

Legal Terms – holding, decision, and ruling

CSI 2212 – Childhood and the Law – P. Ryan

A **'holding'** is a court's answer to a question of law. This can be at trial, for example, when a judge 'holds' whether an attorney properly phrased a question for a witness (e.g. leading or argumentative questions – non questions – may be held improper and stopped).

In this class, the court's 'holding' usually refers (not to trial or procedural actions by a trial or applicant judge), but to the **answer given by an appellate court (e.g. the Supreme Court of Canada) to a legal question.**

For example, in the case *E. v. Eve* the Supreme Court of Canada **held** that scope of *parens patriae* (the state's power to act on behalf or to protect those that cannot protect themselves) is unlimited, but that the test for using this power is the 'best interest' of the person for whom the state is acting (or protecting).

A holding is closely related to the term 'decision' – but decision can also refer to all the arguments made by the majority of an appellate court. 'Holding' (strictly) refers to the 'legal principle' that comes from the 'decision.' One of the principles (holdings) that descends from *E. v. Eve* (and other cases) is the legal principle that the 'best interest' (of the child) is the **legal test** for using *parens patriae* when children are involved.

A 'ruling' is closely related to 'holding' and it is common for the two terms to be used interchangeably. Technically, a **'ruling' is what the court orders to happen to the parties as a result of their holding.** So, in *E. v. Eve* the high court, held two things: (1) *parens patriae* is unlimited, but the test for its use is the best interest of the dependent person. (2) Non-therapeutic sterilizations can never meet the standard of being in the best interests of the individual sterilized. As a result of this holding, the court ruled that E's (the mother of Eve) petition to have Eve sterilized without her consent should be rejected, and this overturned the ruling of the lower courts in P.E.I.

Ruling is more specific; it is tied to the facts and parties of a case. Holding is more abstract, because it can be applied to cases with different details, but a similar 'fact profile.' For example, Eve was not a child (a legal minor), but the holding in her case helped establish a legal principle that is often used in cases involving children, as well as disabled adults, and ultimately for anyone who might be deemed legally incompetent.