

This is the 1<sup>st</sup> affidavit  
of Wanda Morris in this case  
and it was made on 29 Aug 2011

No. S112688  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

LEE CARTER, HOLLIS JOHNSON, DR. WILLIAM SHOICHET, THE BRITISH  
COLUMBIA CIVIL LIBERTIES ASSOCIATION and GLORIA TAYLOR

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

INTERVENOR

**AFFIDAVIT**

I, **WANDA MORRIS**, Executive Director of Dying with Dignity, of 802 – 55 Eglinton Avenue East, in the City of Toronto, in the Province of Ontario, AFFIRM THAT:

1. I am the Executive Director of Dying with Dignity (“DWD”) and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and where so stated, I verily believe them to be true.

2. This affidavit is my account of the activities of DWD and why and how they take place. In order to provide the Court with the fullest account it is necessary for me to tell the Court what I have been told by our clients and what I have been told by our staff. Due to the deeply personal nature of DWD’s work, DWD operates on the premise that all conversations between members and DWD employees and volunteers are confidential. It is simply not possible for me to disclose the names or identities of the many people who have informed me in the process of preparing

this affidavit as this may expose them to criminal liability and for many would be a gross invasion of their privacy. In every instance where I advise the Court of what I have been told I verily believe the information to be accurate and truthful. All such information is being provided to the Court to explain why DWD does what it does and has been doing for over thirty years; this is the only way we can apprise the Court of our work.

3. DWD is a national non-profit, member-based charitable organization. It was founded in 1980, and incorporated as a Registered Charity in 1982, pursuant to the *Income Tax Act*. Its national office is at 802—55 Eglinton Avenue East, Toronto, Ontario, and its second office is in Vancouver, British Columbia.

4. DWD is an organization concerned with the care of individuals at the end of life. Its mission is to improve individuals' quality of dying and to expand end of life choices.

5. DWD has a three-part mandate:

- a. To educate the public about end of life options and the importance of advance care planning;
- b. To provide information and resources to the public and lawmakers about the choice in dying movement, and the reasons why appropriately regulated medically assisted dying should be legalized in Canada; and
- c. Through its Client Support Program, to provide support for individuals at the end of their lives, including support at the bedside for those who wish to determine the nature and timing of dying.

6. DWD has three part-time employees who are responsible for carrying out the mission of the organization: an Executive Director, a Client Support Director, and a Membership and Community Relations Director. DWD also has several volunteers who assist with general office duties such as mailing, packaging, donation processing, and phone calls. DWD has a member-elected board of directors that is responsible for the organization's strategic direction. The board is comprised of eight individuals from across Canada.

7. DWD currently has approximately 1200 members and donors across Canada. DWD is funded mainly through donations and memberships. Attached hereto and marked as **Exhibit A** to this my Affidavit is a true copy of DWD's audited financial statements dated December 31, 2010.

8. DWD has been an active member with the World Federation of Right to Die Societies ("WFRDS") since 1984. The WFRDS is a collaborative effort of 46 organizations from 26 countries to secure and promote the individual's right to self-determination at the end of life. In September 2006, DWD hosted the WFRDS "Challenge in Change" conference at Toronto's Sheraton Centre. Over 230 delegates from 16 countries were in attendance.

9. DWD also has organizational linkages with the Right to Die Society of Canada ("RDS"). I currently serve as an advisor for RDS; Ruth von Fuchs, the President and Secretary of RDS, serves as a DWD board director.

10. DWD works to improve the quality of end of life care and expand end of life choices in Canada through education and advocacy and by supporting individuals and their loved ones at the end of life.

### **Education and Advocacy**

11. DWD promotes informed end of life decision making by educating the public and advising health care professionals. We employ educational training programs and online and print publications to change healthcare practice, inform policy-makers, influence public opinion and empower individuals.

12. DWD encourages individuals to think about end of life decisions in the context of their values, beliefs and wishes and in consultation with loved ones. DWD offers an Advance Care Planning Kit to help individuals leave clear, written instructions regarding medical treatment in the event that they are no longer able to communicate on their own behalf. The Advance Care Planning Kit includes "Power of Attorney for Personal Care: How to Appoint a Power of Attorney" which suggests different factors to consider when choosing a substitute decision maker. DWD holds advance care directive workshops several times a year, depending on

member interest, throughout Canada. These workshops educate individuals about how to convey decisions about end of life care ahead of time.

13. DWD holds public workshops and interactive sessions on choice in dying, patient healthcare rights, and end of life care alone and in partnership with churches, university clubs, service clubs, associations, and retirement communities. DWD also delivers a training program for end of life and palliative caregivers which provides comprehensive information on patients' rights, such as the right to have advance care directives recognized, the right to pain management and symptom control, and the right to refuse or discontinue treatment.

14. DWD advocates to improve hospice and palliative care and educates about the reasons why medically-assisted dying should be legalized in Canada. DWD monitors legislative and policy initiatives, providing written and oral submissions and presentations to government bodies and committees. DWD staff and board members have testified before Parliament, provincial research bodies, and law reform commissions on numerous subjects such as advance care directive legislation, alternative forms of healthcare, living wills and powers of attorney, and assisted dying.

### **Support**

15. DWD's Client Support Program provides support for individuals at the end of their lives, including support at the bedside of those who wish to determine the nature and timing of their death. DWD's Client Support Director helps clients one on one by providing compassionate listening and information about all end of life options. For those members who meet our eligibility criteria and request it, we offer information on self-determined dying and provide emotional support through a difficult time. It is the only program of its kind in Canada that provides personalized information and support to individuals at end of life, including information about self-determined dying. DWD does not encourage anyone to end their life, does not provide the means to do so, and does not actively assist in a person's death. DWD does, however, provide information and emotional support to any member who meets our eligibility criteria and requests our support.

16. The purpose, philosophy and goals of the Client Support Program are detailed in the DWD document “Dying with Dignity Canada Client Support Program Guiding Principles and Policies.” Attached hereto and marked as **Exhibit B** to this my Affidavit is a true copy of the “Dying with Dignity Canada Client Support Program Guiding Principles and Policies” dated May 27, 2011.

*History of the Client Support Program*

17. DWD’s Client Support Program was conceived by DWD’s first executive director, Marilynne Seguin in the early 1980s. Ms. Seguin travelled extensively to discuss end of life options with individuals and families who contacted the organization, including those who wanted to hasten their dying. She pursued this initiative on an “as-needed” or “call-by call” basis rather than through a formalized program. She attended at the bedside of over 300 deaths, both natural and hastened.

18. After Ms. Seguin retired from DWD, this informal counselling program of providing information and support to those with incurable and progressive physical illnesses continued to grow. As the complexity and volume of the support requirements increased, it became apparent to the DWD board of directors that a more formalized approach was required, with dedicated resources allocated to the program. In 1999, the DWD board of directors decided it needed to establish a formal program, with structured reporting and accountability practices.

19. In 2001, DWD received a three-year grant to develop the Client Support Program from the Ontario Trillium Foundation. DWD hired its first Program Coordinator (now referred to as the Client Support Director) to develop and oversee the program in 2002. The Client Support Program was initially modelled on the former Hemlock Society’s (now Compassion & Choices) “Caring Friends Program.” DWD conceived a program in which professionally trained volunteers provided non-medical information and support on end of life choices, including hastening death, to individuals requesting such help. The first comprehensive volunteer training session was held in 2003; DWD trained 10 volunteers for the program at that time.

20. While DWD was in the process of developing the Client Support Program, Evelyn Martens, founding member of the Right to Die Society, was criminally charged with assisting in

two suicides. In light of this development, the DWD board of directors became concerned that the Client Support Program would expose staff, volunteers and board directors to criminal prosecution. Accordingly, DWD decided to limit the scope of its services until the laws against assisted dying were clarified or changed.

21. DWD curtailed the scope of the Client Support Program, only providing information on hospice and palliative care, the refusal or withdrawal of life-sustaining treatment, and the voluntary stopping of eating and drinking as a means to hasten death. DWD referred those who wanted additional information on hastening death to other organizations.

22. In 2005, DWD conducted an evaluation and review of the Client Support Program. The purpose of the evaluation was to review areas of success and whether clients' needs were being met, and recommend future improvements for the program. The review determined that although client satisfaction ratings for the program were high, a large majority of the clients surveyed indicated that they called DWD for practical assistance in hastening death and were disappointed to learn that the program could not provide this information to them.

23. In November 2005, in response to the review, DWD determined that it would resume providing practical information on hastening death to clients who met its strict eligibility requirements.

24. In order to be eligible to receive information on hastening death DWD enacted guidelines which required applicants meet certain criteria. The guidelines set out the following criteria for support:

- a. The applicant must be a member of DWD.
- b. The applicant must be 18 years old or older.
- c. The request must come directly from the applicant.
- d. The applicant must have a terminal or an incurable progressive physical illness where suffering is unbearable for the applicant.

- e. The applicant must provide documentation from his physician confirming his medical diagnosis and prognosis.
- f. The applicant must have the capacity, as defined by applicable legislation, to make personal care decisions.
- g. The applicant must have completed the "Request for Information and Support Form." Attached hereto and marked as **Exhibit C** to this my Affidavit is a true copy of the "Request for Information and Support" form dated January 14, 2008.
- h. After exploring all other options, if the applicant is considering hastening his death he must complete the "Request for Support in Dying" form. Attached hereto and marked as **Exhibit D** to this my Affidavit is a true copy of the "Request for Support in Dying" dated March 3, 2010.
- i. A minimum of 14 days must elapse between the time the applicant submits the "Request for Support in Dying" and the time of hastened death.
- j. The applicant must complete a personal statement describing how his illness has affected him and why he is considering hastening his death.
- k. The applicant must be able to demonstrate that his decision is reasoned and considered over time and is not coerced in any way.
- l. The applicant must be able to self-administer the means of hastening death and understand that DWD does not encourage, assist or provide the means to do so.

25. In 2009, the Board of Directors again decided that the risk of liability was high and discontinued the Client Support Program. The decision to discontinue the program was highly contentious amongst board directors and members. DWD's seriously ill clients relied on the service and were suddenly left without any support. The members called a special meeting and voted in a new Board of Directors that agreed to reinstate the Client Support Program.

*The Current Client Support Program – Phase I*

26. Since 2009, the Client Support Program has continued to provide support to DWD members, the general public and health professionals. The Client Support Program is a free service. The program makes limited use of volunteers.

27. At present, there are two phases of support for members at the end of life. To be eligible for Phase I support an individual must be a DWD member and complete a “Request for Information and Support” form (Exhibit C). DWD’s Director of Client Support provides Phase I clients with information and support regarding treatment options, including information about staying at home or moving to a hospice facility, pain and symptom management, starting or stopping life-sustaining treatments, and palliative sedation. For example, some clients contact DWD for personalized advice about how discuss their illnesses with loved ones. Others inquire about how to articulate their medical wishes to their doctors.

28. DWD also refers clients to hospice and palliative care organizations, mental health support services, and crisis intervention services. DWD’s referral service is national in scope, referring clients to services within their local communities.

*The Current Client Support Program – Phase II*

29. Occasionally, individuals who are searching for a peaceful, humane death contact DWD for information and support. In Phase II of the Client Support Program, DWD provides information and support on hastening death. To be eligible for Phase II, the client must meet DWD’s strict eligibility guidelines discussed in paragraph 24 namely, the client must be a mentally competent adult with a terminal or incurable progressive physical illness and the client’s suffering must be unbearable.

30. After an initial Phase II request, the Client Support Director will discuss with the client whether the program is right for his or her situation and needs. This discussion can take place over a number of conversations. The Client Support Director will first explore the client’s motivation for hastening death. Together, they discuss the client’s experiences with pain control and symptom management as well as more personal but relevant details, such as family relationships and spiritual or ideological beliefs.

31. If the program seems appropriate for the client making the request, he must complete a "Request for Support in Dying" form (Exhibit D). He must also provide information regarding his health status. If he is accepted as a Phase II client, he and the Client Support Director make a preliminary plan of action and coordinate support in accordance with his location and the program's resources.

32. If through the intake process, it appears the client may be depressed, have a mental health disorder or not have the capacity to make end of life decisions, the Client Support Director will discontinue providing information and support until the client undergoes a capacity assessment. Requiring a capacity assessment ensures that: a) the client has the capacity to make personal health or care decisions; and b) the client's decision making capacity is not impaired by depression, mental illness, or emotional distress. Upon entering the Client Support Program, the Client Support Director or a DWD volunteer will also discuss other legal options with the client, such as the right to refuse treatment. DWD does not endorse any particular option. DWD presents all options so that clients can make fully informed choices.

33. Typically, clients consult with DWD over several years. The average client stays with the program for one to three years. Ongoing assessment and documentation of interactions continue for the duration of the service. The majority of Phase II clients suffer from Amyotrophic Lateral Sclerosis ("ALS"), Huntington's disease, or cancer. Current Phase II clients range in age from approximately 50 years old to 90 years old; most are in their mid-seventies to mid-eighties. Since 2003, DWD has served a total of 131 clients. At present, DWD supports 35 clients in total, 23 of whom are Phase II clients.

34. When Phase II clients receive specific information on how to hasten dying, DWD provides information on safe, effective methods for hastening death as an option of last resort. DWD provides information on several ways to peacefully hasten including stopping or refusing treatment, voluntary stopping of eating and drinking and active hastening through the helium method or medication.

35. DWD tells its Phase II clients that the helium method involves an individual placing a specially designed bag over his head with the helium entering the bag through a tube. The bag must not be opened too wide or closed too tightly. Special "exit bags" have been designed for

this purpose and can be ordered from other organizations through the mail. DWD tells Phase II clients that an individual who uses this method will become unconscious within several seconds, with death often occurring shortly thereafter. DWD also informs clients that this has been a successful method for all clients who have chosen this method, and our experience is that it has been painless for those clients.

36. DWD tells its Phase II clients that an advantage of the helium method is that it is quick and peaceful; clients who hasten death by this method do not experience discomfort. Family members do not experience this method as traumatic. Helium can keep for some time, so an individual can obtain helium while he is still able-bodied; in this way, the individual does not need to ask for assistance, thereby exposing a family member or loved one to criminal liability.

37. DWD tells its Phase II clients that if they choose the medication method, there are a limited number of medications that are suitable for hastening death. Before they speak with us, most clients do not know what medications are suitable or where to get them. Although some clients are already being prescribed a suitable medication for the treatment of their illness, most clients must seek out medication through other sources. Even those clients who are being prescribed suitable medication are faced with an additional hurdle. They must stockpile the medication in order to acquire enough for hastening, potentially leaving their symptoms untreated. They may lack the time required to stockpile the medication because of their deteriorating condition and impending death.

38. DWD warns Phase II clients that while some physicians might be supportive and write a prescription despite knowing they intend to hasten, most physicians are reluctant to assist if they suspect a patient may be considering hastening death. This could result in the physician refusing to prescribe medication at all, leaving their symptoms undertreated.

39. Many clients are reluctant to request medication through their physician when it involves subterfuge and deceit because they are reluctant to be less than honest. They also have their physicians' interests in mind and do not want to involve their physicians in an act that may create difficulty for their physician.

40. Clients who are unable to acquire the medication through their physicians must turn to alternative sources for acquiring medication such as online pharmacies in other countries which do not require a prescription. They may rely on friends or family members who are visiting other countries where the medication is available to bring it back to Canada; however, this creates a risk of criminal prosecution for friends or family members should they be caught bringing medication illegally into the country.

41. DWD cautions Phase II clients that when ordering medication from other countries, there are risks that the medication may not be of high quality or may be counterfeit, that the vendors of the medication might be disreputable or that there may be difficulties reading non-English labels. Furthermore, DWD cautions these clients that there is the potential that Canada Customs will seize the medication at the border. If a client is relying on a medication to be delivered and it is seized at the border or an insufficient quantity arrives, different from what was ordered, it could result in a client missing the opportunity to hasten death because the disease has progressed beyond the point where they can self-administer. In light of these risks, all of DWD's clients have requested DWD's bedside support when they self-administer their medication.

42. These risks create high levels of anxiety for clients and their families when they are already dealing with the anxiety of their disease.

43. DWD struggles to maintain transparency and openness in a legal climate that encourages secrecy, isolation and underground practice. In this climate of fear, DWD aims to provide Phase II clients with accurate information about safe and effective methods for hastening death as a means to prevent intolerable suffering. Most clients who are provided with this information never act on it; simply knowing they have a choice if their suffering becomes unbearable provides solace, comfort and dignity.

44. DWD's staff and volunteers attend at the bedside of Phase II clients who desire information and emotional support at the end of life. DWD's view is that because it is legal to be present when an individual ends his life and because DWD does not encourage individuals to end their life or provide the means for an individual to die, but only provides information and emotional support, its work complies with the criminal code.

45. On occasion, after DWD clients have died, government authorities have treated their deaths as suspicious, and have conducted investigations. These investigations are emotionally devastating and distressing for family members who have just lost a loved one and are already grief-stricken. DWD cautions Phase II clients to prepare family members for the possibility that the police or coroner's office might conduct an investigation into the manner of death. DWD also informs them about the need to take precautions to protect family members and loved ones from criminal prosecution.

46. DWD informs Phase II clients that if family members or loved ones assist in administering the medication or helium, there is a risk that they could be criminally prosecuted. DWD also encourages them and their family members to seek independent legal advice if they have concerns.

47. DWD provides emotional support for family members and loved ones who are fearful of government interference, offering practical strategies for coping with fears. Our staff and volunteers are specially trained to assist with the grief and trauma that accompany a family members' serious illness, as well as with the dread and apprehension of potential criminal prosecution. DWD tries to make family members feel less alone because many family members are too frightened to discuss their loved one's journey with anyone else.

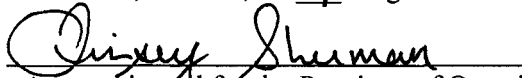
48. The law places DWD's clients in a difficult position. DWD is obliged to point out to Phase II clients that they may not be able to self-administer the means of death once their illness has progressed. If clients puts off hastening dying until the extreme end of their abilities to self-administer, there is a serious risk that loved ones will feel pressured to actively assist the individual.

49. Some DWD clients do not end up hastening simply because they miss the opportunity to do so, either cognitively or physically. Many serious illnesses have a cognitive component, so a client may lose the mental capacity required for DWD support. Others clients suffer from illnesses which do not have a linear deterioration. Others with a disease such as ALS or some cancers might think they have a predictable trajectory, but then their illness will suddenly and rapidly progress so that self-administering the means of hastening death is no longer possible.

50. DWD offers to accompany Phase II clients to the Dignitas clinic in Switzerland. However, no client has ever used this service. We tell clients that to make the trip, they must be well enough to travel, meaning they would likely have to end their lives before they were ready to do so. Most clients do not have the financial means to travel to Switzerland. Finally, most clients prefer to die in the comfort of their own home surrounded by loved ones, rather than in an unfamiliar environment.

51. DWD's goal in offering client support services is to ensure that Canadians have the opportunity to make informed choices about their end of life options. DWD is of the view that seriously ill individuals should not have to suffer at the end of life. DWD has firsthand experience with responding to the needs of the incurably and seriously ill, and knows what difficult choices such individuals must make at the end of life. These are amongst the most difficult choices a person will ever have to make.

SWORN (OR AFFIRMED) BEFORE ME )  
at Toronto, Ontario, on 29 Aug 2011 )

 )  
in and for the Province of Ontario. )  
**LINSEY SHERMAN**

A Commissioner for  
taking affidavits

  
**WANDA MORRIS**