

CITATION: G.H. v. Attorney General of Canada, 2016 ONSC 2873
COURT FILE NO.: AD-006/16
DATE: 20160428

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
G.H.) *Emma Carver*, for the Applicant
)
Applicant)
)
- and -)
)
Attorney General of Canada, Attorney) *Erica Baron and Meghan Bridges*, for the
General of Ontario, and Dr. Doe and) Respondent Physicians
Dr. Doe)
) *Padraic Ryan*, for the Attorney General of
) Ontario
Respondents)
)
)
) **HEARD:** April 28, 2016

D.A. WILSON, J.

REASONS FOR DECISION

[1] The Applicant brings this application seeking an order declaring that he meets the requisite criteria and ought to be granted the constitutional exemption established in *Carter v. Canada (Attorney General)*, 2016 SCC 4 [*“Carter 2016”*], authorizing a physician-assisted death. An order is also sought declaring that the circumstances of the Applicant’s death do not require the physicians involved to notify the coroner pursuant to the *Coroner’s Act*, R.S.O. 1990, c. C.37.

[2] The Respondents have been served with this application; the Respondent physicians support it and the other Respondents take no position on the application. The application is granted for reasons that I set out in the following paragraphs.

Background

[3] The Applicant is a man in his sixties who was diagnosed with Stage IV lung cancer in March 2016. Further investigations revealed that tumours had spread to intramuscular areas of his body; in particular, there is a mass which has invaded the C3-C4 level of his vertebrae. According to his treating oncologist, the cancer is not curable and his malignancy is aggressive.

His estimated survival without treatment is six to twelve months. The Applicant has made an informed decision to forego chemotherapies and other treatment options.

[4] According to the evidence, G.H. is in excruciating pain, particularly in the area of his neck. He describes his pain level as being a 10 on a scale of 1 to 10. He is getting pain medication intravenously but it provides incomplete relief. The pain in his neck is so severe he cannot leave the house. His wife and sister confirm that the Applicant's pain is so severe he cannot cope with it, despite his high pain threshold. There is a concern that if the tumour at C3 continues to grow, it could cause paralysis. He is essentially bedridden.

Analysis

[5] In *A.B. v. Ontario (Attorney General)*, 2016 ONSC 1912, Perell J. summarized the criteria for a physician-assisted death as set out in *Carter 2015* and *Carter 2016* as follows: (1) the person is a competent adult person; (2) the person has 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; (4) his or her suffering cannot be alleviated by any treatment available that he or she finds acceptable; and, (5) the person clearly consents to the termination of life.

[6] In my opinion, the Applicant meets these criteria. G.H. is an adult living in Ontario. He has capacity to make choices about his treatment. His cancer is grievous and irremediable. There is no issue that the pain he is enduring is a direct result of the Applicant's cancer diagnosis and its progression. It is terminal with an expected date of death within six to twelve months. The description of the pain he is experiencing is dreadful and the pain medication provides little relief. His quality of life is very poor and he cannot participate in any of the activities that he formerly enjoyed.

[7] Without question, I find that G.H. is a competent adult person. He understands completely his medical condition, and its prognosis. He is well informed about the various treatment options. The opinion of the psychiatrist who assessed the Applicant on April 25, 2016 is that he has the capacity to make a decision about physician-assisted death. He is not depressed; rather he wishes to be able to have the option of a physician-assisted death if he so chooses.

[8] I am satisfied on the record before me that the Applicant has been fully informed about his medical situation, his diagnosis and prognosis and the various treatment options that are available. He is aware that his request for an authorization for a doctor assisted death may be withdrawn at any time and it is entirely his decision to make. I am satisfied that there has been no coercion or undue influence brought to bear in the making of this decision.

[9] The evidence is clear that there are physicians willing to assist the Applicant in dying if he obtains a court order and that this assistance is clearly consistent with the wishes of G.H. It is also clear that if the order is granted, the decision to use the authorization is entirely G.H.'s decision to make and he understands this.

[10] As a result, I grant G.H. a declaration that he satisfies the criteria for the constitutional exemption granted in *Carter 2016* for a physician-assisted death. Further, a declaration is granted that it would be unnecessary for the physicians to notify the coroner pursuant to the *Coroners Act*

for the reasons set out in other physician-assisted death cases, specifically *A.B. v. Canada (Attorney General)*, 2016 ONSC 1912.


[11] I make the following orders:

- (i) G.H. meets the requisite criteria to avail himself of the constitutional exemption granted in Carter 2016;
- (ii) G.H. is permitted to proceed with physician-assisted death as of the date of this order; but nothing in my order shall obligate G.H. or the respondent physicians to proceed with the procedure of physician-assisted death and both G.H. and the respondent physicians are free to decide not to proceed with physician-assisted death at any time;
- (iii) G.H. and any health care providers, including physicians, nurses and pharmacists, who provide G.H. with treatment or other services in connection with the physician-assisted death authorized by my 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.;
- (iv) Physicians assisting with G.H.'s death shall take appropriate measures to assess and ensure that G.H. is still capable and continues to consent prior to commencing the physician-assisted death procedure;
- (v) The physician who has provided an affidavit stating that he is willing to assist with the death or if not available his designate are authorized to administer the medication and must be readily available to care for G.H. at the time the pharmaceutical agent(s) that intentionally bring about G.H.'s death are administered and they must remain with G.H. until death ensues;
- (vi) If a physician other than the affiant physician identified in the preceding paragraph administers the physician-assisted death, this order applies to that physician;
- (vii) 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;
- (viii) The circumstances of G.H.'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 G.H.'s death certificate indicating death from G.H.'s underlying illnesses as the cause of death;
- (ix) For the purposes of s. 61 of the *Family Law Act*, R.S.O. 1990, c. F. 3, G.H.'s death will not be due to the fault or neglect of any regulated health professional or facility who provides G.H. with treatment or other services in accordance with this order;

- (x) Any portion of the transcript of any hearing that contains information that would tend to identify G.H., his family members, or his healthcare providers shall be sealed.

[12] Any party whose privacy is protected under the publication ban ordered by Justice McEwen of 25 April 2016 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.

[13] Despite his age, the Applicant has led a full and active life. His descent has been swift. I understand how difficult the last few months have been for the Applicant and his family. It is my sincere hope that this order will bring them peace.



D.A. Wilson, J.

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Respondents

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