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Supreme Court clarifies end-of-life process



The Supreme Court of Canada made the right move in ruling that Ontario's Consent and Capacity Board must act as a decision maker when the wishes of families and doctors conflict in end-of-life cases, though the courts still have a role to play, says Toronto-area estate lawyer [Charles Ticker](#).

[In a 5-2 decision](#), justices for the high court ruled that doctors cannot unilaterally choose to end life support services for Hassan Rasouli, an Ontario man who has been comatose since 2010, the [National Post](#) reports.

The board, a quasi-judicial body that addresses matters of consent under [Ontario's Health Care Consent Act](#), is part of a system that's, "been working fairly well for 17 years," says Ticker. "I think what the court was saying is judges aren't comfortable making decisions as to what's medically appropriate and in the best interest of a patient — judges aren't doctors."

But access to the court will still be important for families, says Ticker, "if the tribunal steps outside its bounds and requires a judicial review. What judges can do is ensure the process is fair and the process has been followed, so there is still a role for the courts."

The ruling provides much-needed clarity on the end-of-life issue, says Ticker.

"I think what it means is medical professionals are going to have to spend more time with families discussing the repercussions of these types of treatments, like life support," he says. "There's always going to be families that are not going to be prepared to make a decision when they feel there's still some hope that their loved one may come around."

The court stressed that its ruling applied only to cases in Ontario, and did not address the broader ethical question of who has the final say — doctors or family — in end-of-life care for incapacitated people, the *Post* reports.

Writing for the majority on the bench, Chief Justice Beverley MacLachlin said the court's decision only addressed the issue of what Ontario's act allows, the report says, noting Canada-wide, — it did not address who "in the absence of a statute, should have the ultimate say in whether to withhold or withdraw life-sustaining treatment."

Ticker says, "it would have been helpful for the statute to have been a little more clear," but he says the ruling's clarification of the process is helpful.

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“It’s a very difficult issue, but I think this is the right decision. If they had left it open and said you have to apply to court to review the decision to remove someone from life support, you’d likely see appeals, and then where does it end,” says Ticker.

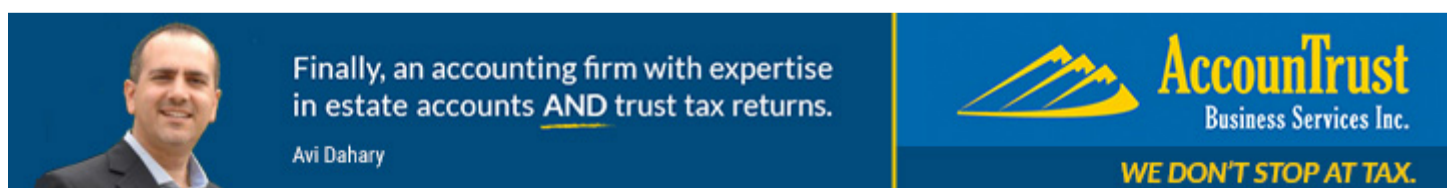
“I think this whole decision underscores the importance of families having these discussions and getting their power of attorneys in place with clear wishes expressed before there’s a crisis.”

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