

**Amended Pursuant to the Consent Order dated August 12, 2011**

**Original filed on April 26, 2011**



No. S112688  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

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

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

**AMENDED NOTICE OF CIVIL CLAIM**

Name and address of each Plaintiff:

Lee Carter, Hollis Johnson, Dr. William Shoichet,  
~~and~~ The British Columbia Civil Liberties Association  
and Gloria Taylor  
c/o Arvay Finlay  
1350 – 355 Burrard Street  
Vancouver BC V6C 2G8

Name and address of each Defendant:

Attorney General of Canada  
900 - 840 Howe Street  
Vancouver BC V6Z 2S9

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFFS**

### **Part 1: STATEMENT OF FACTS**

#### **The Parties**

1. The Plaintiff Lee Carter (“Lee”), age 64, is a retired flight attendant who lives in Fort Langley, British Columbia.
2. The Plaintiff Hollis Johnson (“Hollis”), age 67, is an instructor in criminology at Kwantlen Polytechnic University who lives in Fort Langley, British Columbia.
3. The Plaintiff Gloria Taylor (“Gloria”), age 63, is a part-time property manager and a residential care worker (on leave) who lives in Westbank, British Columbia.

34. The Plaintiff Dr. William Shoichet (“Dr. Shoichet”), age 63, is a family medical practitioner who lives in Victoria, British Columbia.
45. The Plaintiff the British Columbia Civil Liberties Association (the “BCCLA”) is a non-profit, advocacy group incorporated in 1963 pursuant to British Columbia’s *Society Act*, R.S.B.C. 1996, c. 433, with a registered office located at 550 - 1188 West Georgia Street, Vancouver, British Columbia, V6E 4A2.
56. The Defendant Attorney General of Canada (“Canada”) has an address for service at 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.

## **Definitions**

### “Physician-Assisted Suicide”

67. For purposes of this claim, “physician-assisted suicide” means an assisted suicide where assistance to obtain or administer medication or other treatment that intentionally brings about the patient’s own death is provided by a medical practitioner, as that term is defined in s. 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, or by a person acting under the general supervision of a medical practitioner, to a grievously and irremediably ill patient in the context of a patient-physician relationship.

### “Consensual Physician-Assisted Death”

- 7-8. For purposes of this claim, “consensual physician-assisted death” means the administration of medication or other treatment that intentionally brings about a patient’s death by the act of a medical practitioner, as that term is defined in s. 29 of the *Interpretation Act*, or by the act of a person acting under the general supervision of a medical practitioner, at the request of a grievously and irremediably ill patient in the context of a patient-physician relationship.

### “Physician-Assisted Dying”

89. For purposes of this claim, “physician-assisted suicide” and “consensual physician-assisted death” will be collectively defined as “physician-assisted dying.”

“Impugned Provisions”

910. This claim challenges the constitutional validity or applicability of the provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, that prohibit physician-assisted dying, including those provisions that render someone criminally liable for aiding or counselling same or otherwise render someone a party to a criminal offence for arranging, supporting or otherwise participating in physician-assisted dying. Those provisions are ss. 14, 21, 22, 222 and 241 of the *Criminal Code* (the “impugned provisions”).

**Lee and Hollis**

4011. Lee and Hollis are married to one another. Kathleen Carter (“Kay”) was Lee’s mother and Hollis’s mother-in-law.

412. Kay was born in 1920 and died on January 15, 2010, at the Dignitas clinic in Forch, Switzerland. Her death was caused by the voluntary, but assisted, ingestion of a lethal dose of sodium pentobarbital prescribed for that purpose by a qualified Swiss physician.

4213. In 2008, Kay, who was then residing in the Lynn Valley Care Centre in North Vancouver, British Columbia, was diagnosed with spinal stenosis.

4314. Spinal stenosis involves a narrowing of the spine which can put pressure on the spinal cord or spinal nerves at the point of compression. Depending on the nerves affected, severe spinal stenosis can cause pain or numbness in the legs, back, shoulders and arms, limb weakness and incoordination, loss of sensation in the extremities, impairment or loss of bladder and bowel function and paralysis.

4415. Although her thinking and speaking capacities remained clear, Kay’s physical condition deteriorated steadily due to degeneration of the nerves and spinal column. By August 2009, Kay needed the assistance of an aid for dressing, toileting and most of her daily activities. She had extremely limited movement in her hands. Her right hand no longer functioned properly and although she was occasionally able to eat some of her meals without assistance, for the most part she could not eat without help. Kay was unable to walk and was confined to a wheelchair. She could not move herself in the wheelchair. If

she was lying flat, she needed assistance to sit up. She also suffered chronic pain, which was treated with a series of daily medications. Her neurologist told her that her condition would eventually reduce her to lying flat in bed, completely unable to move.

4516. For a period of time prior to the end of her life, Kay wore diapers because she required assistance to go to the washroom and assistance was often untimely. Towards the end of her life, Kay was incontinent.
4617. Kay expressed concern that her condition was rendering her trapped in her own body and stripped of her independence. Kay stated that she did not want to live her life in that condition.
4718. On or about July 26, 2009, Kay reached the firm conclusion that she wished to terminate her life as soon as possible by means of physician-assisted suicide. She then began to inform her immediate family, including Lee and Hollis, of her wish to die with dignity by means of physician-assisted suicide. Kay expressed a desire to end her life in Canada, but was aware that assisting suicide is a criminal offence in Canada. Kay asked Lee and Hollis to support and assist her in arranging a physician-assisted suicide in Switzerland and to support her and assist her to travel to Switzerland for that purpose.
4819. Lee and Hollis discussed the fact that assisting Kay to terminate her life in Switzerland could expose them to criminal charges in Canada. They resolved to assist Kay and to assume the risk of prosecution in order to help Kay fulfil her wish to die with dignity, with minimal suffering, at the time of her choosing.
4920. Lee contacted Dignitas and assisted and supported Kay to make an application for membership in Dignitas. Dignitas requested that Kay write a letter in order to introduce herself. Kay dictated the letter to a family member. Dignitas also requested a "Letter of Support" signed by Kay's children; it was signed by all seven. Kay dictated a letter to Lee requesting Dignitas to perform the assisted suicide. Lee and Hollis assisted and supported Kay by obtaining the other documentation required by Dignitas, including her prognosis and diagnosis, the long version of her birth certificate, detailed information on the persons accompanying Kay, a data sheet for the authorities, detailed information

about Kay's family and children, confirmation that the persons accompanying Kay would be available to testify to local authorities after her death, passport photocopies of everyone accompanying Kay, a passport photograph of Kay, and a letter from a doctor or lawyer confirming that Kay was of sound mind.

2021. Kay's health was deteriorating rapidly, and she became concerned that she would be unable to travel to Switzerland. Lee and Hollis assisted and supported Kay by making the flight and other arrangements necessary to enable her to do so. With Lee and Hollis' assistance, Kay obtained an executive-first class seat for the flight, as she required a seat that would allow her to lie flat. Lee and Hollis accompanied Kay to Switzerland so that she could make the trip.
2122. In Switzerland, Dignitas arranged for the two medical consultations required as a precondition to assisted suicide under Swiss law. Following the second consultation, the Swiss physician approved Kay's request for an assisted suicide.
2223. While in Switzerland, Kay wrote a farewell letter to friends explaining that she had chosen to die with dignity. Kay dictated the letter and Lee typed and printed it. Kay's letter explained that she alone had made the choice to end her life, and that her trip to Switzerland was filled with laughter and fond reminiscences. Kay signed the letter herself. Lee had 125 copies made and mailed them out to the persons Kay indicated on a review of her address book.
2324. Lee and Hollis and two of Kay's other children (the "accompanying family members") accompanied Kay to the Dignitas clinic. At the clinic, a Dignitas staff member, "Erica", repeatedly asked Kay to confirm her desire to terminate her life. Kay repeatedly and decisively stated that she was ready and wished to proceed. Notwithstanding her difficulties with her hands, Kay signed the authorizing paperwork provided by the Dignitas staff.
2425. The accompanying family members remained with Kay at the Dignitas clinic. When Kay was moved from her wheelchair to a bed, the accompanying family members positioned themselves around her, entwining their arms around Kay and each other. The

accompanying family members witnessed Erica dispense a lethal dose of sodium pentobarbital to Kay. The sodium pentobarbital was dissolved into liquid in a drinking glass. Due to Kay's difficulties with her hands, Erica helped hold the glass and Kay drank the medication using a straw. The Swiss physician had advised Kay to eat some chocolate after the sodium pentobarbital in order to cut its bitterness. Lee purchased some fine Swiss chocolate for this purpose, and Kay and the accompanying family members each had some after Kay drank the sodium pentobarbital. Kay fell unconscious within minutes. As Erica advised the accompanying family members that Kay could still hear them talking, they reminisced about their father and other family memories. Kay was pronounced dead approximately 20 minutes later.

2526. The accompanying family members remained at the Dignitas clinic to sign additional paperwork. Swiss medical and police officials attended. A Swiss police officer asked them questions about Kay's illness and her deterioration and, before leaving, shook their hands. The accompanying family members then returned to Zurich. Lee and Hollis arranged for Kay's ashes to remain in Switzerland, scattered in a forest, in accordance with Kay's wishes.
2627. The financial costs incurred in travelling to Switzerland from Vancouver, maintaining accommodations in Switzerland, obtaining the services of the Swiss physician, and obtaining the services of Dignitas were considerable. Kay's costs in these respects were paid by Kay from her remaining life's savings.
2728. After Lee and Hollis agreed to assist Kay to obtain a physician-assisted suicide in Switzerland, Kay, Lee, Hollis and the other family members kept Kay's intentions and plan secret. They did so out of fear that the Canadian police would intervene and stop the plan from being carried out and also out of concern that the assistance that Lee and Hollis were providing to Kay constituted a criminal offence under Canadian law.
2829. Lee and Hollis continue to fear that the assistance they provided to Kay may render them subject to criminal prosecution in Canada.

2930. Lee and Hollis have experienced censure and criticism from third parties who consider Lee and Hollis to have committed a criminal offence by assisting Kay.
3031. Lee and Hollis each want the option of being able to arrange and legally obtain, in Canada, physician-assisted dying services for themselves, for each other and for other loved ones, in the event that either of them or any other loved one should suffer a grievous and irremediable illness and wish to end the suffering and die with dignity.

### Gloria

32. Gloria is a divorced mother of two sons, aged 36 and 38. Her younger son lives in Westbank, and the older about an hour away by car. Gloria has an 11 year old granddaughter, with whom she is very close. Gloria also has an 83 year old mother living in Castlegar, British Columbia.
33. Gloria has amyotrophic lateral sclerosis (“ALS”). ALS, which is also known as Lou Gehrig’s disease, is a fatal neurodegenerative disease. People with ALS become progressively paralyzed due to the degeneration of the upper and lower motor neurons in the brain and spinal cord. Eighty percent of people with ALS die within two to five years of diagnosis. ALS has no known cure or effective treatment.
34. ALS frequently begins with weakness and/or cramping in the hands, feet or limbs. As the disease advances, muscles progressively weaken until paralysis sets in. Progressed ALS generally impacts the abilities to chew, swallow, speak and breathe. Respiratory failure is the most common cause of death for people with ALS.
35. Gloria began to experience symptoms in 2003, in the form of cramping in her hands, feet and limbs, but her condition was not diagnosed at that time. In or about 2006, she began to experience severe muscle cramping and spasms in her hands. Her hands would cramp into fists and her fingers would need to be physically peeled open again. She also started to experience fasciculation - muscular twitching involving small, localized involuntary muscle contractions - in her hands and throughout her body. Later that year, Gloria began to have difficulty with tasks requiring fine motor skills and hand strength, such as, for example, using keys or holding a pen.



36. In the summer of 2009, Gloria's right pinky finger "dropped", leaving her unable to straighten that finger. In September 2009, she was referred to a neurologist for a basic neurological examination. That neurologist referred her to a consulting neurologist at the Kelowna General Hospital. On December 9, 2009, after a series of tests, the consulting neurologist diagnosed Gloria with ALS.
37. The consulting neurologist then referred Gloria to another neurologist, Dr. Hannah Briemberg, at the ALS Centre in Vancouver's GF Strong Rehabilitation Hospital. The ALS Centre's medical team carried out a comprehensive assessment, review and consultation that ultimately confirmed the ALS diagnosis.
38. By the time Gloria attended the ALS Centre, her muscles had begun to atrophy. She had difficulty using her right hand due to fasciculation and muscle degeneration. She had extreme difficulty walking and suffered generalized body weakness. She often felt cold, particularly in her hands and arms, and experienced difficulty breathing. Dr. Briemberg concluded that these symptoms indicated the disease's course was significantly progressed. On or about January 26, 2010, Dr. Briemberg opined that Gloria was likely be paralyzed in six months and likely to die within the year.
39. Following her diagnosis, Gloria founded a Kelowna support group for people living with ALS and their caregivers, the "Living with ALS Group." The group meets monthly, with a meeting generally consisting of a guest lecturer and a social hour where members can discuss their experiences, hopes and fears.
40. Gloria has fared better than predicted by Dr. Briemberg. Gloria's doctor is impressed by her resilience. That said, in most respects, Gloria's condition has continued to steadily deteriorate since diagnosis. She is no longer able to lift herself up from most chairs, and uses a power lift chair to assist her with standing up. The muscles in her feet and toes have atrophied, and she now has difficulty lifting the front of her foot, resulting in a condition known as "footdrop." Footdrop makes it very difficult for Gloria to walk and has caused her to suffer serious falls. At present, she uses a walker and, when particularly weak, a wheelchair. All of the fingers on Gloria's right hand, with the exception of the index finger, have now "dropped" and cannot be straightened. On her

left hand, her pinky finger and her ring finger have also “dropped.” She experiences shaking in her hands. She also suffers constant involuntary muscle cramps throughout her body.

41. Despite her increasing disability, Gloria continues to live by herself and as independently as possible. Although Gloria went on disability leave from her position as a residential care worker effective March 2010, at present, she remains able to fulfil her role as part-time property manager for the mobile home park where she resides. She spends part of most weekends with her granddaughter. She has been teaching her granddaughter to cook and sew. Gloria is an avid cook and food enthusiast. At her granddaughter’s request, she is compiling a cookbook of all her granddaughter’s favourite dishes and various family recipes that reflect their shared heritage. Gloria and her granddaughter sometimes go together to local restaurants for lunch or dinner. Sometimes they picnic, go to movies, visit sightseeing destinations, or go out for ice cream together.
42. Gloria typically spends many hours a day communicating by phone or email with her family, friends, doctors and others. She meets with a physiotherapist once or twice a month, and usually attends several medical appointments each month. Several times a week she goes into town to get groceries or run comparable errands. In addition to her granddaughter and other family, Gloria regularly visits in person with her friends and former work colleagues.
43. Gloria is committed to a number of causes and activities and presently remains very actively involved in these. In addition to keeping up her membership in community groups she belonged to prior to her diagnosis, Gloria participates in local campaigns to raise money for ALS medical research and services to support those living with ALS and their families. Gloria sits on the board of the Association For Injured Motorcyclists, Interior B.C. Chapter. In association with that group and local business sponsors, Gloria organized a motorcycle ride to benefit the ALS Society of BC. Gloria is currently a key participant in an ALS fundraising campaign undertaken by a Kelowna business as part of its 25<sup>th</sup> anniversary celebration.

44. However, Gloria's disability is steadily impacting on her ability to do these things. She is losing the ability to perform basic household and personal tasks. She can no longer peel vegetables or open jars. She finds it challenging to dress herself, and has started wearing dresses every day to make dressing simpler. She has difficulty brushing her teeth, combing her hair and carrying out similar personal tasks. She can only type on her computer keyboard with her left hand and has difficulty using a mouse. She is no longer able to keep her house up to the standard she desires and is unable to perform yard work, such as the planting of flowers. She is concerned that her deterioration will soon impact on her ability to spend quality time with her granddaughter.
45. Gloria hopes to remain in her own home as long as possible. She has reconfigured and re-outfitted her home to this end. Her washroom has been made handicapped-accessible and she has gotten a hospital bed at home so she can sleep with her chest elevated. The ALS Society of British Columbia has provided her with computer hardware and software to enable her to operate the computer without her hands.
46. Gloria is fearful about the progression of her disease. She does not know which functions will be impacted next. She fears losing her ability to get out of bed and the ability to speak. As ALS generally affects the ability to control the muscles used to breathe, she uses a respiratory ventilator when sleeping and sometimes in the evening while she is watching television. She fears that she will eventually suffocate and die struggling for air.
47. Gloria currently experiences pain, for which she takes prescribed medications. She sleeps on her side in order to breathe better, but the resulting body stress causes her hips to ache. Minor bumps and injuries can be very painful due to her loss of the muscle density that usually cushions bones from everyday impacts. Even resting her arms on a recliner chair can cause pain due to muscle deterioration.
48. Using her muscles in stretching or reaching motions sometimes causes excruciating pain and a tearing feeling in the muscles. At present, this pain subsides fairly quickly; however, Gloria believes lasting pain at the same level would be unbearable. Although

aware that increased pain might be addressed with additional narcotics and analgesics, Gloria has no desire to live her life out in a drug-induced haze.

49. Gloria is terrified of losing control of her bodily functions. She has already experienced incontinence on several occasions while at home. She is concerned that these episodes will become more frequent, occur outside her home, or that she will lose her ability to clean herself when they do occur. The prospect of being fully incontinent mortifies her.
50. Gloria has always been very independent. One of her greatest fears is to be reduced to a condition where she must rely on others for all of her needs. She does not want to live in a bedridden state, stripped of her dignity and independence.
51. Shortly after Gloria was diagnosed with ALS, she decided that she wanted to die when the suffering and indignity of her disease became too much for her. Gloria has informed her family and close friends of this desire. Her sons, mother, sisters and closest friends all strongly support her right to make the decision to die and have told her that they do not want to see her suffer against her wishes.
52. Gloria does not want to end her life while she finds it still worth living, but is concerned that her deteriorating condition will render her unable to die without assistance. She is concerned that if she waits too long to act alone and then must ask a friend or family member to assist, that person will be subject to criminal prosecution.
53. Gloria does not want her life to end violently. Gloria does not want her mode of death to impose trauma on her family members.
54. Gloria is aware that assisted suicide is legal in Switzerland. Gloria is not financially able to travel to Switzerland and obtain assisted suicide services there.
55. Gloria wants to be able to obtain physician-assisted dying services in Canada should she resolve to end her suffering and die with dignity. She wants the legal right to die peacefully, at the time of her own choosing, in the embrace of her family and friends.

**Dr. Shoichet**

3456. Dr. Shoichet is a licensed medical practitioner and a member in good standing of the British Columbia College of Physicians and Surgeons. Dr. Shoichet carries on a family medical practice in Victoria, British Columbia.
3257. Dr. Shoichet graduated from medical school in 1971. After graduation he worked on Salt Spring Island, in Ottawa and in Victoria as an emergency room doctor until 1980. Since November 1980, Dr. Shoichet has been in family practice in Victoria. In the course of his practice, Dr. Shoichet has provided medical care to a number of patients suffering from grievous and irremediable illnesses, including, *inter alia*, cancer, chronic renal and/or cardiac failure, and degenerative neurologic diseases such as Huntington's disease and multiple sclerosis.
3358. Some of Dr. Shoichet's grievously and irremediably ill patients suffered greatly from the effects of their illnesses and experienced severe and/or chronic pain, inability to take care of their own basic physical needs and desires, inability to act independently, and severe loss of privacy and dignity.
3459. If the impugned provisions were repealed or struck down as unconstitutional, Dr. Shoichet would be willing to participate in physician-assisted dying for capable grievously and irremediably ill patients where satisfied it constituted appropriate medical care in the circumstances. Dr. Shoichet would require that he be satisfied the patient in question was fully informed, had given due and proper consideration to the issue, and was expressing a continuing and genuine desire for death.
3560. Dr. Shoichet considers end of life care an important part of his compassionate, moral, ethical and professional duty and role as a physician treating grievously and irremediably ill patients. Dr. Shoichet considers the ability to participate in physician-assisted dying on request, in appropriate circumstances and where there are all the necessary safeguards in place, an important component of the provision of health care to grievously and irremediably ill patients.

## **The BCCLA**

3661. The objects of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights in British Columbia and Canada. To that end, the BCCLA prepares position papers, engages in public education, assists individuals to address violations of their rights and takes legal action as a plaintiff.
3762. In addition to the BCCLA's long standing interest in matters of patient's rights and health policy, the BCCLA has been extensively involved in advocacy and education in respect to end of life choices, including assisted suicide and voluntary euthanasia.
3863. The BCCLA has consistently opposed the criminalization of assisted suicide and voluntary euthanasia arguing that the principles of liberty, autonomy and equality, as well as the humanitarian commitment to preventing unnecessary suffering and to preserving the dignity of the individual, justify decriminalization.
3964. The BCCLA has sufficient interest to be granted public interest standing, in that:
- a. this claim raises a serious challenge to the constitutional validity and applicability of the impugned provisions in the context of physician-assisted dying;
  - b. the BCCLA has a demonstrated, serious and genuine interest in the subject matter of this litigation;
  - c. the issue of whether there is a constitutional right to physician-assisted dying is relevant to all Canadians, regardless of their current state of health, given the frequency of the occurrence of diseases capable of causing grievous and irremediable illness and related suffering, and the speed of onset and quickness of course of many such diseases;
  - d. the BCCLA is comprised of thousands of members any of whom may one day wish or need to avail themselves or their loved ones of physician-assisted dying services; and

- e. while directly affected patients could, in theory, bring their own cases to court, it is unreasonable to expect grievously and irremediably, and often terminally, ill persons, in light of their particular personal circumstances, to bring on and carry through to completion, a lengthy and involved legal challenge of the type set out in this claim.

### **The Impugned Provisions**

- 4065. Section 241 of the *Criminal Code* makes it an indictable offence, liable to imprisonment for a term not exceeding fourteen years to: (a) counsel, or (b) aid or abet, a person to commit suicide.
- 4466. Section 22(3) of the *Criminal Code* defines “counsel” to include “procure.” Aiding means assisting.
- 4267. Section 14 of the *Criminal Code* provides that no person is entitled to have death inflicted on him, and such consent does not affect the criminal liability of any person that inflicts death on the consenting person.
- 4368. Section 21(1)(b) of the *Criminal Code* renders a person who does or omits to do anything for purposes of aiding any person to commit an offence, a party to the offence. Section 21(2) renders persons acting with a common intention to carry out an unlawful purpose and to assist each other in carrying out that purpose, a party to any offence committed as a probable consequence.
- 4469. Sections 22(1) and (2) of the *Criminal Code* renders a person who counsels another person to be a party to an offence, where the person counselled is thereafter a party to an offence, also a party to the offence.
- 4570. Section 222 of the *Criminal Code* states, in part, as follows:
  - 222 (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.
  - (2) Homicide is culpable or not culpable.
  - (3) Homicide that is not culpable is not an offence.

- (4) Culpable homicide is murder or manslaughter or infanticide.
- (5) A person commits culpable homicide when he causes the death of a human being,
  - (a) by means of an unlawful act...

### **End of Life Care**

- 4671. Canadian courts recognize the common law right of patients to refuse consent to medical treatment, or to demand that treatment, once commenced, be withdrawn or discontinued. This right has been specifically recognized even where the refusal of or withdrawal from treatment will result in certain death.
- 4772. Capable adults can enter into representation agreements with respect to future treatment in the event that they become incapable. In British Columbia, this is governed by the *Representation Agreement Act*, R.S.B.C. 1996, c. 405, which allows “adults to arrange in advance how, when and by whom, decisions about their health care, personal care or financial affairs or about other matters will be made if they become incapable of making decisions independently.” The *Representation Agreement Act* also allows capable adults to consent in advance, or to refuse in advance, specified kinds of health care including life-supporting health care or treatment.
- 4873. In British Columbia, where an adult does not have a representation agreement, the *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181, prescribes a list of third parties from whom a health care provider may obtain substitute consent to provide major or minor health care to an adult who is incapable. This health care can include the decision to refuse consent to health care necessary to preserve life in prescribed circumstances.

### **Relevant Social Norms**

- 4974. A significant number of countries now authorize physician-assisted suicide or consensual physician-assisted death or both.



**Part 2: RELIEF SOUGHT**

The Plaintiffs seek the following relief:

1. a declaration that the impugned provisions do not apply to physician-assisted dying on the basis of ss. 92(7), (13) and (16), or any combination thereof, of the *Constitution Act, 1867 (U.K.)*, 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 (the “*Constitution Act, 1867*”), and the doctrine of interjurisdictional immunity;
2. a declaration that to the extent that the impugned provisions prohibit physician-assisted dying, they unjustifiably infringe s. 7 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the “*Constitution Act, 1982*”) and are, to that extent, of no force and effect;
3. a declaration that to the extent that the impugned provisions prohibit physician-assisted dying, they unjustifiably infringe s. 15 of the *Charter* and are, to that extent, of no force and effect;
4. the effect of the declarations of constitutional invalidity or inapplicability be suspended for a period of six months, with the exception that for Gloria and her physician there be an immediate constitutional exemption so as to allow her to avail herself of a physician assisted death at such time and subject to such terms and conditions that the Court allows or requires;
5. that such declarations be given retroactive effect at least in the case of the conduct engaged in by Lee and Hollis as described herein so that they not be at further risk of prosecution;
6. in the event that a decision on the merits cannot be made in a timely manner, an interlocutory injunction exempting Gloria and her physician from the application of the impugned provisions on such terms and conditions as the Court allows or requires;
67. costs, including special costs and applicable taxes on those costs; and

78. such further and other relief as this Honourable Court deems meet and just.

**Part 3: LEGAL BASIS**

1. The Plaintiffs rely on:
  - a. the *Constitution Act, 1867* and, in particular, ss. 91 and 92 thereof;
  - b. s. 52 of the *Constitution Act 1982*, and
  - c. the *Charter* and, in particular, ss. 1, 7, 15, and 24 thereof.

**Division of Powers**

2. The treatment and management of the physical and emotional suffering of a grievously and irremediably ill patient and, in particular, the determination of capability and consent for purposes of physician-assisted dying to end that suffering, are matters relating to health care, the regulation and delivery of health services, the practice of medicine, and regulation of the patient-physician relationship. These are matters within the exclusive jurisdiction of the Province of British Columbia on the basis of ss. 92(7), (13) and (16), or any combination thereof, of the *Constitution Act, 1867*.
3. The doctrine of interjurisdictional immunity applies to confer the limited grant of immunity from the impugned provisions required to allow physician-assisted dying to fall within the jurisdiction of the Province of British Columbia as an exercise of its core powers relating to health care, the regulation and delivery of health services, the practice of medicine, and the regulation of the patient-physician relationship.

***Charter, Section 7***

4. Section 7 of the *Charter* states as follows:
  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.

The Grievously and Irremediably Ill Patient

5. The right to life is engaged and infringed by state-imposed restrictions that deprive an individual of the right to make and carry out the decision to end one's own life.
6. The right to liberty is engaged and infringed by state interference with the right of the individual to a protected sphere of autonomy over decisions of fundamental personal importance. The choice to live or die, and to control the when and how of one's death, are decisions of profound and fundamental personal importance.
7. The right to security of the person is engaged and infringed by state-imposed restrictions on the right and ability of an individual to make and act upon decisions concerning his or her own body, to exercise control over matters fundamental to his or her physical, emotional and psychological integrity, and by the resultant impairment to his or her human dignity.
8. Canada has, by means of the impugned provisions, restricted the ability of grievously and irremediably ill patients to obtain the physician-assisted dying services required to manage their death in a humane and dignified manner and thus, to determine, for themselves, the when and how of the experience of death.
9. The restrictions imposed under the impugned provisions, to the extent that they operate to prohibit physician-assisted dying, result in a deprivation of the s. 7 rights of individuals to life, liberty and security of the person.
10. Kay was deprived of her s. 7 rights of life, liberty and security of the person by the existence and operation of the impugned provisions.
11. For the same reasons, the impugned provisions deprive Lee, Hollis, Gloria and all British Columbians, as represented in this proceeding by the BCCLA, of their s. 7 rights to life, liberty and security of person.

Person Assisting

12. The right to liberty of a person who assists or supports a grievously and irremediably ill person to obtain physician-assisted dying services is engaged by prosecution and the threat of prosecution under the impugned provisions.
13. The restrictions imposed under the impugned provisions, to the extent that they operate to prohibit a person from assisting or supporting a grievously and irremediably ill person to obtain physician-assisted dying services, result in a deprivation of the assisting person's s. 7 right to liberty.
14. The right to liberty of persons who assist or support a grievously and irremediably ill person to obtain physician-assisted dying services must necessarily be protected in order to give meaning to the s. 7 life, liberty and security of the person rights of grievously and irremediably ill persons.

Physician Assisting

15. The right to liberty of a physician who seeks to provide physician-assisted dying services to a grievously and irremediably ill patient is engaged by prosecution and threat of prosecution under the impugned provisions.
16. The restrictions imposed under the impugned provisions, to the extent that they operate to prohibit a physician from providing physician-assisted dying services to a grievously and irremediably ill patient, result in a deprivation of the physician's s. 7 right to liberty.
17. The right to liberty of a physician must necessarily be protected in order to give meaning to the s. 7 life, liberty and security rights of grievously and irremediably ill patients to obtain physician-assisted dying services.

**Principles of Fundamental Justice**

18. The application of the impugned provisions to physician-assisted dying is arbitrary. The legal distinction by which the law enables, facilitates and protects the right and ability of grievously and irremediably ill persons, even once they are no longer capable or by

means of a substitute decision-maker, to direct a physician to remove, withdraw or discontinue life-sustaining care or treatment, but deprives, by means of criminal prohibition, capable grievously and irremediably ill persons of the right and ability to choose to die using physician-assisted dying services, is arbitrary.

19. The impugned provisions are, in the context of physician-assisted dying, overbroad in that they prohibit more conduct than is necessary to achieve the state objective. Physician-assisted dying services can be sufficiently and effectively regulated to limit their availability to patients who are capable, grievously and irremediably ill, and genuinely desire death.
20. The impugned provisions are, in the context of physician-assisted dying, grossly disproportionate. The gravity of the infringements on the *Charter* rights of grievously and irremediably ill persons who are thereby denied access to physician-assisted dying services are grossly disproportionate to the benefit and legislative purpose of the law.

***Charter, Section 15***

21. Section 15(1) of the *Charter* reads as follows:

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.

22. The impugned provisions infringe the right to equality under s. 15(1).
23. These prohibitions create inequality by preventing persons unable by reason of material physical disability to end their lives unassisted from having the choice and ability to die when that option is available to other members of the public. Persons unable to act to die without assistance are deprived of the ability to choose and carry out their death in any lawful way, whereas the impugned provisions do not have that same effect on persons of requisite physical ability.

24. This inequality is imposed on the materially physically disabled by reason of their physical disability, which is a personal characteristic listed as an enumerated ground of discrimination under s. 15(1).
25. This inequality is a burden or disadvantage, as it limits the ability of those subject to the inequality to make and act upon decisions that are fundamental to their lives and persons. This disadvantage perpetuates prejudice and stereotyping about individuals with physical disabilities.
26. The impugned provisions operated to deprive Kay of the equal protection and benefit of the law by their discriminatory operation on and application to her by reason of her physical disability.
27. By virtue of the nature of ALS and Gloria's steadily deteriorating physical condition, the impugned provisions will, for the same reasons, operate to deprive Gloria of the equal protection and benefit of the law.
2728. For the same reasons, the impugned provisions deprive all materially physically disabled British Columbians, as represented in this proceeding by the BCCLA, of their rights to the equal benefit and protection of the law.

### ***Charter, Section 1***

2829. Section 1 of the *Charter* reads as follows:

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.

2930. The said infringements of s. 7 and s. 15 cannot be justified pursuant to the criteria of s. 1, the burden of proof of which lies on Canada.

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Vancouver BC V6C 2G8

Fax number address for service (if any): 604.687.1941

E-mail address for service (if any): jarvay@arvayfinlay.com  
 Place of trial: Vancouver, British Columbia  
 The address of registry is: 800 Smithe Street, Vancouver BC V6Z 2C5

Dated: ~~26 Apr 2011~~ 15 Aug 2011

*"Joseph J. Arvay, Q.C."*  
 \_\_\_\_\_  
 Signature of  
 plaintiffs     lawyer for plaintiffs  
**JOSEPH J. ARVAY, Q.C.**

Rule 7-1 (1) of the Supreme Court Civil Rules states:

1. (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**Part 1:            CONCISE SUMMARY OF NATURE OF CLAIM:**

A challenge to the constitutional validity or applicability of the provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, that prohibit physician-assisted dying, including those provisions that render someone criminally liable for aiding or counselling same or otherwise render someone a party to a criminal offence for arranging, supporting or otherwise participating in physician-assisted dying.

**Part 2:            THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

*[Check all boxes below that apply to this case]*

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4: Enactments relied upon:**

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982  
Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11  
Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II,  
No. 5*



No. S112688  
Vancouver Registry

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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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BETWEEN:

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

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

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**AMENDED NOTICE OF CIVIL CLAIM**

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