

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

BETWEEN:

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

Appellants

(Respondents/Appellants on Cross-Appeal)

AND:

ATTORNEY GENERAL OF CANADA

Respondent

(Appellant/Respondent on Cross-Appeal)

AND BETWEEN:

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

**Appellants
(Respondents)**

AND:

ATTORNEY GENERAL OF CANADA

**Respondent
(Respondent)**

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

**Respondent
(Appellant)**

AND:

ATTORNEY GENERAL OF ONTARIO; ATTORNEY GENERAL OF QUEBEC;
COUNCIL OF CANADIANS WITH DISABILITIES AND THE CANADIAN ASSOCIATION FOR COMMUNITY LIVING;
CHRISTIAN LEGAL FELLOWSHIP; CANADIAN HIV/AIDS LEGAL NETWORK (THE 'LEGAL NETWORK') AND THE HIV &
AIDS LEGAL CLINIC ONTARIO ("HALCO"); ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA;
PHYSICIANS' ALLIANCE AGAINST EUTHANASIA; EVANGELICAL FELLOWSHIP OF CANADA; CHRISTIAN MEDICAL AND
DENTAL SOCIETY OF CANADA; CANADIAN FEDERATION OF CATHOLIC PHYSICIANS' SOCIETIES; DYING WITH
DIGNITY; CANADIAN MEDICAL ASSOCIATION; CATHOLIC HEALTH ALLIANCE OF CANADA; CRIMINAL LAWYERS'
ASSOCIATION (ONTARIO); FAREWELL FOUNDATION FOR THE RIGHT TO DIE; ASSOCIATION QUÉBÉCOISE POUR LE
DROIT DE MOURIR DANS LA DIGNITÉ; CANADIAN CIVIL LIBERTIES ASSOCIATION; CATHOLIC CIVIL RIGHTS LEAGUE;
FAITH AND FREEDOM ALLIANCE AND PROTECTION OF CONSCIENCE PROJECT; ALLIANCE OF PEOPLE WITH
DISABILITIES WHO ARE SUPPORTIVE OF LEGAL ASSISTED DYING SOCIETY; CANADIAN UNITARIAN COUNCIL;
EUTHANASIA PREVENTION COALITION AND EUTHANASIA PREVENTION COALITION – BRITISH COLUMBIA

Interveners

**FACTUM OF THE INTERVENER
THE ALLIANCE OF PEOPLE WITH DISABILITIES
WHO ARE SUPPORTIVE OF LEGAL ASSISTED DYING SOCIETY
(PURSUANT TO RULES OF THE SUPREME COURT OF CANADA, RULE 42)**

BORDEN LADNER GERVAIS LLP
1200 – 200 Burrard Street
Vancouver, BC V7X 1T2
Angus M. Gunn QC

Tel: (604) 687-5744
Fax: (604) 687-1415
E-mail: agunn@blg.com

Solicitors for the Intervener
The Alliance of People With Disabilities Who are
Supportive of Legal Assisted Dying Society

BORDEN LADNER GERVAIS LLP
1300 – 100 Queen Street
Ottawa, ON K1P 1J9
Nadia Effendi

Tel: (613) 237-5160
Fax: (613) 230-8842
E-mail: neffendi@blg.com

Ottawa Agent for the Intervener
The Alliance of People With Disabilities Who are
Supportive of Legal Assisted Dying Society

FARRIS, VAUGHAN, WILLS & MURPHY LLP

25th Floor, 700 West Georgia Street
Vancouver, BC
V7Y 1B3

Joseph J. Arvay QC

Alison M. Latimer

Tel: (604) 684-9151

Fax: (604) 661-9349

E-mail: jarvay@farris.com

DAVIS LLP

2800 – 666 Burrard Street
Vancouver, BC
V6C 2Z7

Sheila M. Tucker

Tel: (604) 643-2980

Fax: (604) 605-3781

E-mail: stucker@davis.ca

Solicitors for the Appellants Lee Carter,
Hollis Johnson, Dr. William Shoichet,
The British Columbia Civil Liberties Association
and Gloria Taylor

DEPARTMENT OF JUSTICE CANADA

900 – 840 Howe Street
Vancouver, BC
V6Z 2S9

Donnaree Nygard

Robert J. Frater

Tel: (604) 666-3049

Fax: (604) 775-5942

E-mail: donnaree.nygard@justice.gc.ca

Solicitors for the Respondent Attorney General
of Canada

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, Suite 2600
Ottawa, ON
K1P 1C3

Jeffrey W. Beedell

Tel: (613) 233-1781

Fax: (613) 788-3587

E-mail: jeff.beedell@gowlings.com

Ottawa Agent for the Appellants Lee Carter,
Hollis Johnson, Dr. William Shoichet,
The British Columbia Civil Liberties Association
and Gloria Taylor

DEPARTMENT OF JUSTICE CANADA

Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON
K1A 0H8

Robert J. Frater

Tel: (613) 670-6289

Fax: (613) 954-1920

E-mail: robert.frater@justice.gc.ca

Ottawa Agent for the Respondent Attorney
General of Canada

MINISTRY OF JUSTICE

Legal Services Branch
6th Floor – 1001 Douglas Street
PO Box 9280 Stn Prov Govt
Victoria, BC
V8W 9J7

Bryant Mackey
Christina Drake

Tel: (250) 356-8894
Fax: (250) 356-9154
E-mail: bryant.mackey@gov.bc.ca

Solicitors for the Respondent Attorney General
of British Columbia

ATTORNEY GENERAL OF ONTARIO

720 Bay Street, 4th Floor
Toronto, ON
M5G 2K1

Zachary Green

Tel: (416) 236-4460
Fax: (416) 326-4015
E-mail: zachary.green@ontario.ca

Solicitors for the Intervener Attorney General of
Ontario

PROCUREUR GÉNÉRAL DU QUÉBEC

1200, Route de l'Église, 2ème étage
Québec, QC
G1V 4M1

Sylvain Leboeuf
Sylviane Goulet

Tel: (418) 643-1477
Fax: (418) 644-7030
E-mail: sylvain.leboeuf@justice.gouv.qc.ca

Solicitors for the Intervener Attorney General of
Québec

BURKE-ROBERTSON

441 MacLaren Street, Suite 200
Ottawa, ON
K2P 2H3

Robert E. Houston QC

Tel: (613) 236-9665
Fax: (613) 235-4430
E-mail: rhouston@burkerobertson.com

Ottawa Agent for the Respondent Attorney
General of British Columbia

BURKE-ROBERTSON

441 MacLaren Street, Suite 200
Ottawa, ON
K2P 2H3

Robert E. Houston QC

Tel: (613) 236-9665
Fax: (613) 235-4430
E-mail: rhouston@burkerobertson.com

Ottawa Agent for the Intervener Attorney
General of Ontario

NOËL & ASSOCIÉS

111 Champlain Street
Gatineau, QC
J8X 3R1

Pierre Landry

Tel: (819) 771-7393
Fax: (819) 771-5397
E-mail: p.landry@noelassocies.com

Ottawa Agent for the Intervener Attorney
General of Québec

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Box 10026, Pacific Ctr. S. TD Bank Twr
25th Floor – 700 Georgia Street West
Vancouver, BC
V7Y 1B3

Timothy A. Dickson
Ryan J. M. Androsoff

Tel: (604) 661-9341
Fax: (604) 661-9349
E-mail: tdickson@farris.com

Solicitors for the Intervener
Canadian Unitarian Council

GRATL & COMPANY

302 – 560 Beatty Street
Vancouver, BC
V6B 2L3

Jason B. Gratl

Tel: (604) 694-1919
Fax: (604) 608-1919
E-mail: jason@gratlandcompany.com

Solicitors for the Intervener
Farewell Foundation for the Right to Die

MILLER THOMSON LLP

3000, 700 – 9th Avenue SW
Calgary, AB
T2P 3V4

Gerald D. Chipeur QC

Tel: (403) 298-2425
Fax: (403) 262-0007
E-mail: gchipeur@millerthomson.com

Solicitors for the Intervener
Christian Legal Fellowship

BORDEN LADNER GERVAIS LLP

1300 – 100 Queen Street
Ottawa, ON
K1P 1J9

Nadia Effendi

Tel: (613) 237-5160
Fax: (613) 230-8842
E-mail: neffendi@blg.com

Ottawa Agent for the Intervener
Canadian Unitarian Council

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, 26th Floor
Ottawa, ON
K1P 1C3

Guy Régimbald

Tel: (613) 786-0197
Fax: (613) 563-9869
E-mail: guy.regimbald@gowlings.com

Ottawa Agent for the Intervener
Farewell Foundation for the Right to Die

SUPREME ADVOCACY LLP

103 – 340 Gilmour Street
Ottawa, ON
K2P 0R3

Marie-France Major

Tel: (613) 695-8855 ext 102
Fax: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for the Intervener
Christian Legal Fellowship

GEOFFREY TROTTER LAW CORPORATION

1700 – 1185 Georgia Street West
Vancouver, BC
V6E 4E6

Geoffrey Trotter

Tel: (604) 678-9190
Fax: (604) 259-2459
E-mail: gt@gtlawcorp.com

Solicitors for the Intervener
Evangelical Fellowship of Canada

SCHER LAW PROFESSIONAL CORPORATION

210 – 69 Bloor Street East
Toronto, ON
M4W 1A9

Hugh R. Scher
Geoff Cowper QC

Tel: (416) 515-9686
Fax: (416) 969-1815
E-mail: hugh@sdlaw.ca

Solicitors for the Intervener
Euthanasia Prevention Coalition and
Euthanasia Prevention Coalition – British
Columbia

BAKERLAW

509 – 4711 Yonge Street
Toronto, ON
M2N 6K8

David Baker
Sarah Mohamed

Tel: (416) 533-0040
Fax: (416) 533-0050
E-mail: dbaker@bakerlaw.ca

Solicitors for the Intervener
Council of Canadians with Disabilities and the
Canadian Association for Community Living

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Albertos Polizogopoulos

Tel: (613) 241-2701
Fax: (613) 241-2599
E-mail: albertos@vdg.ca

Ottawa Agent for the Intervener
Evangelical Fellowship of Canada

FASKEN MARTINEAU DUMOULIN LLP

1300 – 55 Metcalfe Street
Ottawa, ON
K1P 6L5

Yael Wexler

Tel: (613) 236-3882
Fax: (613) 230-6423
E-mail: ywexler@fasken.com

Ottawa Agent for the Intervener
Euthanasia Prevention Coalition and
Euthanasia Prevention Coalition – British
Columbia

SUPREME ADVOCACY LLP

103 – 340 Gilmour Street
Ottawa, ON
K2P 0R3

Marie-France Major

Tel: (613) 695-8855 ext 102
Fax: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for the Intervener
Council of Canadians with Disabilities and the
Canadian Association for Community Living

NORTON ROSE FULBRIGHT CANADA LLP

1, Place Ville Marie
Bureau 2500
Montréal, QC
H3B 1R1

Pierre Bienvenu

Andres C. Garin

Vincent Rochette

Tel: (514) 847-4452

Fax: (514) 286-5474

E-mail: pierre.bienvenu@nortonrose.com

Solicitors for the Intervener

Physicians' Alliance Against Euthanasia

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Albertos Polizogopoulos

Tel: (613) 241-2701

Fax: (613) 241-3599

E-mail: albertos@vdg.ca

Solicitors for the Intervener

Christian Medical and Dental Society of Canada

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Albertos Polizogopoulos

Tel: (613) 241-2701

Fax: (613) 241-3599

E-mail: albertos@vdg.ca

Solicitors for the Intervener

Canadian Federation of Catholic Physicians'
Societies

NORTON ROSE FULBRIGHT CANADA LLP

1500 – 45 O'Connor Street
Ottawa, ON
K1P 1A4

Sally Gomery

Tel: (613) 780-8604

Fax: (613) 230-5459

E-mail: sally.gomery@nortonrose.com

Ottawa Agent for the Intervener

Physicians' Alliance Against Euthanasia

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Albertos Polizogopoulos

Tel: (613) 241-2701

Fax: (613) 241-2599

E-mail: albertos@vdg.ca

Ottawa Agent for the Intervener

Christian Medical and Dental Society of Canada

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Albertos Polizogopoulos

Tel: (613) 241-2701

Fax: (613) 241-2599

E-mail: albertos@vdg.ca

Ottawa Agent for the Intervener

Canadian Federation of Catholic Physicians'
Societies

**ASSOCIATION FOR REFORMED
POLITICAL ACTION (ARPA) CANADA**

700 – 1 Rideau Street
Ottawa, ON
K1N 8S7

Andre Schutten

Tel: (613) 297-5172
Fax: (613) 670-5701
E-mail: Andre@ARPACanada.ca

Solicitors for the Intervener
Association for Reformed Political Action
(ARPA) Canada

**PALIARE, ROLAND, ROSENBERG,
ROTHSTEIN, LLP**

155 Wellington Street West
35th Floor
Toronto, ON
M5V 3H1

**Gordon Capern
Michael Fenrick**

Tel: (416) 646-4311
Fax: (416) 646-4301
E-mail: gordon.capern@paliareroland.com

Solicitors for the Intervener
Canadian HIV/AIDS Legal Network and the HIV
& AIDS Legal Clinic Ontario

SACK GOLDBLATT MITCHELL LLP

1100 – 20 Dundas Street West
Box 180
Toronto, ON
M5G 2G8

**Cynthia Petersen
Kelly Doctor**

Tel: (416) 977-6070
Fax: (416) 591-7333
E-mail: cpetersen@sgmlaw.com

Solicitors for the Intervener
Dying With Dignity

**ASSOCIATION FOR REFORMED
POLITICAL ACTION (ARPA) CANADA**

700 – 1 Rideau Street
Ottawa, ON
K1N 8S7

Andre Schutten

Tel: (613) 297-5172
Fax: (613) 670-5701
E-mail: Andre@ARPACanada.ca

Ottawa Agent for the Intervener
Association for Reformed Political Action
(ARPA) Canada

SUPREME ADVOCACY LLP

103 – 340 Gilmour Street
Ottawa, ON
K2P 0R3

Marie-France Major

Tel: (613) 695-8855 ext 102
Fax: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for the Intervener
Canadian HIV/AIDS Legal Network and the HIV
& AIDS Legal Clinic Ontario

SACK GOLDBLATT MITCHELL LLP

500 – 30 Metcalfe Street
Ottawa, ON
K1P 5L4

Raija Pulkkinen

Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: rpulkkinen@sgmlaw.com

Ottawa Agent for the Intervener
Dying With Dignity

POLLEY FAITH LLP

1300 – 80 Richmond Street West
Toronto, ON
M5H 2A4

Harry Underwood

Tel: (416) 365-6446
Fax: (416) 365-1601
E-mail: hunderwood@polleyfaith.com

Solicitors for the Intervener
Canadian Medical Association

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Russell G. Gibson
Albertos Polizogopoulos

Tel: (613) 241-2701 ext 229
Fax: (613) 241-2599
E-mail: russell.gibson@vdg.ca

Solicitors for the Intervener
Catholic Health Alliance of Canada

SACK GOLDBLATT MITCHELL LLP

1100 – 20 Dundas Street West
Box 180
Toronto, ON
M5G 2G8

Marlys A. Edwardh
Daniel Sheppard

Tel: (416) 979-4380
Fax: (416) 979-4430
E-mail: medwardh@sgmlaw.com

Solicitors for the Intervener
Criminal Lawyers' Association (Ontario)

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, 26th Floor
Ottawa, ON
K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
E-mail: lynne.watt@gowlings.com

Ottawa Agent for the Intervener
Canadian Medical Association

VINCENT DAGENAIS GIBSON LLP

400 – 260 Dalhousie Street
Ottawa, ON
K1N 7E4

Albertos Polizogopoulos

Tel: (613) 241-2701
Fax: (613) 241-2599
E-mail: russell.gibson@vdg.ca

Ottawa Agent for the Intervener
Catholic Health Alliance of Canada

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, 26th Floor
Ottawa, ON
K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
E-mail: lynne.watt@gowlings.com

Ottawa Agent for the Intervener
Criminal Lawyers' Association (Ontario)

GRATL & COMPANY

302 – 560 Beatty Street
Vancouver, BC
V6B 2L3

Jason B. Gratl

Tel: (604) 694-1919
Fax: (604) 608-1919
E-mail: jason@gratlandcompany.com

Solicitors for the Intervener
Association québécoise pour le droit de mourir
dans la dignité

BORDEN LADNER GERVAIS LLP

Scotia Plaza, 40 King Street West
Toronto, ON
M5H 3Y4

Christopher D. Bredt
Ewa Krajewska
Margot Finley

Tel: (416) 367-6165
Fax: (416) 361-7063
E-mail: cbredt@blg.com

Solicitors for the Intervener
Canadian Civil Liberties Association

BENNETT JONES LLP

Suite 3400, P.O. Box 130
One First Canadian Place
Toronto, ON
M5X 1A4

Robert W. Staley
Ranjan K. Agarwal
Jack R. Maslen

Tel: (416) 777-4857
Fax: (416) 863-1716
E-mail: staleyr@bennettjones.ca

Solicitors for the Intervener
Catholic Civil Rights League

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, 26th Floor
Ottawa, ON
K1P 1C3

Guy Régimbald

Tel: (613) 786-0197
Fax: (613) 563-9869
E-mail: guy.regimbald@gowlings.com

Ottawa Agent for the Intervener
Association québécoise pour le droit de mourir
dans la dignité

BORDEN LADNER GERVAIS LLP

1300 – 100 Queen Street
Ottawa, ON
K1P 1J9

Nadia Effendi

Tel: (613) 237-5160
Fax: (613) 230-8842
E-mail: neffendi@blg.com

Ottawa Agent for the Intervener
Canadian Civil Liberties Association

BENNETT JONES LLP

1900 – 45 O'Connor Street
World Exchange Plaze
Ottawa, ON
K1P 1A4

Sheridan Scott

Tel: (613) 683-2302
Fax: (613) 683-2323
E-mail: scotts@bennettjones.com

Ottawa Agent for the Intervener
Catholic Civil Rights League

BENNETT JONES LLP
Suite 3400, P.O. Box 130
One First Canadian Place
Toronto, ON
M5X 1A4

Robert W. Staley
Ranjan K. Agarwal
Jack R. Maslen

Tel: (416) 777-4857
Fax: (416) 863-1716
E-mail: staleyr@bennettjones.ca

Solicitors for the Intervener
Faith and Freedom Alliance and Protection of
Conscience Project

BENNETT JONES LLP
1900 – 45 O'Connor Street
World Exchange Plaza
Ottawa, ON
K1P 1A4

Sheridan Scott

Tel: (613) 683-2302
Fax: (613) 683-2323
E-mail: scotts@bennettjones.com

Ottawa Agent for the Intervener
Faith and Freedom Alliance and Protection of
Conscience Project

**FACTUM OF THE INTERVENER
THE ALLIANCE OF PEOPLE WITH DISABILITIES
WHO ARE SUPPORTIVE OF LEGAL ASSISTED DYING SOCIETY
(PURSUANT TO RULES OF THE SUPREME COURT OF CANADA, RULE 42)**

Table of Contents

PART I	OVERVIEW OF POSITION AND STATEMENT OF RELEVANT FACTS.....	1
PART II	OVERVIEW OF POSITION WITH RESPECT TO APPELLANTS' QUESTIONS	2
PART III	ARGUMENT	3
	A. Analytical Framework	3
	B. Application of Analytical Framework.....	3
	1. Impugned Laws' Breach of Section 7	3
	2. Impugned Laws' Breach of Section 15	5
	3. Section 1 Does Not Salvage Impugned Laws' Breaches of Sections 7 and 15	6
PART IV	SUBMISSIONS ON COSTS	9
PART V	ORDER SOUGHT	10
PART VI	TABLE OF AUTHORITIES	11
PART VII	STATUTES RELIED ON.....	15
	A. <i>Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, Sections 1, 7, and 15.</i>	
	B. <i>Criminal Code, R.S.C. 1985, c. C-46, Sections 14, 21, 22, 222, and 241.....</i>	

PART I OVERVIEW OF POSITION AND STATEMENT OF RELEVANT FACTS

1. The Alliance of People With Disabilities Who are Supportive of Legal Assisted Dying Society (the “Alliance of People With Disabilities”) established itself in response to the revitalized public discourse in Canada on the issue of physician-assisted dying. It sought and obtained intervener standing in this appeal on the basis of the distinct perspective that it offers on several of the issues at hand.
2. The availability of choice in the mode and timing of one’s own death is a central concern of the values of autonomy and dignity. For individuals who, by reason of physical disability, are unable to take steps to end their lives, those values call for protection – not criminalization – of the right to choose physician-assisted dying. The Alliance of People With Disabilities advocates for the recognition of this right for adult persons of sound mind, who suffer grievous and irremediable disease or progressive disability, and who have determined that their suffering is no longer tolerable.
3. The Alliance of People With Disabilities’ members are leading advocates for disability rights. Their long-standing community involvements have generated a wide range of experiences in law reform, policy making, constitutional litigation, and community leadership. These committed individuals have been able, through their advocacy efforts and their own lived experience with physical disability, to acquire a nuanced understanding of how an absolute prohibition on physician-assisted dying engages and affects the interests of persons with disabilities. The Alliance of People With Disabilities offers that distinct perspective to this Court.
4. Chief among the guiding principles of the Alliance of People With Disabilities are the central tenets of the disability rights movement – equality, autonomy, freedom of choice, and the right to self-determination of people with disabilities – and the statement that persons with disabilities are capable of making rational, voluntary, and independent decisions to hasten their own deaths.
5. The Alliance of People With Disabilities adopts and relies upon the statement of facts set out in paragraphs 1 through 24 of the appellants’ factum.

**PART II OVERVIEW OF POSITION
WITH RESPECT TO APPELLANTS' QUESTIONS**

6. Of the issues raised on appeal by the appellants, the Alliance of People With Disabilities offers its unique perspective on the following three:

- (a) Do sections 14, 21, 22, 222, and 241 of the *Criminal Code*¹ (the "Impugned Laws") infringe section 7 of the *Canadian Charter of Rights and Freedoms*?²
- (b) Do the Impugned Laws infringe section 15 of the *Charter*?
- (c) Is any infringement of section 7 or section 15 a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Charter*?

¹ R.S.C. 1985, c. C-46.

² Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

PART III ARGUMENT

A. ANALYTICAL FRAMEWORK

7. The Alliance of People With Disabilities maintains that the Impugned Laws unjustifiably infringe the section 7 and 15(1) *Charter* rights of those individuals

- of sound mind who,
- by reason of grievous and irremediable illness or progressive disability,
- are or will be unable to end of their own lives without assistance

by prohibiting the freedom to choose physician-assisted dying, under proper safeguards, to control intolerable suffering and to have autonomy and dignity in death.

8. The Alliance of People With Disabilities relies upon the analytical frameworks set out in the appellants' factum for each of section 7 and 15(1) as the foundation for its submissions.

B. APPLICATION OF ANALYTICAL FRAMEWORK

1. Impugned Laws' Breach of Section 7

(a) Security of the Person and the Foreknowledge of Choice

9. The right to security of the person protects both the physical and psychological integrity of the individual.³ In depriving individuals of such a fundamental choice as how and when to die, the state impinges upon the security of persons who are suffering acutely and are without control over their physical fate. This intrusion is vividly evidenced in the affidavits of individuals such as Gloria Taylor and Peter Fenker.

10. Perhaps less conspicuous is the way in which the Impugned Laws engage the psychological integrity of persons whose physical disability causes them to live with the knowledge that they may become physically unable to end their lives without assistance. Significant psychological stress is experienced as a consequence, as

³ *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 at 586-588 (B.C.), Alliance BOA, Tab 6.

evidenced by the affidavits of Susan Bracken,⁴ Elayne Shapray,⁵ and Ian Petrie.⁶ For these persons, the prospect of choice in dying offers security in living, and respects the autonomy and self-determination of persons with disabilities.

(b) Impugned Laws' Discordance with Principles of Fundamental Justice

11. The Attorney General of Canada ("AGC") identifies the protection of vulnerable people as one of the purposes of the Impugned Laws.⁷ The vulnerable group repeatedly referenced throughout the pleadings is "people who are ill and disabled". This expression appears to subsume every possible disability under its tent, uniformly imposing vulnerability on an entire class of persons.⁸

12. The AGC's pleadings not only perpetuate prejudice and stereotypes but also disclose the Impugned Laws' overbreadth and arbitrariness. An absolute prohibition prejudicially deems as potentially vulnerable all persons with disabilities and paternalistically blankets those who neither need nor wish the state's protection in a way that disrespects their autonomy. The effect of overbreadth in this case is the arbitrary application of the law (on either of the doctrinal definitions of arbitrariness currently competing for ascendancy in this Court):

- If not all persons with disabilities are vulnerable, then the prohibition as applied to them is not necessary to further the Government's stated objective.
- If not all persons with disabilities are vulnerable, then the deprivation of their rights bears no relation to the state interest that lies behind the Impugned Laws.⁹

⁴ Affidavit #1 of Susan Bracken, para. 14, A.R. Vol. XIII, p. 1243 at 1426.

⁵ Affidavit #1 of Elayne Shapray, para. 14, A.R. Vol. IX, p. 335 at 338.

⁶ Affidavit #1 of Ian F. Petrie, paras. 14-17, A.R. Vol. XVII, p. 2933 at 2935-2936.

⁷ Respondent AGC's Factum, paras. 4, 66, 86, 108, 119, 132, 139, 142, 146, 147, 148, 152, 155, 157, 158, 160, and 161.

⁸ Amended Response of the Attorney General of Canada to Amended Civil Claim (16 September 2011), paras. 6, 12, 14, 16, and 18 (Part 1) and paras. 11 and 14 (Part 3), A.R. Vol. IV, pp. 96-100, 102, and 103.

⁹ *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134 at 187 (para. 132) (B.C.), Alliance BOA, Tab 1.

13. Few laws intrude on the inner sanctum of personal decision-making as those that criminalize abortion or physician-assisted death. The laws challenged in *Morgentaler* remain a comparable benchmark against which to measure the constitutionality of the Impugned Laws.¹⁰ The *Criminal Code*'s blanket prohibition of physician-assisted death affords no mechanism to relieve from the unconstitutional application of the Impugned Laws those individuals who neither require nor wish the state's protection. An absolute prohibition and a "uniform" stance on physician-assisted dying not only amount to adverse-effects discrimination but also are grossly disproportionate to the denial of freedom of choice and autonomy.

2. Impugned Laws' Breach of Section 15

14. The Impugned Laws adversely affect those who, by reason of physical disability, are or will be unable to end their own lives without assistance. The Alliance of People With Disabilities adopts and relies upon the appellants' submissions on the first step of the inquiry under section 15(1) – whether the Impugned Laws have an adverse effect on persons with physical disabilities – and focuses here upon discrimination.

15. The purpose of the Impugned Laws is a relevant contextual factor in analyzing the substantive discrimination alleged in this case.¹¹ The legislative purpose that the AGC has identified for the Impugned Laws incorporates the untenable assumption that those persons with a disability (who would require assistance to end their own lives) are by definition vulnerable or at least more potentially vulnerable to coercion or undue influence than others.

16. An absolute prohibition on physician-assisted dying that rests on the concern that such a practice would threaten people with disabilities, due to their particular potential vulnerability and susceptibility to coercion, denigrates and is paternalistic of the disability community. To contend that the mere fact of physical disability renders otherwise autonomous decisions less than fully autonomous not only

¹⁰ *Rodriguez v. British Columbia (Attorney General)* (1993), 76 B.C.L.R. (2d) 145 at 164 (para. 76), 22 B.C.A.C. 266, [1993] 3 W.W.R. 553, 79 C.C.C. (3d) 1, 14 C.R.R. (2d) 34 (C.A.), Alliance BOA, Tab 5.

¹¹ *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396 at 423-424 (paras. 65-67) (B.C.), Alliance BOA, Tab 7.

perpetuates prejudice but also fails to correspond with the actual circumstances of persons with disabilities. Both of these observations are contextual factors relevant to the substantive equality inquiry under section 15(1).¹²

3. Section 1 Does Not Salvage Impugned Laws' Breaches of Sections 7 and 15

(a) Impugned Laws' Breach of Section 7 Unjustifiable Under Section 1

17. It is illegitimate in a free and democratic society to treat as an instrument of government policy the imposition of unnecessary pain and suffering through overbroad enactments that offend the principles of natural justice. Any violation by the Impugned Laws of section 7 rights in a manner inconsistent with the principles of fundamental justice should be incapable of justification under section 1.¹³

18. The following submissions are made in the alternative, and with additional reference to the Impugned Laws' breach of section 15.

(b) Further and Alternatively, Impugned Laws' Breach of Section 7 and Section 15 Unjustified Under Section 1

i. Blanket Prohibitions Unacceptable Where More Nuanced Approach Still Achieves Governmental Objective

19. As this court confirmed in *PHS Community Services Society*,¹⁴ an absolute prohibition on protected activity is constitutionally unacceptable under section 1 unless the government can prove that only a full prohibition will enable the legislative objective to be achieved. The Alliance of People With Disabilities submits that the government has not discharged that evidentiary burden in this case.¹⁵

¹² *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483 at 502-506 (paras. 17-24) (B.C.), Alliance BOA Tab 2; *Withler*, *supra*, note 11 at 418-419, 423-424 (paras. 53-54, 66), Alliance BOA, Tab 7. See also Joint Opinion of Dr. Sheila A. M. McLean and Dr. Laura Williamson (28 October 2011), para. 16, Exhibit "B", Affidavit #1 of Sheila McLean, A.R. Vol. XLVII, p. 13377 (reproduced at Exhibit "B", Affidavit #1 of Laura Williamson, Joint Appeal Book, Vol. 39, pp. 13422-13423, A.R. Vol. XLVII, p. 13412).

¹³ P. W. Hogg, *Constitutional Law of Canada*, 5th Ed. Supp. (Toronto: Carswell, 2007 and looseleaf) at §38.14(b), Alliance BOA, Tab 8.

¹⁴ *PHS Community Services Society*, *supra*, note 9 at 179, 180 (paras. 109, 113), Alliance BOA, Tab 1.

¹⁵ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at 343-344 (para. 163) (Qué.), Alliance BOA, Tab 4.

ii. Impugned Laws Not Minimally Impairing: The Role of Safeguards

20. As in *Rodriguez*, the Attorneys General in this case plead that nothing short of a complete ban on physician-assisted dying can accomplish the government's objective of protecting people in vulnerable circumstances.¹⁶ On this view, no halfway measure could ensure that physician-assisted dying was made accessible only to those qualifying individuals who genuinely desired it.

21. The evidence adduced in this case does not substantiate the slippery slope concern. Persons with disabilities are not vulnerable to abuse in respect of physician-assisted dying in a properly regulated system.¹⁷ Furthermore, opposing a permissive regime with safeguards on the basis of slippery slope reasoning again manifests a prejudicial view of disability. It dispenses with critical distinctions (such as those between mental competency and not) and denigrates the entire class of persons with disabilities by asserting that there is no way to ensure that a person with a disability could ever make an independent decision to choose physician-assisted dying.

22. Although concerns about vulnerability are incapable of sustaining an absolute prohibition on physician-assisted death, they are relevant to the appropriate design of regulations around the practice of physician-assisted death. The concern to avert non-voluntary or coerced decisions around physician-assisted dying favours legislation and regulation – not vitiation – of the right to freedom of choice.

iii. System With Safeguards Provides More Security for Persons in Vulnerable Circumstances than the *Status Quo*

23. The Attorneys General apprehend a grave risk attendant upon decriminalizing physician-assisted dying: a death not freely chosen. As the Royal

¹⁶ Amended Response of the Attorney General of British Columbia to Amended Civil Claim (15 September 2011), para. 42 (Part 3), A.R. Vol. IV, p. 96 at 107; Amended Response of the Attorney General of Canada to Amended Civil Claim (16 September 2011), para. 21 (Part 1), A.R. Vol. IV, p. 110 at 114.

¹⁷ Affidavit # 1 of Margaret Pabst Battin, paras. 14-15, A.R. Vol. XI, p. 908 at 911.

Society Report notes, this risk is premised on a faulty assumption¹⁸ since assisted death occurs even under a restrictive regime.¹⁹ Where it does, no procedural safeguards operate (or at least none that is knowable, reliable, and predictable). Vulnerable persons would realize greater protection in a system that permits the choice of physician-assisted dying in accordance with specified safeguards than under the cloud of an absolute prohibition.

24. Safeguards would strengthen the protection against vulnerable persons being pressured or coerced, while still enabling adult persons of sound mind to exercise self-determination by making a voluntary choice to control the timing and manner of their own deaths. A move to decriminalize physician-assisted dying would not assume that a decision by a person with physical disability to hasten their own imminent death is rational – but nor would such a scheme succumb to the view that an autonomous decision is rendered less than fully autonomous simply because the person making it has a disability or irremediable illness. Safeguards provide security for society's vulnerable members, but also respect the capacity for self-determination of *all* persons.

25. Decriminalizing physician-assisted dying does not devalue the lives of persons living with disabilities. The Impugned Laws' blanket prohibition may respect the fact of life in the abstract, but it does not respect the capacity and right of each individual to make a subjective evaluation about his or her quality of life.

¹⁸ *The Royal Society of Canada Expert Panel: End-of-Life Decision Making* (November 2011), A.R. Vol. LII, p. 14694.

¹⁹ Affidavit #1 of Helene Starks, para. 32, A.R. Vol. XVII, p. 3052 at 3051; Affidavit of S. Lawrence Librach, para. 15, A.R. Vol. IX, p. 159 at 162.

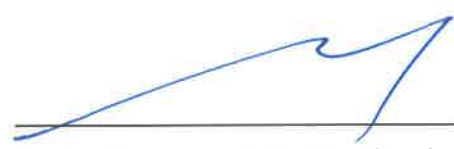
PART IV SUBMISSIONS ON COSTS

26. Pursuant to the Order pronounced on 04 July 2014 by Justice LeBel, the Alliance of People With Disabilities shall pay to the appellants and the respondents any additional disbursements occasioned by its intervention. Beyond this, the Alliance of People With Disabilities requests that no Order for costs be made against it and it seeks no costs.

PART V ORDER SOUGHT

27. The Alliance of People With Disabilities takes no position on the disposition of the appeal and seeks leave to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, 29 AUGUST 2014.



Angus M. Gunn QC (Borden Ladner Gervais LLP)
Counsel for the Intervener
The Alliance of People With Disabilities Who are
Supportive of Legal Assisted Dying Society

PART VI TABLE OF AUTHORITIES

Para(s).

Case Law

1. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 , [2011] 3 S.C.R. 134 (B.C.)..... 12, 19
2. *Kapp, R. v.*, 2008 SCC 41, [2008] 2 S.C.R. 483 (B.C.).....16
3. *Morgentaler, R. v.*, [1988] 1 S.C.R. 30 (Ont.).....13
4. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 (Qué.)..... 19
5. *Rodriguez v. British Columbia (Attorney General)* (1993), 76 B.C.L.R. (2d) 145 (C.A.)13
6. *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 (B.C.).....9
7. *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396 (B.C.).....15, 16

SECONDARY SOURCE

8. Hogg, P. W. *Constitutional Law of Canada*. 5th Ed. Supp. Toronto: Carswell, 2007 and looseleaf. 17

STATUTES

- Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 *passim*
- Criminal Code*, R.S.C. 1985, c. C-46. 6, 13

PART VII STATUTES RELIED ON

FEDERAL

Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982

Rights and freedoms in Canada

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

Life, liberty and security of the person

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.

Equality before and under law and equal protection and benefit of law

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.

Charte canadienne des droits et libertes, Partie I de la Loi constitutionnelle de 1982

Droits et libertés au Canada

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.

Vie, liberté et sécurité

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.

Égalité devant la loi, égalité de bénéfice et protection égale de la loi

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.

***Criminal Code, R.S.C. 1985, c. C-46,
Sections 14, 21, 22, 222, and 241***

Consent to death

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.

Parties to offence

21. (1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

Common intention

(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.

***Code criminal, L.R.C. (1985), ch. C-46,
arts. 14, 21, 22, 222, et 241***

Consentement à la mort

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

Participants à une infraction

21. (1) Participant à une infraction:

- a) quiconque la commet réellement;
- b) quiconque accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre;
- c) quiconque encourage quelqu'un à la commettre.

Intention commune

(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

22. (1) Where a person counsels another person to be a party to an offence and that other 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.

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.

Definition of “*counsel*”

(3) For the purposes of this Act, “*counsel*” includes procure, solicit or incite.

Homicide

222. (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

Kinds of homicide

(2) Homicide is culpable or not culpable.

Personne qui conseille à une autre de commettre une infraction

22. (1) Lorsqu’une personne conseille à une autre personne de participer à une infraction et 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

(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.

Définitions de « *conseiller* » et de « *conseil* »

(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

222. (1) Commet un homicide quiconque, directement ou indirectement, par quelque moyen, cause la mort d’un être humain.

Sortes d’homicides

(2) L’homicide est coupable ou non coupable.

Non culpable homicide

(3) Homicide that is not culpable is not an offence.

Culpable homicide

(4) Culpable homicide is murder or manslaughter or infanticide.

Idem

(5) A person commits culpable homicide when he causes the death of a human being,

- (a) by means of an unlawful act;
- (b) by criminal negligence;
- (c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or
- (d) by wilfully frightening that human being, in the case of a child or sick person.

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.

Homicide non coupable

(3) L'homicide non coupable ne constitue pas une infraction.

Homicide coupable

(4) L'homicide coupable est le meurtre, l'homicide involontaire coupable ou l'infanticide.

Idem

(5) Une personne commet un homicide coupable lorsqu'elle cause la mort d'un être humain:

- a) soit au moyen d'un acte illégal;
- b) soit par négligence criminelle;
- 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) soit en effrayant volontairement cet être humain, dans le cas d'un enfant ou d'une personne malade.

Exception

(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.

Counselling or aiding suicide

241. Every one who

(a) counsels a person to commit suicide, or

(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.

Fait de conseiller le suicide ou d'y aider

241. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, selon le cas:

a) conseille à une personne de se donner la mort;

b) aide ou encourage quelqu'un à se donner la mort,

que le suicide s'ensuive ou non.