

**CITATION:** EF v. Canada (Attorney General), 2016 ONSC 2790  
**COURT FILE NO.:** AD-005/16  
**DATE:** 20160427

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
EF	)	<i>Emma Carver</i> for the Applicant
	)	
Applicant	)	
	)	
<b>– and –</b>	)	
	)	
ATTORNEY GENERAL OF CANADA,	)	<i>Padraic Ryan</i> for the Attorney General of
ATTORNEY GENERAL OF ONTARIO,	)	Ontario
DR. DOE and DR. DOE	)	
	)	<i>Erica Baron</i> and <i>Meghan Bridges</i> for Dr.
Respondents	)	Doe and Dr. Doe
	)	
	)	
	)	
	)	<b>HEARD:</b> April 27, 2016

2016 ONSC 2790 (CanLII)

**PERELL, J.:**

**REASONS FOR DECISION**

- [1] Pursuant to the Supreme Court of Canada's decision in *Carter v. Canada (Attorney General)*, 2016 SCC 4, EF applies for 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 *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 support the application.
- [3] For the reasons that follow, EF's application is granted.
- [4] The evidence for this application was proffered by: (a) EF; (b) one of her adult children; (c) a palliative care physician; (d) a geriatric psychiatrist, who after a recent referral completed a capacity assessment of EF; and (e) a physician willing to assist with the death.
- [5] EF is almost 80 years old. Two decades ago, after a diagnosis of renal cell carcinoma, her right kidney was surgically removed, and the cancer appeared to have been cured. Unfortunately, in 2012, the renal cancer returned, metastasized, and spread to her bones, spine, skull, lungs,

pancreas, and adrenal glands.

[6] Between 2012 and recently, although she was caring for her elderly husband, until his death several years ago, and although she was mourning his death and also the death of other members of her family, she somehow managed to fight back against the disease and to carry on a productive and active life with her child and her grandchildren.

[7] Until earlier this year, although EF was receiving radiation five days a week, with the help of live-in caregivers and the help of her remaining child and her grandchildren, she kept busy and active including driving to go shopping for herself. Sadly, there was no reward for her courage and determination in not only battling the disease but also in dealing with the grief over the deaths of her husband and of her other family members.

[8] Six weeks ago, EF fell. She broke her pelvis. Her fractures were of pathological origin due to bone metastases. She was admitted to hospital. She is now bedridden and unable to move. There is no treatment for her pelvis fracture. She has been discharged to a Palliative Care Unit in another hospital. She can no longer cope with the pain from the cancer, particularly the pain centering on her broken pelvis. Now being ineffective, palliative radiation treatment is now without purpose.

[9] The pain is everywhere in EF's body. It comes in waves and the pain medication only sometimes helps. She finds the pain intolerable. She is entirely dependent on her nursing care. She is non-ambulatory and she cannot dress herself. Her physicians tell her that she has about three months to live, but it could be for longer. She has no quality of life and does not feel she can carry on anymore. She wants to die with dignity. She says that she has had a good life, but she is now ready to let it go. She wishes a physician-assisted death so that she can die peacefully at home.

[10] Before her recent fall, EF had contemplated eventually requesting a physician-assisted death. EF discussed this thought with her grief therapist, with whom she has had a relationship since 2015. After her fall, EF told her palliative care physician that she does not want to live bedridden and in pain and without any independence. At three meetings with her medical team, EF expressed the wish to have a physician-assisted death, and she discussed the matter with the physicians. EF has discussed physician-assisted death with members of her family, including her adult child, with whom she has always had a close and caring relationship. EF has had numerous conversations with her geriatric psychiatrist about physician-assisted death and EF is the one who initiated the conversations.

[11] The geriatric psychiatrist did a capacity assessment of EF on March 30, 2016, and then re-assessments on March 31, April 4, 6, 8, and 12. Throughout these assessments EF has re-stated her wish for a physician-assisted death. The psychiatrist's opinion is that EF has the capacity to make a decision about physician-assisted death. Based on their own observations, the palliative care physician and the physician prepared to assist with the death agree that EF is competent to make a decision about a physician-assisted death.

[12] The opinions of the palliative care physician, the physician prepared to assist in the death, and the geriatric psychiatrist are that: (a) EF has a grievous irremediable medical condition; (b)

there is no hope for recovery or improvement in EF's medical condition; (c) EF likely has less than three months to live; (d) EF is experiencing suffering that is intolerable to her, which cannot be and has not been alleviated by any treatment acceptable to EF; (e) EF has the mental capacity to make a clear, free, and informed decision about a physician-assisted death; (f) EF understands that her request for a physician-assisted death can be withdrawn at any time; (g) EF makes her request for a physician-assisted death freely and voluntarily; (h) EF understands that it is entirely her own decision to use or not use an authorization for a physician-assisted death.

[13] EF's cancer is grievous, terminal, and irremediable. The cancer is causing her to endure excruciating pain and intolerable suffering. Her suffering cannot be alleviated by any treatment. She is a competent adult person. She has been informed and understands her medical diagnosis, prognosis, and treatment options including palliative care options. She has the capacity to make a decision about physician-assisted death.

[14] EF 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.

[15] I am also satisfied by the evidence that: (1) EF 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.

[16] I am satisfied that there are physicians willing to assist EF 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 EF's wishes and that they understand that the decision to use or not use the authorization is entirely EF's to make.

[17] I find as a fact that EF 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; *CD v. Canada (Attorney General)*, 2016 ONSC 2431; *X.Y. v. Canada (Attorney General)*, 2016 ONSC 2317, and *X.Y. v. Canada (Attorney General)*, 2016 ONSC 2585.

[18] Turning to the matter of a declaration that if EF 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.

[19] For the above reasons, I grant EF the following order:

THIS COURT ORDERS THAT

1. EF meets the requisite criteria to avail herself of the constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4;
2. EF 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 EF or the respondent physicians to proceed with the procedure of physician-assisted death and both EF and the respondent physicians are free to decide not to proceed with physician-assisted death at any time;
3. EF and any healthcare providers, including physicians, nurses and pharmacists, who provide EF 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 EF's death shall take appropriate measures to assess that EF 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 EF at the time the pharmaceutical agent(s) that intentionally bring about EF's death are administered and they must remain with EF 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 EF's death, as authorized by this order, do not constitute any of the circumstances in s. 10 of the *Coroners Act*, R.S.O. 1990, c. C.37, and anyone completing the death certificate is authorized to complete EF's death certificate indicating death from EF'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, EF's death will not be due to the fault or neglect of any healthcare provider or facility who provides EF 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 EF, her family members, or her healthcare providers shall be sealed;

11. Any party whose privacy is protected under the publication ban ordered by Justice McEwen 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 identity, or otherwise prejudice the privacy rights, of any other individual whose identity is protected by that order.

Released: April 27, 2016

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Perell, J.

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EF

Applicant

**– and –**

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

Respondents

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**REASONS FOR DECISION**

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PERELL J.

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