

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2015-485-235

UNDER The Declaratory Judgments Act 1908 and the
New Zealand Bill of Rights Act 1990

BETWEEN **LECRETIA SEALES**
Plaintiff

AND **ATTORNEY-GENERAL**
Defendant

**REPLY AFFIDAVIT (NO. 1 BARONESS FINLAY) OF LECRETIA SEALES
SWORN 18 MAY 2015**

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I, **LECRETIA SEALES**, of [REDACTED], Wellington, lawyer, swear:

1. I am the plaintiff in this matter. The purpose of this reply affidavit is to reply to some matters raised in evidence given by witnesses on behalf of the Attorney-General.
2. I have had the affidavit of Baroness Ilora Finlay read to me. Her evidence identifies a number of perceived problems with the safeguards used in aid in dying regimes.
3. My primary reaction to Baroness Finlay's concerns is that they do not relate to my own situation.
4. Her concerns about diagnostic and prognostic uncertainty do not relate to my specific condition. Further these are really matters for my treating doctors who have the benefit of having conducted the appropriate investigations and diagnoses. However, having lived through the series of treatments and tests since my cancer was first diagnosed, I can say I have little personal doubt about my own medical situation. I trust my doctors' assessments of my cancer, and my deterioration since last year. My deterioration since the first affidavit I provided in this case (noted in my second affidavit dated 1 May 2015), is consistent with the prognosis I have been given.
5. Baroness Finlay's other concerns really relate to the quality and safety of a patient's choice in aid in dying situations. She expresses concern that:
 - (a) doctors are not able to detect the effects of coercion on such choice (paragraphs [20]-[23], and [88] of her evidence);
 - (b) a patient's choices may be influenced by his or her doctors' views that his or her condition is hopeless, or existence is pointless (paragraphs [24]-[26], and [88] of her evidence);
 - (c) doctors cannot reliably identify a vulnerable or clinically depressed patient in this context (paragraphs [27]-[32] of her evidence);
 - (d) doctors have difficulty assessing the mental competence of patients (paragraphs [33]-[35] of her evidence);
 - (e) a patient's choice to end life is likely to be unstable, or result from the failure to experience alternatives (paragraphs [37], [41], [81] and [93]-[94] of her evidence); and
 - (f) aid in dying will cause suffering for terminally ill patients because they are faced with a daily choice about whether to end their life at a stressful time (paragraph [68] of her evidence).
6. I would like to reassure the Court that none of those general concerns apply to me. As I always have done throughout my life, I continue to know my own mind, and to trust myself to make informed choices for sound reasons.
7. First, I can confirm that I have not been coerced, subtly or otherwise, by loved ones in seeking confirmation that my choice to end my own life with my doctors' assistance will be respected should my suffering become

intolerable. My husband and my family have been prepared (in some cases reluctantly) to support my own choice in this matter, but in no way have they pressured me to adopt my position or pursue this litigation.

8. Second, I have not been influenced by any of my doctors' views on my prospects or the worth of my existence. I approached my GP to ask if she would be prepared to provide assisted dying services if it was lawful. It is not a matter my GP ever raised with me. As I have previously expressed to the court, I do not doubt my own self-worth and, indeed, it is my sense of the value of my life that helps motivate me to seek some say in the way in which it might end.
9. Third, and again as I have previously reassured the Court, I am neither depressed nor mentally compromised (as has also been confirmed by my GP). Even as my medical condition has deteriorated, I have retained my determination to make the most of my life and enjoy the time I have remaining with my loved ones and friends. Further, as I said in my first affidavit, I realise that the process of assisted dying to be followed in my case would necessarily involve my doctors and the Court being satisfied that I am mentally competent and can make an informed choice. I trust them to make accurate decisions on these matters.
10. Fourth, I do not consider my choices are likely to be unstable. I have lived my whole life as an independent and intellectually engaged person, and trust myself to make a sound decision regarding the end of my life. I know that the alternatives I face (increasing suffering, indignity, loss of valued function, and awareness) are sufficiently agonising, and inconsistent with my own identity and the way I have lived my life, to pursue this case. I do not consider that I need to experience that alternative of intolerable suffering for long in order to test whether in fact my decision is a sound one. However, I also realise that the process of assisted dying to be followed in my case would necessarily involve satisfying both my doctors and the Court that a choice to end my life reflected my clear and settled intention. Again, I trust them to make accurate decisions on these matters.
11. Finally, Baroness Finlay's view that aid in dying increases suffering for the majority of terminally ill patients does not apply to me. To the contrary, I am suffering at present because of the unavailability to me of aid in dying and the prospect that I have to experience a death that is intolerable for me (both psychologically and physically). In addition, I do not see aid in dying as an ongoing choice for me between dying and living. I am dying - the relief I seek relates to choice about the quality of that death and the management of my suffering.
12. To clarify, for me, physician assisted dying is not about a desire to bring about my own death or take my own life, or a desire for someone to deliberately take my life. I am dying from a terminal brain tumour and I am now entering the final stages of this disease. I know that the brain tumour will end my life and I know how it will end my life. I am already on high levels of steroids to address the swelling of my brain (as described in the affidavits of Professor Michael Ashby and Dr Elizabeth Smales). For me, seeking help from a physician is about managing the quality and timing of my inevitable and increasingly imminent death. I do not want my death to needlessly drag on past the point where the suffering associated with my death becomes intolerable for me. I do not want to have to endure the final stages of my inevitable death if and when this involves intolerable suffering for me. The prospect that I may have to

suffer in this way is causing me anxiety and suffering now, as I have said in my first and second affidavits.

13. Baroness Finlay discusses the need to listen carefully and sensitively to terminal patients' needs in order to improve their sense of wellbeing (at paragraph [121] of her evidence). That is exactly what I am asking for in my case. I would like my wish not to have to suffer unnecessarily at the end of my life to be respected, rather than to be told that my own choices are unsafe or cannot be trusted.

SWORN at Wellington this 18 day of May
2015 before me:



A solicitor of the High Court of New Zealand



Lecretia Seales

RICHARD DOUGLAS HUTCHISON

Solicitor, Wellington