
Consent to treatment

The Right Hon Brian Dickson PC, Chief Justice of the Supreme Court of Canada, giving the 1988 Harvey Cushing Oration said that it may seem to physicians that legal rules concerning the patient's right to know intrude unduly in a delicate area of medical judgement. He went on to say that every patient has the right to make his or her own decision regarding medical treatment and care, and in order to make that decision is entitled to have full information regarding the material risks. The physician's duty is to supply the information in sufficient detail and while he may make recommendations to the patient, in the end it is the decision of the patient.

The right to consent

To grant or withhold consent prior to examination or treatment is a patient's fundamental right. Treatment or investigations carried out without the consent of the person concerned (or in the case of a child, a parent) can amount to an assault and may result in an action for damages. Assault may also be a criminal offence. There are certain exceptions which will be discussed later.

Informed consent

A doctor, dentist or other healthcare professional has a duty to explain to the patient in non-technical language the nature, purpose and material risks (vide infra) of the proposed procedure. **The patient must be capable of understanding the explanation given**; if he is incapable, whether from unsound mind or any other cause, informed consent cannot be obtained. If the proposed treatment is difficult to understand, it may be helpful for clinicians to use, for example, drawings, diagrams and models to supplement the verbal explanation. If necessary an interpreter should be present to ensure that the explanation is given in a language which the patient comprehends. The full explanation given to the patient is of paramount importance. The signing of a consent form is of secondary significance. Where the patient has been given insufficient information, the clinician may be found to have been in breach of his duty of care to the patient. If harm results the patient may be entitled to compensation.

Types of consent

Implied consent

For many physical contacts between clinician and patient consent is implied. It can be assumed that a patient has consented to abdominal