

Continue to discuss end of life care plan

[Tom Carney](#) / North Shore News

April 27, 2014 12:00 AM

The B.C. Supreme Court has issued a judgment in the case of Margot Bentley.

I have written about Bentley previously and the case has received extensive coverage in the media. Briefly, Bentley, a former nurse with Alzheimer's disease, is receiving end of life health care at a Fraser Health Authority facility in Abbotsford. Bentley stipulated in a 1991 living will that she did not wish to receive "liquids or nourishments" if she developed an incurable disease. Bentley's family petitioned the courts to stop spoon-feeding Bentley. Healthcare providers are legally bound to follow your wishes for treatment, provided they are appropriate to your medical condition and clearly outlined in legal documents.

A Representation Agreement is legally enforceable under B.C. legislation. A living will is not. Bentley did not have a Representative Agreement.

If you become incapacitated, you have the right to have your substitute decision-maker speak for you. Bentley did not appoint a substitute decision-maker. You also have the right to refuse to take drinks orally or to be fed or be given drinks by others. This is referred to as Voluntary Stopping of Eating and Drinking.

The question for the court was two-fold: can Fraser Health feed an adult without their consent and must the end of life wishes of a competent adult be followed when the individual is no longer competent? The ruling from the B.C. Supreme Court allowed Bentley's nursing home to continue to spoon feed her. Why? In Justice Bruce Greycell's words: "Even if Mrs. Bentley was found incapable of making the decision to accept oral nutrition and hydration, I am not satisfied that the British Columbia legislature intended to allow reference to previously expressed wishes or substitute decision makers to be relied on to refuse basic personal care that is necessary to preserve human life."

Don't get cute here, the judge seems to be saying - electively asking for help in dying constitutes assisted suicide and that is illegal in Canada. (It's legal to end your own life in Canada and has been since suicide was removed from the criminal code in 1972).

The ruling is a bit of a puzzler to me. Under B.C.'s residential care legislation and the Adult Guardianship Act the care plan prepared for a resident must respect the adult's wishes when they were capable. As to the intention of the legislature, Section 45 of the Adult Guardianship Act promotes an adult's right to give consent or to refuse consent on any grounds, including moral or religious grounds, even if the refusal will result in death.

Finally, in my opinion, there is no requirement for Fraser Health to continue to spoon feed Bentley. They have an out. She refused consent, which is a lawful excuse.

There are lessons here for the rest of us. Have a conversation with your family and loved ones about death and dying. Get yourself a good estate lawyer to help you draw up your advance care plan and then review and initial it every year. And, choose wisely when it comes to where you will be housed in your final days.

It's not easy to talk about end of life issues. But if you don't have this conversation how will others know and

respect your wishes?

[tomcarney@telus.net \(mailto:tomcarney@telus.net\)](mailto:tomcarney@telus.net)

© 2015 North Shore News