Amended pursuant to Rule 6-1(1)
Original filed June 27, 2016

No. S-165851
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JULIA LAMB ~~and~~, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
and ROBYN MORO

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

AMENDED NOTICE OF CIVIL CLAIM

Name and address of each Plaintiff

Julia Lamb
c/o Farris, Wills, Vaughan & Murphy LLP
25 Floor, 700 West Georgia Street
Vancouver BC V7Y 1B3

British Columbia Civil Liberties Association
c/o Farris, Wills, Vaughan & Murphy LLP
25 Floor, 700 West Georgia Street
Vancouver BC V7Y 1B3

Robyn Moro
c/o Farris, Wills, Vaughan & Murphy LLP
25 Floor, 700 West Georgia Street
Vancouver BC V7Y 1B3

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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff Julia Lamb ("Julia"), age 25, is a marketing assistant who lives in Chilliwack, British Columbia.

2. The Plaintiff Robyn Moro ("Robyn"), age 68, is a retired retail business owner and operator who lives in Delta, British Columbia.

~~2.~~3. The Plaintiff British Columbia Civil Liberties Association ("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 900 Helmcken Street, Second Floor, Vancouver, British Columbia, V6Z 1B3.

~~3.~~4. The Defendant Attorney General of Canada ("Canada") has an address for service at 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.

"Grievous and Irremediable Medical Condition"

~~4.~~5. A "grievous and irremediable medical condition" is a serious medical condition, including an illness, disease or disability, that has been diagnosed as such by a medical practitioner and that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. "Irremediable" does not require the patient to undertake treatments that are not acceptable to the individual.

"Impugned Laws"

~~5.~~6. This claim challenges the constitutional validity of the following underlined portions of s. 241.2 of the *Criminal Code*, R.S.C. 1985, c. C-46, as amended by Bill C-14, assented to on June 27, 2016 (the "impugned laws"):

> **241.2 (1)** A person may receive medical assistance in dying only if they meet all of the following criteria:
>
> **(a)** they are eligible - or, but for any applicable minimum period of residence or waiting period, would be eligible - for health services funded by a government in Canada;
>
> **(b)** they are at least 18 years of age and capable of making decisions with respect to their health;
>
> **(c)** they have a grievous and irremediable medical condition;
>
> **(d)** they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
>
> **(e)** they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering including palliative care.
>
> **(2)** A person has a grievous and irremediable medical condition only if they meet all of the following criteria:
>
> **(a)** they have a serious and incurable illness, disease or disability;
>
> **(b)** they are in an advanced state of irreversible decline in capability;

(c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and

(d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

Julia

~~6.~~7. Julia has Spinal Muscular Atrophy ("SMA"), Type 2, a hereditary disease that causes weakness and wasting of the voluntary muscles. This wasting may lead over time to areflexia, overall muscle weakness, difficulty walking/standing/sitting, loss of strength of the respiratory muscles and respiratory distress, fasciculations of the tongue and difficulty swallowing.

~~7.~~8. SMA is caused by an abnormal or missing gene known as the "survival motor neuron gene 1." The gene is responsible for the production of a protein essential to motor neurons, which are the nerves that control muscle movement. Without the ability to produce this protein, motor neurons in the spinal cord degenerate and die.

~~8.~~9. SMA is a progressive degenerative disease. Progress is known to vary greatly. It has no known cure or effective pharmacological treatment. Care is symptomatic.

~~9.~~10. SMA has no negative impact on cognitive development.

~~10.~~11. Most individuals with SMA Type 2 live well into adulthood, although life expectancy is reduced. Death before the age of 20 is frequent, but many SMA Type 2 patients live through their 40s and 50s.

~~11.~~12. Julia was diagnosed with SMA when she was 16 months old. She was never able to crawl or walk. She began using a wheelchair when she was six years old. She developed scoliosis (curvature of the spine), which is a common symptom of SMA, because normal growth of the skeletal system relies on normally functioning muscles. At age seven, Julia underwent surgery for her scoliosis, which was causing one of her lungs to collapse. The surgery entailed applying hooks and screws to her spine to anchor two long rods.

~~12.~~13. Julia's disease progressed throughout her childhood and adolescence. When she was a child, she could stand for periods of time in a standing frame, which supports a person in a standing position. By the time she was an adolescent, she had begun to develop osteoporosis, a medical condition in which the bones become brittle and fragile from loss of tissue. Julia's bones and muscles could no longer support her weight in a standing position.

~~13.~~14. Julia began to suffer repeated respiratory infections.

~~14.~~15. Julia lived with her parents until 2010. Despite her increasing disability, Julia moved out of her parents' home to live as independently as possible and lived on her own from

September 2010 to April 2011 while attending school in Richmond. She then returned to live with her parents until January 2016. She has since been living independently in her own apartment with the help of three care aides, with whom she is very close.

~~15.~~16. Julia's care aides provide home care for approximately 18 hours a day, attending to her overnight, in the morning and in the evening. She currently is not capable of any daily living activities and requires assistance for bathing, dressing, toileting and preparing meals. Julia is able to feed herself, but requires a care aide to cut her food into small bites because recently she has begun to experience increased difficulty with swallowing.

~~16.~~17. Julia is unable to roll herself over in bed, so she requires the assistance of an aide to roll her over during the night so she does not develop pressure sores. Julia wakes up to five times per night from discomfort and pain and requires assistance to adjust her positioning. Her waking throughout the night leaves her fatigued.

~~17.~~18. Julia values her alone time. While she has a good relationship with her care aides, she is sensitive to the moods of other people and she finds it exhausting to be so frequently in the company of other people.

~~18.~~19. Julia is unable to move or bend her legs and is unable to bend her hips. She has severe weakness in her arms and legs, although she retains a limited range of movement in her arms.

~~19.~~20. Julia loves writing and she is able to type on her computer and write longhand. Julia graduated from high school from G.W. Graham Secondary School. She attended a fashion marketing program at Kwantlen Polytechnic University in Richmond. She completed one year of the program before having to quit due to health issues.

~~20.~~21. She is also able to manually control her electric wheelchair.

~~21.~~22. She cannot brush her hair because she cannot reach over her head, but she is able to apply her own makeup.

~~22.~~23. Julia experiences frequent pain from muscle contractures in her hips, shoulders, elbows, wrists and ankles. The condition is caused by stiffness and muscle constriction in muscles, joints, tendons and ligaments, which restricts normal movement. Physiotherapy has provided her with temporary gains in mobility, but has not provided lasting relief. She also occasionally experiences severe back pain as a result of her scoliosis surgery.

~~23.~~24. Julia relies on a wheelchair for mobility, which allows her to leave her apartment most days. Julia works part-time as a marketing assistant for a local clothing retailer, writing their newsletters and managing their social media accounts. She largely works from home, however she makes weekly visits to the company's store locations, and conducts market research by visiting other stores in the area.

~~24.~~25. In the last couple of years, Julia has become increasingly concerned about her progressively declining health. She feels as though her body is starting to fail her, which makes it difficult for her to feel as though she can forge ahead in life.

~~25.~~26. Her grasp is not as strong as it used to be. She can no longer reach as far with her arms.

~~26.~~27. Her lung capacity has decreased and is currently only at 30 percent. She has noticed that her breathing has become more shallow. She lives with the constant fear that a mild cold could lead to pneumonia and a permanent further decrease in lung function.

~~27.~~28. Last year, she started waking with excruciating headaches, which her physician told her was likely caused by breathing difficulties. As result, for the past year she has been sleeping every night with a BiPAP, a machine that assists with breathing.

~~28.~~29. Julia now tires more easily. Although she used to be able to write term papers for school, she now sometimes finds herself exhausted after writing a single email.

~~29.~~30. Julia's osteoporosis is now severe. In the last several years, she has broken her ankles numerous times from falling. Last month, she broke her leg in two places after she leaned forward in her wheelchair and could not stop herself from falling over. The bone fractures were extremely painful.

~~30.~~31. Julia may require a permanent tracheotomy in the future. Julia worries that a tracheotomy may negatively impact her ability to communicate orally.

~~31.~~32. Should Julia's respiratory function decrease further, Julia may be able to breathe independently yet require a ventilator for quality of life, much as she uses the BiPAP presently. While ventilators may be portable, they are cumbersome and Julia dreads the further restriction of her mobility.

~~32.~~33. Julia may lose the use of her hands. She fears losing the ability to drive her wheelchair and write and type because she loves to express herself through writing. She also loves to use illustration and drawing programs on her computer.

~~33.~~34. Through worsening muscle function in her throat, Julia may lose the ability to eat. She worries about requiring tube feeding.

~~34.~~35. Julia tries to keep moving and maintain her active lifestyle, but she feels a shadow looming over her. Julia fears that the worst possible version of her future – one where she suffers increased pain and discomfort, has difficulty breathing sufficiently well on her own, loses her independence and loses her ability to express herself – could come upon her at any time. She has no way to know how and when her disease will progress, but she knows that it is possible that it will bring intolerable suffering upon her and that the time period she will be left in that state could be of unknown and unbearable duration.

~~35.~~36. Julia's choices are already limited by her disability. Julia wants the peace of mind of knowing that provided she is fully informed and clearly consents to it, she has the right to be able, should her medical condition bring her to the point of enduring and intolerable suffering, to seek medical assistance in dying in order to alleviate that suffering regardless of how long she might survive in that state and regardless of the fact that predicting her life expectancy may be beyond the capability of her physicians or that her death from natural

causes is not reasonably foreseeable or that she may not be in an advanced state of irreversible decline.

~~36.~~37. The fact that the impugned laws may not allow Julia to have access to medical assistance in dying should her symptoms develop in such a way as to cause her intolerable suffering causes Julia great stress and deprives her of peace of mind.

Robyn

38. Robyn has Parkinson's Disease ("Parkinson's"), a degenerative disorder of the central nervous system that primarily affects movement. Parkinson's causes motor symptoms such as shaking, slow movement, and muscle rigidity. As the disease progresses, additional symptoms may develop including pain, fatigue, difficulties with speech and swallowing, impaired balance, periodic muscle freezing, gastrointestinal complications, and orthostatic hypotension.

39. Parkinson's is the result of neurons in the brain gradually breaking down and dying. Many Parkinson's symptoms are due to the loss of neurons that produce a chemical messenger called dopamine. Dopamine controls bodily movement by carrying signals between the nerve cells in the brain. When the neurons that produce dopamine die, the movement symptoms of Parkinson's appear.

40. The cause of Parkinson's is unknown, although several factors appear to play a role, including genetics and environmental triggers.

41. Parkinson's is a progressive, neurodegenerative disease. Progress is known to vary greatly. Parkinson's has no known cure or effective pharmacological treatment. Care is symptomatic.

42. Individuals with Parkinson's typically have a normal life expectancy.

43. Robyn was diagnosed with Parkinson's in 2013. The onset of her symptoms was gradual, and her early symptoms included tremors in her upper body, partial masking of her facial expressions, reduced eye blink, stiffness in her lower body, and gait changes.

44. In the years following her diagnosis, Robyn's symptoms multiplied. The tremors spread to various other parts of her body, including her legs and face. She began to experience muscle freezing episodes, where her legs lock in position. Her pain levels increased alongside these additional symptoms, and she began experiencing persistent headaches, nausea and vomiting.

45. Throughout the progression of her disease, Robyn's Parkinson's has been difficult to manage due to her intolerance to many of the pharmaceuticals typically relied on to manage pain and Parkinson's symptoms.

46. Robyn experiences persistent nausea. She cannot eat most solid foods without severe abdominal pain and increased nausea and vomiting. She lives primarily on a liquid diet, and has experienced difficulty maintaining her weight.

47. Robyn has been repeatedly hospitalized for severe abdominal pain and nausea over the past two years. Robyn often relies on ambulance services to transport her to hospital, where she is typically admitted for a period of one week.

48. In the past six months, Robyn's pain levels have increased significantly.

49. Robyn can walk for short distances unaided, although she often uses the assistance of a cane or other stabilizing device. Robyn's muscles may freeze at any time when she is walking. She falls to the floor about three times a week. Robyn worries that one of these falls will cause serious injury and additional unmanageable pain.

50. Robyn's most acute, persistent pain is in her legs. During her waking hours, if she sits or lies down for longer than approximately five minutes, the pain in her legs typically becomes unbearable. Robyn attempts to manage her leg pain by keeping herself in a state of almost constant motion. Every few minutes, she alternates between sitting, walking or lying down.

51. Robyn is easily exhausted by walking, and if she stands too long in one place she is at risk of fainting. She can only walk for short distances before needing to sit down and rest. However, such rest is short-lived, as the pain in her legs quickly forces her to begin moving again.

52. Robyn is extremely fearful of losing her ability to balance and walk. Robyn does not know how she will manage her pain without walking.

53. Robyn's whole body shakes with tremors, most severely from the waist down. The tremors combine with her need to walk (to reduce pain) to exacerbate her nausea.

54. Robyn is no longer able to take care of herself independently. She requires assistance with dressing and bathing, but is still able to use the bathroom on her own. Robyn no longer drives. She experiences sudden drops in blood pressure, and does not go anywhere outside of her home without assistance.

55. Prior to her diagnosis, Robyn lived a very busy and active life. She was a hard-working entrepreneur, running multiple retail stores for approximately thirty years prior to her retirement.

56. Robyn used to enjoy a wide range of physical activities. She loved to go for long walks, and enjoyed being outdoors, often going camping with her husband. She frequently

enjoyed driving, boating, shopping, going out to dinner, and hosting friends and family in her home.

57. Robyn received her Parkinson's diagnosis shortly after she retired, rendering most of her retirement plans impossible.

58. Robyn doesn't feel like herself anymore. She can no longer engage in the activities that used to bring her joy, like playing with her grandchildren and attending their activities. She used to love reading, but now can read very little due to her shaking, loss of concentration and need to be in motion to stave off pain. She used to enjoy food, but is now typically unable to either eat or prepare it for others. She used to love having a house full of company, but now finds it exhausting and overwhelming to have more than a few members of her family over at the same time. She also finds it distressing that she is no longer capable of hiding her pain from visitors.

59. In the last three months, Robyn's pain has become unbearable to her. She cries from pain and frustration every day.

60. Robyn has seen people with even later stage Parkinson's. She is terrified by the knowledge that her pain and other symptoms will get worse.

61. Nothing in Robyn's medical condition renders her likely to die any time soon. Robyn can survive indefinitely in her state.

62. Robyn finds her quality of life unacceptable. She feels that she is not living life, but rather enduring it as a daily cruelty. She finds her suffering intolerable and has had enough. Robyn wants to die.

63. Robyn's request for a medically assisted death was denied because her death is not reasonably foreseeable. Robyn meets all other eligibility criteria for an assisted death.

64. The only unassisted means of death Robyn has practically available to her is to refuse food and water. Robyn believes that death by that means will be slow, painful and distressing, particularly given the level of pain she will experience once she is too weak to engage in the constant motion she uses for pain relief. She also believes that it would be deeply upsetting to her family and friends to bear witness to such a death.

65. Robyn wants access to medical assistance in dying. She wants to able to set a time and die peacefully and with dignity, surrounded by her loved ones.

The BCCLA

~~37.~~66. 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 and intervenor.

~~38.~~67. In addition to the BCCLA's long standing interest in matters of patients' 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.

~~39.~~68. The BCCLA was the institutional plaintiff in *Carter v. Canada (Attorney General)*,[1] which litigation successfully struck down ss. 241(b) and 14 of the *Criminal Code* as unjustifiably violating s. 7 of the *Charter*. *Carter #1* was the impetus for Bill C-14, which ultimately resulted in the enactment of the impugned laws.

~~40.~~69. 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.

~~41.~~70. The BCCLA has sufficient interest to be granted public interest standing, in that:

a. this claim raises a serious challenge to the constitutional validity of the impugned laws in the context of medical assistance in dying;

b. the BCCLA has a demonstrated, serious and genuine interest in the subject matter of this litigation;

c. the scope of the constitutional right to seek medical assistance in dying is relevant to all Canadians, regardless of their current state of health, given the frequency of the occurrence of medical conditions capable of causing grievous and irremediable illness and related suffering;

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 medical assistance in dying;

e. the resources and expertise of the BCCLA confirm its capacity to bring forward the claim and to ensure that the issues will be presented in a sufficiently concrete and well-developed factual setting;

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

g. the claim raises issues in the public interest that transcend the interests of any single patient who may be directly affected; and

h. the claim is, in all of the circumstances, a reasonable and effective means of bringing the matter before the court.

[1] *Carter v. Canada (Attorney General)*, 2015 SCC 5 [*Carter #1*]

***Carter #1* Procedural History**

~~42.~~71. In April 2011, the BCCLA and a number of directly affected individuals launched a constitutional challenge to the provisions of the *Criminal Code* which, at that time, constituted an absolute prohibition against medical assistance in dying.

~~43.~~72. The group of plaintiffs represented people who had both terminal and non-terminal medical conditions. Kay Carter could have had an operation to alleviate her spinal stenosis, but opted not to given the risk and downside of the operation itself. The evidence from witnesses before the Court also included evidence from people with terminal and non-terminal medical conditions, including evidence from people for whom a natural death was not "reasonably foreseeable". The record before the Court included evidence from people who had grievous and irremediable medical conditions but were not in an advanced state of irreversible decline in capability.

~~44.~~73. The trial judge held that the impugned provisions breached s. 7 and also breached s. 15 of the *Charter*, and that neither breach was justified under s. 1.[2]

~~45.~~74. The British Columbia Court of Appeal majority allowed the appeal on the basis of the doctrine of *stare decisis*. Chief Justice Finch, dissenting, agreed that *stare decisis* foreclosed consideration of, among other things, s. 15 of the *Charter*. He held that the impugned laws breached s. 7 as overbroad and grossly disproportionate, and were not saved under s. 1.[3]

~~46.~~75. On October 15, 2015, the Supreme Court of Canada unanimously declared that ss. 241 and 14 of the *Criminal Code* unjustifiably infringe s. 7 of the *Charter* and are of no force or effect to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. As a result, the Court concluded that it was unnecessary to decide whether the prohibition also violates s. 15. The Court suspended its declaration of invalidity for 12 month.[4]

~~47.~~76. On January 15, 2016, the majority of the Supreme Court of Canada granted Canada's application for a four month extension of the suspension of the declaration of invalidity. However, the majority exempted Quebec from the extension. Further, during the four month extension period, the majority granted an exemption to those who wished to exercise their rights by application to the superior court of their jurisdiction for relief in accordance with the criteria set out in para. 127 of *Carter #1*.[5]

~~48.~~77. During the four month exemption period, a number of individuals in various provinces sought and obtained exemptions on the basis of paragraph 127 of *Carter #1.* For some of those individuals, a "natural death" was not "reasonably foreseeable".

---

[2] *Carter v. Canada (Attorney General)*, 2012 BCSC 886 [*Trial Reasons*], paras. 16-18, 1393
[3] *Carter v. Canada (Attorney General)*, 2013 BCCA 435, paras. 171-79
[4] *Carter #1*, paras. 127-28
[5] *Carter v. Canada (Attorney General)*, 2016 SCC 4, para. 7

***Carter #1* Facts**

~~49.~~78. The following findings of fact were made by the trial judge and upheld by the Supreme Court of Canada. The plaintiffs plead and rely on all of the findings of fact in *Carter #1* and in particular highlight the following:

~~50.~~79. People with grievous and irremediable medical conditions who cannot seek physician assistance in dying may be condemned to a life of severe and intolerable suffering. (*Carter #1*, para. 1)

~~51.~~80. A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel. (*Carter #1*, para. 1)

~~52.~~81. This choice imposes unnecessary suffering on affected individuals, deprives them of the ability to determine what to do with their bodies and how those bodies will be treated, and may cause those affected to take their own lives sooner than they would were they able to obtain a physician's assistance in dying. (*Carter #1*, para. 90)

~~53.~~82. Current unregulated end-of-life practices in Canada - such as the administration of palliative sedation and the withholding or withdrawal of lifesaving or life-sustaining medical treatment - can have the effect of hastening death and there is a strong societal consensus that these practices are ethically acceptable. (*Trial Reasons*, para. 357; *Carter #1*, para. 23)

~~54.~~83. The "preponderance of the evidence from ethicists is that there is no ethical distinction between physician-assisted death and other end-of-life practices whose outcome is highly likely to be death." (*Trial Reasons*, para. 335; *Carter #1*, para. 23)

~~55.~~84. There are qualified Canadian physicians who would find it ethical to assist a patient in dying if that act were not prohibited by law. (*Trial Reasons*, para. 319; *Carter #1* para. 23)

~~56.~~85. In each foreign system that permits assisted dying, there is general compliance with regulations. The Oregon and the Netherlands regimes show that a system can be designed to protect the socially vulnerable. The "predicted abuse and disproportionate impact on vulnerable populations has not materialized" in Belgium, the Netherlands and Oregon. Those systems work well in protecting patients from abuse while allowing competent patients to choose the timing of their deaths. (*Trial Reasons*, paras. 684-85; *Carter #1* para. 25, 104-05, 109)

~~57.~~86. People with disabilities are not at heightened risk of accessing physician-assisted dying. (*Trial Reasons*, paras. 852, 1242; *Carter #1*, para. 107) Thus unconscious bias by physicians will not undermine the assessment process. (*Trial Reasons*, para. 1129; *Carter #1*, para. 107) There is no heightened risk to socially vulnerable populations in the permissive jurisdictions. (*Trial Reasons*, para. 731; *Carter #1*, para. 107) A permissive regime in Canada will not result in a "practical slippery slope." (*Trial Reasons*, para. 1241; *Carter #1*, paras. 107, 109, 120)

~~58.~~87. Legalization of physician-assisted dying does not impede the development of palliative care. The effects of a permissive regime would "not necessarily be negative." (*Trial Reasons*, para. 736; *Carter #1*, paras. 26, 109)

~~59.~~88. Any changes in the physician-patient relationship following legalization "could prove to be neutral or for the good." (*Trial Reasons*, para. 746; *Carter #1*, paras. 26, 109)

~~60.~~89. The risks of physician-assisted death "can be identified and very substantially minimized through a carefully-designed system" that imposes strict limits that are scrupulously monitored and enforced. (*Trial Reasons*, para. 883; *Carter #1*, paras. 27, 105, 109, 117)

~~61.~~90. It is feasible for properly qualified and experienced physicians to reliably assess patient competence and voluntariness. Coercion, undue influence, and ambivalence can all be reliably assessed as part of that process. (*Trial Reasons*, paras. 795-98, 815, 837, 843; *Carter #1*, paras. 27, 106, 109) It is possible for physicians to apply the informed consent standard to patients who seek assistance in dying. (*Trial Reasons*, para. 831; *Carter #1*, paras. 27, 106, 109, 115-17)

~~62.~~91. Not every person who wishes to end their life is vulnerable. (*Trial Reasons* para. 1136; *Carter #1*, para. 86)

~~63.~~92. There are people with disabilities who have a considered, rational and persistent wish to end their own lives. (*Trial Reasons*, para. 1136; *Carter #1*, para. 86)

~~64.~~93. It is problematic to conflate decision-making by grievously and irremediably ill persons about the timing of their deaths, with decision-making about suicide by persons who are mentally ill, or whose thinking processes are affected by substance abuse, trauma or other such factors. (*Trial Reasons*, para. 814)

Relevant Social Norms

~~65.~~94. A significant number of countries now authorize medical assistance in dying, including the provision of same to individuals with grievous and irremediable medical conditions for whom a natural death is not reasonably foreseeable or who are not in an advanced state of irreversible decline.

Conditions and Suffering Excluded Under Impugned Provisions

~~66.~~95. There are a significant number of medical conditions that may cause intolerable suffering prior to "natural death" being reasonably foreseeable and/or prior to reaching an advanced stage of irreversible decline in capability. The following are non-exhaustive examples of such conditions:

a. Spinal muscular atrophy;

b. Multiple sclerosis;

c. Spinal stenosis;

d. Locked-in syndrome;

e. Severe conversion disorder;

f. Traumatic spinal injury;

g. Parkinson's disease; and

h. Huntingdon's disease.

Part 2: RELIEF SOUGHT

The plaintiffs seek the following relief:

1. a declaration that to the extent that the impugned laws 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*"), the impugned laws are of no force and effect;

2. a declaration that to the extent that the impugned laws unjustifiably infringe s. 15 of the *Charter,* the impugned laws are of no force and effect;

3. that the declarations of invalidity be of immediate effect;

4. in the alternative, that a constitutional exemption be granted to Julia Lamb during any period of suspension of the declarations;

5. in the alternative, a declaration of constitutional exemption exercisable by application for authorization by the superior court of the jurisdiction;

6. costs, including full indemnity special costs and applicable taxes on those costs; and

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

Part 3: LEGAL BASIS

8. The plaintiffs rely on:

   a. Section 52 of the *Constitution Act, 1982*; and

   b. Sections 1, 7, 15 and 24 of the *Charter*.

***Charter*, Section 7**

9. 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.

Person with a Grievous and Irremediable Medical Condition

10. 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.

11. 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.

12. 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.

13. Canada has, by means of the impugned laws, restricted the ability of individuals with grievous and irremediable medical conditions that may be curable (but only by treatment options unacceptable to the patient), and/or for whom a natural death is not reasonably foreseeable and/or who are not in an advanced state of irreversible decline in capability, to end their intolerable suffering and manage their deaths in a humane and dignified manner by determining, for themselves, the when and how of the experience of death.

14. The restrictions imposed under the impugned laws, to the extent that they operate to prohibit access to medical assistance in dying, result in a deprivation of the s. 7 rights of individuals to life, liberty and security of the person.

15. Julia, Robyn and all British Columbians, as represented in this proceeding by the BCCLA, are thus deprived of their s. 7 rights to life, liberty and security of the person.

Principles of Fundamental Justice

16. The impugned laws are, in the context of medical assistance in dying for individuals with grievous and irremediable medical conditions that cause intolerable suffering but may be curable (but only by treatment options unacceptable to the patient), and/or for whom a natural death is not reasonably foreseeable and/or who are not in an advanced state of irreversible decline in capability, overbroad in that they prohibit more conduct than is necessary to achieve the state objective. Medical assistance in dying services can be sufficiently and effectively regulated to limit their availability to patients who are capable, have a grievous and irremediable medical condition, and genuinely desire death.

17. The impugned laws are, in the context of medical assistance in dying for individuals with grievous and irremediable medical conditions that cause intolerable suffering but may be curable (but only by treatment options unacceptable to the patient), and/or for whom a natural death is not reasonably foreseeable and/or who are not in an advanced state of irreversible decline in capability, grossly disproportionate. The gravity of the infringements on the *Charter* rights of individuals suffering with grievous and irremediable medical conditions that may be curable (but only by treatment options unacceptable to the patient),

and/or for whom a natural death is not reasonably foreseeable, and/or who are not in an advanced state of irreversible decline in capability, and who are denied access to medical assistance in dying services by the impugned laws are grossly disproportionate to the benefit and legislative purpose of the laws.

***Charter*, Section 15**

18. 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.

19. The impugned laws infringe the right to equality under s. 15(1).

20. The prohibition under the impugned laws creates inequality by:

a. Preventing younger persons who have a grievous and irremediable medical condition from accessing a medically assisted death. These people are deprived of the ability to choose a medically assisted death in a lawful death whereas the impugned laws do not have that same effect on older persons with the same grievous and irremediable medical condition.

b. Preventing persons unable by reason of ~~material physical disability~~ their non-terminal grievous and irremediable medical condition 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~~ and/or other people with terminal grievous and irremediable medical conditions.

c. Preventing 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 laws do not have that same effect on persons of requisite physical ability.

21. This inequality is imposed on younger persons and/or persons who ~~are materially physically disabled~~ have a material grievous and irremediable medical condition, which are both personal characteristics listed as enumerated grounds of discrimination under s. 15(1).

22. 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 younger individuals and individuals with ~~physical disabilities~~ material grievous and irremediable medical conditions.

23. The impugned laws deprive all ~~materially physically disabled~~ British Columbians with a material grievous and irremediable medical condition, as represented in this proceeding by the BCCLA, of their rights to the equal benefit and protection of the law.

24. By virtue of her age, the nature of SMA and Julia's physical condition, the impugned laws will, for the same reasons, operate to deprive Julia of the equal protection and benefit of the law.

25. By virtue of the nature of Robyn's grievous and irremediable condition, the impugned laws, for the same reasons, operate to deprive Robyn of the equal protection and benefit of the law.

***Charter*, Section 1**

~~25.~~26 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.

~~26.~~27. 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.

Plaintiff's address for service:	Farris, Vaughan, Wills & Murphy LLP PO Box 10026, Pacific Centre South 25th Floor, 700 West Georgia Street Vancouver BC V7Y 1B3
Fax number address for service (if any):	604.661.9349
E-mail address for service (if any):	jarvay@farris.com
Place of trial:	Vancouver, British Columbia
The address of registry is:	800 Smithe Street, Vancouver, BC, V6Z 2C5

Dated: ~~27 Jun 2016~~ May 19, 2017

____
Signature of lawyer for plaintiffs
JOSEPH J. ARVAY, Q.C.

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

(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.

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 of the provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, that render medical assistance in dying unavailable to various subsets of persons suffering intolerably from grievous and irremediable medical conditions

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*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

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

No. S-165851
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JULIA LAMB ~~and~~, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
and ROBYN MORO

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

AMENDED NOTICE OF CIVIL CLAIM

Farris, Vaughan, Wills & Murphy LLP
PO Box 10026, Pacific Centre South
25th Floor, 700 West Georgia Street
Vancouver BC V7Y 1B3
Tel: 604.684.9151 / Fax: 604.661.9349
File No. 26902-0010-0000