COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Carter v. Canada (Attorney General),* 2012 BCCA 336

Date: 20120810
Docket: CA040079

Between:

Lee Carter, Hollis Johnson, Dr. William Shoichet, The British Columbia Civil Liberties Association and Gloria Taylor

Respondents
Appellants on Cross Appeal
(Plaintiffs)

And

Attorney General of Canada

Appellant
Respondent on Cross Appeal
(Defendant)

And

Attorney General of British Columbia

Respondent
(Defendant)

Before: The Honourable Madam Justice Prowse
(In Chambers)

On appeal from the Supreme Court of British Columbia, June 15, 2012
(*Carter v. Canada (Attorney General),* 2012 BCSC 886,
Vancouver Registry, Docket Number S112688)

Counsel for the Appellant Attorney General of Canada:	D. Nygard M. Nicolls
Counsel for the Respondents:	S.M. Tucker A.M. Latimer
No one appearing for the Attorney General of British Columbia	
Place and Date of Hearing:	Vancouver, British Columbia August 3, 2012

Place and Date of Judgment:	Vancouver, British Columbia August 10, 2012

Reasons for Judgment of the Honourable Madam Justice Prowse:

NATURE OF APPLICATION

[1] On June 15, 2012, following a 23-day trial involving thousands of pages of evidence and many days of oral testimony, Madam Justice Smith made an order containing declaratory and other relief which I will summarize as follows:

> (1) The impugned provisions [of the *Criminal Code* (the "*Code*") prohibiting assisted suicide] unjustifiably infringe ss. 7 and 15 of the *Charter* and are of no force and effect to the extent that they prohibit physician-assisted suicide by a medical practitioner in the context of a physician-patient relationship, where the assistance is provided to a fully-informed, non-ambivalent competent adult patient who: (a) is free from coercion and undue influence, is not clinically depressed and who personally (not through a substituted decision-maker) requests physician-assisted death; and (b) is materially physically disabled or is soon to become so, has been diagnosed by a medical practitioner as having a serious illness, disease or disability (including disability arising from traumatic injury), is in a state of advanced weakening capacities with no chance of improvement, has an illness that is without remedy as determined by reference to treatment options acceptable to the person, and has an illness causing enduring physical or psychological suffering that is intolerable to that person and cannot be alleviated by any medical treatment acceptable to that person.
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> (2) The effect of the declarations is suspended for one year; and
>
> (3) During the period of suspension of the declaration of constitutional invalidity, Ms. Taylor is granted a constitutional exemption permitting her to obtain physician-assisted death under the following conditions:
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> > (a) Ms. Taylor provides a written request;
> >
> > (b) Her attending physician attests that Ms. Taylor is terminally ill and near death, and there is no hope of her recovering.

(c) Her attending physician attests that Ms. Taylor has been:

(i) informed of her medical diagnosis and prognosis;

(ii) informed of the feasible alternative treatments, including palliative care options;

(iii) informed of the risks associated with physician-assisted dying and the probable result of the medication proposed for use in her physician-assisted death;

(iv) referred to a physician with palliative care expertise for a palliative care consultation;

(v) advised that she has a continuing right to change her mind about terminating her life.

(d) Her attending physician and a consulting psychiatrist each attest that Ms. Taylor is competent and that her request for physician-assisted death is voluntary and non-ambivalent. If a physician or consulting psychiatrist has declined to make that attestation, that fact will be made known to subsequent physicians or consulting psychiatrists and to the court.

(e) Her attending physician attests to the kind and amount of medication proposed for use in any physician-assisted death that may occur.

(f) Unless Ms. Taylor has become physically incapable, the mechanism for the physician-assisted death shall be one that involves her own unassisted act and not that of any other person.

[2] The order goes on to provide that if the above conditions are met, Ms. Taylor may apply to the B.C. Supreme Court, "without notice to any other party, and upon proof of the above to the Court's satisfaction, the Court shall order that":

(a) a physician may legally provide Ms. Taylor with a physician-assisted death at the time of her choosing provided that Ms. Taylor is, at the material time:

(i) suffering from enduring and serious physical or psychological distress that is intolerable to her and that cannot be alleviated by any medical or other treatment acceptable to her;

(ii) competent, and voluntarily seeking a physician-assisted death, in the opinion of the assisting physician and a consulting psychiatrist;

(b) notwithstanding any other provision of law, should Ms. Taylor seek and obtain a physician-assisted death, that the assisting physician be authorized to complete her death certificate indicating death from her underlying illness as cause of death.

[3] The Attorney General of Canada ("AG Canada") filed a Notice of Appeal from this decision on July 13, 2012. It is seeking an order staying the provisions of both the declarations of invalidity and the exemption until such time as the appeal has been heard and decided by this Court. In that regard, the appeal has been tentatively set for hearing for five days commencing March 4, 2013.

[4] It is common ground that, no matter what the result of the appeal in this Court, it is highly likely that the decision will be appealed, with leave, to the Supreme Court of Canada.

[5] The Attorney General of British Columbia ("AGBC"), who is a party to the appeal, did not appear or take any position on this application.

CONSENT ORDER

[6] Prior to the hearing of the stay application, the respondents, Lee Carter, Hollis Johnson, Dr. William Shoichet, the British Columbia Civil Liberties Association and Gloria Taylor, consented to an order staying the declarations of invalidity and the running of the suspension of those declarations from August 3, 2012 (the date the stay application was heard) to the date of the decision of this Court on the appeal. I would, therefore, make an order to that effect, the wording of which I leave with counsel.

[7] The only issue to be decided on this application, therefore, is whether a stay should be granted of the exemption order permitting Ms. Taylor to seek a physician-assisted death pending the outcome of this appeal.

THE LAW TO BE APPLIED ON AN APPLICATION FOR A STAY OF PROCEEDINGS

[8] The starting point on an analysis for a stay of proceedings is the general proposition that successful parties are entitled to what are referred to as "the fruits of their judgment"; that is, they are entitled to the benefit of the order under appeal unless, and until, it is set aside. (See for example, *P. Kiewit Sons Co. v. Perry*, 2006 BCCA 259, at para. 12, (Levine J.A. in Chambers).) This is consistent with another general proposition of law that an order is presumed to be correct unless and until it is set aside. Thus, as a starting point, Ms. Taylor is entitled to the benefit of the exemption granted to her, subject to the application of the other important principles to which I will now refer.

[9] The parties are agreed that, in determining whether to grant a stay of proceedings, the Court should apply the test set out in *RJR- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, [1994] S.C.J. No. 17 (Q.L.), namely:

(1) whether there is a serious question to be determined;

(2) whether the applicant would suffer irreparable harm if the stay were not granted; and

(c) whether the balance of convenience favours granting a stay.

[10] Before turning to the application of those principles in this case, I will touch briefly on the background giving rise to this application, much of which is well-known because of the degree of publicity which has surrounded these proceedings and the ensuing judgment.

[11] Given the fact that the judgment under appeal is 395 pages in length, I will do no more than refer to some basic facts relating to the proposed stay of the exemption provisions of the order which impact directly on Ms. Taylor.

[12] Ms. Taylor is the mother of two grown sons and the grandmother of an 11-year-old granddaughter to whom she is very close. In December 2009, she was diagnosed with

amyotrophic lateral sclerosis (“ALS”), also known as Lou Gehrig’s disease. ALS is a neurodegenerative disorder that causes progressive muscle weakness and eventually progresses to near total paralysis. The trial judge referred to evidence at trial that, while cognition and sensation remain generally intact, ALS patients become increasingly incapacitated. They lose the ability to use their hands and feet; the ability to walk, to chew and to swallow; the ability to make their speech intelligible to others; and, ultimately, the ability to breathe.

[13] In January 2010, Ms. Taylor was advised by her neurologist that she would likely be paralyzed in six months and would likely die within the year. As of the time of the trial in November and December 2011, her condition had deteriorated, but she still enjoyed significant quality of life. There is no question, however, that ALS is a fatal disease with no known cure and that it is simply a matter of time before Ms. Taylor’s condition deteriorates to the point where she will be incapable of ending her own life without assistance, and will be left to die in circumstances which are painful, frightening and repugnant to her. In that regard, I will refer to only one paragraph from her affidavit, referred to at para. 56 of Madam Justice Smith’s reasons for judgment:

> I am dying. I do not want to, but I am going to die; that is a fact. I can accept death because I recognize it as a part of life. What I fear is a death that negates, as opposed to concludes, my life. I do not want to die slowly, piece by piece. I do not want to waste away unconscious in a hospital bed. I do not want to die wracked with pain. It is very important to me that my family, and my granddaughter in particular, have final memories that capture me as I really am - not as someone I cannot identify with and have no desire to become.

[14] It is Ms. Taylor, and no one else, who has the benefit of the exemption for which the stay is sought. AG Canada’s suggestion that it is possible that others could apply for similar exemptions in the future is, in my view, speculative and of little assistance on this application.

[15] While I accept that others have genuine concerns about the possible implications of Ms. Taylor’s exemption, the validity of the laws in issue will be determined in the foreseeable future by this Court, and, ultimately, by the Supreme Court of Canada.

[16] I turn, now, to the application of the test for a stay of the provisions of the order relating to the exemption.

APPLICATION OF THE TEST FOR A STAY

(a) The Merits of the Appeal

[17] The question at the first stage of the analysis is whether there is a serious question to be tried; that is, whether the appeal is frivolous or vexatious. Counsel for Ms. Taylor acknowledges, and I concur, that there is a serious question to be tried and that the appeal is neither frivolous nor vexatious. Thus, on the face of it, the first stage of the test for a stay has been met. That is so with respect to both the declaration of invalidity and the exemption.

[18] Generally speaking, at this stage of the test for a stay, the court engages in a very limited review of the merits. Counsel for AG Canada submits, however, that "a higher level of scrutiny" of the merits may be appropriate in this case in relation to the exemption on the basis that granting a stay of the exemption may result in a final determination of this issue. In other words, if the stay is granted, Ms. Taylor may never receive the benefit of the exemption. Although I did not understand her to press the point, counsel for Ms. Taylor agreed that it is open to the Court to take a closer look at the merits in relation to the exemption than would normally be the case, given that a stay could preclude Ms. Taylor from ever obtaining her constitutional remedy.

[19] In support of the proposition that a more rigorous review of the merits of the grounds of appeal may be appropriate in these circumstances, counsel referred to para. 51 of *RJR*, which states:

> Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial. Indeed, Lord Diplock modified the *American Cyanamid* principle in such a situation in *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294, at p. 1307:
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> > Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the

> judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.
>
> [Emphasis added.]

[20] Where a more extensive review of the merits is required and conducted, the results of that analysis, in terms of the relative strength of the appeal, can be taken into account in the latter two stages of the test for a stay.

[21] In this case, the granting or refusal of a stay in relation to the exemption will not have the practical effect of putting an end to the appeal, since the main issues on appeal relate to the declarations of invalidity. In that respect, this case is unlike many of those which come before the Court, often on an interlocutory basis in a commercial or labour law context, where the granting or refusal of a stay will determine the main issue in dispute. Further, the court in *RJR* made it clear that the circumstances which call for a more extensive review of the merits will be "rare."

[22] At this early stage of the appeal, there are no appeal books, transcripts, or factums. Thus, I would have to rest any analysis of the relative merits of the appeal on the reasons for judgment and the submissions of counsel. (To give some idea of the nature and breadth of the decision, I attach as Schedule "A" to these reasons the Table of Contents from the reasons for judgment of Madam Justice Smith.)

[23] Upon considering the limited nature of the stay application relating to the exemption, and given the main focus of the appeal, I conclude that this is not one of those rare cases which require an extensive examination of the merits. I will, however, touch briefly on the arguments raised by AG Canada.

[24] Counsel for AG Canada submits that Madam Justice Smith erred by:

> (1) creating a benefit or remedy for Ms. Taylor which is not available to others who are similarly situated, in a manner inconsistent with *Miron v. Trudel*, [1995] 2 S.C.R. 418, (where the definition of "spouse" in the *Insurance Act*, R.S.O. 1980, c. 281, was found to be unconstitutional as being in breach of s. 15 of the *Charter* insofar as it excluded common law spouses from its benefits);

(2) effectively usurping the role of Parliament by drafting conditions for Ms. Taylor's exercise of the exemption which amount to reading in exceptions to the legislation (albeit impacting on only one individual), and doing so in such a way that AG Canada has no role to play in the exercise of the exemption;

(3) improperly fettering the discretion of the judge who may consider Ms. Taylor's application to pursue her exemption by stating that, if the conditions set forth in the order for the exercise of the exemption are satisfied, the trial judge "shall" issue a form of order giving effect to the exemption.

[25] At the hearing of this application, counsel for AG Canada also alleged that Madam Justice Smith erred in distinguishing the decision in *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, with respect to arguments under ss. 7, 15 and 1 of the *Charter*, by finding that the law had developed significantly with respect to certain aspects of ss. 7 and 1 subsequent to the *Rodriguez* decision such that she was not bound to follow it in those respects. Counsel for AG Canada relies on the recent decision of *Canada v. Craig*, 2012 SCC 43, as support for that proposition.

[26] Since I have concluded that a close review of the merits is not called for in these circumstances in relation to the exemption, I do not propose to detail the submission of the respondents. I would, however, make the following brief points:

(1) While the *Craig* decision may be relevant to the merits of the main appeal, it does not have direct application to the exemption. (Although the fate of the exemption is clearly linked to the main appeal, counsel did not suggest that I engage in a more intense scrutiny of Madam Justice Smith's analysis of ss. 7, 15 and 1 on this application.)

(2) The *Miron* decision is distinguishable in significant respects, not the least because in that case the court was choosing between two effective remedies which were available as a result of the finding of constitutional invalidity, one of which (reading in) enabled the court to extend the benefit of the legislation to similarly situated persons. In this case, the exemption is the only effective remedy available to Ms. Taylor. While the result is to provide a benefit to her which is not available to

those similarly situated, this will invariably be the effect of an exemption – that is the very nature of an exemption.

(3) With respect to the impugned terms of the exemption, it is important to note that, unlike legislation, these provisions were designed solely in relation to Ms. Taylor to ensure she derived a remedy (as a result of the declarations of invalidity and suspension). Further, to the extent they may or may not be flawed, it does not necessarily follow that this Court would simply overturn the exemption if it upheld the declaration of invalidity but found the trial judge had erred with respect to the terms of the exemption. It is open to this Court, in appropriate cases, to make the order which should have been made by the trial judge.

[27] Madam Justice Smith engaged in a very complete discussion of the nature of a constitutional exemption, the fact that it is a remedy which is rarely granted, and various methods of giving effect to it to ensure that both the public interest and the interest of Ms. Taylor were protected. Given the complexity of the issues, and the arguments put forward by AG Canada, both on this application and in the trial court, I am satisfied that AG Canada has established a case which exceeds the relatively low threshold of a serious question to be tried. Based on the limited material before me, I can say no more than that I would place the merits midway along the spectrum from weak to strong.

[28] I turn, next, to the question of irreparable harm.

(b) Irreparable Harm

[29] In *RJR*, at para. 60, the court observed that:

> The assessment of irreparable harm in interlocutory applications involving *Charter* rights is a task which will often be more difficult than a comparable assessment in a private law application. One reason for this is that the notion of irreparable harm is closely tied to the remedy of damages, but damages are not the primary remedy in *Charter* cases.

[30] AG Canada submits that it would suffer irreparable harm if the stay is not granted because Ms. Taylor may successfully exercise her rights under the exemption before the appeal is heard and decided. I understand AG Canada's concern in that regard to relate both to Ms. Taylor, and the risk that she will exercise the exemption while in a vulnerable state

despite the safeguards provided in the order, and to the public, which may view her possible death pending appeal as a "state-sanctioned" devaluation of human life. With respect to this submission, AG Canada's position is that the judiciary forms part of the "state" in the broadest sense of that word.

[31] While the irreparable harm to be considered at this stage of the test is irreparable harm to the appellant only, I note that counsel for Ms. Taylor submits it is Ms. Taylor who is more likely to suffer irreparable harm if the stay is granted, since she will be precluded from exercising her rights under the exemption and she will lose the peace of mind and solace which the exemption provides to her in the interim. Under the authorities, however, this point is more appropriately dealt with in discussing the balance of convenience.

[32] AG Canada submits that it is entitled to a presumption of irreparable harm. In support of that proposition, it refers to paras. 71 and 72 of *RJR*, which state:

> ... In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.
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> A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought. To do so would in effect require judicial inquiry into whether the government is governing well, since it implies the possibility that the government action does not have the effect of promoting the public interest and that the restraint of the action would therefore not harm the public interest. The *Charter* does not give the courts a licence to evaluate the effectiveness of government action, but only to restrain it where it encroaches upon fundamental rights. [Emphasis added.]

[33] Counsel for Ms. Taylor submits that these passages must be read together with para. 73, which states:

> Consideration of the public interest may also be influenced by other factors. In *Metropolitan Stores* [[1987] 1 S.C.R. 110], it was observed that public interest considerations will weigh more heavily in a "suspension" case than in an "exemption" case. The reason for this is that the public interest is much less likely to be detrimentally affected when a discrete and limited number of applicants are exempted from the application of certain provisions of a law than when the application of the law is suspended entirely. [Emphasis added.]

[34] There is no doubt that Parliament is charged with the duty of promoting and protecting the public interest and that the assisted suicide provisions of the *Code* were designed to protect the public. For that reason, if the question were whether AG Canada would suffer irreparable harm if the declarations of invalidity were not stayed, I would be more inclined to answer "yes", at least if the declaration took effect immediately and there were no safeguards in place. The reasoning in paras. 71 and 72 of *RJR* would appear to apply. In this case, however, I am unable to see that AG Canada is entitled to a presumption of irreparable harm if its application for a stay of the exemption only is dismissed.

[35] Having said that, I accept that the exemption has important symbolic and, perhaps, psychological, value, which extends beyond Ms. Taylor to those who are similarly situated, whether or not they agree with the decision under appeal. I also accept that the fact "only" one life is at stake under the exemption does not detract from the fact that what is at issue is the value of a human life – what has been referred to as the sanctity of a human life. In other words, I do not see the public interest aspect of the exemption as being of relative insignificance because "only" one life is at stake. Whether Ms. Taylor wishes it or not, her life, including her death, has become a focal point for the debate on the value of human life in relation to physician-assisted dying. Providing a means for her to exercise a right to a physician-assisted death, even under the very stringent criteria set by Madam Justice Smith, is seen by many individuals and groups as being "the thin edge of the wedge".

[36] But can it reasonably be said that permitting the exemption to stand pending the resolution of this appeal would result in irreparable harm to AG Canada as representative of the public interest? In my view, it cannot. I do not consider that reasonable members of the public, fully apprised of the circumstances of this case, and having read the reasons of the trial judge, would conclude that the public interest would suffer irreparable harm if the exemption were permitted to continue, even knowing that Ms. Taylor may find it necessary to exercise her rights under the exemption before the appeal is concluded. I do not consider that those members of the public would find it necessary that Ms. Taylor, who has fought so courageously and in such difficult circumstances to assert this right, should be required to sacrifice her right to a concept of the "greater good" if it should come to that. Nor do I consider it a likely consequence of allowing the exemption to stand pending the resolution of this appeal that the value of life would seen to be diminished either by the state, which has

pursued this relief with a view to the public good, or by the judiciary, which is required to tackle these difficult issues.

[37] I accept that the exercise by Ms. Taylor of her rights under the exemption would give rise to some harm to the public interest, which is concerned with the value of all life, but I am not persuaded that the level of harm reaches the level of irreparable harm alleged by AG Canada. In coming to that conclusion, I place some weight on the distinction between the stay of the declarations of invalidity, the refusal of which is more likely to result in irreparable harm for the reasons set out at paras. 71-72 of *RJR*, and the stay of the exemption.

[38] If I am wrong, however, and irreparable harm to AG Canada would flow from the very fact of the exemption in these circumstances, that would not end the analysis. I would then have to go on to consider the balance of convenience. This is so because it is only irreparable harm to the appellant which is considered at the second stage of the test for a stay, whereas the balance of convenience requires the Court to consider the degree of harm to Ms. Taylor in the event the stay is granted.

[39] I will, therefore, approach the third stage of the analysis on the assumption that failure to grant a stay would cause irreparable harm to AG Canada as representative of the public interest.

(c) The Balance of Convenience

[40] Assessing the balance of convenience requires me to consider whether refusing the stay would cause greater harm to AG Canada and the public interest it represents than the harm to Ms. Taylor if the stay is granted. Some of the comments I have made in relation to relative harm at the second stage of the analysis also apply at this stage.

[41] As foreshadowed by my earlier remarks, I accept the submission of counsel for Ms. Taylor that she would suffer irreparable harm if a stay were granted. I agree with her counsel that irreparable harm to her takes two forms. The first, and most significant, is the irreparable harm which she would suffer if her condition deteriorated to the point where she wished to exercise her rights under the exemption pending the resolution of this appeal, but, because of the stay, she was unable to do so. In that circumstance, all of her worst fears would be

realized and she would be forced to endure the very death which she has fought so assiduously to avoid. Counsel for AG Canada does not purport to say that this ending to Ms. Taylor's life would not constitute irreparable harm. Rather, as I understand the position of counsel for AG Canada, the harm Ms. Taylor would suffer is outweighed by the greater harm to the public if the stay were not granted and she succeeded in obtaining a physician-assisted death.

[42] The second category of irreparable harm which Ms. Taylor alleges if a stay is granted is the loss of the peace of mind and solace now available to her as a result of the exemption, in knowing that if living becomes unbearable to her for any of the reasons she has given, she can bring her life to an end upon fulfilling the requirements set forth in the order governing the exemption. The exemption also gives her the potential for a longer life since she can continue to live, even in difficult circumstances where she may be incapable of ending her own life, if she still enjoys some quality of life which she considers makes it worth living.

[43] I accept that Ms. Taylor would suffer both forms of harm if the stay were granted, and that they constitute irreparable harm to her.

[44] Assuming, therefore, that refusing a stay would result in irreparable harm to AG Canada as representative of the public interest, and finding that granting a stay would result in irreparable harm to Ms. Taylor, I am left in the invidious position of having to compare degrees of irreparable harm in determining where the balance of convenience lies. Comparing relative harm in these circumstances is obviously unlike the task which accompanies the balancing act in most cases which usually arise in the commercial context and do not involve matters of life and death.

[45] In the result, and not without some hesitation, I conclude that the balance of convenience favours refusing a stay. I am not persuaded that the harm to the public contended for by counsel for AG Canada outweighs the harm to Ms. Taylor if she is left without a remedy pending the resolution of this appeal, and possibly at all. She may be a symbol, but she is also a person, and I do not find that it is necessary for the individual to be sacrificed to a concept of the "greater good" which may, or may not, be fully informed. The reasons for judgment in this case put squarely at issue the important public values with which this Court (and, likely, the Supreme Court of Canada) will ultimately have to grapple in

determining whether, and in what circumstances, assisted suicide may, or may not, be in accord with the public interest, including the interest of that minority of the public in circumstances similar to those of Ms. Taylor. It is apparent there are competing arguments and interests on both sides of the issue which will be elaborated upon as the appeal progresses. The public as a whole will benefit from this process. In the meantime, if it should happen that Ms. Taylor is not present for the end of the story because she exercised her right to end her life in accordance with the exemption, I am not persuaded that the nature of any harm suffered by the public as a result offsets the likely final and irrevocable nature of the harm to Ms. Taylor if a stay is granted.

CONCLUSION

[46] I would grant the application for a stay of the declarations of invalidity and the running of the suspension of those declarations, from August 3, 2012 to the date of the decision of this Court on appeal, by consent. I would dismiss the application for a stay of the portions of the order granting the constitutional exemption. I leave it to counsel to draft the precise terms of the order.

[47] In closing, I thank counsel for their excellent submissions.

"The Honourable Madam Justice Prowse"

SCHEDULE A