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Living will in debate

Patient's family disagrees with treatment

Tom Carney / North Shore News
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IS a living will worth the paper it is written on? We are about to find out. The Supreme Court is expected to clarify end-oflife rights of patients and the obligations of health providers within the next year. We can thank the Bentley family for that.

Eighty-two-year-old Margaret Bentley, who has Alzheimer's disease, is currently being spoon fed by her care staff contrary to the wishes she expressed in her living will. Diagnosed with Alzheimer's at the age of 68 in 1999, Bentley has been institutionalized since 2005 and has been in a "vegetative" state for at least three years.

Bentley made out a living will in 1991 and specified she was to receive no nourishment or liquids if there was no reasonable expectation of recovery from extreme physical or mental disability. Despite those instructions, and over the objections of her family

and her physician, Bentley continues to be spoon fed at her care home. Bentley's family is asking the court to recognize her Statement of Wishes as a valid and enforceable advance directive under the Health Care Consent Act.

Anyone who is competent has the right to consent or refuse medical care. That's not in dispute. The care facility housing Bentley, which operates under the Fraser Health Authority, takes the position that it is obligated to provide necessities of life for patients.

Ten years ago, most of us had no idea what an advanced directive or living will was. Now many Canadians have resorted to living wills because we fear being kept alive in a hospital or nursing home beyond the point that anyone would choose to endure.

It would be useful, I suppose, to know if the right to refuse medical treatment includes the right to refuse ordinary care such as food and water. I suspect the public is more interested in knowing if they are going to be allowed to make decisions around when they want to die, if they want to die and how they are going to die, if they are facing a terminal illness from which there is no hope of recovery.

How the court will rule here is difficult to say. I would expect the court to uphold the provision that fully informed and competent patients have the right to make individual treatment decisions including not accepting treatment even if that decision is likely to result in death.

I think that the court may rule that there is no legal requirement to continue any form of medical treatment where treatment is considered to be medically useless and not in the best interest of the patient. This is sometimes referred to as heroic or extraordinary

treatment, and the question of if treatment once started must be continued is a bit of a grey area.

I think it is unlikely that active euthanasia will be accepted or made legal in Canada except perhaps in the

province of Quebec. What is needed here, in my opinion, is for the courts to make a clear ruling on whether or not a prior statement, such as a living will, must be respected first and foremost in a patient's decision and choice to terminate ordinary care.

The challenge facing the court is to find a balance between personal autonomy and the protection of human life. Even if we could agree that no one should be kept alive against his or her wishes, does an individual have the right to require others to bring about death?

The courts will need the wisdom of Solomon to sort this one out. Let's hope for Margaret Bentley's sake, and indeed for all of us, that the court hears this case soon.

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