ARVAY FINLAY LLP

File No: 20001

6 September 2019

VIA EMAIL

Supreme Court of British Columbia
800 Smithe Street
Vancouver BC V6Z 2E1

Attention: Sue Smolen
Trial Coordinator

Dear Ms. Smolen:

Re: *Lamb and BCCLA. v. AGC*
SCBC Action No. S-165851, Vancouver Registry

I am counsel for the plaintiffs in the above-noted matter and Chief Justice Hinkson is both the case management and assigned trial judge. I am writing this letter with the consent of counsel for the defendant, Attorney General of Canada.

In the course of my review of the file it has become apparent to me that an adjournment of the trial is necessary or at least prudent.. This is because the plaintiff Ms. Julia Lamb is not at the present time prejudicially affected by the impugned provisions. This is revealed by the evidence of one of Canada's experts Dr. Madeline Li whose responding report is attached, but the key paragraphs of her report are as follows:

> ***Question 2: In your opinion, if Ms. Lamb requested a medically assisted death at a future date, would she meet the eligibility requirements of the existing medical assistance in dying laws? Why or why not?***
>
> 66. When Ms. Lamb clearly expresses an intent to receive MAID, either now or at a near future date, I believe she would meet all eligibility requirements of the existing MAID law, including all current criteria for having a grievous and irremediable medical condition, as detailed below.
>
> 67. Spinal Muscular Atrophy Type 2 is clearly a progressive, incurable condition.
>
> 68. As she is unable to walk, turn in bed, attend to her own activities of daily living, and she struggles with writing, swallowing, and breathing during sleep, she clearly meets threshold for being in an advanced state of irreversible decline in capability.

69. Intolerable suffering is an entirely subjective determination in Bill C-14, and given her numerous sources of suffering, including psychological suffering in the form of need for alone time and anxiety over further loss of function, when she says she is suffering enough to proceed with MAID, that satisfies the criterion.

70. While there was more caution in using shorter prognoses for interpreting reasonably foreseeable natural death in the first year, following the CAMAP Reasonably Foreseeable Clinical Practice Guideline and the A.B. v. Canada determination, some clinicians gained comfort with extending prognostic timeframes out to many years. At the time Ms. Lamb filed her civil claim, the reasonably foreseeable natural death criterion may have been a barrier to her access.

71. Based on my knowledge of current MAID practice among many providers, if Ms. Lamb were to be assessed now, and she indicated an intent to stop BiPaP and refuse treatment when she next developed pneumonia, it is likely that she would be found to meet the threshold for having a reasonably foreseeable natural death given that dysphagia is present, her lung function will deteriorate and she is clearly at risk for recurrent pneumonia.

72. As is now common practice within the MAID community, she would not be required to develop an episode of pneumonia before being approved for MAID. Most would consider it sufficient that she expresses certain intent to refuse treatment when this occurs, as she will inevitably develop a chest infection in the near future.

73. Therefore, if Ms. Lamb were requesting MAID now I believe she would be found eligible under the current eligibility criteria. She would not need to reach her feared state of invasive mechanical ventilation or to engage in voluntarily stopping eating and drinking (VSED).

74. Canadian physicians and nurse practitioners have been on a steep learning curve over the past three years in interpreting the Bill C-14 eligibility criteria. The law as it stands contains enough flexibility in the interpretation of the end of life criteria that it is not a barrier for practitioners who are comfortable with expanding access to MAID, while it serves to protect practitioners whose values do not align with removing end of life criteria for MAID. Some have commented that the flexibility in interpreting what constitutes a reasonably foreseeable natural death render the criterion meaningless as a safeguard for vulnerable patients. Rather than removing this criterion, this safeguard could be strengthened by the addition of specific prognostic requirements.

As a result, I have instructions to seek an adjournment of the trial scheduled to commence on November 18, 2018. The request is for an order *sine die.* Counsel for Canada consents.

If the Chief Justice requires a formal application and/or to hear submissions on this request, we would propose to attend on September 10th for that purpose. This is a date already set aside to hear

the parties applications to cross-examine experts and other deponents. If the Chief Justice will accept a consent order without requiring our attendance, we will do so promptly.

Needless to say that if our request for an adjournment is accepted then there is no pressing need to proceed with the application to cross-examine and we also ask that that matter be adjourned *sine die*. Canada agrees with that.

Please bring this letter to the Chief Justice with our respects and advise us if he has any directions with respect to this matter.

Yours truly,

ARVAY FINLAY LLP

Per: 

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JJA/sy
Encl.

cc Department of Justice Canada, Attn: BJ Wray and Melissa Nicolls