



The Rasouli Case: A Backgrounder

End of life situations very often give rise to ethical challenges for patients, families, and health care providers. This is due to several features of these situations, including uncertainty regarding prognosis, disagreement regarding patient wishes and values, differences of opinion regarding what constitutes the best interests of the patient and the high emotional stakes associated with substitute decision making in life-and-death situations.



There have been several high-profile cases in Canada in recent years that have resulted from disagreement between health care providers who feel that a particular treatment is “non-indicated” or “futile” and substitute decision makers who feel that continuing treatment is either in accordance with what the patient would want or is in the patient’s best interests. Currently one such case, that of Hassan Rasouli, is being considered by the Supreme Court of Canada. This article will provide a brief background on the case and we will follow up with an explanatory article once a ruling is made.

THE PEOPLE AND ORGANIZATIONS INVOLVED:

Hassan Rasouli, the patient, is currently reliant on a ventilator and artificial nutrition and hydration after experiencing a post-surgical infection in his brain. He was initially thought to be in a persistent vegetative state but his status has been changed to “minimally conscious”. Physicians who have examined him do not think that he is likely to recover.

Parichehr Salasel is Hassan Rasouli’s wife and substitute decision maker. She is licensed as a physician in Iran and asserts that religious faith requires that they do everything possible to preserve Mr. Rasouli’s life. She maintains that he is recovering and can make intentional, purposeful movements.

Physicians at Sunnybrook Health Sciences Centre state that continued treatment is not in Hassan Rasouli’s best interests. They also argue that it is not medically warranted.

The Ontario Consent and Capacity Board is an independent tribunal established to resolve issues around consent and capacity. It is unique to Ontario and is the mechanism used when physicians and substitute decision makers disagree. Its role in this case is to determine whether the substitute decision maker’s choices are in keeping with the best interests of the patient.

THE QUESTION:

The specific question before the Supreme Court is whether the physicians in this case require either: a) consent to withdraw life support or b) a ruling from the Ontario Consent and Capacity Board that withdrawing life support is in Mr. Rasouli's best interests. The physicians and the hospital assert that they do not need consent to withdraw interventions that are no longer medically indicated. In other words, as all treatment requires consent, the physicians and the hospital are claiming that the withdrawal of life support does not constitute treatment.

Lower courts have ruled that while consent is not required for the withdrawal of life support, it is required to start palliative care and that in this case the withdrawal of life support is fundamentally linked to the initiation of palliative care.



THE IMPLICATIONS

Many people are hoping that the Supreme Court makes a broad ruling that will clarify who has the ultimate authority when disagreement between patients or substitute decision makers and health care providers cannot be resolved by discussion and negotiation. A narrow ruling would be specific to the question of whether consent or a ruling from the Consent and Capacity Board is necessary when withdrawing active treatment.

Policies designed to deal with these types of situations emphasize that the ideal is reaching consensus with the patient or substitute decision maker, and ethics committee consultation can be a valuable resource in facilitating that consensus. But in high-profile cases such as Rasouli, the conflict has often escalated past the point where ethics consultation can be effective.

Cases such as Rasouli also raise significant questions around resource allocation, but those questions will not influence the ruling. Policies and legislation in other jurisdictions have generally been silent on resource allocation aspects of end of life situations. Addressing these questions of resources and fairness requires a robust public discussion.

Even a broad court ruling will not definitively resolve the ethical questions that arise in end of life conflicts, but hopefully a broad ruling will contribute to addressing these issues by shaping the framework within which these difficult discussions occur.

There has been no indication of when the Supreme Court might make its ruling in this case.

By Marika Warren, Network Ethicist

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Here are some books and articles relevant to end of life care:

Byock, I. (2002). *Dying Well: Peace and possibilities at the end of life*. Riverhead Trade.

Byock, I. (2012). *The Best Care Possible: A physician's quest to transform care through the end of life*. Penguin Group.

Berlinger, N., Jennings, B., & Wolf, S. (2013). *The Hastings Center Guidelines for Decisions on Life-Sustaining Treatment and Care Near the End of Life: Revised and Expanded Second Edition*. Oxford University Press.

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June 21, 2013	Organizational Ethics Workshop. Truro, NS This is a one-day event. Registration is open now. Check our web site for registration forms.
October 22 & 23, 2013	NSHEN Annual Conference. Antigonish, NS Registration will open soon.

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