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 2) OF LECRETIA SEALES SWORN 18 MAY 2015

RUSSELL McVEAGH

A S Butler | C J Curran | C M Marks
Phone +64 4 499 9555
Fax +64 4 499 9556
PO Box 10-214
DX SX11189
Wellington

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

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1. I am the plaintiff in this matter. The purpose of this reply affidavit is to reply to matters raised in evidence given by witnesses on behalf of the Attorney-General other than Baroness Finlay ("**Finlay affidavit**").

2. I have had all the affidavits filed by the Crown read to me. These affidavits identify perceived problems with the safeguards in aid in dying regimes similar to those raised in the Finlay affidavit, namely coercion, stability of decision making, detection of depression, and assessment of competence.

3. My primary reaction to these concerns, as with my reaction to the Finlay affidavit, is that they do not relate to my own situation and I refer to paragraphs 6 to 12 of my reply affidavit no.1 dated 18 May 2015.

4. Most of the witnesses for the Crown give evidence in relation to palliative care. I make the following observations:

   (a) I agree that it is a role of palliative care to address symptoms of pain and suffering that I may experience insofar as they are able to. I am currently in receipt of palliative care and their aid is gratefully received and the Mary Potter Hospice does a wonderful job.

   (b) However, most of the palliative care experts appear to accept that not all symptoms and all pain can always be treated (for example, Allan, paragraph 17).

   (c) For me, there is a limit to what palliative can do. Palliative care will not prevent loss of control of many of my bodily functions, such as being unable to swallow and the sense of choking and the loss of my sight (and inability to read). It cannot address my increasing paralysis. I am already in a wheelchair and finding it increasingly difficult to walk. It cannot address the possibility I will fall into permanent unconsciousness and die over days or weeks. It cannot reduce the increasing dependence I have on others for all my basic needs, including those needs most intimate to me. It cannot address the side effects of steroids (where I have already gained considerable weight which in turn affects my mobility). It cannot change how I see myself and how I have lived my life, and why the prospect of total immobility and likely inability to recognise my most loved ones is completely unbearable for me. Palliative care will not address how all these physical and psychological symptoms will impact me or alleviate the suffering that I may well endure.

   (d) While palliative care has its part to play (and I understand that role), I have a good network of family and friends. I value my time with them. I do not want to spend time with palliative care workers unless it is necessary. I would prefer not to have strangers visiting my house. Palliative carers must be sensitive to the needs of the patient (as my palliative carers are). I am open to the support that they can provide to the extent that is helpful for me. They have provided me with a lazy-boy type chair which has been a great help and shown me some exercises for my paralysed hand which is clenched. They have

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offered to visit and shower me but my mother is able to assist me with this (and I would find it mortifying to have strangers doing this for me). There is nothing further palliative carers can provide me at this stage. As my disease progresses they will continue to provide assistance as necessary. But there is a limit to what they can provide me as I set out above.

5. In relation to the affidavit of Dr Chochinov I make the following comments:

   (a) He raises a concern that when a clinician shares a patient's sense of hopelessness, this "collusion" can lead to assisted dying being perceived as the only viable option. I do not have a sense of hopelessness. I know that I am dying and the symptoms that will likely accompany my death. Nor have any of my treating doctors made me feel the situation was hopeless, other than of course advising me of my diagnosis and prognosis (which objectively could not be described as hopeful).

   (b) I do not suffer from a lack of affirmation of worth which, if addressed, may mitigate my wish to have access to assisted dying (Chochinov, paragraph 56.5). I have a strong sense of my worth and the person that I am. I do not feel abandoned by my physicians. There is no issue with the care provided by my physicians or the care currently being provided by the palliative care providers.

   (c) Dr Chochinov discusses dignity therapy in his affidavit. He suggests that patients who desire death are significantly more likely to be depressed, more likely to experience pain and less likely to report optimal social support compared to those who do not endorse a desire for early death. This description does not relate to me. I am not suffering from depression and have never suffered from depression. I have extremely good social support from my family and friends. My desire is not the result of depression about my diagnosis or because of lack of support, or driven by a fear of being a burden to others. Some patients of the type he describes may find therapy helpful. However I do not fall within that category.

6. In relation to the affidavit of Robert George, he refers to expert palliative care "exploring potential for recasting with them a dying person's view of self to explore other perspectives and realities with which to transcend an existing state of affairs that the person finds unacceptable or a source of suffering" (paragraph 82). This does not resonate with me or the person I am in any respect. Indeed, it is almost insulting to me to suggest my very considered views and assessment of my situation are somehow unreliable and could be recast so that my suffering is imbued with meaning.

7. In relation to the affidavit of Simon Allan:

   (a) He notes that terminal sedation is rarely provided except in the final stages of death. Simon Allan gives an example of a person who is choking to death who might then be given sedation to a level where they are no longer conscious one or two days before death (Allan at paragraph 19). He states that terminal sedation is also provided to control agitation and restlessness (Allan at paragraph 19). As set out in my first affidavit, I do not wish to be

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terminally sedated into unconsciousness (with nutrition and hydration removed). I would hate to be deprived of being aware of my loved ones and their support at the end. Nor do I wish to have to endure suffering that is unbearable to me up until the time the suffering is viewed as so extreme, terminal sedation is provided.

(b) He suggests that many who express a desire for aid in dying do not persist with that decision (Allan at paragraph 24). I do not fall within this category. I have been consistently clear about my concerns and about my wish to have access to assisted dying. My views are not unstable or ambivalent.

8. In relation to the affidavit Tony O'Brien, he sets out three groups of people that, in his view, tend to express a desire for assisted death (O'Brien at paragraphs 24 - 26). I can see myself fitting within his group 3 but not groups 1 or 2.

9. In relation to the affidavit of Roderick McLeod, at paragraph 35 he notes that the broader suffering of terminally ill patients is a difficult concept to grasp, is inherently unique to individuals and is quite different to the presence of pain. He also notes that attempts can be made to address the issue of suffering. He appears to accept that not all suffering can be addressed. I am asking the court to give me a choice so that I am not forced to endure suffering that is intolerable for me. The suffering is unique to me and I do not believe that I should be forced to endure the suffering associated with my death unnecessarily.

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

Lecretia Seales

A solicitor of the High Court of New Zealand

RICHARD DOUGLAS HUTCHISON
Solicitor, Wellington