



This is the 1st affidavit
of Anthony Nicklinson in this case
and it was made on 22 Aug 2011

No. S112688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

INTERVENOR

AFFIDAVIT

I, ANTONY NICKLINSON, of 2c Thames Crescent, in the town of Melksham, United Kingdom, AFFIRM THAT:

1. I have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and where so stated, I verily believe them to be true.

2. I submitted the following evidence at the United Kingdom ("UK") Commission on Assisted Dying in 2010:

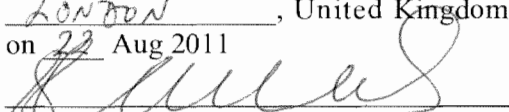
- a. Attached hereto and marked as **Exhibit A** to this my Affidavit is a true copy of an Evidence Submission completed by me for that process and undated.

- b. Attached hereto and marked as **Exhibit B** to this my Affidavit is a true copy of a Statement for the Commission authored by me for that process and dated December 13, 2010.
 - c. Attached hereto and marked as **Exhibit C** to this my Affidavit is a true copy of a transcript of oral evidence given on my behalf by my wife, Jane Nicklinson, and my solicitor, Ms. Saimo Chahal of Bindmans LLP titled "Transcript of Evidence from Jane Nicklinson and Saimo Chahal, on Behalf of Tony Nicklinson to the Commission on Assisted Dying" dated December 14, 2010.
3. I swear that the content of these statements was and remains true.
4. To assist with the Commission on Assisted Dying, I also set out my own ideas for a Scheme for Assisted Death. Attached hereto and marked as **Exhibit D** to this my Affidavit is a true copy my Scheme for Assisted Death dated December 7, 2010. I continue to believe that this scheme represents a credible and practical alternative to prohibition against assisted death.
5. In 2010 I commenced Judicial Review proceedings in the High Court in England against the Secretary of State for Justice. Attached hereto and marked as **Exhibit E** to this my Affidavit is a true copy of a written statement authored by my solicitor Ms. Chahal, titled "Tony Nicklinson's legal case" which sets out the nature of that proceeding and is dated December 14, 2010. This written statement was also submitted into evidence at the UK Commission on Assisted Dying and I swear that it is true and accurate.
6. Attached hereto and marked as **Exhibit F** to this my Affidavit is a true copy of a Written Statement authored by me in the context of these proceedings and dated July 14, 2010.
7. I swear that the content of this statement was and remains true.
8. The current position with my case is that the Judicial review proceedings were discontinued at the end of 2010 due to a change in legal strategy for a number of reasons.
9. My solicitor is now preparing a case which will seek Declarations in the High Court as follows:


- a. That it would be lawful, on the grounds of necessity, for Mr. Nicklinson's GP or another doctor to terminate Mr. Nicklinson's life. By way of preliminary issue Mr. Nicklinson seeks a declaration that the common law defence of necessity is available to a charge of murder in a case of voluntary active euthanasia and/or to a charge under s. 21 of the 1961 Suicide Act in the case of assisted suicide, provided the court has sanctioned the act in advance.
- b. Alternatively, that the current law of murder and/or of assisted suicide is incompatible with Mr. Nicklinson's right to respect for private life under Article 8 of the European Convention on Human Rights and contrary to s. 1 and s. 6 of the Human Rights Act 1998, insofar as it criminalises voluntary active euthanasia and/or assisted suicide.
- c. Further or alternatively that existing domestic law and practice fail to regulate the practice of active euthanasia because it drives the practice underground where it is unregulated and lacks transparency, placing vulnerable individuals at greater risk than if it were legalised and in breach of the United Kingdom's positive obligations under Article 2 (the right to life).

10. It is anticipated that proceedings will be issued as soon as medical evidence has been obtained about my condition, capacity to make decisions and the pain and suffering I am experiencing by not having the right to die at a time of my choosing as I cannot commit suicide due to the level of my physical disability and anyone assisting me is likely to be charged with murder.

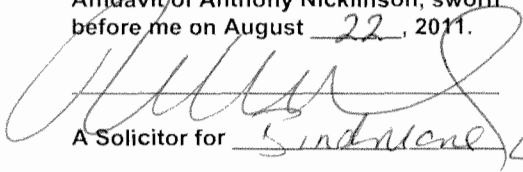
11. I swear to the truth of the contents of this statement.

AFFIRMED BEFORE ME at
LONDON, United Kingdom,
on 22 Aug 2011

JAIMO CHAHAL
Solicitor for Bindmans LLP
275 Grays Inn Road
London WC1X 8QB, United Kingdom

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ANTHONY NICKLINSON

This is Exhibit A referred to in the
Affidavit of Anthony Nicklinson, sworn
before me on August 22, 2011.


A Solicitor for Sindhuone LLP

THE COMMISSION ON ASSISTED DYING: PUBLIC CALL FOR EVIDENCE

Evidence from:

Name: Tony Nicklinson

Profession: Ex civil engineer

This document is a public call for evidence by the Commission on Assisted Dying to seek evidence from members of the public regarding:

- What system, if any, should exist to allow people to be assisted to die
- The circumstances under which it should be possible for people to be assisted to die
- Who should be entitled to be assisted to die
- What safeguards should be put in place to ensure that vulnerable people are neither abused nor pressured to choose an assisted death
- What changes in the law, if any, should be introduced.

In this document the following definitions will be used:

Assisted suicide

Providing someone with the means to end his or her own life.

Voluntary euthanasia

A doctor ending a person's life at his or her own request.

Assisted dying

A compendium that can refer to voluntary euthanasia and/or assisted suicide.

THE LAW ON ASSISTED SUICIDE

According to the Suicide Act 1961, encouraging or assisting a suicide is a crime punishable by up to 14 years imprisonment. However, the recently published Crown Prosecution Service ‘Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide’¹ has provided clarification on which factors would make the prosecution of somebody who assists a suicide more or less likely.

For example, the guidance has made it clear that if the person assisting the suicide was ‘wholly motivated by compassion’ their prosecution is less likely to be in the public interest. The guidance has also specified that doctors or other medical professionals who assist somebody to commit suicide are more likely to be prosecuted for their actions than family members or friends who provide such assistance.

Please give your opinion in response to the following questions, including any evidence or personal experience that supports your view:

1. Do you think that it is right that in certain circumstances, the DPP can decide not to prosecute a person who assists another person to commit suicide?

No because if a person breaks the law that person should be prosecuted otherwise, as with this law, it brings the law into disrepute.

2. Is it right that it is currently illegal for a healthcare professional to assist somebody to commit suicide and that a healthcare professional is more likely to be prosecuted for providing assistance than a friend or family member?

No but their involvement should be regulated and written permission given by the person who wants to commit suicide.

3. Does the DPP policy currently provide sufficient safeguards to protect vulnerable people?

Yes but only because the law makes assisted suicide illegal.

4. Do you think that any further clarification of the DPP policy is needed? Or has the DPP policy already gone too far?

No further clarification is needed, just make it legal to assist somebody who wants to commit suicide.

5. Do you think there should be change in the law to create a legal framework that would allow some people to be assisted to die in certain circumstances?

Yes

ELIGIBILITY AND SAFEGUARDS

The following questions seek to explore the question: if some form of assisted dying were to be legalised, who should be able to access assistance and what safeguards would be needed to protect vulnerable people? Please give your opinion in response to the following questions, including any evidence or personal experience that supports your view:

The 2005 Assisted Dying for the Terminally Ill Bill sought to provide access to an assisted death only for those who have been diagnosed with a terminal illness, who have mental capacity, who are experiencing unbearable suffering and are over the age of 18.

6. If some form of assisted dying were to be legalised, who do you think should be eligible for assistance?

Please refer to the briefing document for a more detailed discussion of eligibility criteria used in previous draft legislation in the UK and in foreign jurisdictions.

7. If some form of assisted dying were to be legalised, what safeguards would be required to protect vulnerable people?

Safeguards that exist in some other jurisdictions include: the person must initiate the request for an assisted death him/herself; the person should be aware of alternative options for pain and symptom relief and palliative care; the person should be referred for counselling if it is suspected that they are suffering from a psychological disorder; and the decision

to assist must be agreed by two independent doctors. Please see the Demos briefing paper for further discussion of potential safeguards that could be included in legislation.

Using a test which identifies, among those people who need help to die, those who don't have the intellectual capability of understanding what self-determination means and ruling them out of any scheme for assisted dying. Prosecuting those who put pressure on people (coercion).

8. What do you think are the main risks (both to individuals and to society) that would be associated with legalising any form of assisted dying?

None, if done properly.

9.
 - a. If some form of assisted dying were to be legalised, who do you think should make the decision on whether somebody who requests an assisted death should be eligible for assistance?

Any adult.

- b. Should this decision be made by doctors, by an independent judicial body such as a tribunal, or by another type of organisation?

No, the person who is going to die should make it because it's his life.

THE ROLE OF DOCTORS AND END OF LIFE CARE

These questions explore how, if some form of assisted dying were to be legalised, doctors might be involved in facilitating assisted dying, and how assisted dying might work within the existing framework of end of life care. Please give your opinion in response to the following questions, including any evidence or personal experience that supports your view:

10. If some form of assisted dying were to be legalised, should doctors be able to take a role in assisting those who request assistance to die?
 - a. If yes, what actions should doctors be able to take?
 - b. If no, please explain your reasoning.

Doctors should advise the person who wants to die of any treatments that exist for his condition and the chances of them making a difference. If that fails to change his mind, offer his help including administering the fatal dose.

11. If some form of assisted dying were to be legalised, what provisions would be required to protect doctors and other healthcare professionals who are ethically opposed to assisted dying?

It would be sensible if the measures adopted for abortion were also adopted for this, suitably modified if necessary.

12. Could assisted dying have a complementary relationship to end of life care or are these two practices in conflict?

Yes. These two practices are not in conflict.

13. If the law was to be changed to permit some form of assisted dying, what forms of assistance should be permitted? Should assisted suicide be permitted? Should voluntary euthanasia be permitted? (Please see the definitions above).

Assistance should be whatever is required because once the decision to die has been made, the assistance necessary to make it happen is purely one of degree

14. Should those who wish to be assisted to die, but are physically unable to end their own lives, receive assistance to die? If yes, what assistance should be provided?

Yes. Assistance can be a doctor giving a fatal injection.

ADDITIONAL COMMENTS

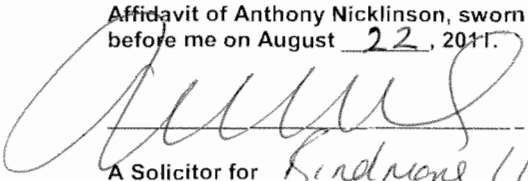
15. Please include here any further comments, evidence or personal experience that you would like the commission to consider:

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ⁱ 'Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' available at:
http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html

Copy of Statement for the Commission dated December 13, 2010

This is Exhibit B referred to in the
Affidavit of Anthony Nicklinson, sworn
before me on August 22, 2011.


A Solicitor for Sindmore LLP

Statement for the Commission

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Thank you for hearing my evidence. I apologise if the statement is long and goes off at a bit of a tangent to the main topics but I hope that the Commission appreciates that answering contemporaneous questions is next to impossible for me and therefore I have to give the fullest comment possible. If, however, the Commission has any questions I would be pleased to answer them if they are put in writing.

The present law, which prohibits any form of assisted suicide or consensual death, is not effective because people are going abroad to die; there are probably more who would go but perhaps they can't afford the journey. It is also discriminatory because it takes away the right to determine where, when and how a person may die as soon as that person becomes disabled and needs help. Prohibition does not work and never will. It is far better to regulate something than ban it.

The law does not reflect the fact that we are all living longer and therefore prone to age-related illness, has not kept up with advances in technology and is probably out of step with public opinion. Furthermore, such discrimination is wrong and would not be tolerated in any other situation. I wonder how the discrimination, when it is purely physical, squares with current legislation which states that it is unlawful to treat disabled people differently from those who are not disabled.

This law has no place in 21st century Britain. A new law is required to reinstate this right of self-determination. Everybody, whether or not they need assistance, should be able to determine their own future. This should be the default position until it becomes an issue when the applicant is tested to see if he has the intellectual capability to make such a difficult decision. Notwithstanding a person's right to self-determination, I do recognize that certain people need protection. That is why the use of such legislation by those who need help to die should be subject to a test for competence; the law should be made difficult but not impossible to apply. I therefore submit *The Scheme for Assisted Death* for the Commission's consideration.

I'm pleased that the Commission is looking at assisted dying rather than just assisted suicide. It is in fact simply a matter of degree of the amount of help given. For example, help could be buying some drugs for someone who is housebound to administering a fatal dose to someone like me. Once the need for help is established and it is the clear and considered decision of the applicant, the amount and type of help given is somewhat academic. However, I do realise that anything other than assisted suicide is probably too much to ask at this stage and so I won't ask for euthanasia even though it makes sense to do so.

At this stage you will probably have a scheme in mind. The temptation will be to restrict the scheme to those people who have a terminal illness on the grounds that they are going to die anyway. I urge you to resist such temptation. In my scheme it is open to everybody over the age of 18 on the grounds that anything else is discrimination. It should not matter why a person wants to die, only that he has his reasons and they should all be respected.

Ethically, there is no greater issue than having the right to self-determination taken away just because one needs help to die. If this issue is resolved all other aspects of this topic fall into place. In fact a compassionate society would do all it could to help those people who need it. Tell me, what is enlightened about sending society's cripples abroad to die? Debbie Purdie's court case may have been a victory but the fact is that she still cannot determine her own destiny and she has to go to a foreign country to die. At least she has company while she does it so that's something, I suppose.

Please also keep religion out of this issue for it is purely secular. It is one thing to object to legislation and choose not to use it; it is another to block legislation because you happen to dislike what's proposed. I would hate to think that, as an atheist, my opportunity of a dignified death was thwarted by a religion I don't believe in.

Something needs to be done but neither palliative care nor some sort of tribunal is the answer.

Sir Terry Pratchett has suggested that a tribunal be set up. I am not a supporter of such a body. I believe it is unnecessary, will be expensive and bureaucratic to administer and ultimately will just be a talking shop for a bunch of 'experts'. Central to a tribunal is its purpose but I imagine this Commission will tell us that in due course. Is it to question the decision of the applicant? I hope not because that presumes the tribunal's judgement is worth more than the applicant's and I doubt that it is. Is it to determine if the law has been met? I would have thought that a judge is better able to determine that rather than a tribunal composed, I suppose, of laymen. I await the outcome of your deliberations with interest.

Other questions, and there are many, include these: Who sits on the tribunal? How many people make up a tribunal? Do they get paid? If yes, who pays them and how much? How often does it convene? How big is a quorum? Is its judgement binding or is it only advisory, in which case its decision can be ignored so why bother? If it's binding, how does one appeal if one doesn't like its decision? If it makes a recommendation, to whom does it make it? What is the test for competence? It seems that the more one asks questions, the more questions there are to ask.

Regarding palliative care, I'll ask just one question: Does it give me back my right to self-determination? If it doesn't it isn't much use. However, it might be to those who cannot, for one reason or another, take advantage of the legislation.

Some objectors to a change of legislation will tell you that it will start off voluntary but will eventually be compulsory. What a load of nonsense and anyone holding such a view should be ashamed of themselves for scaremongering. This is not 1930s Germany. I reckon that for this to come true the following conditions must be met: the replacement of the Queen as Head of State; the control of both Houses of Parliament; the control of the judiciary. Of course, everything is possible but the

Statement for the Commission

12

chances of these circumstances prevailing must be so remote that one has more chance of winning the lottery more than once. I suggest that you ask the person who holds such a view to describe the circumstances that would have to prevail for such a vision to come true.

To end, on a personal note I decided in 2007, some two years after my stroke, that I didn't want to go into old age like this. I engaged a lawyer to draw up a living will and stopped taking all drugs that were meant to prolong my life. I also wished for a life-threatening condition like cancer so that my life may end sooner rather than later because the law is not helpful to me. I also considered starvation but concluded that I didn't possess the courage to go through with it nor did I have the courage to put my family and friends through that amount of distress.

So, we have a law which: condemns me and others like me to a life of misery; makes my wife (or anybody else) a murderer for simply carrying out my wishes; puts people in jail for up to 14 years for helping someone to commit suicide; makes me wish for a fatal condition; makes me consider starvation as a way out and sends society's cripples abroad to die. Tell me, just what is compassionate about that? Who will defend such a law? What sort of person might he be? Who can defend the indefensible? Perhaps your Commission will tell us.

Thank you.

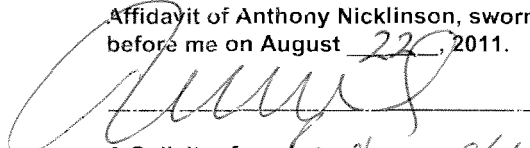
Tony Nicklinson

13 December 2010

TRANSCRIPT OF EVIDENCE FROM JANE
NICKLINSON AND SAIMO CHAHAL, ON
BEHALF OF TONY NICKLINSON TO THE
COMMISSION ON ASSISTED DYING.

Tuesday 14 December 2010
2pm, at Demos

This is Exhibit C referred to in the
Affidavit of Anthony Nicklinson, sworn
before me on August 22, 2011.


A Solicitor for Sindhu

Lord Charles Falconer (LF): Thank you very much both for coming. Could just for the record briefly say who you are?

Jane Nicklinson (JN): I am Jane Nicklinson.

Saimo Chahal (SC): And I'm Saimo Chahal from Bindmans LLP.

LF: Jane what would be really helpful is if you could just tell us what happened to Tony and what effect it had on him over a period of time. You used to live in Dubai...you went on a...

JN: He was on a business trip and he had a massive stroke and he is now left with locked in syndrome, which basically means he can't move and he can't speak, the only movement he has is a slight head movement and eyes, so he has to blink if he want to converse with you. He blinks it out with the aid of a board, or he has a specially adapted eye-blink computer.

LF: What effects has it had on his ability to understand and think about things?

JN: None whatsoever, I have actually got a statement which he wants me to read out, and you will see by the way he words it and everything that his mind is completely on the ball.

LF: Would you like to read the statement?

JN: Shall I do that now? It's a bit long winded I am afraid

LF: Don't worry

JN: [Reading 'Statement for the Commission' – also available separately on the commission's website]

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the fullest comment possible. If, however, the commission has any questions I would be pleased to answer them if they are put in writing.

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The law does not reflect the fact that we are all living longer and therefore prone to age-related illness, it has not kept up with advances in technology and is probably out of step with public opinion. Furthermore, such discrimination is wrong and would not be tolerated in any other situation. I wonder how the discrimination, when it is purely physical, squares with current legislation which states that it is unlawful to treat disabled people differently from those who are not disabled.

This law has no place in 21st century Britain. A new law is required to reinstate the rights of self-determination. Everybody, whether or not they need assistance, should be able to determine their own future. This should be the default position until it becomes an issue when the applicant is tested to see if he has the intellectual capability to make such a difficult decision. Notwithstanding a person's right to self-determination, I do recognise that certain people need protection. That is why the use of such legislation by those who need help to die should be subject to a test for competence; the law should be made difficult but not impossible to apply. I therefore submit *The Scheme for Assisted Death* for the commission's consideration.

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Please also keep religion out of this issue for it is purely secular. It is one thing to object to legislation and choose not to use it; it is another to block legislation because you happen to dislike what's proposed. I would hate to think that, as an atheist, my opportunity of a dignified death was thwarted by a religion I don't believe in.

Something needs to be done but neither palliative care nor some sort of tribunal is the answer.

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Other questions, and there are many, include these: Who sits on the tribunal? How many people make up a tribunal? Do they get paid? If yes, who pays them and how much? How often does it convene? How big is a quorum? Is its judgement binding or is it only advisory, in which case its decision can be ignored so why bother? If it's binding, how does one appeal if one doesn't like its decision? If it makes a recommendation, to whom does it make it? What is the test for competence? It seems that the more one asks questions, the more questions there are to ask.

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To end, on a personal note I decided in 2007, some two years after my stroke, that I didn't want to go into old age like this. I engaged a lawyer to draw up a living will and stopped taking all drugs that were meant to prolong my life. I also wished for a life-threatening

condition like cancer so that my life may end sooner rather than later because the law is not helpful to me. I also considered starvation but concluded that I didn't possess the courage to go through with it nor did I have the courage to put my family and friends through that amount of distress.

So, we have a law which: condemns me and others like me to a life of misery; makes my wife (or anybody else) a murderer for simply carrying out my wishes; puts people in jail for up to 14 years for helping someone to commit suicide; makes me wish for a fatal condition; makes me consider starvation as a way out and sends society's cripples abroad to die. Tell me, just what is compassionate about that? Who will defend such a law? What sort of person might he be? Who can defend the indefensible? Perhaps your commission will tell us.

Thank you.

LF: Thank-you very much indeed. In the statement your husband says he has had the desire to die since 2007. That's two years after the stroke -- that's what he says in the statement. Since 2007, has his view changed? Has it come and gone or...?

JN: Nò, not at all, He actually expressed his wish to die as soon as he could start communicating; as soon as he realised he was not going to get better. He said he would give life a couple of years like this to see if he could adapt because people said people do adapt and you could learn to make the most of what you've got, so he gave it a couple of years.

LF: And, have you sought to try a persuade him not to, during that period of time?

JN: Yes we have many times, but I know him and I knew as soon as I had realised what would happen to him that this would come at some point.

LF: Were there outsiders you sought help from, either people expert in treating people with locked-in-syndrome, to try and make his view different from that which he had expressed in 2007?

JN: Yes he was in hospital for two and a half years, either in a hospital or rehab; he saw a psychiatrist and he has seen counsellors and everything, it did nothing.

LF: What does he do? How does he spend his days?

JN: He spends most of the day on his computer writing emails to people, looking on the internet, writing a book, he is writing his memoirs. His new computer is a lot better, he has this eye-blink computer which is a huge boost for him really. About 4 o'clock he comes off the computer and just watches TV in the evenings. He rarely leaves his room.

LF: Could you describe how he communicates – you say the ‘eye-blink computer’: does that mean he can blink his eyes at a particular letter?

JN: Yes, it's a perspex board; it has groups of letters and colours and by looking at a group of letters and then a colour you can work out which letter he wants, so that you spell out a word.

LF: That needs a human intermediary to do that?

JN: Yes, he can only communicate with people that know how to use the board.

LF: Right; and how many people know how to do that?

JN: Me, my daughters and one or two of the carers. People are very reluctant to learn how to use it. It's like learning a foreign language; you're afraid you're going to make a fool of yourself.

LF: How long did it take you to learn it?

JN: About five minutes. It's very easy, the concept is very easy, it's just getting used to it. I know where his eyes are going, I mean I have done it for so long, so many times, just a slight movement of

his eyes and I can sort of work it out, it does take practice, but the actual principle is very easy.

LF: And something like the statement which you read today, which is obviously his, what's the form in which that is actually produced? Do you type it out as he does the letters?

JN: This is all done on his computer.

LF: He does it? Right. OK. Other questions. Elaine...

Baroness Elaine Murphy (BM): Can I ask you about your own journey from this tragedy? Have you changed your mind at all about what you wanted for him? Do you think there is any hope that he will change his mind in the future? Do you know?

JN: No, none whatsoever. I knew this would come, as I said from the day he had the stroke. I am a nurse, so I knew what the prognosis was, and I knew that this point would come. We tried to talk him out of it, but I can say one hundred percent there is absolutely no way he would change his mind; none whatsoever. And people have said things are changing, technology is improving, medical advancements, and he said you know to live for the next 20 or 30 years just for the hope of being able to move a finger is just not enough.

BM: Tony has given us his view of what he doesn't want to happen. He obviously doesn't like the idea of the tribunal. What would his positive thoughts be, or what have you talked together about what he would like rather than what he wouldn't like? What would he like?

JN: In an ideal world what he would like is for me to give him a sedative, so that he goes off to sleep and then hopefully a doctor or someone would come and give him the fatal dose, so I didn't actually give it to him and wouldn't have to live with that. In an ideal world, that's what he would like. At home.

LF: Just picking up his point... He said, his words were that he thought it should be difficult, but not impossible to have an assisted

death. And I thought he was saying some sort of tribunal might be the answer. Is that right?

JN: He has got this scheme, I won't bore you with it now, I've got copies for everyone to have a look through, he has this scheme. I'm not sure exactly what the tribunal said to be honest. His scheme is quite simple. We do understand that there are people out there who need to be protected without a doubt; but at the moment they are being protected at his expense, his rights are been taken away from him and he can't see how anyone can see that is right, its not just.

LF: And just to press you: on his right, identify the right that you say is been taken away from him?

JN: To take his own life.

LF: He's got other family apart from you, two daughters aged...?

JN: Two daughters yes, 21 and 23.

LF: And what's their view about this?

JN: They are totally behind him, totally.

LF: Friends, he's got friends as well?

JN: To be honest, seriously I don't know anyone that thinks we are doing the wrong thing. People that know him, everyone that knows the kind of person he was fully understands why he is doing this.

LF: Questions. Any other questions...?

Dr Stephen Duckworth (SD): Is he in a position to sit up at all or is he in bed all the time?

JN: No, no he gets up into his chair and that, yes.

SD: You say he doesn't go out much. Is that at his insistence or has there been some encouragement? To go abroad on holiday, to enjoy the sunshine?

JN: No, I've got a car and everything to take him out. I think I have had it for two and half years and he has been out in it three times and that's just to go to the dentist. That's the only time he ever goes out.

SD: Has he had any input from maybe a cognitive behavioural therapist or some other form of input to enable him to envisage a different future for himself other than which he is currently talking about?

JN: Yes, he was in hospital in Bath for over a year. We used to take him out into Bath sometimes for a walk around, but he didn't enjoy it. He didn't enjoy being pushed around, he doesn't even want to leave his room anymore. I can barely even get him to go into the sitting room if anyone visits but if people visit he won't see them anyway, he won't see anyone. He'll say hello and that's it and then they have to go away.

SD: Probably wrong of me to do so, I am reflecting on my own experiences of trying to remain inside my home when my friends came round and not wanting to go out because I'd never seen...this is 28-29 years ago... I'd never seen anybody like me out there and people like me didn't belong out there, but as soon as I started doing it and became one of the first of those people out there I started to see more people. I just wonder whether he's got the potential capacity to change?

JN: I don't think so. I think, to be honest, if he could speak things would be completely different, that's the real bug-bear, the lack of his being able to communicate with people. He says that he can't sit in a room full of people listening to them jabbering away and he can't interrupt. He was always someone who loved the sound of his own voice, he loved nothing more than to have a good argument with someone or you know debate as he would call it. For him it is sheer agony for him to sit and listen to people talking, I mean he would love dearly to be here today to argue his point.

BM: It's that lack of communication that you feel is the most difficult thing for him to bear rather than the psychical dependence?

JN: I think that's the worst. It is everything really but I think if he could speak then maybe things might be different. He just gets...sorry...I can't describe how frustrated he gets when he is trying to tell someone something, even if it is one of the carers to move a leg or move a foot or something and he can't make them understand. He just, he looks like he is going to explode at any moment. I'll go and slam a door or throw something or scream or swear you know; he can't do any of these things. He just gets so frustrated with people and the more frustrated he gets the worse it is because then you can't understand even more what he wants because he cries and his eyes go all funny and everything so you can't see what he is looking at.

Dame Denise Platt (DP): You mentioned carers. What sort of care and support do you get?

JN: I have someone in the mornings, a couple in the mornings to get him up and shower him and everything and one in the afternoon to move him from his wheel chair to his arm chair and then we have one overnight.

DP: Is that sufficient?

JN: Yes.

DP: And have those carers been with you for a while? Are they the same carers?

JN: Well we've just actually changed to a new care agency but they are quite good.

DP: So adequate?

JN: Yes.

LF: And your home; is it adapted to meet the particular needs that he's got?

JN: Yes we have a room built on for him.

Professor Sam Ahmedzai (SA): I am a little bit, not confused, I am interested in his state of mind. You say on the one hand he is clearly expressing no desire or will to live but he is writing his memoirs. What's motivating him to write his memoirs?

JN: I suppose he just want to leave his, something behind.

SA: What kind of message is he giving? Is it going to be inspirational or is going to be saying don't do this or...?

JN: No, no, it's nothing to do with this part of his life, I mean it's not a Diving Bell and Butterfly type book, it's about our life overseas, and all the people we have met and all the places we've been. It will be funny you know, semi-factual, I suspect there'll be a few stories in there that aren't really true. He is really enjoying doing it, he's has got a real way with words, I mean, he's got a tremendous sense of humour, but it's just very, very difficult to find that anymore, the real Tony is so deep inside now.

SA: But that in itself is something that is keeping him going at the moment?

JN: Yes it is.

SA: And who is to say that when he finishes that book he won't want to start another?

JN: I don't know.

SA: Another question. I think I know the answer to this but, has he actually had any contact with palliative care? Has there been any palliative care input into his condition, into his medical or nursing care?

JN: What do you mean palliative care exactly?

Prof SA: That's a good question, but, I think you read out from him a question about palliative care, so he must have some idea. But

let's just say specialised services for the care of dying people; sort of people that work in hospices for example.

JN: He's not dying! He is not dying! This is the problem, you know he is not dying, he would wish to have cancer or something but he is not dying. He could outlive us all.

SA: So he would say and you would say that palliative care isn't an answer for his condition?

JN: Well no. He doesn't need palliative care. He could live for another 20-25 years like this.

LF: Thank you so much for coming, you have brilliantly expressed what I am sure you wanted to express, he has expressed it himself in the documents which he has produced which we will all consider very, very carefully. It's a real assistance to the commission to hear from you and through you from your husband. So we really appreciate you coming.

JN: Thank you for having me

LF: Thank you for coming

BM: Will you say thank you to him?

JN: Yes I will.

LF: I went down to Jane's house for a Radio Five Live broadcast which lasted over a two hour period, which the nation heard, Tony's view from there, he did express himself very, very clearly there, the views that you are expressing to us today exactly reflects the views that he was expressing at the time. So thank you very much. And could you thank Tony for us.

Saimo Chahal (SC): Did you want to hear any information about his legal case, because I can circulate a paper or I can tell you about it?

LF: Yes that would be interesting, is the legal case trying to ensure that there will be no persecution subject to any assistance with suicide, is that the view of the case?

SC: No. In Tony's case we are challenging the law of murder, saying that there should be a review of the law of murder and that mercy killing should be dealt with in a separate way, I mean I have got a very short statement if you want to hear about it?

LF: Yes do, that would be interesting.

SC: So, I am acting for Tony in his legal case, which is a proposed judicial review claim against the secretary of state for justice, and that claim arises because Tony wants to end his life at a moment of his own choosing at home with his family around him as you heard from Jane.

But because there is no law of assisted dying in this country as things stand, there are significant impediments to him being able to do so in a safe and dignified manner and the penalties for anyone helping him are grave. So the setting up of this commission comes at a very timely moment for Tony.

So Tony's case is about bringing legal proceedings that will clarify when it is lawful for him to end his life in circumstances where he has made a competent and rational decision to end his own life, but by virtue of his almost total physical disability he is unable to do so even with assistance other than by refusing foods and liquids and thereby dying of dehydration. And this is a method he has rejected as one that is painful and distressing for his family to witness and one that is lacking in regard for his dignity, which he wishes to maintain.

So far as the current law stands, Tony knows that any person who assists him by taking active steps to end his life will be prosecuted for the offence of murder, regardless of his consent. The DPP has confirmed that he does not have any meaningful discretion as to whether to prosecute, at least in so far as the "victim's" consent is concerned and so that throws into stark relief how the law of murder constitutes an absolute bar to the exercise of Tony's right to

choose when and how to end his life, giving rise we argue to a disproportionate interference with his Article 8 rights which is not justified under Article 8(2.). And those are the rights to personal autonomy and ability to make decisions about the closing moments of his life.

The current state of the law on murder also highlights vividly the situation seen from Jane's perspective, who if she actively helps her husband because she loves him and wants to help him, when he asks her to, she will be liable to be charged with murder, with all the stigma and severity of the penalty that that offence carries, namely a mandatory life sentence.

Tony's legal challenge is to the blanket nature of the prohibition of killing in the law of murder, in so far as it applies to cases of genuine consensual killing. What is being requested in Tony's case is a declaration under article eight of the Human Rights Act that the law, as currently framed, is incompatible with Tony's Convention rights.

It is accepted that it should be for Parliament, after a suitable review of the law, to determine how the law is to be framed. But it is open to the Court to grant a declaration that the current law fails to strike a proportionate balance between Tony's Article 8 rights and the obligation to protect the Article 2 rights (the right to life of other people). It will then be for Parliament to determine how that balance should be struck.

It's accepted in Tony's case there is no consensus that consensual killing should be legalized as yet, but a few countries permit consensual killings. The practice is lawful, and regulated, in places like the Netherlands, Belgium, Luxembourg, Oregon. In Japan it is lawful provided a number of conditions are met, set down by case-law. The direction of travel is towards recognising the right of autonomy over end of life decisions (as was recognised in Debbie Purdy's case) and therefore towards the legalisation of consensual killings. However it is not necessary in Tony's case to establish that Article 8 requires consensual killing to be legalised, and that is not his case. His case is that the current law disproportionately affects

his right to personal autonomy as somebody who is too physically disabled to end his own life. If that is right then the Court may make a suitable declaration. It will then be a matter for Parliament to change the law. In order to succeed in his claim Tony needs to demonstrate that some change to the law is required, even if it is a change that does not go as far as he would like.

SC: The state we are at is we are waiting to hear from the Legal Services Commission as to whether public funding has been granted for the next stage which is to issue judicial review proceedings.

LF: You are going to bring judicial review proceedings seeking declaration from the English courts that our law infringes on Tony's Article 8 rights. You don't have to say what the right law should be all you need to say is that it disproportionately prejudices Tony's right to choose the manner of his death.

SC: Yes, so we are invoking Article 8 and 14 because of the discrimination element.

LF: Yes, OK, and do you not need a decision to appeal against or is it sufficient for you to have the law in that state?

SC: We have got a decision from the Secretary of State for Justice saying...

LF: ...who says he won't change the law?

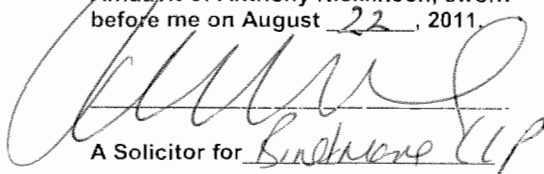
SC: He won't change the law and it's not disproportionate, so that gives rise to the challenge that we seek to make.

LF: Have you got a note, will you leave us a copy? OK thank you very much, for all you have done today.

SC: Thank you.

Copy of Scheme for Assisted Death dated December 7, 2010

This is Exhibit D referred to in the
Affidavit of Anthony Nicklinson, sworn
before me on August 22, 2011.


A Solicitor for Anthony Nicklinson

A SCHEME FOR ASSISTED DEATH

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The purpose of this document is to show that there is a credible and practical alternative to prohibition, the present situation. Criticism is welcomed but it is expected that the critic will offer a solution to the problem that has been identified. Scheme requirements are given in blue, commentary in red.

Eligibility: Any British citizen who is an adult and has been resident in the UK for the 6 months prior to the date on the contract is eligible for the scheme. The Scheme is open to all British adults and is thus not discriminatory. The law doesn't make any distinction between adults – a person is either an adult (18+) or not – and the Scheme sees no reason to disagree. The rules for being resident are meant to limit the sort of issues that Switzerland now faces, although it is recognised that they may be unenforceable.

Capability: The nation is divided into two groups – those who are capable of making an informed, independent decision and those who aren't, as determined by the test of legal capacity. Those who don't have legal capacity cannot form a contract and because a contract is an essential part of the Scheme, are automatically excluded; they are thus protected. There is no evidence that having only a physical disability such that help is needed to die impairs a person's ability to make a decision (ask Debbie Purdie or Sir Terry Pratchett if they agree), which is why disability is not considered. It simply isn't relevant. There are many reasons why a person may want to die and they should all be treated with equal respect. It is not logical for a reason, such as having an illness like dementia, that is given by a person who needs no help to die is legal yet that same reason when given by a person who needs help is illegal. Furthermore, if they both have legal capacity does it mean that what's legal for one is illegal for the other? Finally, legal capacity has been chosen because it exists, is a central part of contract law, is well understood by the judiciary and is therefore cheap.

Contract: Every person (the Applicant) must form a contract (a living will) to be included in the scheme. The living will describes how the Applicant intends to comply with the law and other relevant information such as, perhaps, the arrangements regarding resuscitation. The Applicant engages a lawyer approved by the DPP to prepare the document; the lawyer must be satisfied that the Applicant has the necessary legal capacity. If the lawyer says he doesn't and the Applicant disagrees with the lawyer's decision, he may plead his case before the judge. The Scheme is voluntary so if you don't want to die, don't make a contract. The contract may apply to the present or the future, is enforceable until the death

A SCHEME FOR ASSISTED DEATH

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of the Applicant and can be terminated by him at any time and for any reason should he change his mind. The lawyer is approved by the DPP because it makes it harder for the DPP to object to the choice of law firm.

Judge: The contract is subject to a judicial review in open court. The Applicant must appear in person so that the judge can verify that he has legal capacity. The judge may ask anybody any question to help him come to a decision. The judge only decides on the legality of the contract; he is not there to question the judgment (the decision) of the Applicant. However, once the contract has been ruled on, the court may hear from interested parties. The requirement that the Applicant appears in court in person immediately rules out the bedridden and housebound. If the judge finds evidence that the Applicant has been subject to coercion, the relevant person(s) shall be prosecuted and shall face up to 14 years in custody.

Interval: A period of 3 months shall elapse between the judge ruling that a contract is legal and the contract becoming enforceable. This allows the Applicant time to reflect on what has happened and for support agencies to do what they do.

Death: The death of the Applicant shall be conducted as described in the contract.

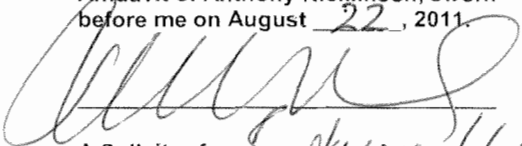
Investigation: Following the death the DPP may want to carry out an investigation. If it is determined that death happened as described in the contract the death shall be considered legal. If it happened some other way, the helpers shall be liable to prosecution as at present.

- End -

Tony Nicklinson
07 December 2010

Copy of a written statement authored in Mr. Nicklinson's behalf by his solicitor, Saimo Chahal, titled "Tony Nicklinson's legal case"

This is Exhibit E referred to in the
Affidavit of Anthony Nicklinson, sworn
before me on August 22, 2011.


A Solicitor for Sinclair & Co

The Commission on Assisted Dying 14.12.2010

Tony Nicklinson's legal case

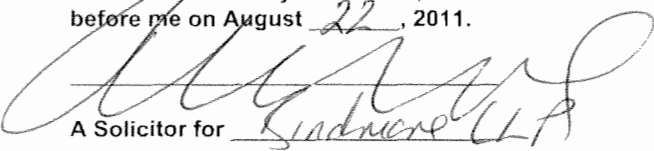
1. I am Tony Nicklinson's solicitor and act for Tony Nicklinson in connection with a proposed Judicial Review claim against the Secretary of State for Justice. The claim arises because Tony Nicklinson wishes to end his at a moment of his own choosing, at home with his family around him. But, because there is no law of assisted dying in this country, there are significant impediments to him being able to do this in a safe and dignified manner and the penalties for anyone helping him are grave. The setting up of this Commission therefore comes at a very timely moment for Tony.
2. Tony Nicklinson's case will seek to bring legal proceedings that will clarify when it is lawful for him to end his life in circumstances where he has made a competent and rational decision to end his own life but, by virtue of his almost total physical disability, he is unable to do so, even with assistance, other than by refusing all food and liquids and thereby dying of dehydration. This method has been rejected as one that is painful for him, distressing for his family to witness and lacking in regard for his dignity which he wishes to maintain.
3. So far as the current law stands, Tony knows that any person who assists him by taking active steps to end his life will be prosecuted for the offence of murder, regardless of his consent. The DPP has confirmed that he does not have any meaningful discretion as to whether to prosecute, at least in so far as the 'victim's' consent is concerned and this throws into stark relief how the law of murder constitutes an absolute bar to the exercise of Tony's right to choose when and how to end his life, giving rise we argue to a disproportionate interference with his Article 8(1) rights which is not justified under Article 8(2.).
4. The current state of the law on murder also highlights vividly the situation seen from Jane's perspective, who if she assists her husband because she loves him and wants to help him, when he asks her to, she will be liable to a charge of murder, with all the stigma and severity of the penalty that that offence carries, namely a mandatory life sentence.

5. Tony's legal challenge is to the blanket nature of the prohibition of killing in the law of murder, in so far as it applies to cases of genuine consensual killing. What is being requested in Tony's case is a Declaration under s .8 HRA that the law, as currently framed, is incompatible with Tony Nicklinson's Convention rights under Article 8. Also, that article 14 is engaged as the law discriminates against him as a person who is physically disabled and thus cannot take his own life without active assistance from another
6. It is accepted that it should be for Parliament, after a suitable review of the law, to determine how the law is to be framed. But it is open to the Court to grant a declaration that the current law fails to strike a proportionate balance between the Article 8 rights of individuals like Tony and its obligation to protect the Article 2 rights (the right to life and the protection of the vulnerable) It will then be for Parliament to determine how the balance should be struck.
7. It is accepted there is no consensus that consensual killing should be legalized as yet, but a few countries permit consensual killings ('voluntary active euthanasia'). The practice is lawful, and regulated, in the Netherlands, Belgium, Luxembourg and Oregon, USA. In Japan it is lawful provided a number of conditions are met, set down by case-law. The direction of travel is towards recognizing the right of autonomy over end of life decisions and therefore towards the legalization of consensual killings. However it is not necessary for Tony Nicklinson to establish that Article 8 requires consensual killing to be legalized, and that is not his case. His case is that the current law – where consensual killing is absolutely prohibited by the law of murder (for which only one sentence – life imprisonment – is available) disproportionately affects his Article 8 rights. If that is right then the Court may make a suitable declaration. It will then be a matter for Parliament to change the law. The final outcome may be the legalization of consensual killings in circumstances such as Tony's but the changes may not go that far: In order to succeed on his claim he need only demonstrate that some change to the law is required, even a change that does not go as far as he would like.

This is Exhibit F referred to in the
Affidavit of Anthony Nicklinson, sworn
before me on August 22, 2011.

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Statement of: Anthony Nicklinson
Exhibit no: 0
Date: 14th July 2010

A Solicitor for 

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION FOR PERMISSION FOR JUDICIAL REVIEW OF
A DECISION OF THE DPP DATED 18 MARCH 2010

CO/ /2010

BETWEEN:

R

(ANTHONY NICKLINSON)

Claimant

v.

DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

AND

MINISTRY OF JUSTICE (1)

First Interested Party

JANE NICKLINSON (2)

Second Interested Party

WITNESS STATEMENT OF ANTHONY NICKLINSON

I, Anthony Nicklinson, of 26 Thames Crescent, Melksham SN12 8EH, make oath and
say as follows:

1. I have read the statement of Jane Nicklinson and agree with its contents. I
refer you to that statement for the factual and background information.

2. Where to start? I am a 56 year old man who suffered a catastrophic stroke in June 2005 whilst on a business trip to Athens, Greece. It left me paralyzed below the neck and unable to speak. I need help in almost every aspect of my life. I cannot scratch if I itch, I cannot pick my nose if it is blocked and I can only eat if I am fed like a baby - only I won't grow out of it, unlike the baby. I have no privacy or dignity left. I am washed, dressed and put to bed by carers who are, after all, still strangers. You try defecating to order whilst suspended in a sling over a commode and see how you get on.

3. I am fed up with my life and don't want to spend the next 20 years or so like this. Am I grateful that the Athens doctors saved my life? No, I am not. If I had my time again, and knew then what I know now, I would not have called the ambulance but let nature take its course. I was given no choice as to whether or not I wanted to be saved. However, I do concede that it was a fair assumption given that I had asked for the ambulance and associated medical staff.

4. What I object to is having my right to choose taken away from me after I had been saved. It seems to me that if my right to choose life or death at the time of initial crisis is reasonably taken away it is only fair to have the right to choose back when one gets over the initial crisis and have time to reflect..

5. I'm not depressed so do not need counseling. I have had almost five years to think about my future and it does not look good. I have locked-in syndrome and I can expect no cure or improvement in my condition as my muscles and joints seize up through lack of use. Indeed, I can expect to dribble my way into old age. If I am lucky I will acquire a life-threatening illness such as cancer so that I can refuse treatment and say no to those who would keep me alive against my will. Unfortunately, I don't smoke or drink any more - have you ever tasted thickened beer? No? Then perhaps you should - so tobacco or alcohol induced diseases are out and since I rarely go outside the likelihood of me catching a fatal disease is low.

6. Letting nature take its course can, I admit, take a long time or not work at all but what choice do I have since do-gooders - those people who want assisted suicide to remain illegal - took away my right to decide my own fate, a right

which, incidentally, they have. Why deny me and others who need help? Is it because I'm disabled?

7. Perhaps I somehow can't be trusted to make the 'right' decision? Have I suddenly lost my intellectual ability? - if that was really a criterion, then probably half the country would be ruled out. Or is it something else? I would like to see a do-gooder explain that to me. The flaw in their argument is the assumption that we all want to live whatever the cost in terms of quality of life when this is clearly not the case. I want to make that choice for myself. What prevents me is the fact that I am too disabled to take my won life and unlike an able bodied person I need help to die.
8. By all means protect the vulnerable (by vulnerable I mean those who cannot make decisions for themselves,) just don't include me. I am not vulnerable, I don't need help or protection from death or those who would help me - if the legal consequences were not so huge- life imprisonment.
9. I am asking for my right to choose when and how to die to be respected. I know that many people feel that they will have failed if someone like me takes his own life and that life is sacred at all costs. I do not agree with that view. Surely the right and decent thing to do would be to empower people so that they can make the choice for themselves. Also, why should I be denied a right - the right to die of my own choosing when able bodied people have that right and only my disability prevents me from exercising that right. In the interests of equality surely the state should help to equalise the position between someone like me and some one who is not disabled?
10. I shall miss my family and friends when I go but I have to die some time. Hopefully they will eventually get over it. They know what my views are and I know that they would support me in them.
11. I have heard it said that a compassionate society would not allow assisted suicide but I take the contrary point of view. Surely a compassionate society is one which, as far as possible, accommodates all views as it clearly can in this case if the pioneering work in Oregon and Holland is to be believed. The vulnerable seem adequately protected and there is no evidence as far as I know

of people being killed against their will, so where is the 'slippery slope' down which society will descend if we cease discriminating against those who need help to die.

12. I don't want to die in a foreign country where assisted suicide is legal- even if getting there were realistic for me. I want to end my days in the comfort of my own home - is that too much to ask? Why can't I? If you really have my best interests at heart, and the interests of thousands of others who would take advantage of a change in the law, you would help me to restore choice. If that were the case, I may not exercise my right immediately, just having the same right as those who are able bodied may be sufficient. I would know that I could have help to die when I am ready. That would be a great comfort - knowing that I can be released when it gets too much for me.

13. Governments of all complexions speak about not discriminating against minorities, the disabled and so on. Well, I am being discriminated against because I am totally physically disabled. I am not equal under the law and I don't have the same choices as someone who is not. Is that fair?

14. So, do you want grotesquely swollen feet brought about by the inability to walk? Experience the frustration of being unable to speak? Does your heart race to the sound of the hoist as it moves you between bed and chair? How about sitting without moving for six hours because you are paralysed? Do you crave a life with all the inconvenience of being a cripple without the benefits of being normal? Well, coming to an NHS hospital near you is a stroke unit where staff trained in 21st century medicine prevent you from dying so that you can live a life totally devoid of quality. Fancy it? No? Then kindly explain why the hell I should.

15. If you have any sympathy for me you will agree that the law needs to be changed so that people like me can die with dignity. So that people like me don't have to worry about a loved one being charged with murder for helping to end my life with my consent when I choose that the quality of my life is no longer worth living.

16. There is now produced and shown to me marked exhibit AN1 correspondence sent by my solicitors to the DPP in the form of a letter before claim and replies together with a letter before claim to the Secretary of State for Justice together with replies.

I make this statement to the best of my knowledge and belief.

Signed on behalf of Tony Nicklinson in his presence and in the presence of a witness by

B. Willison

Dated 14th July 2010

Signature witnessed by

Name P. Howcroft

Address: 36 High Street

Easton Devices. SW10 4PE

Occupation: Care Assistant

Dated 14th July 2010

No. S112688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LEE CARTER ET AL.

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANTS

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

INTERVENOR

AFFIDAVIT

Arvay Finlay
Barristers
1350 – 355 Burrard Street
Vancouver BC V6C 2G8
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File No. 2734-001