor the entitlement to make her own medical treatment decisions because of her age and *presumed* maturity may constitute discrimination within the terms of s.15 of the *Charter*.

This paper analyses the various provincial frameworks for determining whether a minor who refuses medical treatment will nevertheless receive that treatment, and contrasts these schemes with a full understanding of decision-making maturity. Some judges and statutes currently override minors' mature treatment decisions. Yet, this may simply be because judges and law-makers have been unable to reconcile themselves to compromising the protection of minors in favour of minors' autonomy when it is not clear that minors whose decisions satisfy the available tests of “maturity” have reached mature decisions.

What should we mean by “maturity”? A mature decision requires more than a high level of cognitive and psychosocial development specific to the decision-making context; a minor's mature decision is not reached in an irrational manner, and is based on a relatively stable set of informing values, which are themselves socially tolerated.

We contend that minors satisfy these criteria below the age of majority, although there can be no general rules for minors of the same age. As a consequence, age is an inadequate proxy for decision-making maturity. This paper concludes with recommendations for how provincial law might be brought into line with the demands of minors' s.15 right to equal treatment, and suggests, among other proposals, the adoption of an age-based presumption of decision-making maturity for minors who are at least 12 years old.