

HIV & AIDS Legal Clinic Ontario and Mental Health Legal Committee to participate in important Supreme Court of Canada consent to treatment case

The HIV & AIDS Legal Clinic Ontario (HALCO) and the Mental Health Legal Committee (MHLC) are pleased to have been granted intervener status in the upcoming appeal in *Brian Cuthbertson, et al. v. Hassan Rasouli (Rasouli)* to be heard by the Supreme Court of Canada in December 2012. Canada's highest court will be deciding whether a doctor can unilaterally withdraw life support. As interveners, we will be able to provide the Court with our communities' perspectives on the implications of this vital matter. HALCO and the MHLC strongly believe that consent must be at the heart of all treatment decisions.

Mr. Hassan Rasouli tragically fell into a coma in October 2010 as a result of an infection following surgery. He is being kept alive by a mechanical ventilator and feeding tube at Sunnybrook Health Sciences Centre in Toronto. In recent weeks, Mr. Rasouli has been clearly communicating to his family members – even giving the “thumbs up” signal. His wife, Mrs. Rasouli, is Mr. Rasouli's substitute decision maker and therefore makes health care decisions for him when he is unable to do so himself.

Mr. Rasouli's physicians determined that he is in a persistent vegetative state, that medical recovery is not possible, and that ongoing mechanical intervention provides no medical benefit. As such, it was their legal position that life support can be withdrawn without consent of the substitute decision maker.

This matter went to a trial court in Ontario and the judge determined that consent must be obtained from Mrs. Rasouli, the substitute decision maker, in order for the physicians to withdraw life support. The physicians appealed the decision, and Ontario's Court of Appeal held that consent must be obtained because the withdrawal of life support is inseparable from palliative care, for which consent is required.

Although Mr. Rasouli's family asked the Supreme Court to dismiss the appeal because Mr. Rasouli is able to clearly communicate with his family, the Supreme Court will be considering the matter in December 2012. The Supreme Court's decision will have profound implications for all medical treatment, not only treatment at the end of life. It is imperative to maintain the principle of no treatment without consent. Doctors should not be allowed to unilaterally make life and death decisions.

HALCO and the MHLC will be further communicating with our communities as the hearing approaches.

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*HIV & AIDS Legal Clinic Ontario &
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