IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2015-485-000235
[2015] NZHC 828

UNDER	The Declaratory Judgments Act 1908 and the New Zealand Bill of Rights Act 1990
BETWEEN	LECRETIA SEALES Plaintiff
AND	ATTORNEY-GENERAL Defendant

Hearing: 21 April 2015

Counsel: A S Butler and C J Curran for Plaintiff
P T Rishworth QC and E J Devine for Defendant
K G Davenport QC and A H Brown for Voluntary Euthanasia Society of New Zealand (Incorporated)
M S R Palmer QC and J S Hancock for Human Rights Commission
V E Casey for Care Alliance

Judgment: 24 April 2015

JUDGMENT OF COLLINS J
[Leave to intervene]

Summary of decision

[1] I am granting applications made by Care Alliance, The Voluntary Euthanasia Society of New Zealand (Incorporated) (Voluntary Euthanasia) and the Human Rights Commission for leave to intervene in this proceeding. In order to ensure Ms Seales is not unnecessarily burdened by the participation of the interveners, I am placing stringent conditions on the interveners' participation in this proceeding. I am exercising my discretion to grant the applications primarily because I am satisfied that I may be assisted by the conditional participation of the interveners in reaching my decision in relation to Ms Seales' application for declarations.

[2] Before setting out the reasons for my decision, I shall explain:

(1) the context in which the intervention applications have been made;

(2) the intervention applications; and

(3) the principles which govern intervention applications in the circumstances of this case.

Context

Ms Seales

[3] Ms Seales is a 42 year old woman, who is dying from a brain tumour.[1] Ms Seales' life expectancy is difficult to predict because brain tumours vary greatly in their behaviour. As at 2 April 2015 Ms Seales' oncologist estimated she could expect to live somewhere between three and 18 months.[2]

[4] Ms Seales' brain tumour was diagnosed in March 2011. Since then Ms Seales has undergone surgery, courses of chemotherapy and radiation therapy. Despite this treatment Ms Seales' oncologist is confident her tumour is inoperable and that while further treatment may temporarily halt or even slow progression of the brain tumour, it will ultimately cause Ms Seales' death. In his affidavit, Ms Seales' oncologist also explains that usually it is possible to provide palliative relief to patients in Ms Seales' circumstances to reduce the effects of pain, nausea and seizures.[3]

[5] It is not necessary for me to explain in this judgment the physical effects of Ms Seales' illness.[4] What is important is that I explain Ms Seales' response to her illness and her limited life expectancy.

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1 Dr Hamilton, Ms Seales' oncologist has explained Ms Seales has "diffuse astrocytoma ... with elements of an oligodendroglioma. This combination is often abbreviated to 'oligoastrocytoma'. Both astrocytoma … and oligodendroglioma grow diffusely and infiltrate the brain". Affidavit of D A Hamilton, 2 April 2015 at [7]-[8].

2 At [12].

3 It is anticipated further evidence from a palliative care specialist will be provided before the substantive hearing.

4 It may however be necessary for me to explain these matters in my substantive judgment.

[6] Ms Seales is a highly intelligent woman, who has to date lived a very satisfying and fulfilling life. She is a well regarded and successful lawyer, who has enthusiastically pursued passions beyond her career. For example, Ms Seales has studied four additional languages, learnt dancing (tango) and acquired a range of culinary skills. Most importantly, Ms Seales has a close and loving relationship with her husband and family members.

[7] Throughout her life Ms Seales has been a fiercely independent and rational person. These traits are still very evident in Ms Seales' explanation that she intends to live every day as best she can. Ms Seales does not seek pity from others and she is committed to maintaining a positive and constructive approach to her circumstances.

[8] Ms Seales has explained that although she is not depressed she is concerned that she is destined to face a slow, unpleasant, painful and undignified death. She is concerned not just for herself, but about the impact her circumstances will have on her husband and family. Ms Seales explains the way she currently anticipates having to die is completely contrary to the way that she has lived her life to date. Ms Seales wants to have the option to die with dignity.

[9] In her amended statement of claim,[5] Ms Seales identifies the following options she is facing:[6]

(1) dying by way of "facilitated aid in dying",[7] or "administered aid in dying",[8] at the point that she reaches a state of suffering that is

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5 Amended Statement of Claim of L Seales, 20 April 2015.

6 At [11].

7 Defined in the Amended Statement of Claim, above n 5, in the following way:
For the purposes of this claim "facilitated aid in dying" means a medical practitioner, or a person acting under the supervision of a medical practitioner in the context of a patient/physician relationship, making available to a patient the means by which the patient may bring about his or her own death where the patient: (1) being competent to do so, clearly consents to the provision of that aid; and (2) is suffering from a grievous and terminal illness that causes enduring suffering that is intolerable to the individual in the circumstances of his or her illness".

8 Defined in the Amended Statement of Claim, above n 5, in the following way:
For the purposes of this claim "administered aid in dying" means the administration by a medical practitioner, or a person acting under the general supervision of a medical practitioner in the context of a patient/physician relationship, of medication or other treatment that brings about the death of a patient who: (1) being competent to do so, clearly consents to the administration of that aid; and (2) is suffering from a grievous and terminal illness that causes enduring

enduring and intolerable to her as a result of her grievous and terminal illness;

(2) intolerable suffering and loss of dignity; or

(3) taking her own life while she is still physically able in order to avoid that suffering, which could likely occur sooner than would be the case if facilitated aid in dying or administered aid in dying were available to her.

[10] Ms Seales "wishes to have the choice to die by way of facilitated aid in dying or administered aid in dying at the point that she reaches a state of suffering that is intolerable to her as a result of her grievous and terminal illness".[9]

[11] Ms Seales' general practitioner[10] respects and understands Ms Seales' wishes. However, Ms Seales' general practitioner is not willing to assist Ms Seales in the way she wishes unless this Court grants the declarations sought by Ms Seales.

The application for declarations

[12] Ms Seales seeks two alternative sets of declarations under the Declaratory Judgments Act 1908.

[13] The first set of declarations sought by Ms Seales involves two aspects of the criminal law. I will refer to those declarations as "the criminal law declarations" although I appreciate that s 6 of the New Zealand Bill of Rights Act 1990 (NZBORA) is relevant to the criminal law declarations. The alternative sets of declarations primarily relate to the NZBORA. I will refer to those declarations as "the Bill of Rights declarations".

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suffering that is intolerable to the individual in the circumstances of his or her illness".

9 Amended Statement of Claim, above n 5, at [12].

10 The name of Ms Seales' general practitioner is suppressed.

Criminal law declarations

[14] The criminal law declarations sought by Ms Seales focus upon the following two aspects of the criminal law.

[15] First, the provisions of s 179(b) of the Crimes Act 1961 (the Crimes Act), which make it an offence for any person to aid or abet (assist) any person in the commission of suicide.[11]

[16] Second, the provisions of s 160(2)(a) and (3) of the Crimes Act, which provide that killing any person by an unlawful act will be either murder or manslaughter.[12]

[17] Ms Seales asks that I issue declarations to the effect that in her circumstances Ms Seales' doctor would not commit a criminal offence by either assisting Ms Seales in ending her own life, or by committing an act that ends Ms Seales' life.

[18] Specifically, the two criminal law declarations sought by Ms Seales are:[13]

> (1) In circumstances where the Court is satisfied that the plaintiff is a competent adult who:
>
> (i) clearly consents to the facilitated aid in dying; and
>
> (ii) has a grievous and terminal illness that causes enduring suffering that is intolerable to her in the circumstances of her illness, facilitated aid in dying is not prohibited by section 179 of the Crimes Act.
>
> (2) In circumstances where the Court is satisfied that the plaintiff is a competent adult who:

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11 **179 Aiding and abetting suicide**
Every one is liable to imprisonment for a term not exceeding 14 years who–
…
(b) Aids or abets any person in the commission of suicide.

12 **160 Culpable homicide**
...
(2) Homicide is culpable when it consists in the killing of any person–
(a) By an unlawful act;
...
(3) Except as provided in section 178 of this Act, culpable homicide is either murder or manslaughter.
...

13 Amended Statement of Claim, above n 5, at [34].

(i) clearly consents to the administered aid in dying; and

(ii) has a grievous and terminal illness that causes enduring suffering that is intolerable to her in the circumstances of her illness, administered aid in dying is not unlawful under section 160 of the Crimes Act.

Bill of Rights declarations

[19] If I do not agree to issue the criminal law declarations, Ms Seales asks that I issue declarations that ss 179 and 160 of the Crimes Act are not consistent with her rights under ss 8 and 9 of the NZBORA.

[20] Section 8 of the NZBORA provides:

> **8 Right not to be deprived of life**
>
> No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.

[21] Section 9 of the NZBORA provides:

> **9 Right not to be subjected to torture or cruel treatment**
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> Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.

[22] The specific Bill of Rights declarations Ms Seales asks me to make are:[14]

(1) Section 179 of the Crimes Act is inconsistent with sections 8 and 9 of BORA, to the extent that it prohibits facilitated aid in dying for a competent adult who:

(i) clearly consents to the facilitated aid in dying; and

(ii) has a grievous and terminal illness that causes enduring suffering that is intolerable to the individual in the circumstances of his or her illness.

(2) Section 160 of the Crimes Act is inconsistent with sections 8 and 9 of BORA, to the extent that administered aid in dying is unlawful under section 160 for a competent adult who:

(i) clearly consents to the administered aid in dying; and

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[14] Amended Statement of Claim, above n 5, at [40].

(ii) has a grievous and irremediable illness that causes enduring suffering that is intolerable to the individual in the circumstances of his or her illness.

[23] If I conclude either ss 8 or 9 of the NZBORA are engaged in the circumstances of Ms Seales' case, I will then need to undertake an analysis under s 5 of the NZBORA which provides:

> **5 Justified limitations**
>
> ... the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[24] If I find in Ms Seales' favour when undertaking the analysis required by s 5 of the NZBORA, further issues will then arise as to whether I should grant relief, and if so, the nature of that relief.

[25] I am scheduled to commence hearing Ms Seales' case on 25 May 2015. A strict timetable has been put in place to ensure Ms Seales' application can be heard and determined.[15] Regardless of the outcome of Ms Seales' application it is essential that I endeavour to deliver judgment while Ms Seales is competent to make informed decisions about any ongoing care and treatment.

Intervention applications

Care Alliance

[26] Care Alliance is described as a "broad coalition established in 2012 to oppose euthanasia and assisted suicide".[16] The entities which comprise Care Alliance are:

(1) The Nathaniel Bioethics Centre, which is the New Zealand Catholic Bioethics Centre established for the purpose of promoting the study and practical resolution of ethical, social and legal issues arising out of medical and scientific research and practice.[17]

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15 The plaintiff is to file any further evidence by 5.00 pm 24 April 2015, the defendant is to file his evidence by 5.00 pm 11 May 2015, the plaintiff is to file any reply evidence and her submissions by 5.00 pm 18 May 2015, the defendant is to file his submissions by 5.00 pm 21 May 2015.

16 Affidavit of J Kleinsman, 2 April 2015 at [2].

17 At [12].

(2) The Australian and New Zealand Society of Palliative Medicine Incorporated. This is a specialist medical society. The New Zealand branch of the society represents approximately 90 doctors involved in the practice of palliative medicine.

(3) Hospice New Zealand, a national organisation that represents 29 hospice services in New Zealand.

(4) Te Omanga Hospice, a charitable trust based in the Hutt Valley that provides palliative services to terminally ill patients.

(5) Palliative Care Nurses New Zealand Society Incorporated, which is an organisation that represents palliative care nurses.

(6) New Zealand Health Professionals Alliance, which is described as a "society that is committed to the practice of ethical health care and the right to conscientious objection".[18]

(7) Christian Medical Fellowship, an organisation for Christian members of the medical profession in New Zealand.

(8) Not Dead Yet Aotearoa, which is described as "a voice from the disabled community on euthanasia and assisted suicide issues".[19]

(9) Family First New Zealand, which "researches and advocates for strong family and safe communities".[20]

(10) Euthanasia-Free NZ Incorporated, which is described as being "dedicated to raising awareness of the dangers posed by the decriminalisation of euthanasia and assisted suicide".[21]

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18 Affidavit of J Kleinsman, above n 16, at [25].
19 At [28].
20 At [31].
21 At [34].

[27] In his affidavit in support of the application by Care Alliance, Dr Kleinsman explains that the evidence which it wishes to put before the Court covers the following topics:[22]

(1) The impact of the proposed orders on the practice of palliative care in New Zealand.

(2) The impact of the proposed orders on the medical profession and the ethics of medical practice in New Zealand.

(3) The impact of the proposed orders on disabled people.

(4) The impact of the proposed orders on people who are elderly and infirm, with particular reference to the issues facing this group in New Zealand.

(5) The impact of the proposed orders on those suffering from mental illness, including depression, and in particular on the issue of youth suicide – again with particular reference to these issues in the New Zealand context.

(6) The impact of the proposed orders on others suffering chronic or terminal illnesses.

(7) The ethical concerns and wider social impacts that ought to be taken into account in any assessment of the proposed law change, including issues particular to New Zealand's multi-cultural context.

(8) The nature of palliative care that is available to people in New Zealand in situations similar to Ms Seales, which would provide a fourth option to the three she lists in her statement of claim.

(9) Any other issues that might be of assistance to the Court.

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[22] Affidavit of J Kleinsman, above n 16, at [9.1]-[9.9].

[28] I will return to these topics when analysing the application from Care Alliance.

Voluntary Euthanasia

[29] Voluntary Euthanasia was established to develop "discussion and debate around the concept of Euthanasia and Physician Assisted Dying, and to assist in the development of the law surrounding any changes to existing legislation".[23]

[30] Dr Havill, the president of Voluntary Euthanasia explains that his society wishes to provide evidence "... on both national and international developments around the statistics, medical data, legal changes and challenges relating to the issue of choice at the time of a person's death".[24]

Human Rights Commission

[31] The Human Rights Commission was established by the Human Rights Act 1993. The primary functions of the Commission are:[25]

> (a) to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
>
> (b) to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

[32] In order to carry out its functions, the Human Rights Commission has a number of statutory roles including:[26]

> (a) to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights:
>
> …
>
> (j) to apply to a Court ... to be appointed as intervener or as counsel assisting the Court ... or to take part in proceedings before the Court ... if, in the Commission's opinion, taking part in the proceeding in that way will facilitate the performance of its functions ...

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23 Affidavit of J H Havill, 15 April 2015 at [6].
24 At [9].
25 Human Rights Act 1993, s 5(1).
26 Section 5(2)(a) and 5(2)(j).

[33] The Human Rights Commission does not wish to adduce any evidence. It wishes to confine its role in the proceeding to making submissions designed to assist the Court in understanding the international and domestic human rights dimensions of Ms Seales' application.

The parties' positions

[34] The Attorney-General does not oppose the applications to intervene and suggests that I would be assisted in receiving submissions and/or evidence from the proposed interveners. In support of this aspect of his case the Attorney-General says that allowing the applications to intervene would enable the Court to receive information that the parties might not be in a position to provide. The Attorney-General says intervention on this basis would be consistent with the interests of justice. During the course of the hearing of the applications the position of the Attorney-General was qualified by Professor Rishworth QC in relation to the topics that Care Alliance identified as being the subject matters in respect of which it wished to adduce evidence. I will return to this matter in paragraphs [56] to [60] of this judgment.

[35] The applications to intervene are ardently opposed by Ms Seales. It is sufficient to summarise the grounds of opposition advanced by Dr Butler, senior counsel for Ms Seales, in the following way.

[36] First, Ms Seales' case, and in particular her right to access the Courts and justice will be compromised if the proposed interveners become involved in the proceeding. Dr Butler was specifically concerned that Care Alliance is intent on greatly expanding the scope of the proceeding, thereby introducing extraneous material and adding to the cost and logistical burdens faced by Ms Seales. Consistent with the principled approach taken by Ms Seales, Dr Butler opposed all applications to intervene, including from Voluntary Euthanasia, which would be likely to take a stance supportive of Ms Seales' case.

[37] Second, the intending interveners could not add anything by way of evidence or submissions beyond that which the parties intend to produce.

[38] Third, the interests of the proposed intervener, and in particular Care Alliance, will be protected by the Attorney-General who is responsible for protecting the public interest.

[39] Fourth, the proposed interveners have no right to participate in the proceeding. It is an indulgence for the Court to grant an application to intervene. In this case Ms Seales has chosen to conduct her proceeding by bringing her application against the Attorney-General, who in all respects is the most appropriate defendant. Ms Seales does not wish to deal with the added complications of responding to the proposed interveners.

[40] Fifth, Care Alliance and Voluntary Euthanasia have not established its members would be genuinely affected by my decision if I find in favour of Ms Seales.

Principles governing intervention applications

[41] An entity that is not a party to a proceeding may apply to become involved in the proceeding through intervening. There is no specific legislative basis for intervention in New Zealand although it is accepted that r 7.43A(d) and (e) of the High Court Rules and the High Court's inherent jurisdiction enable the High Court to grant leave to a non-party to intervene.[27]

[42] The Law Commission has noted "there appears to be a healthy practice of third party interventions" in New Zealand.[28] This development has occurred in conjunction with the growth of public interest litigation, particularly cases involving human rights, New Zealand's international obligations and Treaty of Waitangi issues.[29] The growth in the number of intervener applications has also occurred at a time when relator proceedings have declined.[30]

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27 The position of the Attorney-General as intervener is more settled. See Crown Proceedings Act 1950, s 35(2)(h); High Court Rules, rr 4.27, 7.4 and sch 5(2).

28 Law Commission *Review of the Judicature Act 1908 – Towards a Consolidated Courts Act* (NZLC IP29, 2012) at [15.41].

29 See generally E Clark "The Needs of the Many and the Needs of the Few: A new System of Public Interest Intervention for New Zealand" (2005) 36 VUWLR 71.

30 Relator proceedings are now extremely rare with only two having been taken in the past 30 years. See *Attorney-General ex rel Benfield v Wellington City Council* [1979] 2 NZLR 385 (SC); *Thorndon Antiques & Fine China Ltd v Telecom Corporation of New Zealand Ltd* (1999)

[43] The starting point when considering an intervention application is that a proposed intervener must establish a sound basis for the Court to depart from the traditional privity of litigation, particularly where, as in the present case, the intervention application is opposed by one party. As Lord Woolf has noted:[31]

> The practice of allowing third persons to intervene in proceedings brought by and against other persons which do not directly involve the person seeking to intervene has become more common in recent years but it is still a relatively rare event. The intervention is always subject to the control of the court and whether the third person is allowed by the court to intervene is usually dependent upon the court's judgment as to whether the interests of justice will be promoted by allowing the intervention. Frequently the answer will depend upon whether the intervention will assist the court itself to perform the role upon which it is engaged. The court has always to balance the benefits which are to be derived from the intervention as against the inconvenience, delay and expense which an intervention by a third party can cause to the existing parties.

[44] The following principles have governed my consideration of the intervention applications in this case.

[45] First, the power to grant leave to intervene is discretionary and should be exercised with restraint to avoid the risk of expanding issues, elongating the hearing and increasing the costs of the litigation.[32]

[46] Second, in a proceeding involving issues of general and wide public importance, leave to intervene may be granted when the Court is satisfied that it would be assisted by the intervener.[33]

[47] Third, it may be appropriate to grant leave to intervene where the proceeding is likely to result in the development of the law.[34]

[48] Fourth, leave should not be granted when the proceeding is essentially one that involves statutory interpretation and is unlikely to involve broad questions of policy.[35]

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13 PRNZ 405 (HC).

31 *Re Northern Ireland Human Rights Commission (Northern Ireland)* [2002] UKHL 25 at [32].

32 *Drew v Attorney-General* [2001] 2 NZLR 428 (CA) at [11].

33 *Wellington City Council v Woolworths New Zealand Ltd* [1996] 2 NZLR 436 (CA).

34 *X v X* HC Auckland CIV-2006-404-903, 4 July 2006 at [25].

35 *D v C [Intervention]* (2001) 15 PRNZ 474 (CA) at [7].

Analysis

[49] Before examining each application, there are five points which I wish to emphasise. These points apply to all three applications.

[50] First, the declarations Ms Seales seeks are cast very precisely and are not intended to have a wide application. Nevertheless, the issue of whether or not a person in Ms Seales' circumstances can be assisted to end her life, or have her health professional deliberately hasten her death raises significant legal and ethical issues that are of intense public importance.

[51] Second, in this case the Attorney-General is named as defendant in three capacities, namely:

(1) the supervisor of public prosecutions;

(2) the officer responsible for legal proceedings involving the Crown; and

(3) the representative of the public interest.

The Attorney-General's role as the guardian of the public interest is particularly important in this case. The role of the Attorney-General as guardian of the public interest was explained in the following uncompromising terms by Lord Wilberforce in *Gouriet v Union of Post Office Workers*:[36]

> [I]t is the exclusive right of the Attorney-General to represent the public interest - even where individuals might be interested in a larger view of the matter - is not technical, not procedural, not fictional. It is constitutional.

[52] While the full force of Lord Wilberforce's words might be open to debate,[37] it is clear the Attorney-General is the person who has responsibility for protecting the public interest in this case.

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[36] *Gouriet v Union of Post Office Workers* [1978] AC 435 (HL) at 477.

[37] Philip Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers, Wellington, 2014) at 1236. See also Paul Craig *Administrative Law* (7th ed, Sweet & Maxwell, London, 2012); Gabrielle Appleby, Patrick Keyzer and John Williams *Public Sentinels: A Comparative Study of Australian Solicitors-General* (Ashgate Publishing Limited, Surrey, 2014) at 197; Mark Elliott (ed) *Beatson, Matthews and Elliott's Administrative Law Text and Materials* (4th ed, Oxford University Press, Oxford, 2011) at 432; Timothy Endicott *Administrative Law*

[53] Third, I am satisfied that health professionals, particularly those involved in the practice of palliative medicine have a direct interest in Ms Seales' proceeding even though Ms Seales' proceeding does not seek to compel any health professional to act against his or her will.

[54] Fourth, I am satisfied Ms Seales has a right to have her proceeding heard and determined expeditiously without the inconvenience, delay and costs that would be caused if the intervention applications were granted without conditions.

[55] Fifth, I am fortunate that the parties are represented by leading lawyers in the areas of law to which Ms Seales' proceeding relates. I am confident the parties will more than adequately address most issues raised by this case.

Application by Care Alliance

[56] Apart from the palliative care health professionals identified by Dr Kleinsman, and through them, the hospice organisations, I am concerned those who Care Alliance represents do not have an interest in this proceeding that extends beyond the interests of the Attorney-General. This concern became crystallised when Professor Rishworth explained the evidence the Attorney-General intends to produce covers seven of the topics identified by Dr Kleinsman which I have set out in paragraph [27] of this judgment:

(1) "The impact of the proposed orders on the practice of palliative care in New Zealand".

(2) "The impact of the proposed orders on the medical profession and the ethics of medical practice in New Zealand".

(3) "The impact of the proposed orders on disabled people".

(4) "The impact of the proposed orders on people who are elderly and infirm, with particular reference to the issues facing this group in New Zealand".

(3rd ed, Oxford University Press, Oxford, 2015) at 438.

(5) "The impact of the proposed orders on others suffering chronic or terminal illness".

(6) "The ethical concerns and wider social impacts that ought to be taken into account in any assessment of the proposed law change, including issues particular to New Zealand's multi-cultural context".

(7) "The nature of palliative care that is available to people in New Zealand in situations similar to Ms Seales, which would provide a fourth option to the three she lists in her statement of claim".

[57] The only topics referred to by Dr Kleinsman that are not on the list of issues the Attorney-General's evidence intends to address are:

(1) "The impact of the proposed orders on those suffering from mental illness, including depression, and in particular on the issue of youth suicide".

(2) "Any other issues that might be of assistance to the Court".

[58] It is difficult to see how I can be assisted by Care Alliance presenting evidence on the topics which the Attorney-General intends to address.

[59] Dr Butler may prove to be correct when he says there is no relevance to any evidence concerning the impact of Ms Seales' proceeding on those suffering from mental illness, including depression, or on the issue of youth suicide. At this preliminary stage, however, it is very difficult for me to be certain Ms Seales' proceeding will have no impact on those suffering from mental illness, including depression, or on the issue of youth suicide or that evidence about these matters will not assist any analysis I may be required to make under s 5 of the NZBORA. This uncertainty on my part has led me to conclude that as I may be assisted by evidence on these issues, Care Alliance should be granted leave to intervene in order to provide that assistance, but subject to strict conditions which I set out in paragraphs [67] to [73] of this judgment.

[60] I am also concerned that the patient groups that form part of Care Alliance are not necessarily the most appropriate organisations to be advocating on behalf health consumers and the disabled in relation to the issues raised by this proceeding. Although it will be for the Attorney-General to decide, the advocacy role that Care Alliance wishes to undertake on behalf of some health consumers *might* more appropriately be undertaken through the Attorney-General conferring with the Health and Disability Commissioner pursuant to the functions conferred upon him by s 14(1)(i) of the Health and Disability Commissioner Act 1994.

Voluntary Euthanasia

[61] The evidence Voluntary Euthanasia wants to produce might assist me particularly if I am required to undertake a s 5 NZBORA analysis. In these circumstances, I grant leave to Voluntary Euthanasia to adduce evidence of the kind that I have set out in paragraph [30] of this judgment. Permission for Voluntary Euthanasia to intervene is subject to the conditions which I explain in paragraphs [67] to [73] of this judgment.

Human Rights Commission

[62] The Human Rights Commission is in a different position to the other interveners for two reasons.

[63] First, the Human Rights Commission does not wish to produce any evidence.

[64] Second, the Human Rights Commission intends to assist the Court by providing impartial submissions on the international and domestic human rights dimensions of Ms Seales' proceeding.

[65] Notwithstanding the fact that counsel for both parties will traverse these matters, I believe I will be assisted by limited neutral submissions from the Human Rights Commission on the topics in respect of which it wishes to address me.

Conditions

[66] I am granting the applications to intervene subject to the following conditions.

[67] Care Alliance may produce evidence relating to the impact of the proposed orders on those suffering from mental illness, including depression, and in particular on the issue of youth suicide. However, to ensure there is no duplication between this evidence and the evidence which the Attorney-General intends to produce, Care Alliance must provide the Attorney-General with a draft of its proposed evidence by 5.00 pm on 4 May 2015. If the Attorney-General believes the evidence Care Alliance wishes to produce duplicates the evidence the Attorney-General intends to produce then Care Alliance should not produce that evidence. If there is any dispute about this the parties and Care Alliance may seek further directions from me. Any evidence Care Alliance produces must be filed and served by 5.00 pm, 8 May 2015.

[68] Voluntary Euthanasia may produce the evidence I have identified in paragraph [30] of this judgment. That evidence is to be filed and served by 5.00 pm, 8 May 2015.

[69] No intervener may cross-examine any witness.

[70] All three interveners may file written submissions on the issues raised by this proceeding. Those submissions are to be confined to 6,000 words and are to be filed and served by 5.00 pm, 15 May 2015.

[71] I will decide at the hearing if any intervener can make oral submissions.

[72] No intervener may seek costs against any party.

[73] I will decide at the time I deliver judgment if any intervener should be liable for costs.

Conclusion

[74] The applications are granted on the limited conditions set out in paragraphs [67] to [73] of this judgment.

[75] I may make no order for costs at this stage in relation to the intervention applications.

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D B Collins J

Solicitors:
Russell McVeagh, Wellington for Plaintiff
Crown Law Office, Wellington for Defendant
Toni Brown Law, Tauranga for Voluntary Euthanasia Society of New Zealand Inc