

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN: )  
)  
X.Y. ) Emma Carver, for the Applicant  
)  
Applicant )  
)  
- and - )  
)  
THE ATTORNEY GENERAL OF )  
CANADA )  
)  
Respondent )  
)  
- and - )  
)  
THE ATTORNEY GENERAL OF ) Zachary Green, for the Respondent Attorney  
ONTARIO ) General of Ontario  
)  
Respondent )  
)  
- and - )  
)  
DR. DOE and DR. DOE ) Sam Rogers, for the Respondents Dr. Doe  
) and Dr. Doe  
)  
Respondents )  
)  
) HEARD: April 19, 2016

MCEWEN, J.

REASONS FOR DECISION

[1] X.Y. is a woman in her seventies suffering from late stage amyotrophic lateral sclerosis (“ALS”). She brings this application for a declaration that she satisfies the criteria for a physician-assisted death as per the constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4 (S.C.C.) (“*Carter – 2016*”). X.Y. also seeks a declaration that the circumstances of her death do not require notification to the coroner pursuant to the provisions of the *Coroners Act*, R.S.O. 1990, c.C. 37.

[2] The respondents, the Attorney General of Canada and the Attorney General of Ontario take no position on this application. The respondent physicians and X.Y.’s children support the application. No family members oppose.

[3] On March 31, 2016 I granted a confidentiality order allowing X.Y. to participate in the application using a pseudonym and file redacted materials which protect the identity of X.Y., her family and any involved regulated health professionals.

[4] For the reasons below, the application is granted.

[5] In preparation for today's hearing I have read the case law and particularly the helpful reasons of Justice Martin in *S.(H.), Re*, 2016 ABQB 121 (Alta. Q.B.), and Justice Perell in *B.(A.) v. Canada (Attorney General)*, (2016) 2016, ONSC 1571. I adopt and follow the legal analyses set out in those cases.

[6] X.Y. currently lives in Ontario. She is a widow with three adult children. In 2011 she was diagnosed with ALS. Currently, the disease has progressed to the stage where she has lost control of her limbs and she is confined to her wheelchair or bed. She has difficulty holding her head in place. Additionally, her throat muscles have deteriorated to the point that she chokes on her food. Breathing has become so difficult that she uses a cough assistance machine to rid herself of mucus buildups in her throat and she is losing the ability to speak.

[7] As a result she has no ability to care for herself and entirely relies upon others. She is currently taking morphine which does nothing to alleviate her problems with lack of mobility, choking or breathing. X.Y. has reached the stage where she is scared, has lost her dignity, her breathing is painful and she lives in constant fear of choking. In the past six months she has lost approximately 40 pounds in weight. Her life expectancy is now a matter of a few months or so.

[8] In her own words she has deposed, in part, as follows:

I am requesting physician-assisted death as I can no longer stand to live as a vegetable, and the thought of being unable to breathe is unbearable. As discussed above, my condition has deteriorated to the point where I must remain in a wheelchair or my bed at all times. Using the lifts exhausts me. I rely on others for the simplest things, such as itching my nose, going to the bathroom, and eating. I am scared of losing the ability to communicate completely. My breathing is no longer comfortable, and I live in constant fear of choking. I feel I have lost my dignity, as I cannot do anything on my own.

[9] Two of X.Y.'s children have delivered affidavits and the third has filed a supporting letter. Each of them have provided heart-wrenching descriptions of their mother's current condition wherein, amongst other things, they have stated:

- For the last six months X.Y. has been advising them that she wishes her suffering would end and that she wants to die.
- Seven weeks ago she began losing her ability to speak.
- She feels that she cannot breathe.
- Her muscles in her throat are failing and she aspirates her food into her lungs.

- She has a lack of control over her body.
- She is anxious about a painful death.

[10] The supporting affidavits of the participating physicians also clearly demonstrate that her situation has become intolerable and that the disease is incurable.

[11] Each of them have deposed, in part, the following:

- X.Y. has a grievous irremediable medical condition that causes suffering.
- X.Y. is enduring intolerable pain that cannot be and has not been alleviated by treatment acceptable to her.
- X.Y.'s medical condition has been discussed with her and she understands that she has a grievous irremediable medical condition, the prognosis, treatment options, palliative care options and risks associated with the physician-assisted death.
- X.Y. currently makes her own medical decisions and they have not observed anything to call into question X.Y.'s mental capacity to make a clear, free and informed decision about physician-assisted death.
- X.Y. wishes the assistance of a physician in her death.
- X.Y. advises that she wishes and consents to physician-assisted death and they have not observed any undue influence, coercion or ambivalence.

[12] One of the participating physicians has gone further and has deposed that she has advised X.Y. that her request for an authorization for physician-assisted death may be withdrawn at any time; X.Y. makes a request for authorization for a physician-assisted death freely and voluntarily; X.Y. understands that if an authorization is granted the decision to use or not to use the authorization is entirely X.Y.'s; X.Y. understood all of the aforementioned advice; and the participating physician believed X.Y.

[13] As noted by Perell J. in *B.(A.)* there are five criteria set out in *Carter v. Canada (Attorney General)*, 2015 SCC 5 ("*Carter – 2015*") that must be satisfied in order for the application to be granted: (1) the person seeking the exemption is a competent adult person who clearly consents to the termination of life; (2) the person as a grievous and irremediable medical condition including an illness, disease or disability; (3) the person's condition is causing him or her to endure intolerable suffering; and (5) his or her suffering cannot be alleviated by any treatment available that he or she finds acceptable.

[14] I find that X.Y. meets the criteria set out by the Supreme Court of Canada in *Carter – 2015* and *Carter – 2016* for a physician-assisted death. The record demonstrates that X.Y. is a competent adult person who clearly consents to the termination of life. She clearly has given this decision a great deal of thought over an extended period of time. The disease from which she

suffers has progressed quickly and reached the stage where it is grievous, irremediable and is causing her great and intolerable suffering. There is no cure and medical treatment, that is acceptable to her, can no longer alleviate the significant ailments that she now suffers. Up until this point in time she has done her very best to maintain some quality of life, but the advance of the disease has now rendered that quality nonexistent.

[15] I am also satisfied by the record filed that X.Y. is a resident of Ontario. She has commenced her application after being fully informed about the ramifications of ALS, her prognosis, treatment options and palliative care options. She is aware that she may withdraw her request for a physician-assisted death at any time and she is aware that the decision to use the authorization, or not, is entirely hers to make. Her decision has been made without coercion, undue influence or ambivalence. X.Y., for at least a year, has been discussing some form of physician-assisted death with her doctors. As a result of the decision in *Carter – 2016* she decided to pursue this application.

[16] Insofar as the participating physicians are concerned, they have been involved in her palliative care and have agreed to assist X.Y. As noted, they have deposed that by providing medical assistance they would be complying with X.Y.'s wishes and confirm that it is her decision to make. They have further deposed that X.Y. understood their advice that if an authorization is granted the decision of whether or not to use it is up to her.

[17] Furthermore, the psychiatrist who met with X.Y. has confirmed that she is capable of making the decision and that she is not suffering from any psychiatric disorder nor is she being coerced in any way.

[18] All of the participating physicians have confirmed that X.Y. suffers from a grievous, irremediable medical condition and is intolerably suffering. I am also satisfied, based on the filed record, that there are physicians willing to assist X.Y. with a physician-assisted death and the "Quebec protocol" will be followed. This has been explained to X.Y.

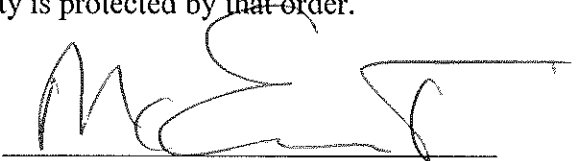
[19] Based on the foregoing I therefore grant X.Y. a declaration that she satisfies the criteria for the constitutional exemption granted in *Carter – 2016* for a physician-assisted death.

[20] I further find that it will be unnecessary for the attending physicians to notify the coroner pursuant to the *Coroners Act*. In this regard I adopt the analysis of Perell J. in *B.(A.)*.

[21] In keeping with the existing case law and the orders necessary to implement X.Y.'s request for a physician-assisted death I grant the following orders:

1. X.Y. meets the requisite criteria to avail herself of the constitutional exemption granted in *Carter – 2016*;
2. X.Y. 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 X.Y. or the respondent physicians to proceed with the procedure of physician-assisted death and both X.Y. and respondent physicians are free to decide not to proceed with physician-assisted death at any time;

3. X.Y. and any regulated health professional, including physicians, nurses and pharmacists, who provide X.Y. 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 X.Y.'s death shall take appropriate measures to assess that X.Y. 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 X.Y. at the time the pharmaceutical agent(s) that intentionally bring about X.Y.'s death are administered and they must remain with X.Y. 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 X.Y.'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, X.Y.'s death will not be due to the fault or neglect of any healthcare provider who provides X.Y. 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 X.Y., her family members, or her healthcare providers shall be sealed;
11. Any party whose privacy is protected by my publication ban shall be entitled to opt out of the protection granted to them provided that their self-identification as a party 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.



Mr. Justice T. McEwen

**CITATION:** X.Y. v. Canada (Attorney General), 2016 ONSC 2585  
**COURT FILE NO.:** CV-16-000AD-004-00ES  
**DATE:** 20160419

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

X.Y.

Applicant

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THE ATTORNEY GENERAL OF CANADA

Respondent

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THE ATTORNEY GENERAL OF ONTARIO

Respondent

– and –

DR. DOE and DR. DOE

Respondents

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**REASONS FOR DECISION**

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Mr. Justice T. McEwen

Released: April 19, 2016