



## Malette v. Shulman et al.

67 DLR (4th) 321, 72 OR (2d) 417

**Country:** Canada

**Region:** Americas

**Year:** 1990

**Court:** Ontario Supreme Court, Court of Appeal

**Health Topics:** Health care and health services, Informed consent, Medical malpractice

**Human Rights:** Freedom of religion, Right to bodily integrity

### Facts

Malette, a Jehovahâ€™s Witness, sued Dr. Shulman for administering a blood transfusion contrary to her prior expressed wishes. Malette was rushed to the emergency room after sustaining serious injuries in a car accident. She was semi-conscious and bleeding profusely. One of the nurses found a card in her purse, which stated she was a devout Jehovahâ€™s Witness and refused to receive blood transfusions under any circumstances. Dr. Shulman was made aware of this, but administered the blood transfusion nonetheless. A few hours later, Maletteâ€™s daughter arrived at the hospital and confirmed that Malette would not wish to receive transfusions. However, Dr. Shulman continued to administer the transfusions because he believed it was his professional responsibility to do so. At trial, the court held that Dr. Shulman had committed a battery against Malette by administering the blood transfusions. The trial judge concluded the card carried by Malette was a valid expression of her wishes that served to restrict the treatment Dr. Shulman could permissibly provide.

### Decision and Reasoning

On appeal, the court held that Dr. Shulman committed a battery against Malette by administering the blood transfusions. The Jehovahâ€™s Witness card was a valid advance directive, which prohibited Dr. Shulman from administering blood products.

The court reasoned that a patientâ€™s right to self-determination requires that health care providers obtain a patientâ€™s free and informed consent prior to administering treatment. This right also entitles patients to refuse to consent to treatment, including on religious grounds. However, in emergency situations, a health care provider may administer treatment without obtaining the patientâ€™s informed consent if:

The patient is unconscious or otherwise incapable of making a decision, and there is no one available who is legally authorized to make a decision on their behalf;

There is a serious risk of death or serious bodily harm if the health care professional delays in order to obtain consent; and

A reasonable person in the same circumstances would consent to the treatment, and it is probable that the patient would consent to the treatment.

In this case, the third requirement was not satisfied. But for the presence of the Jehovahâ€™s Witness card, Dr. Shulman would have been justified in administering the blood transfusion. However, the card was clearly intended to express Maletteâ€™s wishes in circumstances where she was unable to give or withhold consent. Dr. Shulman had no reason to believe that the card did not represent Maletteâ€™s wishes at the time of the accident, and Maletteâ€™s daughters only confirmed that it was indeed her wish to refuse blood products. As such, Dr. Shulmanâ€™s actions constituted a tort against Malette, and the court upheld the damages awarded at trial in the amount of \$20,000.

### Decision Excerpts

â€œWhile the law may disregard the absence of consent in limited emergency circumstances, it otherwise supports the right of competent adults to make decisions concerning their own health care by imposing civil liability on those who perform medical treatment without consent.â€• Para. 24.

â€œâ€¦there was no reason not to regard this card as a valid advance directive. Its instructions were clear, precise and unequivocal and manifested a calculated decision to reject a procedure offensive to the patientâ€™s religious

convictions.â€• Para. 44.

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