

## Rasouli: Withdrawal of Medical Treatment

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"... a myriad of important interests, such as the integrity of our health care system, (is) at stake."

– *Cuthbertson v. Rasouli*, [2013] 3 SCR 341

### Introduction

In October 2010, Mr. Rasouli underwent surgery at Sunnybrook Health Sciences Centre in Toronto, Ontario to remove a benign brain tumour. Following the procedure, he developed meningitis that caused severe brain damage and left him unconscious. He has been kept alive by mechanical ventilation. It was expected that if his life-support were removed, he would pass away.

Mr. Rasouli's physicians decided that he was in a persistent vegetative state and there was no hope for his recovery. They were of the opinion that continuing life support would not provide any medical benefit to him.

Rasouli's wife disagreed. She wanted her husband to be kept alive on life-support. This was partly driven by her religious beliefs, but she also did not accept that her husband was in a state of irreversible unconsciousness.

The case went to the Supreme Court of Canada.

### Law

Disputes between next of kin and physicians over consent and life support used to be resolved through the common law. However, Ontario's 1996 *Health Care Consent Act (HCCA)* set out the law to settle such disputes. Under the *HCCA*, a designated substitute decision-maker (SDM), who is often a close family member, has the right to decide whether life support can be removed. The provision aims "... to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services." The legislation seeks to protect patient autonomy and medical interests. In cases of disagreement between the patient's physician and SDM, the physician can appeal the SDM's decision to the Consent and Capacity Board which makes the final care decision for the patient. The Board is typically composed of physicians, ethicists, lawyers and members of the public.

**The term "treatment" applies to more than just what physicians consider to be of medical benefit to a patient. The Court extended this to also include end-of-life care.**

The issue before the Supreme Court was whether the *HCCA* governed this case. If not, what common law applied to the question of whether life-support should be maintained?

### Position of the Physicians

The physicians argued that "treatment" under the *HCCA* is what they determine to be of medical benefit to the patient. They formed the professional opinion that life-support no longer offered any medical benefit for Rasouli despite the fact that the system kept him alive in his unconscious state. They said maintaining life- support for

Rasouli cannot be considered "treatment" under the *HCCA*, which then rendered the SDM's consent for life-support removal unnecessary.

The case came down to the Supreme Court's interpretation of the Act's definition of "treatment." In the *HCCA*, treatment is defined as "... anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan."

## Decision

On October 18, 2013, the Supreme Court of Canada sided with Rasouli's wife by a 5 to 2 vote [see: <http://canlii.ca/t/g10hr>]. The majority of the Court set out the mechanism for dealing with such disputes under the *HCCA*. The term "treatment" applies to more than just what physicians consider to be of medical benefit to a patient. The Court extended this to also include end-of-life care. The Chief Justice said: "... while the end-of-life context poses difficult ethical dilemmas for physicians, this does not alter the conclusion that withdrawal of life support constitutes treatment requiring consent under the *HCCA*."

The judgment means that the Consent and Capacity Board has the final say on the continuation of Rasouli's life-support.

These cases are all unique and complex life-and-death matters. The Toronto Star reported that costs at Sunnybrook's Intensive Care for Rasouli were about \$2,000 per day. The Court did not take into account any financial considerations in its decision.

## Conclusion

Rasouli has been upgraded from permanent vegetative state to what physicians deem as minimally conscious. Studies have shown that patients in a permanent vegetative state have about a 4% chance of regaining awareness, while those in a minimally conscious state have a 33% chance of making a marked recovery. Since the life-support decision is now in the Board's hands, Rasouli's slightly improved condition could warrant indefinite medical support.

At the end of 2013, still comatose, Rasouli was transferred from Sunnybrook to another facility. He had been a critical care patient at Sunnybrook for more than three years. He is now 64 years old.

The Supreme Court decision is a victory for patient autonomy. However, resources are not unlimited and this decision leaves for another day the essential political, governance and ethical debate about allocation of finite health care resources in a real world context of excessive demand for them.

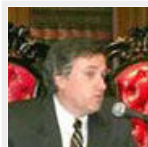
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