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
(Respondents/Cross-Appellants)

- and –

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Appellant/Cross-Respondent)

- and –

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT
(Appellant)

- and –

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FACTUM OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION ("CCLA")

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TABLE OF CONTENTS

FACTUM OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION ("CCLA")

PART I - OVERVIEW

1. This appeal challenges the constitutionality of the *Criminal Code*'s provisions which prohibit assisted suicide in all circumstances. The Canadian Civil Liberties Association (the "CCLA") submits that this absolute prohibition restricts personal autonomy in a manner that unjustifiably violates the right to life, liberty, and security of the person. Moreover, the absolute nature of the prohibition is overbroad, disproportionate, and as such non-compliant with the principles of fundamental justice. The CCLA limits its argument in this appeal to two points: (A) personal autonomy, which is understood to be fundamental to the liberty and security of the person interests under s. 7, should also inform the life interest; and (B) absolute prohibitions will be held to a stringent standard of justification under s. 7.

2. The CCLA takes no position on the facts.

PART II - QUESTIONS AT ISSUE

3. The CCLA's argument in this appeal is limited to the issues identified above.

PART III - ARGUMENT

A. Personal Autonomy

(i) Personal Autonomy is at the Core of Section 7

4. This Court has repeatedly emphasized the fundamental importance of personal autonomy as a principal value underlying the liberty and security of the person interests under s. 7; so too should personal autonomy be central to the life interest.[1] This Court has had the opportunity to define the interests protected by s. 7's right to liberty and security of the person. The liberty interest protects "the core of what it means to be an autonomous human being blessed with dignity and independence in 'matters that can properly be characterized as fundamentally or

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[1] This section of the *Charter* was "enacted for the purpose of ensuring human dignity and individual control, so long as it harms no one else." *Rodriguez v British Columbia (AG)*, [1993] 3 SCR 519 at 618, CCLA BOA Tab 22 , McLachlin J, dissenting [*Rodriguez*]; *AC v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para 100, [2009] 2 SCR 181, CCLA BOA Tab 1.

inherently personal.'"[2] The security of the person interest encompasses "a notion of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference and freedom from state-imposed psychological and emotional stress."[3]

5. Unlike the other rights protected by s. 7, the life interest is not well-developed in Canadian jurisprudence. In *Chaoulli v. Quebec (A.G.)* and *Canada (A.G.) v. PHS Community Services Society*, this Court has held that lack of timely or accessible life-saving medical care will engage the right to life.[4] This right otherwise has been largely undefined.

6. While the s. 7 rights to life, liberty, and security of the person are three distinct interests, with each to be given independent significance, the *Charter* must be interpreted in such a manner that it forms a cohesive and internally consistent framework.[5] This is particularly important when rights are bonded together in one section, as the rights to life, liberty, and security of the person are under s. 7. Given that bodily integrity and personal autonomy are fundamental to the liberty and security of the person interests under s. 7, so too should these values inform the life interest. Personal autonomy in the context of the right to life should be given no less respect and significance than under the rights to liberty and security of the person.[6]

(ii) Personal Autonomy Includes the Fundamental Right to Choose to End One's Life

7. To suggest that the right to life merely enshrines the right to exist or a right not to die would be inconsistent with a generous or purposive interpretation of the *Charter*,[7] and with the ample s. 7 case law opining on human dignity and self-determination. As stated by Arbour J. in *Gosselin v. Québec (A.G.)*, "s. 7 must be interpreted as protecting something more than merely

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[2] *R v Clay*, 2003 SCC 75, [2003] 3 SCR 735 at para 31, CCLA BOA Tab 16; see also *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at para 80, CCLA BOA Tab 3; *Godbout v Longueuil (City of)*, [1997] 3 SCR 844 at para 66, CCLA BOA Tab 10.

[3] *Rodriguez, supra,* at 587-88, CCLA BOA Tab 21.

[4] *Chaoulli v Quebec (AG)*, 2005 SCC 35 at paras 123-24, [2005] 1 SCR 791 [*Chaoulli*], CCLA BOA Tab 7; *Canada (AG) v PHS Community Services Society*, 2011 SCC 44 at para 92, [2011] 3 SCR 134 [*PHS*], CCLA BOA Tab 4.

[5] *R v Morgentaler*, [1988] 1 SCR 30 at 52, CCLA BOA Tab 18; *R v Hebert*, [1990] 2 SCR 151 at 176, CCLA BOA Tab 17.

[6] As explained by the Court of Appeal for Ontario in *Fleming v Reid*, 4 OR (3d) 74, [1991] OJ No 1083 at para 39, CCLA BOA Tab 9, "The common law right to bodily integrity and personal autonomy is so entrenched in the traditions of our law as to be ranked as fundamental and deserving of the highest order of protection."

[7] See *Carter v Canada (AG)*, 2013 BCCA 435 at paras 82-88, Finch CJA, dissenting [*Carter* BCCA], CCLA BOA Tab 6. See also *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at 344, CCLA BOA Tab 15.

negative rights."[8] She wrote, "No doubt a meaningful right to life is reciprocally conditioned by these other rights: they guarantee that human life has dignity, worth and meaning."[9]

8. What then does personal autonomy mean in the context of the right to life? Surely it must mean that everyone should be able to make deeply personal decisions about their life – including, for example, deciding that there would be greater dignity in death than life, or in making the informed personal choice about whether or not to end one's own debilitating suffering.[10] As stated by the Chief Justice of British Columbia:

> Life's meaning, and by extension the life interest in s. 7, is intimately connected to the way a person values his or her lived experience. The point at which the meaning of life is lost, when life's positive attributes are so diminished as to render life valueless, when suffering overwhelms all else, is an intensely personal decision which "everyone" has the right to make for him or herself.[11]

9. The state has recognized the right to end one's own life in other contexts. Jurisprudence on informed consent to medical treatment is clear that the individual has the right to choose death if the alternative is living a life inconsistent with the individual's beliefs or desires. In *Malette v. Shulman*, for example, the Court of Appeal for Ontario stated:

> A competent adult is generally entitled to reject a specific treatment or all treatment, or to select an alternate form of treatment, even if the decision may entail risks as serious as death and may appear mistaken in the eyes of the medical profession or of the community. … The doctrine of informed consent is plainly intended to ensure the freedom of individuals to make choices concerning their medical care. For this freedom to be meaningful, people must have the right to make choices that accord with their

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[8] *Gosselin v Québec (AG)*, 2002 SCC 84 at para 348, [2002] 4 SCR 429, Arbour J, dissenting [*Gosselin*], CCLA BOA Tab 11.

[9] *Gosselin, supra,* at para 346, Arbour J, dissenting, CCLA BOA Tab 11.

[10] See *contra* the decisions cited by AG Canada at para 77 of its factum. Even if the right to life is engaged only when there is a threat of death (which, we suggest, would not be a large and liberal interpretation of the right), the right to life is engaged in forcing an earlier decision or earlier death on physically-incapable individuals who wish to die, as found by Smith J and Finch CJA, dissenting: *Carter v Canada (AG)*, 2012 BCSC 886 at para 1322 [*Carter* BCSC], CCLA BOA Tab 5; *Carter* BCCA, *supra,* at paras 119, 121. CCLA BOA Tab 6.

[11] *Carter* BCCA, *supra,* at para 86, Finch CJA, dissenting, CCLA BOA Tab 6.

> own values, regardless of how unwise or foolish those choices may appear to others.[12] [emphasis added]

Ms. Malette preferred to die rather than live with a blood transfusion. Had she been given the opportunity to choose, she would have made the inherently personal choice to favour death over living a life that was inconsistent with her religious values.[13] The Court explicitly stated that it was not for the doctor or the state to decide for her that she should choose life instead.[14]

10. Similarly, individuals can choose to end their lives for altruistic reasons, such as when an individual gives up his or her life to save another. For example, a "good Samaritan" might leap in front of a speeding car to save a child at risk or a soldier might dive on a bomb to protect others. The state even recognizes that death may be a noble and brave choice, such as by posthumously awarding these individuals for acts of courage with the Cross of Valour or the Victoria Cross.

11. Thus choosing to end one's life is not regarded as absolutely undesirable by the state in every context. An individual's decision to end his or her life for religious, altruistic, or patriotic reasons is justifiable or even valued by the state, but the individual's choice to end life in order to alleviate his or her own suffering is not. The state should not be able to constrain an informed and deeply personal choice to die in such circumstances. The right to personal autonomy is foundational to the life interest under s. 7 and thus includes the fundamental right to end one's own life.

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[12] *Malette v Shulman*, 72 OR (2d) 417, 1990 CarswellOnt 642 at para 19 (CA) [*Malette*], CCLA BOA Tab 12. See also *NB v Hôtel-Dieu de Québec*, [1992] RJQ 361, [1992] JQ No 1 at 8 (CA), CCLA BOA Tab 14, in which the patient wished to have a respirator, which was keeping her alive, removed. The plaintiff invoked the principle of autonomy of will and self-determination; she sought to "be freed from the slavery of a machine, even though her life depends on it." In order for this to be done, she required the help of a third party, since she was incapable of unhooking the machine herself. The Court concluded that she had the right to request that the respiratory support treatment be stopped and the person who stopped the respiratory support system was not committing homicide or aiding suicide.

[13] It was not Ms. Malette's religious values that allowed her to choose death, however, but her autonomy over her bodily integrity; the motivation for an individual choosing to die is that individual's prerogative, which should be free from state interference.

[14] *Malette*, *supra*, at paras 19, 34-37, CCLA BOA Tab 12. Case law on informed consent could also provide helpful guidance for development of a law that ensures each patient who chooses physician-assisted death does so in an informed manner. Indeed, this jurisprudence, along with provincial health care consent legislation, already protects against the harm s. 241(b) of the *Criminal Code* is meant to address; it ensures that any medical intervention is carried out only after a competent and fully informed individual provides consent. Accordingly, physician-assisted death would not be permitted without such informed consent.

(iii) The Preservation of Life Should Not Trump Personal Autonomy

12. Though the sanctity and inviolability of life is a fundamental principle worthy of protection, that value should not in all cases and without question trump personal autonomy, including the right to make the fundamental decision to end one's own life.

13. In *Rodriguez v. British Columbia (A.G.),* Sopinka J. on behalf of the majority drew a distinction between passively allowing someone to die and actively assisting them in death, the former reflecting the state's desire to preserve the sanctity of life, with the latter denigrating it.[15] However, dying a natural death, as opposed to a medically-assisted death, does not in and of itself have inherent value; that is, a natural death achieved after prolonged suffering and indignity does not promote the sanctity of life.

14. That the state must not be seen as condoning the taking of life is not sufficient justification for the absolute prohibition of physician-assisted death. Causing the death of another person is not a universal and unjustifiable wrong in Canadian society. In *Rodriguez*, McLachlin J. (as she then was) offered the examples of killing in self-defence or a lawful excuse for failing to provide the necessities of life as examples in which causing the death of another is not penalized.[16] The state also permits its soldiers to engage in warfare, which clearly can involve the lawful killing of particular humans in certain contexts. Where there is a valid justification for bringing about someone's death in these circumstances, the person who does so will not be held criminally responsible.

15. The state's recognition in these contexts that there may be justifications for death has not been interpreted as state endorsement of death or killing. Yet, in *Rodriguez,* Sopinka J. stated that "to permit a physician to lawfully participate in taking life would send a signal that there are circumstances in which the state approves of suicide."[17] That an act is not criminalized or penalized means only that there are no criminal consequences to such an act; it does not mean that the act is recommended or actively approved of by the state.

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[15] *Rodriguez, supra,* at 598-601, 607-08, CCLA BOA Tab 21.
[16] *Rodriguez, supra,* at 623, McLachlin J, dissenting, CCLA BOA Tab 21.
[17] *Rodriguez, supra,* at 608 [emphasis added], CCLA BOA Tab 21.

16. The state permits justifications in some contexts for choosing death over life and for taking the life of another. Prohibiting such actions in the context of physician-assisted death degrades the autonomous choice of a competent and informed, but terminally ill individual who seeks assistance in carrying out a death that he or she has freely chosen. While the state may intervene in specific circumstances to protect vulnerable people, the current prohibition conflates all individuals who are physically incapable of ending their own lives, regardless of their ability to make informed, autonomous choices.

17. To allow individuals in the specific circumstances here before the Court to choose when and how they die does not devalue life; rather, it places value on autonomy. Section 241(b) of the *Criminal Code* has the objective of safeguarding the autonomy of vulnerable persons by ensuring that their choice to die is not usurped by those who might kill them or coerce them to die. However, the law also denies autonomy from those who, with sound mind, voluntarily want to make the fundamentally personal choice to control the timing and manner of their death.

18. Given the centrality of personal autonomy to s. 7, the right to life must include the right to make fundamental personal decisions about one's own life, including whether or not to end it. The state permits individuals to choose to end their lives in other contexts, yet prohibits informed, terminally ill and suffering individuals from doing so through physician-assisted death. The absolute prohibition on physician-assisted death unjustifiably infringes upon the s. 7 rights of these individuals.

B. Absolute Prohibitions Under Section 7 Should be Difficult to Justify

(i) Section 1 Jurisprudence on Absolute Prohibitions

19. In *Bedford v. Canada (A.G.)*, this Court acknowledged that there are "parallels between the rules against arbitrariness, overbreadth, and gross proportionality under s. 7 and elements of the s. 1 analysis for justification of laws that violate *Charter* rights."[18] Because s. 1 and s. 7 are "rooted in similar concerns",[19] this Court's jurisprudence strictly scrutinizing absolute prohibitions under s. 1 should inform the proportionality analysis under s. 7.

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[18] *Bedford v Canada (AG)*, 2013 SCC 72 at para 124, [2013] 3 SCR 1101 [*Bedford*], CCLA BOA Tab 2.
[19] *Bedford, supra,* at para. 128, CCLA BOA Tab 2.

20. This Court has repeatedly made clear, in the context of its *Oakes* analyses, that absolute prohibitions will be difficult to justify. For example:

(a) In *RJR-MacDonald Inc. v. Canada (A.G.)*, an absolute prohibition on tobacco advertising failed both the rational connection and minimal impairment stages of the *Oakes* test: "As this Court has observed before, it will be more difficult to justify a complete ban on a form of expression than a partial ban. … A full prohibition will only be constitutionally acceptable under the minimal impairment stage of the analysis where the government can show that *only* a full prohibition will enable it to achieve its objective."[20]

(b) In *Multani v. Commission scolaire Marguerite-Bourgeoys*, a school board's absolute prohibition on a student wearing a kirpan unjustifiably infringed his freedom of religion under s. 2(a). While recognizing the important objective of safety in schools, this Court found that the deleterious effects of a total prohibition outweighed the salutary effects.[21]

(c) In *Chaoulli v. Quebec (A.G.)*, a challenge under s. 7 and the Quebec *Charter of Human Rights and Freedoms* to prohibitions on private health insurance, this Court held that the absolute prohibition on private health insurance could not be justified at the minimal impairment stage because it was not necessary to preserve the integrity of the public health care system. There were a wide range of measures that were less drastic and less intrusive in relation to the protected rights: "A measure as drastic as prohibiting private insurance contracts appears to be neither essential nor determinative."[22]

21. Though this case law should help guide this Court's consideration of an absolute prohibition under its s. 7 proportionality analysis, this Court has also noted that there are crucial differences between the proportionality analysis under s. 7 and balancing under s. 1.[23] In *Bedford*, this Court stated:

> [U]nder s. 7, the claimant bears the burden of establishing that the law deprives her of life, liberty or security of the person, in a manner that is not connected to the law's object or in a manner that is grossly disproportionate to the law's object. The inquiry into the purpose of the law focuses on the nature of the object, not on its

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[20] *RJR-MacDonald Inc v Canada (AG)*, [1995] 3 SCR 199 at 343-4 [emphasis added], CCLA BOA Tab 20.

[21] *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at paras 54-55, [2006] 1 SCR 256, CCLA BOA Tab 13.

[22] *Chaoulli, supra,* at para 83, CCLA BOA Tab 7; see also *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at 225, CCLA BOA Tab 8, in which the exclusion of off-reserve members of the Batchewana Indian band from the right to vote in band elections, pursuant to s. 77(1) of the *Indian Act*, was inconsistent with s. 15 of the *Charter* and was not justified under s. 1 because the complete denial of the right could not satisfy the minimal impairment requirement of *Oakes*: "Even if it is accepted that some distinction may be justified in order to protect legitimate interests of band members living on the reserve, it has not been demonstrated that a complete denial of the right of band members living off-reserve to participate in the affairs of the band through the democratic process of elections is necessary."

[23] *Bedford, supra,* at paras 124-28, CCLA BOA Tab 2.

> efficacy. The inquiry into the impact on life, liberty or security of the person is not quantitative — for example, how many people are negatively impacted — but qualitative. An arbitrary, overbroad, or grossly disproportionate impact on one person suffices to establish a breach of s. 7. To require s. 7 claimants to establish the efficacy of the law versus its deleterious consequences on members of society as a whole, would impose the government's s. 1 burden on claimants under s. 7. That cannot be right.[24] [emphasis added]

22. The different onuses and aims of the s. 7 and s. 1 analyses suggest that absolute prohibitions should be even more difficult to justify under s. 7 than s. 1. If an absolute prohibition is difficult to justify under s. 1, where it can be counterbalanced against the state's promotion of the public good, it should be even more difficult to justify under s. 7, where the question is simply whether the law's negative effect on the life, liberty or security interests of even one individual lacks a connection with or is grossly disproportionate to the law's objective. The government's "pressing and substantial" concerns that endeavor to achieve "collective goals of fundamental importance" should not weigh down the proportionality analysis under s. 7, but should be left to be balanced under s. 1.[25]

(ii) Application to This Case

23. In this case, the courts below have accepted that the objective of the absolute prohibition on physician-assisted death is the preservation of life and the protection of vulnerable individuals "from being pressured or coerced into committing suicide" at a time of weakness when they do not genuinely desire death.[26] Using the s. 1 jurisprudence above as a guide, this Court should find that an absolute ban is not required or desirable to achieve these important objectives, given that they can be advanced while also preserving individuals' s. 7 rights, including their dignity and control over their own bodies.

24. The law is overbroad. A law will be overbroad when there is no connection between the purpose of the law and its effect on a specific individual. [27] Section 241(b) may be rational in some cases, but its effects overreach in others. It deprives non-vulnerable, terminally ill and

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[24] *Bedford, supra*, at para 127, CCLA BOA Tab 2.
[25] *R v Oakes*, [1986] 1 SCR 103 at 136, CCLA BOA Tab 19.
[26] *Rodriguez, supra,* at 561-62, CCLA BOA Tab 21, Lamer CJC, dissenting, but not on this point. See also *Carter* BCSC, *supra,* at para 1190, CCLA BOA Tab 5; *Carter* BCCA, *supra*, at paras 139-46, CCLA BOA Tab 6, Finch CJA, dissenting, but not on this point.
[27] *Bedford, supra,* at para 113, CCLA BOA Tab 2.

suffering individuals who wish to end their lives at a time and in a manner of their choosing from autonomous choice, thus constraining their life, liberty and security of the person interests in a manner that is overbroad with respect to the law's objective. [28]

25. In *Rodriguez,* the majority held that s. 241(b) was not overbroad "since there is no halfway measure that could be relied upon to achieve the legislation's purpose fully."[29] Concerns about abuse, which have supported the state's blanket prohibition on assisted suicide, disregard existing laws that already safeguard against counseling suicide, taking another's life without justification, and unwanted medical intervention. The *Criminal Code* prohibits counseling suicide (s. 241(a)) and homicide (s. 222). The tort of battery protects the interest in bodily security from unwanted physical interference.[30] Provincial health care consent legislation ensures that patients (or their legally authorized decision maker) may give or withhold consent to medical intervention so long as they have provided informed consent, meaning that they have been provided with full information as to alternative courses of action and the consequences and the consent is voluntary and not obtained through misrepresentation or fraud.[31]

26. The experience of other jurisdictions, such as the Netherlands, Switzerland, Belgium, Luxembourg, and certain of the states in the United States, demonstrates that a more carefully tailored law could still achieve the government's objective without capturing clearly competent, fully informed, terminally ill and suffering individuals who sincerely wish to end their lives. These jurisdictions have demonstrated that it is possible to craft a law that upholds dignity and respects individual autonomy while also protecting the vulnerable from abuse – for example, by imposing safeguards that test the competency and comprehension of the person choosing death. Moreover, there are legislative examples in other contexts, such as the supervised injection sites considered in *Canada (A.G.) v. PHS Community Services Society*, which demonstrate that prohibitions on undesirable behavior may be effectively combined with the power to grant

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[28] *Bedford, supra,* at para 101, CCLA BOA Tab 2.
[29] *Rodriguez, supra,* at 614, CCLA BOA Tab 21.
[30] See e.g. *Malette, supra,* CCLA BOA Tab 12.
[31] See e.g. *Health Care Consent Act*, SO 1996, c 2, Sch A; *Health Care (Consent) and Care Facility (Admission) Act,* RSBC 1996, c 181.

exemptions so as to prevent a penal law from applying where it would violate the principles of fundamental justice.[32]

27. The effect of the impugned law is also grossly disproportionate to the objective. A law will be grossly disproportionate where its effects on life, liberty, or security of the person are so removed from its purpose that they cannot be rationally supported.[33] In this case, informed, terminally ill individuals who wish to die painless, dignified deaths are denied this choice, and instead forced to endure indeterminate suffering and fear. In addition to protracted physical suffering, they experience the mental suffering of knowing they have been rendered incapable of choice and must live without control over their own bodies and their futures. Alternatively, they could choose to commit suicide, either by their own hands while able to do so, thus undesirably and prematurely ending their lives, or by relying upon the help of another, thus exposing their aides to prosecution.

28. Although validly "protecting" some vulnerable persons from abuse, the impugned law imposes significant and prolonged emotional and physical suffering upon other individuals, the severity of which is out of proportion to the government's objective. Section 241(b) imposes imprisonment upon those who might assist a fully competent and informed individual enacting a decision about his or her own body, which harms no one else.

PART IV - SUBMISSIONS ON COSTS

29. The CCLA seeks no costs and asks that no costs be awarded against it.

PART V - ORDER REQUESTED

30. The CCLA respectfully seeks to present oral submissions not to exceed ten minutes.

31. The CCLA takes no position with respect to the outcome of this appeal.

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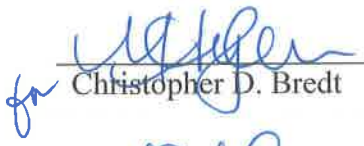
[32] See *PHS, supra,* at paras 109, 113-14, CCLA BOA Tab 4, in which the "safety valve" of s. 56 of the *Controlled Drugs and Substances Act* ("CDSA") prevented the CDSA from applying where such application would be arbitrary, overbroad or grossly disproportionate in its effects. This Court spoke in favour of a legislative scheme that combatted drug use while also respecting *Charter* rights, by combing a prohibition with the power to grant an exemption.

[33] *Bedford, supra,* at para 120, CCLA BOA Tab 2.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Christopher D. Bredt

Margot Finley

Lawyers for the Canadian Civil Liberties Association

PART VI - LIST OF AUTHORITIES

CASES	*Paragraph # in factum where case cited*
A.C. v Manitoba (Director of Child and Family Services), [2009] 2 SCR 181	4
Bedford v Canada (AG), 2013 SCC 72	19, 21, 24, 27
BR v Children's Aid Society of Metropolitan Toronto, [1995] 1 SCR 315	4
Canada (AG) v PHS Community Services Society, 2011 SCC 44	5, 26
Carter v Canada (Attorney General), 2012 BCSC 886	8, 23
Carter v Canada (Attorney General), 2013 BCCA 435	7, 8, 23
Chaoulli v Quebec (AG), 2005 SCC 35, [2005] 1 SCR 791	5, 20
Corbiere v Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203	20
Fleming v Reid (1991), 4 OR (3d) 74 (CA)	6
Godbout v. Longueuil (City of), [1997] 3 SCR 844	4
Gosselin v Québec (Attorney General), 2002 SCC 84	7
Malette v Shulman (1990), 72 OR (2d) 417 (CA)	9, 25
Multani v Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6	20
Nancy B v Hôtel-Dieu de Québec, [1992] RJQ 361 (Q.C.A.)	9
R v Big M Drug Mart Ltd, [1985] 1 SCR 295	7
R v Clay, 2003 SCC 75	4
R v Hebert, [1990] 2 SCR 151	6
R v Morgentaler, [1988] 1 SCR 30	6
R v Oakes, [1986] 1 SCR 103	20, 22
RJR-MacDonald Inc. v Canada (AG), [1995] 3 SCR 199	20
Rodriguez v. British Columbia (AG), [1993] 3 SCR 519	4, 13

OTHER AUTHORITIES	*Paragraph # in factum where case cited*
Health Care Consent Act SO 1996 c2 Sch A	25
Health Care (Consent) and Care Facility (Admission) Act, RSBC 1996 c181	25

PART VII - LEGISLATION AT ISSUE

ENGLISH	FRENCH
Canadian Charter of Rights and Freedoms, ss. 1 and 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c11 CONSTITUTION ACT, 1982 PART I CANADIAN CHARTER OF RIGHTS AND FREEDOMS GUARANTEE OF RIGHTS AND FREEDOMS 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. LEGAL RIGHTS Life, liberty and security of 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.	LOI CONSTITUTIONNELLE DE 1982 PARTIE I CHARTE CANADIENNE DES DROITS ET LIBERTÉS GARANTIE DES DROITS ET LIBERTES 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. GARANTIES JURIDIQUES 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.
Criminal Code, R.S.C., 1985, c. C-46 HOMICIDE 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. Non culpable homicide (3) Homicide that is not culpable is not an offence. Culpable homicide	Code criminel L.R.C. (1985), ch. C-46 HOMICIDE 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. Homicide non coupable (3) L'homicide non coupable ne constitue

(4) Culpable homicide is murder or manslaughter or infanticide.	pas une infraction.
Idem	Homicide coupable
(5) A person commits culpable homicide when he causes the death of a human being,	(4) L'homicide coupable est le meurtre, l'homicide involontaire coupable ou l'infanticide.
o (*a*) by means of an unlawful act;	Idem
o (*b*) by criminal negligence;	(5) Une personne commet un homicide coupable lorsqu'elle cause la mort d'un être humain :
o (*c*) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or	o *a*) soit au moyen d'un acte illégal;
o (*d*) by wilfully frightening that human being, in the case of a child or sick person.	o *b*) soit par négligence criminelle;
Exception	o *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;
(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.	o *d*) soit en effrayant volontairement cet être humain, dans le cas d'un enfant ou d'une personne malade.
Suicide	Exception
Counselling or aiding suicide	(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.
241. Every one who	
(*a*) counsels a person to commit suicide, or	*Suicide*
(*b*) aids or abets a person to commit suicide,	Fait de conseiller le suicide ou d'y aider
whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.	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.