Court File No. 35591

**IN THE SUPREME COURT OF CANADA**
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

B E T W E E N :

**LEE CARTER, HOLLIS JOHNSON, DR. WILLIAM SHOICHET, THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and GLORIA TAYLOR**

Appellants

- and –

**ATTORNEY GENERAL OF CANADA;**
**ATTORNEY GENERAL OF BRITISH COLUMBIA**

Respondent

- and -

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Interveners

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# MEMORANDUM OF ARGUMENT OF DYING WITH DIGNITY

(Rule 42 of the *Rules of the Supreme Court of Canada*)

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# PART I - OVERVIEW

1. Dying with Dignity (DWD) believes that assisted dying should be part of our country's healthcare system, subject to a regime of robust safeguards that are rigorously monitored and enforced. It supports the legalization of medically assisted dying, including both physician assisted suicide and voluntary euthanasia, in the context of a physician-patient relationship, for informed and competent adults who are grievously and irremediably ill and suffering unbearably with a terminal illness or incurable physical condition. For the reasons set out below (and those articulated by the Appellants), DWD takes the position that ss. 14, 21, 22, 222 and 241 of the *Criminal Code*, to the extent that they prohibit medically assisted dying, infringe rights guaranteed by ss.7 and 15 of the *Canadian Charter of Rights and Freedoms* and are not justifiable pursuant to s.1 of the *Charter*. DWD takes no position on the issue of inter-jurisdictional immunity and adopts the Appellants' submissions on the issue of *stare decisis*.

# PART II - STATEMENT OF FACTS

2. DWD relies on the factual findings of the trial judge, Smith J., in this matter.

# PART III - SUBMISSIONS

## A. The Right to Life Encompasses a Right to Die with Dignity

3. The majority justices of the B.C. Court of Appeal erred in concluding that the s.7 right to life "has a narrow compass and does not include the right to die in the manner and at the time of one's choosing."[1] Some of the interveners opposite advocate for this narrow interpretation of the right to life based on their religious conviction that human life is sacred (a gift from God) and therefore inviolable. This Court must, however, adopt an interpretive approach that reflects the secular nature of the Canadian state.[2] The scope and parameters of constitutional rights and freedoms cannot be dictated by the doctrines of any particular faith.[3] This Court's interpretation

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[1] *Carter v Canada (AG)*, 2013 BCCA 435 at para 281, per Newbury JA.

[2] *O'Sullivan v Canada (MNR)*, [1992] 1 FC 522 at paras 18-20, DWD's BOA, Tab 7: Despite reference to the "supremacy of God" in the preamble to the *Charter*, the *Charter* itself defines Canada as a secular state.

[3] *R v Butler*, [1992] 1 SCR 452 at 492, Appellants' BOA, Vol II, Tab 42 ("To impose a certain standard of public and

of s.7 must not be imbued with a religious view of the sanctity of life, but rather with secular *Charter* values, including respect for autonomous individual decision-making.[4]

4. While the protection of life is an important *Charter* value and should be treated as paramount in some cases, the right to life in s.7 should not be read so narrowly as to restrict its interpretation exclusively to the preservation of life. To do so would create an internal inconsistency within s.7, such that the "life" interest would conflict with the "liberty" and "security of the person" interests. The "life" interest should instead be interpreted broadly and consistently with "liberty" and "security of the person" to encompass a right to make autonomous personal decisions about end-of-life matters. As Justice Cory stated (in his dissenting opinion) in *Rodriguez*:

> Dying is the final act in the drama of life. If, as I believe, dying is an integral part of living, then as part of life it is entitled to the constitutional protection provided by s.7. It follows that the right to die with dignity should be as well protected as is any other aspect of the right to life.[5]

5. The criminal prohibition on assisted suicide deprives many grievously ill individuals of the peace of mind afforded by having choice over the timing and manner of their own death. It forces them to live the remainder of their lives consumed by fear and dread of a protracted death by starvation, suffocation, or other unknown and potentially agonizing causes. Without access to medically assisted dying, many individuals are compelled to endure a prolonged and/or physically painful death against their wishes. In some instances, the only recourse available to individuals to manage their intolerable pain and distress involves sacrificing conscious awareness through palliative sedation.[6] Not only are these individuals effectively required to

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sexual morality, solely because it reflects the conventions of a given community, is inimical to the exercise and enjoyment of individual freedoms..."); *R v Labaye*, [2005] 3 SCR 728 at paras 33-35, DWD's BOA, Tab 10.

[4] *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at 346, DWD's BOA, Tab 9; *Quebec (AG) v A*, [2013] 1 SCR 61 at paras 139, 276, DWD's BOA, Tab 8; *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at para 80, DWD's BOA, Tab 3; *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 66, DWD's BOA, Tab 5; *Blencoe v BC (HRC)*, [2000] 2 SCR 307 at paras 49-50, 54, DWD's BOA, Tab 2; *R v Morgentaler*, [1988] 1 SCR 30 at 164-166, Wilson J, DWD's BOA, Tab 11.

[5] *Rodriguez v British Columbia (AG)*, [1993] 3 SCR 519 at 630, Cory J, Appellants' BOA, Vol III, Tab 67.

[6] Affidavit of Prof. Anne Bruce, sworn Aug 25, 2011 at para 9; Expert report of Dr. Harvey Chochinov, dated Sept 30, 2011 at para 4; Affidavit of Dr. G. Michael Downing, sworn Oct 3, 2011 at para 50; Expert report of Dr. José Pereira, dated Oct 17, 2011 at paras 31-32. Dr. Pereira agreed on cross-examination that without palliative sedation, 10-15% of patients in palliative care would "suffer horribly" (Transcript of Proceedings in Chambers, Day 7, Nov

spend their last days and sometimes weeks[7] in non-communicative dormant states of unconsciousness, but they are also denied the choice of experiencing dying consciously as an integral (albeit final) part of life. As Professor Pabst Battin testified, for some individuals, such terminal sedation is a "fundamentally unacceptable" treatment option:

> People have their own conceptions of a good death and, for a significant number, a good death entails being able to say farewell in a composed and conscious manner and to depart from life on those terms. For some, this is a source of contentment and personal achievement in and with the experience and very act of dying.... For these people, a forced choice between the options of terminal sedation and unbearable suffering, effectively, and absolutely, deprives them of their preferred experience of a life-defining moment.[8]

6. These devastating effects of the impugned laws constitute a deprivation not only of the s.7 rights to liberty and security of the person, but also of the right to life, which should not be interpreted in a manner that is purely existential.

## B. The Impugned Laws are Not in Accordance with Principles of Fundamental Justice

7. The absolute prohibition on assisted suicide is both arbitrary and overbroad because its effects on some individuals undermine its objective.[9] It was enacted to protect vulnerable persons from being induced to commit suicide in a time of weakness, but the trial judge found that its effects actually *contribute to* risks faced by individuals who lack information about therapeutic options, whose decisional competence is impaired by mental health disorders, or whose autonomous decision-making is compromised by familial or other external pressures.[10] The ban on medically assisted dying creates a chilling climate of silence, in which physicians are reluctant to discuss end-of-life planning with patients, for fear of criminal prosecution. In jurisdictions where medically assisted dying has been legalized, the evidence reveals improved communications between patients and doctors not only about assisted dying, but also about

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22, 2011 at p 30, lines 28-43).

[7] Examination on the Affidavit of Dr. Michael Downing, Nov 9, 2011, at p 22, lines 27-32; Cross-examination of Dr. Douglas McGregor, Transcript of Proceedings in Chambers (Day 2), Nov 15, 2011 at p 12, line 15.

[8] Affidavit #2 of Prof. Margaret Pabst Battin, sworn Nov 3, 2011 at para 34. See also the Affidavit #2 of Dr. Linda Ganzini, sworn Nov 2, 2011 at para 54.

[9] *Canada (A.G.) v Bedford*, [2013] 3 SCR 1101 at paras 112, 118 and 119, Appellants' BOA, Vol I, Tab 10. See also, *R v Morgentaler*, [1988] 1 SCR 30 at 75-76, DWD's BOA, Tab 11.

[10] *Carter v. Canada (AG)*, 2012 BCSC 886 at paras 1267 and 1370 ("Trial judgement").

alternatives to hastening death (e.g. palliative care and symptom management) and about the patient's motivation in seeking to hasten death.[11] A regulated system of medically assisted dying would encourage rather than stifle open discourse with physicians, promoting better informed patient decision-making and more effectively bringing decisionally-compromised persons to the attention of health care professionals.

8. While it is true that some individuals who express a wish to die subsequently change their minds, DWD disputes the Attorney General for Canada's ("AGC") assertion that the "desire for death is most often ambivalent and transitory."[12] This statement conflates traditional suicidal ideation (which is often situational and temporary) with the considered, settled and unwavering wish to die of most irremediably ill individuals who actively seek medical assistance in dying.[13] Moreover, although the presence of ambivalence remains a possibility, as the trial judge concluded based on expert evidence, it is feasible to screen out ambivalent patients.[14]

9. The AGC argues that, in the context of an irreversible decision with such grave consequences, more weight must be given to the concern that individuals may change their minds, noting that they cannot voice regret for their decision after their death. The AGC points to the evidence of one witness, a woman with multiple disabilities who had previously expressed a wish to die, but now expresses gratitude that she did not have the option of seeking medical assistance in dying because she feels she would have missed the best years of her life, which came after her last failed suicide attempt.[15] While the potential for ambivalence must be considered in developing appropriate safeguards in a permissive regime of medically assisted

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[11] Affidavit # 1 of Dr. Linda Ganzini, sworn Aug 24, 2011 at para 21; Affidavit of George Eighmey, sworn Aug 26, 2011 at para 6; Affidavit of Dr. Jean Bernheim, sworn Aug 26, 2011 at para 16; Affidavit of Prof. Luc Deliens, sworn Aug 30, 2011 at para 15; Affidavit of Ann Jackson, sworn Aug 28, 2011 at para 19, Affidavit #1 of Prof. Helene Starks, sworn Aug 29, 2011 at para 17 and exhibit C at pp 44-47.

[12] Factum of the AG Canada at para 31.

[13] Affidavit of Prof. James Werth Jr., sworn Nov 1, 2011 at paras 17-20; Affidavit #2 of Dr. Linda Ganzini, sworn Nov 2, 2011 at paras 11-12; Affidavit #1 of Prof. Helene Starks, sworn Aug 29, 2011 at paras 20-21; Affidavit # 1 of Prof. Battin, sworn Aug 29, 2011 at para 37; Affidavit #2 of Prof. Battin sworn Nov 3, 2011 at para 12; Trial judgment at para 814.

[14] Trial judgment at para 843.

[15] Affidavit #1 of Alison Davis sworn Sept 27, 2011. It should be noted that it is unclear whether Ms. Davis would have actually qualified for medically assisted dying in a permissive regime, as it is unknown whether she would have passed a consent and capacity assessment at the time. She may, for example, have been suffering from a major depressive disorder that impaired her decisional capacity.

dying, the possibility of regret cannot override the s.7 interests in this case. In our current healthcare system, we do not deny competent and informed adults the freedom to make other deeply personal choices based on the irreversible quality of their decisions and/or the fact that they might later experience remorse (e.g. whether to undergo a hysterectomy, to have a limb amputated, to refuse life-saving treatments). It would no doubt be possible to identify a pregnant woman who had her abortive plans thwarted (e.g. by family pressures) and subsequently expressed gratitude for the birth of her child, or conversely a woman who underwent an abortion and subsequently regretted her decision, but the possibility of these scenarios does not justify the state depriving all women of their right to security of the person by criminalizing abortions. If personal autonomy is to be taken seriously and the right to security of the person is to have meaning, the state must allow people to make important and profound personal choices about their bodies and their lives, even when those choices have grave and permanent consequences.[16] Indeed, the more personal, serious and irreversible the decision, the more critical it becomes for the decision to be left to the individual and not the state.

10. The impugned laws are also flawed by overbreadth because they are so general in scope as to capture conduct that bears no relation to their purpose. The evidence establishes that competent individuals can make a rational decision to hasten their own death and that the reasoning underlying such decisions is distinguishable from the distorted thought processes that inform traditional suicidal ideation.[17] The prohibition on assisted suicide, by virtue of its absoluteness, criminalizes providing end-of-life assistance to individuals who are not vulnerable and whose decisions are in no way compromised by social prejudices, internalized biases, family pressures, mental health disorders or other influences. These individuals are not the intended targets of the protection afforded by the impugned laws, yet they are nevertheless prevented from obtaining medical assistance in dying (without subjecting those who would assist them to criminal liability). Health care professionals wishing to provide medical assistance to grievously ill patients whose request for assisted dying is both competent and well-informed are rendered

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[16] The fact that a decision may have moral implications also does not justify state interference. See *R v Morgentaler*, [1988] 1 SCR 30 at pp 175-176, DWD's BOA, Tab 11 ("The decision whether or not to terminate a pregnancy is essentially a moral decision and in a free and democratic society the conscience of the individual must be paramount to that of the state.")

[17] See *supra* note 13.

helpless and powerless in the face of their patients' suffering.

11. The AGC argues that a blanket prohibition is necessary because it is not feasible to implement adequate mechanisms to identify and protect individuals who *are* vulnerable. The AGC raises the spectre of medical error, physician non-compliance with regulations, and the possibility that consent and capacity assessments may be tainted by doctors' unconscious biases, based on disability prejudice and age discrimination. While regulators must be aware of these risks, they are not so grave and insurmountable as to undermine the feasibility of enacting appropriate safeguards. Indeed, the necessary consent and capacity assessments are *already made routinely* by physicians within our current medico-legal system, including with respect to decisions that can bring about death. Competent individuals have the right to determine what medical treatments they will accept and the extent to which they will accept them.[18] As this Court has previously noted, "The state's interest in preserving the life or health of a competent patient must generally give way to the patient's stronger interest in directing the course of her own life."[19] Every competent person has the right to refuse treatment and/or request the withdrawal of treatment, including life sustaining measures. These requests are common: the evidence establishes that 90% of deaths among critically ill patients in Canada occur following the withdrawal of some form of life-support (e.g. medical ventilation, dialysis or inotrope medications).[20] While the decision to refuse or terminate life-sustaining treatments is sometimes made by advance directives or substitute decision-makers, it is often made by patients in advanced stages of disease, who share identical characteristics (including potential vulnerability to influence) as the patient population that would seek medical assistance in hastening death. Physicians regularly engage in consent and capacity assessments before acting on directives from these patients. There is no basis for concluding that similar assessments could not reliably be conducted (and monitored and enforced) in a regime that permitted medically assisted dying.

12. The AGC argues that medically assisted dying is distinguishable from the established

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[18] *Malette v Shulman,* (1990) 72 OR (2d) 417 (CA) at 327, AG Québec's BOA, Tab 12; *Ciarlariello v Schacter,* [1993] 2 SCR 119 at 135-136, DWD's BOA, Tab 4; *AC v Manitoba (Director of Child and Family Services),* [2009] 2 SCR 181 at para 40, DWD's BOA, Tab 1; *Rodriguez v British Columbia (AG),* [1993] 3 SCR 519 at 606-607, Appellants' BOA, Vol III, Tab 67; *Civil Code of Quebec* at arts 3, 10, 11, DWD's BOA, Tab 12.

[19] *AC v Manitoba (DCFS), ibid.* at para 41, DWD's BOA, Tab 1, citing *Malette v Shulman, ibid.*

[20] Affidavit of Dr. Deborah Cook, sworn Sept 19, 2011 at para 18.

practices of withholding or withdrawing life-sustaining treatment (upon a patient's request) because it involves the *active* participation of a physician in *causing* a person's death. This purported distinction is unsustainable because current lawful end-of-life practices are not entirely passive. They often involve the active participation of a physician (for example, to remove a feeding tube or ventilator), which participation results in the patient's ultimate cause of death (e.g. starvation, dehydration or respiratory failure).

## C. The Impugned Laws Discriminate Based on Disability

13. The criminal prohibition on assisted suicide creates a distinction based on disability because it prevents persons who are physically unable to end their lives unassisted from choosing the manner and timing of their own death, when that option is available to all other members of the public. The AGC argues that there is no stark distinction drawn by the impugned laws because "[t]here are means of suicide available to everyone",[21] but the trial judge correctly rejected this argument, noting that the laws have a distinct impact on persons with material physical disabilities because their choice of self-imposed dying is restricted to the singular and onerous option of starvation and dehydration.[22]

14. The AGC argues that the impugned laws are not discriminatory because they correspond to the actual needs and circumstances of individuals whose physical disabilities prevent them from ending their lives unassisted. Specifically, the AGC argues that the ban on assisted suicide counters negative social messaging about the relative value of individual lives, namely "that lives lived with less than full independence are not worth living."[23] It is incontestable that disability prejudice is embedded in some of the discourse about medically assisted dying. Professor Frazee notes, for example, that loss of control of bodily fluids and diminished capacity for independent self-care are frequently described in terms of an assault on dignity, ignoring the fact that the link between dignity and instrumental physical autonomy is not absolute, but rather is subjective and highly variable.[24] However, the point of legalizing medically assisted dying is precisely to

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[21] Factum of the AG Canada at para 124.

[22] Trial judgment at paras 1075-1076.

[23] Factum of the AG Canada at para 166.

[24] Expert Report of Prof. Catherine Frazee, dated Oct 11, 2011 at para 53.

recognize the variability of human experience and allow all individuals (who are competent informed adults) the dignity to make autonomous choices about their own lives. By legalizing medically assisted dying, the state would not be endorsing the view that individuals with particular types of disabilities ought to end their lives (or ought to *want* to end their lives), but rather the view that their independent and informed end-of-life decisions ought to be respected.

15. The prohibition on medically assisted dying does nothing to curtail the disability prejudice that is embedded in public discourse. On the contrary, it contributes to and perpetuates pejorative stereotypes about persons with disabilities, including the patronizing view that they are incapable of autonomous decision making[25] and/or the infantilizing presumption that they require protection not only from the pernicious influence of others but also from themselves (i.e., their own internalized biases). It also conveys the offensive message that the suffering of persons with material physical disabilities is not worthy of significant concern.[26]

## D. The Laws Are Not Justifiable Under Section 1 of the *Charter*

16. Although the criminal prohibition on assisted suicide has a pressing and substantial objective, it is not minimally impairing of the s.7 and s.15 rights guaranteed by the *Charter*.[27] For this reason, and because its deleterious effects outweigh its salutary benefits, it is not justifiable under s.1.

17. The AGC asserts that one of the salutary benefits of the impugned laws is the affirmation of the inherent value of life and argues that legalizing medically assisted dying would conversely condone suicide. This argument (once again) inappropriately conflates traditional suicide, which "is an expression of despair and futility" with medically assisted dying, which (according to expert evidence) "is a form of affirmation and empowerment." As Professor Werth testified,

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[25] This discriminates in a substantive sense by attributing to persons with severe disabilities a psychological functional limitation that their physical impairment does not actually entail. See *Granovsky v Canada (Minister of Employment and Immigration)*, [2000] 1 SCR 703 at paras 33, 36-39, DWD's BOA, Tab 6.

[26] This negative messaging is also relevant to the Court's weighing of the impugned laws' salutary and deleterious effects under s.1 of the *Charter*. As the trial judge noted (at para 1266), "by thwarting the wishes of persons who are physically disabled, grievously ill and suffering intractably, the law sends a negative message that their wishes, and their suffering, are not as important as are other considerations. The law's positive general message about the value of human life must be weighed against its negative message specific to the people whom it most directly affects."

[27] The submissions above with respect to the impugned laws' overbreadth are also applicable under s.1 of the *Charter* with respect to the "minimal impairment" criterion.

"[t]ypical suicide brings shock and tragedy to families and friends" whereas physician assisted deaths "are peaceful and generally supported by loved ones."[28] Moreover, the AGC's argument is contrary to the evidence and the trial judge's finding that the criminal prohibition on medically assisted dying results in some irremediably ill people ending their lives prematurely because they fear that the unpredictable trajectory of their illness will progress to the point where they are no longer able to exercise any control over the timing and manner of their deaths.[29] These premature deaths often occur in secret (because individuals fear exposing caregivers to criminal liability) and/or through violent means (because individuals have no peaceful means available to them). These deaths therefore have the same type of traumatic and devastating consequences for loved ones as traditional suicides. Thus the current regime does not, in fact, have the asserted salutary effect of affirming life and reducing the social harms associated with suicide.

18. In assessing the impugned laws' deleterious effects, the inadequacy of palliative care must be considered. According to expert evidence, some patients experience uncontrollable pain and other intolerable symptoms such as severe vomiting, shortness of breath and nausea that cannot be alleviated by anything other than terminal sedation.[30] Moreover, some individuals who are grievously and irremediably ill seek a peaceful and hastened death, not because of uncontrollable pain or other physical symptoms, but due to their "existential suffering", resulting from profoundly diminished quality of life and a subjective experience of loss of dignity.[31] Palliative care frequently does not address these patients' needs. For individuals whose symptoms are not controlled by available treatments, the absolute prohibition on assisted dying subjects them to relentless, intolerable and sometimes prolonged suffering -- a deleterious effect that is disproportionate in its severity to any salutary benefits of the impugned laws.

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[28] Affidavit of Prof. James Werth, sworn Nov 1, 2011 at para 19. See also Affidavit #2 of Prof. Helene Starks, sworn Oct 31, 2011, at para 7.

[29] Trial judgment at para 1322; Affidavit of Leslie Laforest, sworn Aug 22, 2011 at paras 40-41; Affidavit of Lee Carter, sworn Aug 24, 2011 at para 33.

[30] Affidavit of Dr. William Shoichet, sworn Aug 22, 2011 at para 6; Cross examination of Dr. Linda Ganzini, Transcript of Proceedings in Chambers (Day 1), Nov 14, 2011 at p 74, lines 6-32; Expert report of Dr. José Pereira at p 30. See also Trial judgment at paras 4 and 190.

[31] Trial judgment at para 190. Affidavit of Dr. David Boyes, sworn Jul 31, 2011 at para 11; Affidavit #1 of Dr. Linda Ganzini, sworn Aug 24, 2011 at para 45; Affidavit of Nica Joy Cordover, sworn Aug 24, 2011 at para 14; Affidavit of Dr. Michael Ashby, sworn Aug 26, 2011 at para 18; Affidavit #1 of Prof. Helene Starks, sworn Aug 29, 2011 at para 24; Affidavit #1 of Dr. Douglas McGregor, sworn Sept 23, 2011 at para 45.

### E. The Appropriate Remedy in this Case

19. The trial judge correctly issued declaratory orders, striking down the impugned laws to the extent of their inconsistency with *Charter* rights. She erred, however, by restricting the scope of the declarations to persons who are "not clinically depressed".[32] Expert evidence establishes that depressive disorders vary significantly in severity and do not necessarily impair a person's decisional capacity.[33] Individuals diagnosed with a depressive disorder, who have concurrent grievous and irremediable illnesses and who request assistance to hasten their death in order to alleviate unremitting suffering, should be medically assessed to determine whether the severity of their depressive symptoms is impairing their decisional competence. To automatically preclude their access to medically assisted dying based on a presumption that they do not have decisional capacity would constitute discrimination based on mental disability.

## PART IV - COSTS

20. DWD takes no position with respect to the costs issues between the parties.

## PART V - ORDERS SOUGHT

21. DWD requests that the Court allow its counsel to make oral submissions at the hearing. DWD asks that this Court ultimately issue a declaration of immediate constitutional invalidity to the extent that the impugned laws criminalize medically assisted dying.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27 th day of August 2014,

Kasi Pul
for:

**Cynthia Petersen**
**Kelly Doctor**
**SACK GOLDBLATT MITCHELL LLP**
**Solicitors for the Intervener**
**Dying With Dignity**

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[32] Trial judgment at para 1393.

[33] Affidavit of Dr. Derryck Smith, sworn Aug 31, 2011 at paras 12-13; Affidavit of Dr. Martha Donnelly, sworn Aug 29, 2011 at paras 11-12; Affidavit #1 of Prof. Helene Starks, sworn Aug 29, 2011 at para 36; Affidavit #2 of Prof. Battin, sworn Nov 3, 2011, Exhibit B, at p 14.

# PART VI - TABLE OF AUTHORITIES

| **Case law** | **Paragraphs** |
|---|---|
| *AC v Manitoba (Director of Child and Family Services)*, [2009] 2 SCR 181 | 11 |
| *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 | 3 |
| *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 | 3 |
| *Canada (Attorney General) v Bedford*, 2013 SCC 72 | 7 |
| *Carter v Canada (Attorney General)*, 2012 BCSC 886 | 7, 8, 15, 17, 18, 19 |
| *Carter v Canada (Attorney General)*, 2013 BCCA 435 | 3 |
| *Ciarlariello v Schacter*, [1993] 2 SCR 119 | 11 |
| *Godbout v Longueuil (City)*, [1997] 3 SCR 844 | 3 |
| *Granovsky v Canada (Minister of Employment and Immigration)*, [2000] 1 SCR 703 | 15 |
| *Malette v Shulman*, (1990), 72 OR (2d) 417 (CA) | 11 |
| *O'Sullivan v Canada (MNR)*, [1992] 1 FC 122 | 3 |
| *Quebec (Attorney General) v A*, 2013 SCC 5, [2013] 1 SCR 61 | 3 |
| *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295 | 3 |
| *R v Labaye*, [2005] 3 SCR 728 | 3 |
| *R v Morgentaler*, [1988] 1 SCR 30 | 3, 7, 9 |
| *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 | 4, 11 |
| **Legislation** | |
| *Civil Code of Quebec*, LRQ c C-1991, arts 3, 10, 11 | 11 |

# PART VII - LEGISLATION

***Criminal Code*, R.S.C. 1985, c. C-46**

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| Consent to death<br><br>14. No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given. | Consentement à la mort<br><br>14. Nul n'a le droit de consentir à ce que la mort lui soit infligée, et un tel consentement n'atteint pas la responsabilité pénale d'une personne par qui la mort peut être infligée à celui qui a donné ce consentement. |
| Parties to offence<br><br>21. (1) Every one is a party to an offence who<br><br>(a) actually commits it;<br><br>(b) does or omits to do anything for the purpose of aiding any person to commit it; or<br><br>(c) abets any person in committing it.<br><br>Common intention<br><br>(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence. | Participants à une infraction<br><br>21. (1) Participent à une infraction :<br><br>a) quiconque la commet réellement;<br><br>b) quiconque accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre;<br><br>c) quiconque encourage quelqu'un à la commettre.<br><br>Intention commune<br><br>(2) Quand deux ou plusieurs personnes forment ensemble le projet de poursuivre une fin illégale et de s'y entraider et que l'une d'entre elles commet une infraction en réalISAnt cette fin commune, chacune d'elles qui savait ou devait savoir que la réalISAtion de l'intention commune aurait pour conséquence probable la perpétration de l'infraction, participe à cette infraction. |
| Person counselling offence<br><br>22. (1) Where a person counsels another person to be a party to an offence and that other | Personne qui conseille à une autre de commettre une infraction<br><br>22. (1) Lorsqu'une personne conseille à une autre personne de participer à une infraction et |

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| person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled. | que cette dernière y participe subséquemment, la personne qui a conseillé participe à cette infraction, même si l'infraction a été commise d'une manière différente de celle qui avait été conseillée. |
| Idem | Idem |
| (2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling. | (2) Quiconque conseille à une autre personne de participer à une infraction participe à chaque infraction que l'autre commet en conséquence du conseil et qui, d'après ce que savait ou aurait dû savoir celui qui a conseillé, était susceptible d'être commise en conséquence du conseil. |
| Definition of "counsel" | Définitions de « conseiller » et de « conseil » |
| (3) For the purposes of this Act, "counsel" includes procure, solicit or incite.<br><br>. | (3) Pour l'application de la présente loi, « conseiller » s'entend d'amener et d'inciter, et « conseil » s'entend de l'encouragement vISAnt à amener ou à inciter. |
| Homicide | Homicide |
| 222. (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being. | 222. (1) Commet un homicide quiconque, directement ou indirectement, par quelque moyen, cause la mort d'un être humain. |
| Kinds of homicide | Sortes d'homicides |
| (2) Homicide is culpable or not culpable. | (2) L'homicide est coupable ou non coupable. |
| Non culpable homicide | Homicide non coupable |
| (3) Homicide that is not culpable is not an offence. | (3) L'homicide non coupable ne constitue pas une infraction. |
| Culpable homicide | Homicide coupable |
| (4) Culpable homicide is murder or manslaughter or infanticide. | (4) L'homicide coupable est le meurtre, l'homicide involontaire coupable ou l'infanticide. |

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| Idem | Idem |
| (5) A person commits culpable homicide when he causes the death of a human being, | (5) Une personne commet un homicide coupable lorsqu'elle cause la mort d'un être humain : |
| (a) by means of an unlawful act; | a) soit au moyen d'un acte illégal; |
| (b) by criminal negligence; | b) soit par négligence criminelle; |
| (c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or | c) soit en portant cet être humain, par des menaces ou la crainte de quelque violence, ou par la supercherie, à faire quelque chose qui cause sa mort; |
| (d) by wilfully frightening that human being, in the case of a child or sick person. | d) soit en effrayant volontairement cet être humain, dans le cas d'un enfant ou d'une personne malade. |
| Exception | Exception |
| (6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law. | (6) Nonobstant les autres dispositions du présent article, une personne ne commet pas un homicide au sens de la présente loi, du seul fait qu'elle cause la mort d'un être humain en amenant, par de faux témoignages, la condamnation et la mort de cet être humain par sentence de la loi. |

| Suicide | Suicide |
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| Counselling or aiding suicide | Fait de conseiller le suicide ou d'y aider |
| 241. Everyone who | 241. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, selon le cas : |
| (a) counsels a person to commit suicide, or | a) conseille à une personne de se donner la mort; |
| (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. | b) aide ou encourage quelqu'un à se donner la mort, que le suicide s'ensuive ou non. |

***Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11**

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| 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. | 1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique. |
| 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. | 7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale. |
| 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<br><br>(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. | 15 (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.<br><br>(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques. |