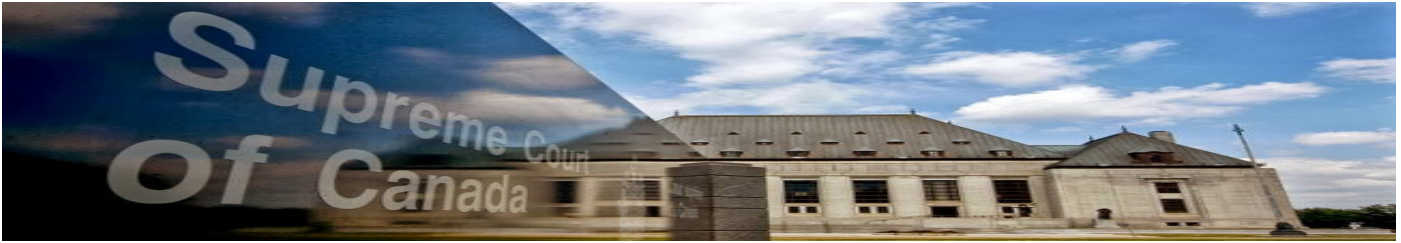




The Rasouli Case: The Decision



Note: this is a follow up to a previous **article** discussing the background of the Rasouli case.

In October 2013, the Supreme Court of Canada (SCC) ruled in the Rasouli case, which centred on issues of how to make decisions about the use of life-sustaining treatment when a patient lacks capacity and substitute decision makers and health care providers disagree about the appropriate course of action. While the ruling was characterized by some as a victory for the family, it would perhaps be more accurate to portray it as a victory for legal process. The majority opinion stated that the existing legal mechanism for resolving disputes of this sort in Ontario, namely the Consent and Capacity Board, is indeed applicable in this case. The SCC is careful to emphasize that the ruling applies to the particulars of this case and is not intended to be a blanket statement on how all disputes about potentially life-sustaining treatment should be addressed.

The court notes that some provinces have created legislative mechanisms for addressing such disputes and in Ontario, the Health Care Consent Act (HCCA) is the relevant legislation. In this case, the SCC found that there was no compelling reason provided by Hassan Rasouli's situation to depart from the processes already established by the HCCA.

Given the controversy surrounding the Rasouli case, it is important to note what this ruling does not state. It gives neither patients and their families nor physicians ultimate unilateral decision making authority, confining itself to what is required in order to meet the requirements of the HCCA. Like legislation and common law elsewhere in Canada, the HCCA seeks to uphold patient autonomy and, when patient wishes are unknown, uses a best interest standard to determine the appropriate course of action. While the purpose of the HCCA is to preserve patient autonomy to the greatest degree possible, the court emphasized that when best interests are driving decision-making physician determination of medical benefit will carry significant weight in the deliberations of the Consent and Capacity Board. This is in keeping with the court's efforts to ensure that neither substitute decision makers nor physicians are being given ultimate authority.

Similarly, the ruling does not determine the potential benefit or futility of further treatment for Mr. Rasouli. The ruling does also not imply that all withdrawal of treatment requires consent; it is focused on the case of Mr. Rasouli and the circumstances specific to that case.



The physicians also asserted that they were put in an “untenable” ethical position by the circumstances of this case. As with other cases such as that of Samuel Golubchuk in Winnipeg, the physicians described what they were being asked to do by the family as tantamount to torture. The court dismissed these arguments, claiming that ethical tensions between what one is being asked to do and one’s personal or professional values are inherent to the practice of medicine and that there are other ways (such as transferring care) of resolving these tensions.

Of course, there are significant concerns regarding resource allocation related to this case that have been raised by many in the public sphere (as well as in response to our last newsletter article on this topic), but these issues were not raised in the arguments presented to the SCC. The court, however, mentioned these concerns in the ruling and indicated that these are also addressed through legislation such as the HCCA. This decision, then, puts the ball back in the court of provincial governments and health care systems to find ways to address these challenges, through creating legislation and policy.

In summary, the SCC indicates that legislation is the solution to questions of both what sort of care can be provided within the Canadian health care system as well as to who will make decisions about whether it will be provided in a given case. What is clearly also necessary is public discussion and debate over how legislation serves to set limits and boundaries on the use of potentially life-sustaining treatment for Canadians.

Respectively submitted by
Marika Warren, NSHEN Ethicist

Here is the link to the full Rasouli decision made by the Supreme Court of Canada

Supreme Court Judgments: Cuthbertson v. Rasouli
<http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/13290/index.do>

Here are some websites that have useful information on personal directives and substitute decision making:

Personal Directives in Nova Scotia
<http://novascotia.ca/just/pda/>

Speak Up: About Advance Care Planning
<http://www.advancecareplanning.ca/about-advance-care-planning.aspx>



**It's about conversations.
It's about decisions.
It's how we care for each other.**

NSHEN currently has a library of books that may be of interest to you based on this newsletter theme:

Daniels, N. & Sabin JE. (2008). **Setting Limits Fairly: Learning to Share Resources for Health.** Oxford University Press.

Carter, ZF. (2010). **Imperfect Endings.** Simon and Schuster Paperbacks.

Byock I. (1997). **Dying Well: Peace and Possibilities at the End of Life.** Riverhead Books.

Berlinger, N., Jennings, B., & Wolf, SM. (2013). **The Hastings Center Guidelines for Decisions on Life Sustaining Treatment and Care Near the End of Life.** Oxford University Press.

Please check our website for complete listing and contact the Administrator to arrange a book loan.

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NSHEN: Upcoming Events...

March 2-8, 2014 The Canadian Bioethics Society, in collaboration with NSHEN, will present the first ever National Health Ethics Week. NSHEN will also be coordinating a provincial event - stay tuned for details.

The theme of this National Health Ethics Week 2014 is Health Ethics from Coast to Coast to Coast. It invites participants to consider what health ethics issues are most relevant to their community or organization and why.

All organizations, groups, and individuals who are interested in health ethics issues are invited to participate. To register, please download and complete the registration form found here <https://www.bioethics.ca/resources/NHEW/NHEW%20registration%20form.pdf>, or contact Amy Middleton, National Health Ethics Week Coordinator, ethicsweek@bioethics.ca

For more information please visit the National Health Ethics Week information site <https://www.bioethics.ca/ethicsweek>

April 2014 CEC Follow-up Workshop. For individuals who participated in the beginner CEC workshop this past year. This event will be in Truro, NS. Registration will open soon.

What Makes NSHEN Unique?

While there are other ethics networks and centres across the country, there are a few features that make NSHEN unique within Canada.

- * Our collaborative structure facilitates dialogue between partners
- * Our strategic goals are collectively established by the collaborating partners
- * NSHEN involves academia, government, and health care organizations in a single network

This results in a network that is innovative, efficient, and responsive to ethics needs in Nova Scotia.