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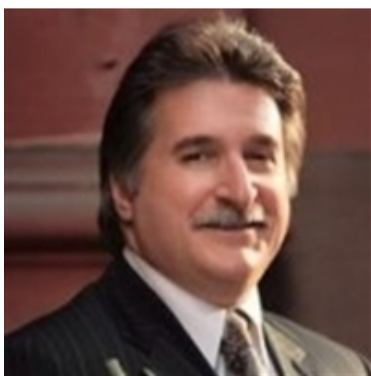
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Case emphasizes need for end-of-life discussions



A landmark case set to determine whether physicians can decide – without relatives' consent – to unplug patients from life support highlights the importance of expressing and documenting end-of-life care wishes, says Toronto-area estate lawyer [Charles Ticker](#).

"It's important for everyone to discuss these wishes with their families and physicians while capable," says Ticker. "Then, those wishes should be put in a power of attorney for personal care or living will or advance directive."

At the centre of the court case is Hassan Rasouli, a man whose family opposes taking him off his life-sustaining ventilator while physicians pushed to have him removed from life support, noting he has no hope of recovery, the *National Post* reports. [Read National Post](#)

The case was heard today at the Supreme Court of Canada. The court's decision is not expected for several months.

In 2010, Rasouli underwent surgery to remove a benign brain tumour, says Ticker, noting that post-surgery complications caused severe brain damage and Rasouli ended up on life support. Since then, he has been in the critical care unit at Sunnybrook Health Sciences Centre being kept alive with a mechanical ventilator.

"The attending doctors who are the appellants before the Supreme Court wanted to remove Mr. Rasouli from life support as they were of the opinion that he was in a vegetative state with no prospect of making a recovery," says Ticker. "They advised his wife Parichehr Salasel of their intentions and as Mr. Rasouli's substitute decision maker, she refused to give consent to the withdrawal of the life support measures.

"The doctors did not think that her consent was required under the Health Care Consent Act, 1996, (HCCA) but they allowed her to make an application to the court before withdrawing the life support measures."

Ticker says Justice Susan Himel, "held on March 9, 2011 after a three-day hearing that the doctors could not take Mr. Rasouli off life support without the consent of his substitute decision maker. The judge held that withdrawal of treatment constitutes treatment under the HCCA and therefore consent is required to withdraw treatment including the cessation of life support measures."

The doctors appealed and the Ontario Court of Appeal heard the case on May 18, 2011, says Ticker, adding the court dismissed the appeal in June 2011. [Read Rasouli v. Sunnybrook Health Sciences](#)

"The Court of Appeal was prepared to accept that the HCCA does not require doctors to obtain consent from a patient or substitute decision maker to withhold or withdraw 'treatment' that they view as medically ineffective or inappropriate," says Ticker. "However, in this case, removing Mr. Rasouli from the mechanical ventilator and

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placing him on a program of palliative care until he dies did constitute treatment according to the Court of Appeal for which consent is required. Palliative care is included in the definition of treatment under the HCCA.”

“Under s. 21 of the HCCA, Ms. Salasel had to make a decision based on her husband’s best interests as defined in the HCCA. The doctors could have applied to the Consent and Capacity Board for a reversal of Ms. Salasel’s decision but they chose not to follow that procedure.”

New research that lets scientists communicate with vegetative patients suggests that Rasouli is at a very low level of consciousness, the *Post* reports, noting the new information has been added to the Supreme Court documents.

“The new research raises questions as to when you can conclude that someone is in a vegetative state,” says Ticker. “However, even when Mr. Rasouli was tested using the new MRI technique, he was found to be functioning at a ‘very low level of a minimally conscious state.’”

While the debate centres on the weight of relatives’ consent versus a physician’s orders, Ticker says the case represents a larger concern.

“I think the real issue is the wishes the incapable person expressed while capable,” he says. “The Court of Appeal had sympathy for the doctors’ position but felt that under the HCCA consent was required. I think it should be the family’s right to make the decision based on best interests and the expressed wishes of the incapable person while capable.”

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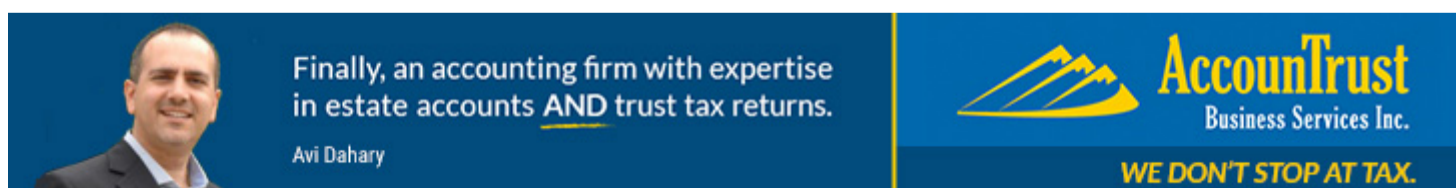


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