

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
M.N.) *A. Faith and E. Brousseau* for the Applicant
)
Applicant)
)
– and –)
) *J. Cheng* for the Attorney General of Canada
)
ATTORNEY GENERAL OF CANADA,)
ATTORNEY GENERAL OF ONTARIO,) *S. Z. Green and P. Ryan* for the Attorney
DR. DOE and DR. DOE) General of Ontario
)
Respondents) *E. Baron and S. Rogers* for Dr. Doe and Dr.
) Doe
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) HEARD: May 20, 2016

FIRESTONE J.

REASONS FOR DECISION

[1] The Applicant M.N. suffers from terminal ampullary cancer which has metastasized to her liver and ovaries. The medical evidence confirms that her current life expectancy is less than six months in light of the malignancy of the cancer, her functional status, and her current rate of deterioration.

[2] M.N. seeks an order declaring that she meets the requisite criteria for an order to permit her to avail herself of the constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4 (S.C.C.) (“Carter 2016”), authorizing 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.

[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] On May 2, 2016, a confidentiality order was granted permitting M.N. to proceed anonymously and that the application materials filed in the public record be redacted to protect her identity as well as the identity of her family members, physicians and healthcare providers.

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

[6] M.N. has been told by her health care practitioners that there are no further treatment options other than palliative care to manage her pain. She does not want to be forced to choose between a painful death and one where she will be heavily sedated due to pain medication during her final moments with her family.

[7] M.N. has thought about her decision for many months and is very comfortable with it. She wishes to spend what little time she has left with her family, free from fear that her deteriorating condition will continue to cause herself and her family emotional hardship. Her immediate family is supportive of her wish to die with dignity when the time is right.

[8] Based on the evidentiary record, I find as a fact that M.N. 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; *B.(A). 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.

[9] M.N. is a competent adult. She currently makes her own decisions pursuant to the *Health Care Consent Act*. Her consulting psychiatrist has confirmed that, based on his assessment, M.N. has the mental capacity to make a decision about a physician-assisted death. Her consulting psychiatrist, palliative care physician and the physician proposed to assist with death have not observed anything to call into question M.N.'s mental capacity to make a clear, free and informed decision about physician-assisted death.

[10] M.N. has a grievous and irremediable medical condition. Her cancer has metastasized. It is a progressive and terminal disease with no cure. Her diagnosis is terminal and her prognosis is less than six months. Her medical condition greatly interferes with her quality of life. Her consulting psychiatrist, palliative care physician and the physician proposed to assist with death agree that her condition is grievous and irremediable.

[11] M.N. has articulated that she experiences enduring and intolerable physical pain and emotional distress. She is in constant pain which is getting sharper and worse every day. She has undergone chemotherapy. She takes hydromorphone on a daily basis which inadequately manages her pain and affects her ability to function. M.N.'s spouse confirms that her pain worsens daily and that the physical pain and emotional suffering consumes every waking moment. Her pain management program provides incomplete relief. The consulting psychiatrist and palliative care physician have confirmed that M.N. has a grievous irremediable medical condition that causes suffering. The physician proposed to assist with death confirms that she is experiencing significant suffering.

[12] M.N. has tried chemotherapy, naturopathic medicine and has been told she is not a candidate for radiofrequency ablation or radiation therapy. M.N. does not wish to increase her pain medication to the point where she will be required to take other drugs in order to combat the side effects of the pain medication. Her pain management regime provides incomplete relief. She is concerned that if her pain medication dosage is increased she may no longer be in control of her autonomy and decision-making. It is clear that her physical pain and psychological distress

are enduring, intolerable and cannot, as she has stated, be alleviated by treatments which are acceptable to her.

[13] M.N. clearly consents to the termination of her life.

[14] This application was commenced after M.N. was fully informed about, and with an understanding of, her medical condition, diagnosis, prognosis, and treatment options. She has made the decision to obtain, and consents to, a physician-assisted death freely, without coercion, undue influence or ambivalence. It has been explained to her and she understands that her decision to obtain a physician-assisted death is hers alone. She is aware that the request for an authorization for a physician-assisted death may be withdrawn at any time before the application is heard and that if the application is granted, the decision to use or not use the authorization, and when to use it, is entirely her own decision to make. The physician-assisted process has been explained to her in detail by the physician proposed to assist death. She understands that the medication to cause death would be administered intravenously and would result in certain death.

[15] I, therefore, grant M.N. 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.

[16] In accordance with the decision of Perell J. in *B. (A) v. Canada (Attorney General)*, 2016 ONSC 1912, I find that if M.N. proceeds to use the constitutional exemption, the physicians involved are not required to notify the coroner pursuant to the *Coroners Act*.

[17] In accordance with these reasons, I grant the following order:

1. M.N. meets the requisite criteria to avail herself of the constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4;
2. M.N. 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 M.N. or the respondent physicians to proceed with the procedure of physician-assisted death and both M.N. and respondent physicians are free to decide not to proceed with physician-assisted death at any time;
3. M.N. and any healthcare providers, including physicians, nurses and pharmacists, who provide M.N. with treatment or other services in connection with the physician assisted death authorized by this order are also exempt from the application of sections 241(b) and 14 of the *Criminal Code*, R.S.C. 1985, c. C-46, pursuant to *Carter v. Canada (Attorney General)*, 2016 SCC 4;
4. Physicians assisting with M.N.'s death shall take appropriate measures to assess that M.N. 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 M.N. at the time the pharmaceutical agent(s) that intentionally bring about M.N.'s death are administered and they must remain with M.N. 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 M.N.'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 M.N.'s death certificate indicating death from M.N.'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, M.N.'s death will not be due to the fault or neglect of any regulated health professional or facility who provides M.N. 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 M.N., her family members, or her healthcare providers shall be sealed; and
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.


Firestone J.

Released: May 20, 2016

CITATION: CD v. Canada (Attorney General), 2016 ONSC 3346
COURT FILE NO.: AD-008/16
DATE: 20160520

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

M.N.

Applicant

– and –

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

Respondents

REASONS FOR DECISION

Firestone J.

Released: May 20, 2016