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## **Death by starvation in Canada?**

*The case of Kulendran Mayandy*

By Derek Miedema, Researcher, Institute of Marriage and Family Canada

You may not have heard the name of Mr. Kulendran (Joshua) Mayandy. Mr. Mayandy passed away on September 6, 2010. However, the hospital care he received was the subject of public discussion and debate for more than two weeks leading up to his death. The hospital maintains that it followed appropriate procedures in Mr. Mayandy's care. His friends and colleagues disagree.

Kulendran Mayandy, 48, was the pastor of a small church in Brampton, Ontario. Originally from Sri Lanka, where his family still lives, he lived with friends from his church for the past 10 years.

On May 29, 2010, he had a heart attack. He stopped breathing for a few minutes before he was revived and therefore experienced severe brain damage, resulting in a stay in intensive care at William Osler Health Centre in Brampton, Ontario.

When he was able to breathe on his own, Mr. Mayandy was transferred to another unit in the hospital. For the next two months, he was treated and made significant progress, according to his friend, Rev. Bernard Stephenson. [1]

In late June, the William Osler Health Centre stopped providing nutrition to Mr. Mayandy. This means that he received water, but no food. On July 16, friends and family appealed this decision to the Consent and Capacity Board of Ontario. [2] The family won this case, meaning that the hospital would be required to continue supplying him with nutrition through a tube.

Because Mr. Mayandy was not able to speak for himself, a member of his family from Sri Lanka applied to the hospital's Consent and Capacity Board to be his Substitute Decision Maker (SDM). The family member was rejected by the Board. (When a person is judged incapable of making legal decisions with regards to desires for care a Substitute Decision Maker is appointed.)

The Board appointed another friend of Mr. Mayandy as his SDM on August 13. However, they placed a difficult condition on his appointment; he would need to accept the removal of nutrition tubes:

Mr. \_\_\_ now consents to PK's treatment, commencing August 17, 2010, palliative only, including safe removal of NG and IV tubes... [3]

According to the Health Care Consent Act, this condition is within the powers of the Consent and Capacity Board. [4]

Their decision also describes Mr. Mayandy this way:

We were also satisfied, based on the evidence we heard and the agreement of all parties, that the patient remains treatment incapable with respect to all treatments. [5]

Yet his friends insist Mr. Mayandy had regained the ability to speak single words, that he recognized members of his family and the church and was even able to take some small amounts of food by mouth. [6] It is not clear why the SDM accepted these terms.

By the beginning of September, Mr. Mayandy was experiencing kidney failure and had a seizure. He died on September 6. [7]

William Osler Health Center would not confirm or refute any of the details of the case, citing patient confidentiality.

Many questions remain.

Firstly, was the hospital's treatment of Mr. Mayandy palliative care, as the August 13 order of the Consent and Capacity board stated?

Health Canada defines palliative care as follows:

Palliative care is an approach to care for people who are living with a life-threatening illness, no matter how old they are. The focus of care is on achieving comfort and ensuring respect for the person nearing death and maximizing quality of life for the patient, family and loved ones. [8]

Withholding nutrition, (starvation) is not a comfortable death; giving a patient only liquids does not maximize their quality of life. And, by the accounts of eye witnesses Mr. Mayandy was neither near death nor dying. He had suffered brain damage as the result of a heart attack. It appears as though the hospital was citing this as palliative care in contradiction to Health Canada's definition.

If the hospital judged Mr. Mayandy's treatment to be futile and subsequently withdrew food in order to hasten his death, this would be a case of euthanasia, not palliative care. Such an action is not part of palliative care. Dame Cicely Saunders, who founded St. Christopher's Hospice in London in 1967 and is seen as the founder of the modern hospice movement, described the vow of palliative care workers as "We will do all we can not only to help you die peacefully, but also to live until you die." [9]

Secondly, why does the Consent and Capacity Board have the authority to make the withdrawal of nutrition a condition of appointment as SDM? In this case, what good is a Substitute Decision Maker if they can't make decisions?

How many SDMs have been treated similarly by the Consent and Capacity Board? What was the Board's intent in this case? How many family members have been treated this way by doctors and hospitals? A case before the courts shows that this is not an isolated situation. [10] Certainly, patient confidentiality is important, however, it should not be used as an excuse to avoid tough questions. Mr. Mayandy's family and friends in Canada deserve these answers; so too do Canadians who may experience similar treatment in the event of a medical emergency.

## Recommendations

Recommendations from this difficult case include questioning the regulations and procedures governing the Consent and Capacity Board.

The remaining recommendations are for Canadians at large, who need to understand what palliative care is—and is not. Canadians should also make their end of life expectations very clear, well in advance.

## Endnotes

- [1] Personal communication with Bernard Stephenson, September 7, 2010.
- [2] The Consent and Capacity Board is an independent body created by the Ontario government to conduct hearings and make rulings into cases like this one under the Health Care Consent Act. Consent and Capacity Board of Ontario. Retrieved September 8, 2010 from <http://www.ccboard.on.ca/scripts/english/aboutus/index.asp>
- [3] Consent and Capacity Board of Ontario. (2010, August 13). In the matter of Health Care Consent Act S.O. 1996 c. 2, Sch. A as amended and in the matter of KM, a patient of William Osler Health Centre-Brampton Campus. Docket Num. 1186, File Num. HA-10-1483, HA-10-1497.
- [4] Health Care Consent Act, 1996, S.O. 1996, c. 2, Sch. A. Section 33(7). Retrieved September 8, 2010 from <http://www.canlii.org/en/on/laws/stat/so-1996-c-2-sch-a/latest/so-1996-c-2-sch-a.html#BK41>
- [5] *Ibid.*
- [6] Personal communication with Bernard Stephenson, September 7, 2010.
- [7] Personal communication with Alex Schadenberg, September 7, 2010.
- [8] Health Canada. (2009). Palliative and End of Life Care. Retrieved September 7, 2010 from <http://www.hc-sc.gc.ca/hcs-sss/palliat/index-eng.php>
- [9] Picard, A. (2010, July 21.) There are a lot better places to die than Canada. *The Globe and Mail*, p. L1.
- [10] Cribb, R. (2010, September 4). Lawsuit could set precedent about end-of-life decisions. *The Toronto Star*. Retrieved September 8, 2010 at <http://www.thestar.com/news/gta/article/856741--lawsuit-could-set-precedent-about-end-of-life-decisions>