



NEWS RELEASE

April 24, 2011 – For immediate release

BCCLA launches lawsuit to challenge criminal laws against medically-assisted dying

Vancouver, BC: The BCCLA filed a lawsuit today to challenge the laws that make it a criminal offense to assist seriously and incurably ill individuals to die with dignity. The legal challenge will seek to allow mentally competent adults, who are suffering from serious illnesses that cannot be remedied, the right to receive medical assistance to hasten death under certain specific safeguards.

Lee Carter and her husband Hollis Johnson are two of the individuals who have joined the BCCLA in the lawsuit. Lee and Hollis accompanied Lee's 89-year-old mother, Kathleen ("Kay") Carter to Switzerland in January 2010 to end her life. Kay suffered from spinal stenosis, a degenerative condition, which confined her to a wheelchair, unable to feed herself, and suffering from chronic pain. Her doctor told her that the condition would quickly leave her reduced to lying flat in bed, completely unable to move. Kay feared she would become trapped in own body and stripped of her independence.

"I believe that the choice to die with dignity should be available to all Canadians," says Lee Carter. "My mother, Kay, was a lifelong supporter of the dying with dignity movement. She lived her life with passion, independence and resolve, and her independence extended to insisting that she would have choice and control over how she would leave this world. My mother was a great lady, and I feel that I'm honouring her memory by participating in this legal challenge."

The lawsuit claims that Criminal Code provisions against physician assisted-dying are unconstitutional because they deny individuals the right to have control over choices that are fundamental to their physical, emotional and psychological dignity and restrict the liberty of physicians to deliver end of life care to incurably ill patients.

Grace Pastine, BCCLA Litigation Director: "We want every Canadian to have the choice to have what they consider to be a good death, including the option of a medically-assisted death for seriously and incurably ill, mentally competent adults. Inflicting unbearable suffering on dying patients who wish to end their lives with dignity is unjust, unacceptable, and unconstitutional."

Joseph Arvay, Q.C., lawyer for the BCCLA: "The choice to live or die, and to control when and how to die, are choices of profound and personal importance, and should not be unnecessarily interfered with by the state. The gravity of the infringements on the Charter rights of the grievously and irremediably ill, their family members, and health care workers are grossly disproportionate to the purpose of the law."

The BCCLA is represented by Joseph Arvay, Q.C. and Alison Latimer of Arvay Finlay and Sheila Tucker of Davis LLP.

MEDIA CONTACTS:

Grace Pastine, BCCLA Litigation Director, 604-630-9751

Joseph Arvay, Lawyer for the BCCLA, 604-505-1728

John Dixon, BCCLA Board Member, 604-788-6634

[Read the Notice of Claim here >>](#)

[Read additional materials about the Assisted Dying case here >>](#)

PRESS BACKGROUNDER

BCCLA launches lawsuit to challenge criminal laws against medically-assisted dying
April 24, 2011 – For immediate release

Why is the BC Civil Liberties Association working to change law on medically-assisted dying?

We believe that everyone has the right to choose a dignified death. The BCCLA is passionate about alleviating suffering and honouring autonomy. The BCCLA has consistently opposed the criminalization of assisted dying, arguing that the principles of liberty, autonomy and equality, as well as the humanitarian commitment to preventing unnecessary suffering and to preserving the dignity of the individual, justify decriminalization.

The Criminal Code provisions against medically assisted-dying are unconstitutional because they deny individuals the right to have control over choices that are fundamental to their physical, emotional and psychological dignity and restrict the liberty of physicians to deliver compassionate end of life care to incurably ill patients.

Who are the plaintiffs in the BCCLA lawsuit?

There are four named plaintiffs in the lawsuit. Lee Carter and her husband Hollis Johnson are two of the plaintiffs. Lee and Hollis accompanied Lee's 89-year-old mother, Kathleen ("Kay") Carter to Switzerland in January 2010 to end her life with dignity. Kay was a lifelong supporter of the dying with dignity movement and she insisted on having choice and control over how she would end her life. Lee and Hollis believe that by participating in this lawsuit they are honouring her intrepid spirit.

Another co-plaintiff in the lawsuit is Victoria family physician Dr. William Shoichet who believes the ability to participate in physician assisted dying on request and in appropriate circumstances is an important component of the provision of compassionate health care to the seriously and incurably ill.

Finally, the BCCLA is also named as a plaintiff in the lawsuit. The BCCLA is a voice for seriously and incurably ill individuals who are not able to bring their own cases to court in light of their particular personal circumstances.

What is medically-assisted dying?

While different people may define the term in various ways, for the purposes of the BCCLA lawsuit, "medically-assisted dying," (also known as "physician-assisted dying") refers to two different types of assistance that can be offered to seriously, incurably ill persons. The first type of assistance is "physician-assisted suicide," where a doctor, prescribes a life-ending dose of medication to a mentally competent, incurably ill adult at his request, and the patient then chooses to administer the medication himself.

In some situations, mentally competent individuals may be so ill that they may have lost the ability to use their hands or to swallow, and therefore cannot administer the medication themselves. "Consensual physician-assisted death" is where a doctor prescribes a life-ending dose of medication to a mentally competent, incurably ill adult at his request and a doctor, or a person under the supervision of doctor, such as a nurse, administers the medication.

What is the current law in Canada regarding medically-assisted dying?

Medically-assisted dying is illegal in Canada. The primary legal obstruction to medically-assisted dying is Section 241 of the *Criminal Code*, which makes it illegal to: (a) counsel, or (b) aid or abet, a person to commit suicide.

What is the current law in Canada regarding suicide?

The act of suicide itself was decriminalized in Canada in 1972. Currently, in the same way Canadians are able to make choices in regards to medical treatment and health care, it is legal for a Canadian to choose to end her own life. However, those individuals who are unable to end their own lives due to disability (for example, a lack of mobility due to terminal illness such as ALS) are not able to exercise this option. This leaves incurably ill individuals who wish to die with dignity before their illness has progressed to a point where they are unable to enjoy life with the agonizing decision: they can either take their own life while they are capable of doing so, but before their illness has progressed to a point where they are ready to die, or to ask a friend, associate, or doctor to break the law and risk legal punishment to help them in carrying out their wishes.

What is the law in other jurisdictions?

A significant number of countries now allow for medically-assisted dying in some form. In the United States, the states of Oregon and Washington have passed legislation allowing for death with dignity. Belgium, Luxembourg and the Netherlands have also legalized medically-assisted dying. All these jurisdictions have passed legislation specifying the requirements for a medically-assisted death to be considered legal. These safeguards may include patient counselling, assessment by multiple physicians, ensuring that patients are incurably ill due to their conditions, and a time lapse to ensure that the decision cannot be made rashly, and that patients are consistent in their wish for a physician-assisted suicide over a period of time.

Is legalizing medically-assisted dying a slippery slope toward involuntary euthanasia?

No. The “slippery slope” argument is commonly argued by individuals who oppose medically-assisted dying; however, the experience in a number of other countries suggests that these fears are unfounded. The key to protecting the vulnerable is to ensure that Parliament enacts rigorous regulations to supervise medically-assisted dying. Oregon and the Netherlands have created stringent procedures to protect against abuses and ensure all legally sanctioned assisted deaths are fully voluntary and desired by the patient. Canada should enact legislation with equally stringent safeguards.

Does pain management and palliative care negate the need for physician-assisted suicide?

While pain management has improved over time, physicians and advocates recognize that even the most aggressive pain management treatments do not alleviate suffering for all patients, who are then forced to spend their last days, weeks, months, or years in agony. In addition, pain management is unable to treat the loss of dignity, autonomy, anxiety, and fear that frequently accompanies incurable illness.

Where can I find additional information about medically-assisted dying?

The following websites provide in-depth information about medically-assisted dying, including information about end-of-life care legislation around the world:

<http://www.dyingwithdignity.ca/>
<http://www.deathwithdignity.org/>