

**CITATION:** CD v. Canada (Attorney General), 2016 ONSC 2431  
**COURT FILE NO.:** AD-003/16  
**DATE:** 20160412

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
**CD** ) *Emma Carver* for the Applicant  
)  
Applicant )  
)  
- and - )  
)  
**ATTORNEY GENERAL OF CANADA,** ) *Padraic Ryan* for the Attorney General of  
**ATTORNEY GENERAL OF ONTARIO,** ) Ontario  
**DR. DOE, DR. DOE and DR. DOE** )  
) *Stephanie Pearce* for Dr. Doe, Dr. Doe, and  
Respondents ) Dr. Doe  
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) **HEARD:** April 12, 2016

2016 ONSC 2431 (CanLII)

**PERELL, J.:**

**REASONS FOR DECISION**

[1] CD is being ravaged by stage 4 metastatic breast cancer that has spread to her lungs, limbs, bones, and lymphatic system.

[2] Pursuant to the Supreme Court of Canada's decision in *Carter v. Canada (Attorney General)*, 2016 SCC 4, CD applies for a judicial authorization of a physician-assisted death. She also seeks a declaration that her physician-assisted death would not require the physicians involved to notify the coroner pursuant to the *Coroner's Act*, R.S.O. 1990, c. C.37.

[3] The Respondents the Attorney General of Canada and the Attorney General of Ontario take no position on this application. The Respondent physicians support the application.

[4] For the reasons that follow, her application is granted.

[5] CD, who resides in Ontario, is in her sixties. In 2014, she was diagnosed with breast cancer. After consulting two surgeons, a radiation oncologist, a medical oncologist, and a palliative care physician, she made an informed and reasoned decision to forgo radiation or chemotherapy. For the following year, she manifested no symptoms from the disease, but in

2015, her medical condition began to deteriorate and then to rapidly deteriorate.

[6] What she describes in her affidavit about her current state of health and what is described by her two young-adult children, her family doctor, a doctor willing to assist with the death, and a consulting psychiatrist is to give horrific meaning to the word awful and absolute meaning to the words pathetic and heartbreaking. Out of respect for CD's courage and dignity, I shall not repeat the description of her current circumstances, and I shall simply state my findings of fact.

[7] I find as a fact that CD meets the criteria set out by the Supreme Court of Canada in *Carter v. Canada (Attorney General)*, 2015 SCC 5 and *Carter v. Canada (Attorney General)*, 2016 SCC 4 for a physician-assisted death. See also: *Re H.S.*, 2016 ABQB 197; *A.B. v. Canada (Attorney General)*, 2016 ONSC 1912; *A.B. v. Ontario (Attorney General)*, 2016 ONSC 2188; *W.V. v. Attorney General of Canada*, 2016 ONSC 2302; *Patient v. Canada (Attorney General)*, 2016 MBQB 63; and *A.A. (Re)*, 2016 BCSC 570.

[8] CD's cancer is grievous, terminal, and irremediable. CD's prognosis is that she will die within two to six months. The cancer is causing her to endure excruciating pain and intolerable suffering. The pain is unrelenting. Her suffering cannot be alleviated by any treatment available that she finds acceptable. Indeed, her suffering cannot be alleviated by any treatment at all. Notwithstanding her confident, strong-willed, and resolute personality, multiple pain management medications have been tried without success and the pain remains intolerable. She deposed that her quality of life is non-existent.

[9] I find as a fact that CD is a competent adult person. She has been informed and understands her medical diagnosis, prognosis, and treatment options including palliative care options. Her family doctor, who has known her for almost two decades, and the consulting psychiatrist opined that she has the capacity to make a decision about physician-assisted death.

[10] The psychiatrist, who performed a capacity assessment, added that she is not suffering from any active psychiatric or mood disorder.

[11] CD has been informed of the physician-assisted death process and of the risks involved. There is no evidence of coercion or anyone influencing her decision, and I find that she clearly and freely consents to the termination of her life. She has expressed and understands that the decision to obtain a physician-assisted death is hers alone.

[12] I am also satisfied by the evidence that: (1) CD is a resident of Ontario; (2) she commenced her application after having been fully informed about her medical condition, diagnosis, prognosis, treatment options, and palliative care options; (3) she is aware that her request for an authorization for a physician-assisted death may be withdrawn at any time; (4) she is aware that if the authorization is granted, the decision to use or not use the authorization is entirely hers to make; and (5) she consents without coercion, undue influence, or ambivalence to a physician-assisted death.

[13] I am satisfied that there are physicians willing to assist CD in dying if a physician-assisted death were authorized by court order and that the physicians believe that providing assistance would clearly be consistent with CD's wishes and that they understand that the decision to use or not use the authorization is entirely CD's decision to make.

[14] I, therefore, grant CD a declaration that she satisfies the criteria for the constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4 for a physician-assisted death.

[15] Turning to the matter of a declaration that if CD proceeds to use the constitutional exemption it would be unnecessary for the physicians to notify the coroner pursuant to the *Coroners Act*, I adopt the analysis set out in *A.B. v. Canada (Attorney General)*, *supra*. That analysis applies precisely to the circumstances of the immediate case, and once again the declaration should be granted.

[16] For the above reasons, I grant CD the following order:

1. CD meets the requisite criteria to avail herself of the constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4;
2. CD is permitted to proceed with physician-assisted death as of the date of pronouncement of this order, but nothing contained within this order shall obligate CD or the respondent physicians to proceed with the procedure of physician-assisted death and both CD and respondent physicians are free to decide not to proceed with physician-assisted death at any time;
3. CD and any regulated health professional who provides CD with treatment or other services in connection with the physician-assisted death authorized by this order are, during the period of suspension of the declaration of constitutional invalidity, also exempt from the application of sections 241(b) and 14 of the *Criminal Code*, R.S.C. 1985, c. C-46;
4. Physicians assisting with CD's death shall take appropriate measures to assess that CD is still capable and continues to consent prior to commencing the physician-assisted death procedure;
5. The physician who has provided an affidavit stating that he or she is willing to assist with the death or if not available his or her designate are authorized to administer the medication and must be readily available to care for CD at the time the pharmaceutical agent(s) that intentionally bring about CD's death are administered and they must remain with CD until death ensues;
6. If a physician other than the affiant physician identified in the preceding paragraph administers the physician-assisted death, this order applies to that physician;
7. Any pharmaceutical agent(s) brought for use for the physician-assisted death that are not administered must be returned to the pharmacy from which the pharmaceutical agent(s) were dispensed for proper storage and disposal;
8. The circumstances of CD's death as authorized by this order, do not constitute any of the circumstances of s. 10 of the *Coroners Act*, R.S.O. 1990, c. C.37, and anyone completing the death certificate is authorized to complete CD's death certificate indicating death from CD's underlying illnesses as the cause of death;
9. For the purposes of s. 61 of the *Family Law Act*, R.S.O. 1990, c. F. 3, CD's death will

not be due to the fault or neglect of any regulated health professional or facility who provides CD with treatment or other services in accordance with this order;

10. Any portion of the transcript of any hearing that contains information that would tend to identify CD, her family members, or her healthcare providers shall be sealed;

11. Any party whose privacy is protected under the publication ban ordered by Justice McEwan shall be entitled to opt out of the protection granted to them provided that their self-identification as being involved in this application does not disclose or publish the identify, or otherwise prejudice the privacy rights or any other individual whose identity is protected by that order.

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Perell, J.

Released: April 12, 2016

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**CD**

Applicant

**– and –**

**ATTORNEY GENERAL OF CANADA,  
ATTORNEY GENERAL OF ONTARIO, DR. DOE,  
DR. DOE and DR. DOE**

Respondents

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**REASONS FOR DECISION**

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PERELL J.

Released: April 12, 2016