IN THE HIGH COURT OF THE DOMINION OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN

Dylan Jacob
Appellant

– and –

Attorney General of Canada
Respondent

FACTUM OF THE APPELLANT

TEAM #8

TABLE OF CONTENTS

PART I – OVERVIEW 1
PART II – STATEMENT OF FACTS 2
1. Background 2
2. Procedural History 4
PART III – STATEMENT OF POINTS IN ISSUE 6
PART VI – ARGUMENT 7
Issues 1 and 2: The Impugned Restrictions Are Not Protected Under Section 15(2) and Infringe Section 15(1) of the *Charter* 7
1. The Impugned Restrictions Create a Distinction Based on the Enumerated Ground of Mental Disability 7
2. The Impugned Restrictions Are Not Protected Under Section 15(2) of the *Charter* 9
A. The Impugned Restrictions Perpetuate Prejudice Against Mr. Jacob. 12
B. The Impugned Restrictions Are Based on False Stereotypes About Mr. Jacob's Actual Circumstances and Characteristics. 13
Issue 3A: The Impugned Restrictions Deprive the Appellant of His Section 7 Rights to Liberty and Security of the Person 16
1. This Deprivation is Sufficiently Severe to Warrant Constitutional Protection 16
2. The Impugned Restrictions are Inconsistent With Guarantees of Liberty and Security of the Person in the Analogous Medical Context 18
Issue 3B: The Impugned Restrictions are Overbroad, Arbitrary and Grossly Disproportionate, and Not in Accordance with the Principles of Fundamental Justice .. 19
1. The Requirement of Competence at the Time of the Procedure is Overbroad 20
2. The Terminal Illness Requirement is Arbitrary 21
3. The Negative Effects of the Restrictions Are Grossly Disproportionate to Their Ends ... 22
Issue 4: The Impugned Restrictions Cannot Be Justified Under Section 1 23
i. An Infringement of Section 7 Rights Has Never Been Justified as Reasonable in a Free and Democratic Society Under Section 1 23
ii. The Onus Is on the Respondent to Justify an Infringement Under Section 1 24
iii. The Court Has a Proper Role in Reviewing Socially Contentious Issues for Charter Compliance 24
1. The Means Chosen Are Not Proportional to the Stated Objective 25
A. The Impugned Restrictions Are Not Rationally Connected to Their Objective 25
B. The Impugned Restrictions Are Not Minimally Impairing 26
C. The Impugned Restrictions Impose Severe Harm on Patients Which Outweighs Any Speculated Salutary Effects 27
2. The Restrictions Cannot Be Saved by Section 1 29
PART VI – LIST OF AUTHORITIES AND STATUTES 31

PART I – OVERVIEW

[1] Mr. Jacob has made a rational and autonomous decision to end his life in order to avoid indefinite mental suffering caused by an acute and unmanageable form of schizophrenia. The question in this case is whether the state can refuse Mr. Jacob necessary assistance in carrying out his decision and thereby consign him to the very mental anguish that he wished to avoid.

Official Problem, the Wilson Moot 2013 at 1-2, [Official Problem].

[2] Mr. Jacob's capacity to chart the course of his life is limited in many ways, both by his disability and the state's response to it. His illness has deprived him of the chance to get a job or an education and, since 2008, it has deprived him of his freedom. However, in spite of his limitations, Mr. Jacob retains some capacity to make autonomous decisions about his life. His decision to end his life is one of them. By denying Mr. Jacob assistance in carrying out his decision, paragraphs 241.1(1)(a) and (c) of the *Criminal Code* (the "Impugned Restrictions") strike directly at his remaining autonomy, one of the fundamental values underlying both sections 15 and 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). In doing so, they discriminate against him and violate his rights to liberty and security of the person in a manner not in accordance with the principles of fundamental justice. These violations cannot be justified in a free and democratic society under section 1.

Official Problem, *supra* para 1 at 1, 4.
Quebec (Attorney General) v A, 2013 SCC 5 at para 139, [2013] SCJ No 5, LeBel J, dissenting on other grounds [*Quebec*].
Rodriguez v British Columbia (Attorney General), [1993] 3 SCR 519 at paras 21-22, 29, 85 CCC (3d) 15 [*Rodriguez*].
Criminal Code, RSC 1985, c C-46, ss 241.1(1)(a), (c).
Canadian Charter of Rights and Freedoms, ss 1, 7, 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

PART II – STATEMENT OF FACTS

1. Background

[3] Dylan Jacob is a patient in the forensic unit of the Oak Ridges Centre for Mental Health ("Oak Ridges"), a world-renowned mental health facility in Hamilton, Ontario. Stephanie Jacob is Mr. Jacob's sister and his guardian for the purposes of the *Substitute Decisions Act*. Dr. Lee has been Mr. Jacob's physician since his arrival at Oak Ridges.

Official Problem, *supra* para 1 at 1, 4.
Substitute Decisions Act, RSO 1992, c 30.

[4] Mr. Jacob has repeatedly expressed his wish to end his life but is unable to do so without assistance. He is denied this assistance as a result of the Impugned Restrictions, which limit access to physician-assisted suicide to individuals who are competent at the time of the procedure and are suffering from a terminal illness. Mr. Jacob satisfies neither requirement.

Official Problem, *supra* para 1 at 1-2, 5.

[5] Mr. Jacob has experienced four lucid periods since the beginning of his institutionalization at Oak Ridges, each lasting between three and five days. During each of these periods he was competent in the sense of "having the ability to understand the information relevant to making a decision about a medical treatment, and the ability to appreciate the consequences of that decision" (Official Problem). At all other times since his institutionalization at Oak Ridges, Mr. Jacob has not been competent. In particular, he has not been competent since the end of his last lucid period in March 2011. Nobody knows when, or if, Mr. Jacob will be competent again.

Official Problem, *supra* para 1 at 4-5.

[6] Mr. Jacob's suffering is acute. While psychotic, he experiences hallucinations, including a recurring delusion that he will be kidnapped and handed over to government doctors who will perform medical experiments on him. He is terrified of doctors and hospitals, horrified by his psychotic behaviour, and wracked by guilt for killing his father. Mr. Jacob's medications have severe side effects that include lethargy, dizziness, and loss of motor control. Despite these medications, he often has to be restrained to his bed. In her affidavit, Dr. Lee characterized Mr. Jacob's mental suffering as incredibly severe. Mr. Jacob himself has described his medical treatments as "barbaric" and his quality of life as "non-existent."

Official Problem, *supra* para 1 at 3-6.

[7] Mr. Jacob's prognosis is poor. Despite receiving excellent care, his condition has worsened since his institutionalization at Oak Ridges. Mr. Jacob has been given every treatment known to Dr. Lee without success and, in her opinion, there is a low likelihood that his condition will improve. This opinion has been seconded by Dr. Lee's colleague Dr. Grimshaw. During his lucid periods, Mr. Jacob discussed his treatment options and prognosis with Dr. Lee. He is 32 years old and so may live in his present condition for 40 years or more, a prospect he finds appalling.

Official Problem, *supra* para 1 at 3, 5-7.

[8] During each of his last three lucid periods, Mr. Jacob told both Ms. Jacob and Dr. Lee that he wanted to end his life. During two of his lucid periods Mr. Jacob attempted to commit suicide, once by strangling himself with a bed sheet and once by slashing his wrists with shards from a broken mirror. Since then, Oak Ridges has taken measures to prevent any further attempts.

Official Problem, *supra* para 1 at 5.

[9] In her affidavit, Dr. Lee described Mr. Jacob's decision to end his life as one that is "well-informed and enduring" (Official Problem). Dr. Lee is a widely-respected authority on the subject of undifferentiated schizophrenia and has published several papers on ethical issues associated with treating psychotic patients. She believes that it is her medical duty to prevent Mr. Jacob's further suffering and, if this application is allowed, is prepared to assist him in ending his life.

Official Problem, *supra* para 1 at 4-6.

[10] Ms. Jacob has always attempted to maintain a relationship with Mr. Jacob and has been the only consistently supportive influence in his life. She visits him at least three days every week for an hour or more, and so is acutely aware of the extent of his suffering. Although she was initially resistant, Ms. Jacob now unequivocally supports Mr. Jacob's decision to end his life and, as his substitute decision-maker, would consent to physician-assisted suicide on his behalf.

Official Problem, *supra* para 1 at 4-5.

2. Procedural History

[11] Ms. Jacob, in her capacity as Mr. Jacob's litigation guardian, commenced an application seeking a declaration that the Impugned Restrictions are of no force or effect. Wire J. found that the Impugned Restrictions denied mentally ill persons access to physician-assisted suicide "simply because their illness is mental rather than physical" and so discriminated on the basis of mental illness in violation of section 15(1) of the *Charter*. This infringement was not saved under section 1, as Wire J. was "unable to conclude that a regime that totally excludes mentally ill individuals from being able to access physician-assisted suicide is minimally impairing." As a result of this finding, Wire J. did not consider whether the Impugned Restrictions infringed section 7 of the *Charter*. In order to make the legislation *Charter* compliant, Wire J. read the

words "at the time of the patient's request that the physician assist the patient to end his or her life" into the end of paragraph 241.1(1)(a) and struck the words "as a result of a terminal illness" from the end of paragraph 241.1(1)(c).

Official Problem, *supra* para 1 at 8-9.

[12] On appeal, Rainfoot J.A. writing for the majority of the Court of Appeal for Ontario held that section 241.1 corresponds to the actual needs of and circumstances of mentally ill individuals and is not discriminatory within the meaning of section 15(1). On the same grounds, she also found no violation of section 7.

Official Problem, *supra* para 1 at 9.

[13] Singh J.A., in dissent, largely adopted Wire J's reasoning, finding that the Impugned Restrictions violate section 15(1) of the Charter.

Official Problem, *supra* para 1 at 9.

[14] Both lower courts determined that the primary objective of the Impugned Restrictions is the protection of vulnerable persons from abuse and involuntary euthanasia. While Wire J. framed the objective as the protection of mentally ill persons, Rainfoot J.A. interpreted the section more expansively to include all "vulnerable patients," of which the mentally ill are a subset.

Official Problem, *supra* para 1 at 9.

PART III – STATEMENT OF POINTS IN ISSUE

The present appeal raises the following issues:

1. Does section 241.1 of the *Criminal Code* constitute an ameliorative law or program within the meaning of section 15(2) of the *Charter*?
2. If the answer is "no" to question (1), do the Impugned Restrictions infringe the Appellant's right to equality under section 15(1) of the *Charter*?
3. Do the Impugned Restrictions infringe the Appellant's right to liberty or security of person in a manner not in accordance with the principles of fundamental justice under section 7 of the *Charter*?
4. If the answer is "yes" to either question (2) or (3), is the infringement reasonable and demonstrably justified in a free and democratic society?

PART VI – ARGUMENT

Issues 1 and 2: The Impugned Restrictions Are Not Protected Under Section 15(2) and Infringe Section 15(1) of the *Charter*

[15] The Impugned Restrictions violate section 15 of the *Charter* according to the test set out in *Kapp* and reaffirmed in *Quebec*: they create a distinction based on the enumerated ground of mental disability, are not ameliorative under section 15(2), and are discriminatory under section 15(1).

> *Quebec*, *supra* para 2 at para 324.
> *R v Kapp*, 2008 SCC 41 at paras 40-41, [2008] 2 SCR 483 [*Kapp*].

1. The Impugned Restrictions Create a Distinction Based on the Enumerated Ground of Mental Disability

[16] In addition to drawing formal distinctions based on competence and terminal illness, the Impugned Restrictions create a substantive distinction by disproportionately excluding people who experience severe pain as the result of a mental, as opposed to physical, disability and desire assistance in ending their lives.

[17] Adverse effects discrimination of this kind is well accepted in the section 15 jurisprudence. In *Simpsons-Sears Ltd*, the Supreme Court held that this discrimination will arise when the government adopts "a rule or standard which is on its face neutral, and which will apply equally to all [persons], but which has a discriminatory effect upon a prohibited ground…in that it imposes, because of some special characteristic of the…group, obligations, penalties, or restrictive conditions not imposed on other [persons]." In *Eldridge*, the Court noted that "[a]dverse effects discrimination is especially relevant in the case of disability" because "[t]he government will rarely single out disabled persons for discriminatory treatment" but will instead create "laws of general application that have a disparate impact on the disabled."

Quebec, *supra* para 2 at para 328.
Ontario Human Rights Commission v Simpsons-Sears Ltd, [1985] 2 SCR 536 at 551, 52 OR (2d) 799 [*Simpsons-Sears Ltd*].
Eldridge v British Columbia (Attorney General), [1997] 3 SCR 624 at paras 60-65, 151 DLR (4th) 577 [*Eldridge*].

[18] Paragraph 241.1(1)(a) disproportionately excludes people with mental disabilities, who are less likely to be competent than those with physical disabilities. This is because mental disabilities often undermine the capacities of comprehension, analysis and foresight that competence demands.

[19] Paragraph 241.1(1)(c) also disproportionately excludes people with mental disabilities. This is because mental disabilities, as understood in the section 15 jurisprudence, consist of impairments in cognitive capacities such as the capacities to learn, communicate, analyze, comprehend, and perceive. While these impairments may be caused by underlying physical impairments which themselves are terminal, the fact remains that mental disabilities, *qua* mental disabilities, are not. As a result, individuals who are mentally disabled are more likely to be excluded under paragraph 241.1(1)(c) than their physically disabled counterparts.

Granovsky v Canada (Minister of Employment and Immigration), 2000 SCC 28 at para 33, [2000] 1 SCR 703 [*Granovsky*].
Auton (Guardian ad litem of) v British Columbia (Attorney General), 2004 SCC 78 at paras 13, 55, [2004] 3 SCR 657.
R v Swain, [1991] 1 SCR 933 at paras 2, 84, 63 CCC (3d) 481 [*Swain*].
Winko v British Columbia (Forensic Psychiatric Institute), [1999] 2 SCR 625 at paras 4, 14, 175 DLR (4th) 193 [*Winko*].
Eaton v. Brant (County) Board of Education, [1997] 1 SCR 241 at paras 17-20, 71, 142 DLR (4th) 385.

[20] While Wire J. did not explicitly make a factual finding that mentally disabled individuals are less likely to be competent or terminal than their physically disabled counterparts, this finding is necessarily implied by his conclusion that the Impugned Restrictions totally exclude those individuals from access to physician-assisted suicide.

Official Problem, *supra* para 1 at 8-9.

[21] The Impugned Restrictions impose a significant burden on Mr. Jacob. Even if he had not been institutionalized as the result of his mental illness, these provisions would deprive Mr. Jacob of a particularly humane and dignified way to end his life that the legislature has granted to other groups. However, given that he has been institutionalized and is actively prevented from committing suicide, the Impugned Restrictions also deprive Mr. Jacob of his only way for him to end his life.

Official Problem, *supra* para 1 at 5.

[22] The fact that Mr. Jacob has been institutionalized cannot be separated from his disability for the purpose of *Charter* analysis. Mr. Jacob was only detained in the first place because was found not criminally responsible ("NCR") for killing his father during a psychotic episode. Furthermore, Mr. Jacob's continued detention is justified solely on the basis that he represents an ongoing threat to public safety, a fact that is wholly attributable to his mental illness.

Winko, *supra* para 19 at para 47.
Granovsky, *supra* para 19 at para 34.

2. The Impugned Restrictions Are Not Protected Under Section 15(2) of the *Charter*

[23] The Impugned Restrictions are not protected under section 15(2) because they are not targeted at any group identified on an enumerated or analogous ground. The Supreme Court held in *Kapp* that a law will only be protected under section 15(2) if the Crown can establish that:

1. the provision is part of a genuinely ameliorative program directed at improving the situation of a group that is in need of ameliorative assistance in order to enhance substantive equality; and
2. the impugned distinctions drawn by the provision "serve and are necessary to" the ameliorative purpose.

Kapp, *supra* para 15 at paras 40, 41, 52.
Alberta (Aboriginal Affairs and Northern Development) v Cunningham, 2011 SCC 37 at para 45, [2011] 2 SCR 670.

[24] The Court of Appeal for Ontario erred in finding that section 241.1 is an ameliorative program targeted at improving the situation of "severely disabled individuals who are unable, by reason of their physical disabilities, to end their lives when they choose" (Official Problem).

Official Problem, *supra* para 1 at 9.

[25] First, section 241.1 cannot be targeted at individuals who are unable to end their lives without assistance because it includes many individuals who are able to do just that. There is simply no way to read the section as saying that only individuals who require assistance to end their lives may avail themselves of it.

[26] Second, if section 241.1 were actually targeted at the group identified by the Court of Appeal, it would not exclude so many individuals who fall squarely within it. Consider, for example, an individual who has become quadriplegic as the result of a severe car accident. Such an individual has a severe physical disability, may experience acute mental suffering as the result of her condition, and is unable to end her life without assistance. However she would be denied access to physician-assisted suicide because she does not have a terminal illness, a factor that is totally unrelated to the purpose cited by the Court of Appeal.

[27] Finally, in addition to excluding individuals who fall within the target group identified by the Court of Appeal, section 241.1 may also include individuals who are not in that group, namely those who suffer from a terminal illness but are not physically disabled. In *Granovsky*, the Supreme Court noted that the United States Supreme Court held that individuals are not disabled if their physical impairment does not result in any functional limitation. The Court declined to rule on the correctness of this approach. However, if it were followed, it would be

possible for an individual who is able-bodied but suffers from a terminal illness to qualify for physician-assisted suicide under section 241.1, despite not being disabled at all.

Granovsky, *supra* para 19 at para 36.

[28] Given that section 241.1 excludes individuals who fall within the target group identified by the Court of Appeal and may include individuals who fall outside of that group, the section is not "targeted" at that group at all, but rather distinguishes between individuals based on characteristics that are totally arbitrary relative to the cited purpose. The section is therefore not protected by section 15(2).

3. The Impugned Restrictions Discriminate Against Mr. Jacob and Thereby Violate His Rights Under Section 15(1) of the *Charter*.

[29] The Impugned Restrictions discriminate against Mr. Jacob by perpetuating prejudiced beliefs and false stereotypes about his needs, circumstances, and characteristics. The Supreme Court's decision in *Quebec* confirms that in order to establish discrimination under section 15(1), a claimant must prove that the impugned distinction perpetuates his or her disadvantage. Writing for the majority on the issue of section 15(1), Abella J. clarified that, although prejudice and stereotyping are valuable indicia of disadvantage, "they are not discrete elements of the test which the claimant is obliged to demonstrate." In conducting its 15(1) analysis, the Court should take the perspective of the "reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to, and under similar circumstances as, the claimant" (*Law*). While public policy concerns are central to the section 1 inquiry, they should play only a limited role in section 15. The focus at 15 should be on Mr. Jacob's claim of discriminatory treatment, and not on the potential justifications for that treatment.

Quebec, *supra* para 2 at paras 323, 325, 327, 333, 335, 385, 418, 421.
Law v Canada (Minister of Employment and Immigration), 1 SCR 497 at para 60, 170 DLR (4th) 1 [*Law*].

A. The Impugned Restrictions Perpetuate Prejudice Against Mr. Jacob.

[30] The Supreme Court held in *Withler* that a law will be discriminatory if, in purpose or effect, it perpetuates prejudice against members of a group identified on an enumerated or analogous ground. Factors that are potentially relevant to this determination include historic disadvantage, existing prejudice, and the nature of the interest affected.

> *Withler v Canada (Attorney General)*, 2011 SCC 12 at paras 35, 38, 66, [2011] SCR 396, [*Withler*].
> *Quebec*, *supra* para 2 at para 324.
> *Kapp*, *supra* para 15 at paras 23-24.

[31] As the Supreme Court found in *Swain*, "[t]here is no question but that the mentally ill in our society have suffered from historical disadvantage, have been negatively stereotyped, and are generally subject to social prejudice." The Impugned Restrictions compound this disadvantage by perpetuating the prejudiced assumption that if an individual is impaired in one respect then he or she is globally defective.

> *Swain*, *supra* at para 19 at paras 85, 193.

[32] Although Mr. Jacob is disabled in many ways, his rare moments of lucidity nonetheless preserve his capacity to make autonomous decisions about his life. This capacity is all the more important to him because it is so fleeting. As the Supreme Court recognized in *Granovsky*, "[the] concept of disability [is] interwoven with recognition that in many important aspects of life the so-called 'disabled' individual may not be impaired or limited in any way at all." By invoking Mr. Jacob's incompetence at one time in order to disregard his competently expressed wishes at another time, the Impugned Restrictions strike directly at his remaining autonomy. This violation is particularly acute given the fundamental nature of Mr. Jacob's interests in this case: his interests in ending his suffering and controlling the basic course of his own life.

> Official Problem, *supra* para 1 at 4.

Granovsky, *supra* para 19 at paras 28-29.
Quebec, *supra* para 2 at para 139.
Starson v Swayze, 2003 SCC 32 at para 77, [2003] 1 SCR 722 [*Starson*].

B. The Impugned Restrictions Are Based on False Stereotypes About Mr. Jacob's Actual Circumstances and Characteristics.

[33] The Supreme Court in *Withler* also held that a law is discriminatory if "it is based on a stereotype that does not correspond to the actual circumstances or characteristics of the claimant or claimant group." Potentially relevant factors include the degree of correspondence between the law and the claimant's characteristics, the ameliorative effect of the law on other groups, and other interests that are balanced by the law.

Withler, *supra* para 30 at paras 36, 38, 66, 67.
Quebec, *supra* para 2 at paras 324-326.
Kapp, *supra* para 15 at paras 23, 24.

[34] By denying Mr. Jacob access to physician-assisted suicide under any circumstances, the Impugned Restrictions are based on, and perpetuate, the stereotypes that mentally disabled people are fundamentally irrational and vulnerable and that their suffering is less severe than those with physical terminal illnesses. These stereotypes are not supported by the case of Mr. Jacob, whose rationality, resilience, and acute suffering is evident on the record, or by the social science evidence before the Court.

Swain, *supra* para 19 at para 193.

[35] There is no reason to think that Mr. Jacob was irrational when he decided to end his life. Mr. Jacob is suffering immensely and his prognosis is very poor. Faced with the prospect of decades of continued mental anguish, Mr. Jacob used his above-average intellect to make a competent decision that his life is no longer worth living. He has communicated this decision

repeatedly and explicitly, expressing it on three separate occasions and attempting to act upon it twice. There is no indication on the evidence that his decision is irrational.

Official Problem, *supra* para 1 at 3, 5.

[36] There is also no reason to think that Mr. Jacob is fundamentally vulnerable. Mr. Jacob's sister is a responsible guardian who accurately represented his wishes in the past, during his treatment with electroconvulsive therapy. Dr. Lee is a highly-regarded physician and an expert in the medical ethics of treating patients with undifferentiated schizophrenia. Mr. Jacob discussed his decision with both Ms. Jacob and Dr. Lee and both support him in his choice. There is no evidence that Mr. Jacob has been subject to undue pressure to end his life and there is no evidence that, had he been subject to such pressure, he would have succumbed to it.

Official Problem, *supra* para 1 at 4.

[37] Finally, there is no evidence to suggest that the suffering caused by mental illnesses is inherently less severe than that caused by physical terminal illnesses. Indeed, the truth may be the exact opposite: the suffering experienced by terminally ill individuals is, by definition, almost at an end, while the suffering of those who are not terminal may persist for years, or even decades, to come. This conclusion is supported by the fact that, in jurisdictions where physician-assisted suicide is legal, physical pain is cited as a motivating factor for requests to die in less than half of all cases. It was in recognition of the potential gravity of mental suffering that the Crown conceded that an individual may satisfy the terminal illness requirement if he or she is experiencing severe psychological distress as the result of a terminal illness, even if his or her physical pain is not significant.

Official Problem, *supra* para 1 at 2-3, 7.

[38] Mr. Jacob's rationality and resilience is not an exception but rather the rule, as reflected in the social science evidence. Studies performed in jurisdictions where physician-assisted suicide has been legal for at least 10 years show that patients are primarily motivated to request an assisted suicide out of concern for their loss of independence (86% of cases) and dignity (82% of cases). Both of these factors provide a rational basis on which one could decide to end one's life and, indeed, played a large role in Mr. Jacob's own decision-making process. Furthermore, while suicidal ideation is a feature of many mental illnesses, it can also represent an individual's rational response to his or her circumstances. Such is the case with Mr. Jacob.

> *Rodriguez*, *supra* para 2 at para 137.
> Official Problem, *supra* para 1 at 5, 7.

[39] In addition, a survey of jurisdictions where physician-assisted suicide is permitted both in cases of physical and psychiatric illness found that individuals with a psychiatric illness made only 10% of the total requests for assisted suicide. The survey also found that in 80% of those cases, the request was denied on the basis that the patient suffered from treatable depression. The fact that only 10% of the requests were made by individuals with a psychiatric illness belies the government's assumption that mentally disabled people are especially vulnerable. The fact that 80% of those requests were denied suggests that, in cases where mentally disabled people are vulnerable, they can be screened out by a requirement such as that provided by paragraph 241.1(1)(d), that all treatment options be exhausted or refused.

> Official Problem, *supra* para 1 at 8.

[40] To say that mentally disabled people are not fundamentally irrational or vulnerable is not to suggest that they are not irrational or vulnerable in any respect. Nor is it to suggest that there should not be safeguards to control access to physician-assisted suicide. The Appellants accept

the requirements that Mr. Jacob repeatedly and explicitly request to end his life, that he be competent at the time of the requests, that he be experiencing severe pain as the result of a grave illness, that he be informed of his treatment options, that he exhaust or refuse those options, and that a second physician be consulted.

[41] However, even if mentally disabled people are irrational and vulnerable in some respects, this does not mean that they are globally defective. Rather, they are autonomous human beings who retain some capacity to make basic decisions about their lives. By denying Mr. Jacob access to physician-assisted suicide, the Impugned Restrictions stereotype him as a fundamentally irrational and vulnerable, rather than autonomous, agent. In doing so, they discriminate against him.

Official Problem, *supra* para 1 at 5.
Rodriguez, *supra* para 2 at paras 176-181, 257.

<u>Issue 3A: The Impugned Restrictions Deprive the Appellant of His Section 7 Rights to Liberty and Security of the Person</u>

1. This Deprivation is Sufficiently Severe to Warrant Constitutional Protection

[42] Under subsection 241.1(1), Mr. Jacob is precluded from accessing physician-assisted suicide and is therefore restricted from making fundamental choices about his own life and body. This invokes not only the choice to die, but also the choice to die in a dignified and humane manner. Prohibiting an individual from making these choices is a deprivation of liberty and security of the person, a point affirmed by Sopinka J. in *Rodriguez*.

Rodriguez, *supra* para 2 at para 137.

[43] Both liberty and security of the person are informed by notions of personal autonomy. While La Forest J. in *Godbout* recognized that liberty includes the ability to make any fundamental or inherently personal decisions which “by their very nature … implicate basic

choices going to the core of what it means to enjoy individual dignity and independence," security of the person more narrowly protects "the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity" (*Rodriguez*). No choice is more fundamentally or inherently personal than the choice of how and when to die, and as a result, liberty and security of the person is invoked by legislation which infringes upon these choices.

> *Bedford v Canada (Attorney General)*, 2012 ONCA 186 at para 93, 109 OR (3d) 1 [*Bedford*].
> *Godbout v Longueuil (City)*, [1997] 3 SCR 844, at para 66, 47 CRR (2d) 1 [*Godbout*].
> *Rodriguez*, *supra* para 2 at para 136.

[44] While any deprivation of liberty and security of the person will result in "the most severe consequences for the individual," the consequences are greater and even more deserving of constitutional protection for the mentally ill (*Motor Vehicle Reference*). Mental illness has historically been equated with complete incompetence, a stereotypical view which makes mentally ill persons more vulnerable to having their wishes ignored (*Starson*). As a result, any law which may infringe upon this autonomy must be more, not less, responsive to the actual situation of the individual and the competently expressed wishes which they have made, a sensitivity not possible given the broad nature of the Impugned Restrictions. Finding no deprivation of liberty or security of the person would unjustifiably prevent any further review of these severe infringements which deserve the careful scrutiny of a full *Charter* review.

> *Reference re Motor Vehicle Act (British Columbia) S 94(2)*, [1985] 2 SCR 486 at para 24, 24 DLR (4th) 536 [*Motor Vehicle Reference*].
> *Starson*, *supra* para 32 at para 77.

[45] The fact that Mr. Jacob has been found NCR and institutionalized does not strip him of all rights to liberty and security of the person. Whereas the rights of prisoners found criminally responsible and incarcerated may justifiably be deprived as punishment, Parliament intentionally

differentiated the NCR regime under Part XX.1 of the *Criminal Code*. The NCR accused is "not to be punished" but rather "to be treated with the utmost dignity and afforded the utmost liberty compatible with his or her situation" (*Winko*). A broad provision like subsection 241.1(1) which restricts the liberty of an NCR accused without reference to his or her individual situation is inconsistent with the legislative purpose of the NCR regime. This regime, then, cannot alone justify the exclusion of Mr. Jacob from access to physician-assisted suicide.

> *Winko*, *supra* para 19 at para 42.

2. The Impugned Restrictions are Inconsistent With Guarantees of Liberty and Security of the Person in the Analogous Medical Context

[46] *Rodriguez* established the relevance of medical law principles to physician-assisted suicide, where the Supreme Court drew on these principles to find an infringement of personal autonomy and a resultant deprivation of security of the person. This body of law also deals with advance consent and treatment causing death, core issues of this appeal.

> *Rodriguez*, *supra* para 2 at para 137.

[47] Under medical law, the patient has the right to consent to or refuse medical treatment. This right provides a competent patient with an absolute entitlement to make decisions regarding his or her medical treatment, including the right to refuse treatment which is necessary to preserve his or her life and health. This "absolute entitlement" extends to the mentally ill, who are presumptively entitled to make their own treatment decisions unless incapacity is proven.

> *Starson*, *supra* para 32, at paras 75-77.

[48] This right includes the ability to make decisions regarding treatment in advance of anticipated incapacity. These directions, including those given through a substitute decision-maker appointed under the *Health Care Consent Act*, must be honoured by a doctor, even in

emergency situations. Although in *R v J A* advance consent was not recognized under the law of sexual assault, McLachlin C.J. explicitly distinguished the different context of medical intervention and affirmed the ability to give advance consent in this context. Such advance consent is common practice in the medical field and applies to any procedure done under anaesthetic. The competence requirement, in refusing to recognize previously and competently made wishes, is inconsistent with this established practice.

> *Fleming v Reid (1991)*, 4 OR (3d) 74 at para 34, 82 DLR (4th) 298, (CA) [*Fleming*].
> *Health Care Consent Act*, SO 1996, c 2, s 21(1) [*Health Care Consent Act*].
> *R v J A*, 2011 SCC 28 at para 55, [2011] 2 SCR 440.

[49] The right to consent to or refuse medical treatment also extends to treatment which causes death, an extension implicit in current accepted end-of-life medical care. A "do not resuscitate order", for example, specifically contemplates and requires that actions be taken which bring about the death of the patient. By depriving Mr. Jacob access to physician-assisted suicide, the Impugned Restrictions deprive him of the ability to exercise his rights under medical law.

Issue 3B: The Impugned Restrictions are Overbroad, Arbitrary and Grossly Disproportionate, and Not in Accordance with the Principles of Fundamental Justice

[50] The Impugned Restrictions are overbroad, arbitrary, and grossly disproportionate relative to their objective, the protection of vulnerable persons. Overbreadth, arbitrariness, and gross disproportionality are all independent principles of fundamental justice. A violation of only one of these principles must be made out in order to find an infringement of section 7.

1. The Requirement of Competence at the Time of the Procedure is Overbroad

[51] The requirement of competence at the time of death is overbroad. In preventing access to physician-assisted suicide for persons who are not vulnerable, the requirement uses means which are broader than necessary to achieve the government's purpose, infringing on core rights of personal autonomy unnecessarily. Not everyone who is incompetent at the time of death is inherently vulnerable and subject to the risk of involuntary euthanasia; such persons do not need the protection of the Impugned Restrictions, and their rights are infringed unnecessarily. Mr. Jacob, for instance, has expressed his wish to die to a responsible substitute decision-maker who is empowered to make decisions according to these wishes. This affords him an ample level of protection such that he is not in need of the rights-infringing protection of the competence requirement.

> *R v Heywood*, [1994] 3 SCR 761 at para 49, 34 CR (4th) 133 [*Heywood*].
> *Official Problem*, *supra* para 1 at 4, 5.

[52] Even where a patient is vulnerable, his or her protection may be accomplished by other, less rights-infringing means. Where there is some question as to whether a substitute decision-maker is acting according to the wishes of the patient, adequate and more tailored protections already exist to address the Respondent's concerns. Under the Ontario *Health Care Consent Act*, substitute decision-makers are statutorily required to permit only treatment to which the patient has consented. Where they do not do so, the Consent and Capacity Board may enforce the wishes of the patient.

> *Health Care Consent Act*, *supra* para 48, ss 21(1), 37(1).
> *Substitute Decisions Act*, *supra* para 3, s 66(1)-(4).

[53] Other less impairing options also exist. As noted previously, subsection 241.1(1), even with the Impugned Restrictions removed, provides numerous and robust safeguards. Moreover,

existing provisions of the *Criminal Code* dealing with culpable homicide already strongly deter individuals from murdering vulnerable people.

> *Rodriguez*, *supra* para 2 at para 221, McLachlin J. (as she then was), dissenting on other grounds.

2. The Terminal Illness Requirement is Arbitrary

[54] The legal test for arbitrariness is unclear in recent jurisprudence, either asking whether a limit is necessary to achieve its objective, or alternatively, whether it bears no relation to or is inconsistent with that objective. The latter test was set out in *Rodriguez* and was recognized as the more stringent of the two in *Chaoulli* by Binnie and LeBel J.J, dissenting on other grounds. Given that any provision failing this test would of necessarily fail the other, it is appropriate to consider only the more stringent test.

> *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 132, [2011] 3 SCR 134.
> *Rodriguez*, *supra* para 2 at para 203, McLachlin J. (as she then was), dissenting on other grounds.
> *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 233, [2005] 1 SCR 791 [*Chaoulli*].

[55] The terminal illness requirement is arbitrary because it is not an indicator of vulnerability, but is rather informed by extraneous moral judgments about the sanctity of life. These judgments, which hold that suicide in the context of terminal illness is more acceptable because death is imminent, bear no relation to the legislative objective of protecting vulnerable persons. As a result, the terminal illness requirement restricts access to physician-assisted suicide based on criteria bearing no relation to that objective.

[56] In contrast, vulnerability is a result of incapacities or frailties – neither of which are necessarily terminal – which expose a person to the risk of inappropriate influence or involuntary euthanasia. The mere presence of terminal illness, then, says nothing about the protection from

these risks which a patient may require and so excludes access to physician-assisted suicide in an arbitrary, rather than responsive, manner.

3. The Negative Effects of the Restrictions Are Grossly Disproportionate to Their Ends

[57] The violations of personal autonomy and bodily integrity caused by the requirements of competence at the time of death and terminal illness are so extreme as to render the scheme disproportionate to any legitimate government interest. By denying patients access to physician-assisted suicide, the Impugned Restrictions consign them to a life of suffering against their will. Mr. Jacob, for instance, suffers from near constant psychosis which can only be controlled by medication and restraints. He is "terrified of doctors and hospitals," his daily surroundings at Oak Ridges, causing "incredibly severe" mental suffering which he will be forced to endure for the rest of his life against his explicit wishes.

> *R v Malmo-Levine; R v Caine*, 2003 SCC 74 at para 143, [2003] SCR 571 [*Malmo-Levine*].
> Official Problem, *supra* para 1 at 3, 5.

[58] The suffering imposed by the Impugned Restrictions must be given substantial weight when balanced against the salutary effects of the legislation. As held in *Bedford*, where legislation is the sole and direct cause of such infringements, this infringement must be given substantial weight. Were it not for the Impugned Restrictions, Mr. Jacob would be permitted to commit physician-assisted suicide in order to end his intolerable suffering. These restrictions are thus the sole and direct cause of the infringements on Mr. Jacob's liberty and security of the person.

> *Bedford*, *supra* para 43 at paras 304, 314.

[59] In contrast to the real harm occasioned by the Impugned Restrictions, the risk of harm to vulnerable persons is speculative, as is the assumption that a broad ban will most effectively

control these risks, and not proven by experience in other jurisdictions. Targeting theoretical harms with laws which impose real and severe harms on vulnerable citizens is not a reasonable response "in relation to the threat" and as a result is disproportionate *per se* (*Malmo-Levine*). It is for this reason that Lamer C.J. in dissent in *Rodriguez* expressed doubt that "legislation that deprives a disadvantaged group of the right to equality can be justified solely on such speculative grounds, no matter how well intentioned."

> Official Problem, *supra* para 1 at 8.
> *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 47, [2002] 1 SCR 3.
> *Malmo-Levine*, *supra* para 57 at para 142.
> *Rodriguez*, *supra* para 2 at para 91.

[60] The requirements of competence at the time of the procedure and terminal illness infringe upon Mr. Jacob's section 7 rights. In denying Mr. Jacob access to physician-assisted suicide, they deprive him of personal autonomy and the right to make fundamental choices about his own life and body in a manner which is overbroad, arbitrary, and grossly disproportionate to any benefit achieved and so not in accordance with the principles of fundamental justice.

Issue 4: The Impugned Restrictions Cannot Be Justified Under Section 1

i. An Infringement of Section 7 Rights Has Never Been Justified as Reasonable in a Free and Democratic Society Under Section 1

[61] If the Court finds an infringement of Mr. Jacob's section 7 rights, the Respondent likely cannot justify that infringement under section 1. The Supreme Court has never upheld an infringement of section 7 as reasonably justified in a free and democratic society and has consistently expressed doubt that this will ever be possible. *Nova Scotia Pharmaceutical*, *Chaoulli*, and *Heywood*, respectively, held that laws deemed vague, arbitrary, or overbroad could not be considered limits prescribed by law, rationally connected, or minimally impairing, and so would necessarily fail under section 1. Even accepting that such justification may be possible, it

will only occur in exceptional circumstances such as natural disasters, the outbreak of war, or epidemics, circumstances not met here.

> *R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 at para 39, 114 NSR (2d) 91 [*Nova Scotia Pharmaceutical*].
> *Chaoulli*, *supra* para 54 at para 155.
> *Heywood*, *supra* para 51 at para 69.
> *Motor Vehicle Reference*, *supra* para 44, at para 83.

[62] In the alternative, the Appellant submits that the infringement of sections 15 and 7 are not reasonable limits in a free and democratic society and so are not saved under section 1.

ii. The Onus Is on the Respondent to Justify an Infringement Under Section 1

[63] Under section 1, the burden of proof placed upon the Respondent is to applied strictly, "having regard to the fact that s. 1 is being invoked for the purpose of justifying a violation of the constitutional rights and freedoms the *Charter* was designed to protect" (*Oakes*). While the Appellant concedes that the Impugned Restrictions are a limit prescribed by law and have a sufficiently pressing and substantial objective, the Respondent has failed to discharge its strict burden on any other step. The restrictions are not rationally connected to their objective, minimally impairing of Mr. Jacob's rights, and do not strike the right balance of salutary and deleterious effects. If any one of these requirements is not met, the infringements cannot be saved by section 1.

> *R v Oakes*, [1986] 1 SCR 103 at paras 66, 68-70, 53 OR (2d) 719 [*Oakes*].

iii. The Court Has a Proper Role in Reviewing Socially Contentious Issues for Charter Compliance

[64] The mere fact that contentious or complex social issues are involved does not require the Court to "abdicate the responsibility vested in them by our Constitution to review legislation for *Charter* compliance when citizens challenge it" and accord the government an undue degree of

deference when reviewing legislation under section 1 (*Chaoulli*). Reviewing legislation for constitutional compliance is not anti-democratic, but is the proper role of the Court accorded it by the elected Parliament in the *Charter* (*Motor Vehicle Reference*).

> *Chaoulli*, *supra* para 54 at para 107.
> *Motor Vehicle Reference*, *supra* para 44 at para 15.

1. The Means Chosen Are Not Proportional to the Stated Objective

A. The Impugned Restrictions Are Not Rationally Connected to Their Objective

[65] The Impugned Restrictions cannot be rationally connected to the stated objective of protecting vulnerable persons because there is no "causal connection between the infringement and the benefit sought on the basis of reason or logic" (*RJR-MacDonald*). Rather than minimizing any possible vulnerability of the mentally ill, the requirements of competence at the time of death and terminal illness perpetuate and exacerbate their historical disadvantage by ignoring the limited autonomy they do have, stereotyping all mentally ill persons as vulnerable and incapable of making important decisions about their own lives. This stereotyping makes the mentally ill more vulnerable to having their competently expressed wishes ignored and as a result to being subjected to medical treatment against their will, the very concern of the legislation. As a result, the legislation cannot be said to confer a benefit as required at this stage.

> *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199 at para 153, 127 DLR (4th) 1 [*RJR-MacDonald*].
> *Starson*, *supra* para 32 at para 77.

[66] Moreover, the legislation forces many patients to suffer years of severe physical and psychological pain against their will, which is not a protection but rather a harm imposed by the government. Section 241.1, by permitting physician-assisted suicide at all, contemplates that a legitimate solution to such pain may be death. It is inconsistent with the objective of protection to prevent access to this legitimate solution and impose unnecessary suffering on patients.

B. The Impugned Restrictions Are Not Minimally Impairing

[67] There are other, less drastic means of achieving the objective in a real and substantial manner. The scheme set out in section 241.1 and modified with Wire J.'s remedies, requiring competence at the time of the request and striking the terminal illness requirement, is just such an alternative. What remains is still a stringent standard, requiring that the patient repeatedly and explicitly express his or her desire to die, that he or she be in severe pain, and that two physicians independently approve of this course of action after the patient has exhausted or refused all possible treatments. Requiring that a patient competently express his or her wish to die is actually stricter than the current, accepted, protections under medical law, which permit substitute decision-makers to consent to treatment in the "best interests" of the patient in the absence of any prior expressed wish.

> *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 55, [2009] 2 SCR 567 [*Hutterian Brethren*].
> Official Problem, supra para 1 at 7, 9.
> *Health Care Consent Act*, *supra* para 48, s 21(1).

[68] Criminal law further supplements this stringent standard. As noted by McLachlin J., as she was then, in *Rodriguez*, "a person who causes the death of an ill or handicapped person without that person's consent can be prosecuted under the provisions for culpable homicide." Dr. Lee was effectively deterred from aiding Mr. Jacob by these very provisions.

> *Rodriguez*, *supra* para 2 at para 221.
> Official Problem, *supra* at para 1 at 2.

[69] Moreover, the legal responsibilities of physicians and substitute decision-makers together provide robust protection for patients. Doctors are always under a professional obligation to act in their patients' best interests, such that in a case of likely abuse, physician-assisted suicide may not even be an available treatment. This protection is explicit under paragraph 241.1(1)(e) which

requires that another physician agree that it is in the patient's best interest to be able to end his or her life. Even where physician-assisted suicide may be available, a substitute decision-maker is bound under the Ontario *Health Care Consent Act* to only consent to treatment to which the patient has previously consented. Given the requirement of competence at the time of the request, they are prevented from consenting to any treatment for which no wish was ever expressed.

> *Rasouli (Litigation Guardian of) v Sunnybrook Health Sciences Centre*, 2011 ONCA 482 at para 43, 107 OR (3d) 9 [*Rasouli*].
> *Health Care Consent Act*, *supra* para 48, s 21(1).

[70] More limited and rights-respecting protections have also proven to be effective in other jurisdictions which permit physician-assisted suicide in cases of physical and psychiatric illness. In these jurisdictions, only 10% of requests for physician-assisted suicide have involved mental illness, not the feared flood of mentally ill persons asking to die. Of these requests, 80% have been refused as inappropriate, demonstrating that more tailored legislation which gives effect to the rights of non-vulnerable patients can and is effectively applied elsewhere.

> Official Problem, *supra* at para 1 at 8.

C. The Impugned Restrictions Impose Severe Harm on Patients Which Outweighs Any Speculated Salutary Effects

[71] The Impugned Restrictions, which impose severe physical and psychological harm on patients, create an imbalance of deleterious effects such that the "benefits of the impugned law are [not] worth the costs of the rights limitation" (*Hutterian Brethren*). By enacting section 241.1 in response to the deaths of patients in "intolerable" conditions, the government recognized the disproportionate harm imposed by prohibiting access to physician-assisted suicide. However, by limiting the application of section 241.1 to the terminally ill, only the lesser harm caused by the ban was remedied. Whereas terminally ill patients whose suffering will soon end regardless of

access to physician-assisted suicide may obtain it, non-terminally ill patients in similarly intolerable pain may be forced to suffer for decades without reprieve. For instance, Mr. Jacob's condition has not improved despite "gold standard" treatment, resigning him to 40 years or more of being "tied to his bed, terrified by things that only he can see, drooling on himself, or crying" (Official Problem). Those who have years left to live must also suffer the psychological harm of pain with no foreseeable end in sight, as well as the indignity of their loss of independence and a concern that they will be a burden on their loved ones, harms which are "primary motivators for patients' requests for assisted suicide."

Hutterian Brethren, *supra* para 67 at para 77.
Official Problem, *supra* para 1 at 5, 7, 8.

[72] It is for this reason that retaining the current competence requirement and permitting Mr. Jacob access to physician-assisted suicide if and when he once again becomes lucid is not a reasonable limitation. Ignoring his competently made wishes and forcing him to suffer in such severe pain for the off-chance that his condition may one day improve is grossly disproportionate to any possible benefit.

[73] In contrast to these severe deleterious effects, the only salutary effect is the hoped promotion of the law's objective, the protection of vulnerable patients. However, the weight of this speculative effect is tempered by the fact that this same objective could be achieved in a less rights-impairing manner.

[74] Moreover, a blanket ban of this nature does not promote "the dignity of individuals living with such illnesses," a salutary effect suggested by Rainfoot J.A., but rather de-values their lives by sending "a negative message that their wishes, and their suffering, are not as important as are other considerations" (*Carter*). In contrast, assisting someone in such great and incurable pain to

end their life in accordance with their wishes is not harming them, but conferring what they by their own value system see as a benefit by bringing an end to their pain. This is not a de-valuation of their life, but an affirmation of it, recognizing that their own conception of the good life, or death, is more important than the morality of others.

Official Problem, *supra* para 1 at 9.
Carter v Canada (Attorney General), 2012 BCSC 886 at para 1266, 287 CCC (3d) 1.

2. The Restrictions Cannot Be Saved by Section 1

[75] Whereas failure at any one stage of the *Oakes* test will result in constitutional invalidity, the restrictions in paragraphs 241.1(1)(a) and (c) fail at all steps of the proportionality stage and are neither rationally connected to their objective, minimally impairing of Mr. Jacob's rights, nor worth the benefit of the rights infringements. The result is that Mr. Jacob is made a scapegoat. He is deprived of fundamental rights of equality, personal autonomy, and bodily integrity and forced to endure barbaric treatment and a quality of life which is "non-existent" for the benefit of the extraneous moral concerns of others and in the name of protection which he does not require. This failure to appreciate his individual circumstances is at once a rejection of his individual fundamental rights and freedoms and discriminatory stereotyping on the part of the state. As a result, paragraphs 241.1(1)(a) and (c) are not reasonable limits in a free and democratic society.

PART V – ORDERS SOUGHT

The Appellant seeks two remedies from the Court:

1. that "at the time of the patient's request that the physician assist the patient to end his or her life" is read in to the end of paragraph 241.1(1)(a);
2. that "as a result of a terminal illness" is struck from the end of paragraph 241.1(1)(c).

PART VI – LIST OF AUTHORITIES AND STATUTES

LEGISLATION	PARAGRAPHS
Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11…………	2
Criminal Code, RSC 1985, c C-46………………………………………………..	2
Health Care Consent Act, RSO 1996, c 2………………………..…………………….……	48, 52, 67, 69
Substitute Decisions Act, RSO 1992, c 30………………………..……………………….…..	3, 52

JURISPRUDENCE	PARAGRAPHS
Alberta (Aboriginal Affairs and Northern Development) v Cunningham, 2011 SCC 37, [2011] 2 SCR 670…………………….……..………..	23
Alberta v Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 SCR 567…………………….……..………..	67, 71
Auton (Guardian ad litem of) v British Columbia (Attorney General), 2004 SCC 78, [2004] 3 SCR 657………………………..…..……..	19
Bedford v Canada (Attorney General), 2012 ONCA 186, 109 OR (3d) 1………………………..………...	43, 58
Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44, [2011] 3 SCR 134……………………….…………	54
Carter v Canada (Attorney General), 2012 BCSC 886, 287 CCC (3d) 1………………………...……….	74
Chaoulli v Quebec (Attorney General), 2005 SCC 35, [2005] 1 SCR 791……………………………….…	54, 61, 64
Eaton v. Brant (County) Board of Education, [1997] 1 SCR 241, 142 DLR (4th) 385……………………………….	19

Eldridge v British Columbia (Attorney General), [1997] 3 SCR 624, 151 DLR (4th) 577……………………………... 17

Fleming v Reid (1991), 4 OR (3d) 74, 82 DLR (4th) 298, (CA)……………………………... 48

Godbout v Longueuil (City), [1997] 3 SCR 844, 47 CRR (2d) 1…………………………………... 43

Granovsky v Canada (Minister of Employment and Immigration), 2000 SCC 28, [2000] 1 SCR 703……………………………………… 19, 22, 26-27, 32-33

Law v Canada (Minister of Employment and Immigration), 1 SCR 497, 170 DLR (4th) 1………………………………………... 29

Ontario Human Rights Commission v Simpsons-Sears Ltd, [1985] 2 SCR 536, 52 OR (2d) 799………………………………….. 17

Quebec (Attorney General) v A, 2013 SCC 5, [2013] SCJ No 5……………………………………….. 2, 15, 17, 29, 30, 32, 33

R v Heywood, [1994] 3 SCR 761, 34 CR (4th) 133…………………………………. 51, 61

R v Kapp, 2008 SCC 41, [2008] 2 SCR 483……………………………………. 15, 23, 30, 33

R v J.A., 2011 SCC 28, [2011] 2 SCR 440……………………………………. 48

R v Malmo-Levine; R v Caine, 2003 SCC 74, [2003] SCR 571……………………………………… 57, 59

R v Nova Scotia Pharmaceutical Society, [1992] 2 SCR 606, 114 NSR (2d) 91……………………………….... 61

R v Oakes, [1986] 1 SCR 103, 53 OR (2d) 719………………………………….. 63

R v Swain, [1991] 1 SCR 933, 63 CCC (3d) 481………………………………... 19, 31, 34

Rasouli (Litigation Guardian of) v Sunnybrook Health Sciences Centre, 2011 ONCA 482, 107 OR (3d) 9……………………………………. 69

Reference re Motor Vehicle Act (British Columbia) S 94(2), [1985] 2 SCR 486, 24 DLR (4th) 536……………………………….. 44, 61, 64

RJR-MacDonald Inc v Canada (Attorney General), [1995] 3 SCR 199, 127 DLR (4th) 1………………………………… 65

Rodriguez v British Columbia (Attorney General), [1993] 3 SCR 519, 85 CCC (3d) 15………………………………… 2, 38, 41-43, 46, 53, 54, 59, 68

Starson v Swayze, 2003 SCC 32, [2003] 1 SCR 722……………………………………… 32, 44, 47, 65

Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1, [2002] 1 SCR 3………………………………………... 59

Winko v British Columbia (Forensic Psychiatric Institute), [1999] 2 SCR 625, 175 DLR (4th) 193……………………………… 19, 22, 45

Withler v Canada (Attorney General), 2011 SCC 12, [2011] SCR 396……………………………………… 30, 33

OFFICIAL WILSON MOOT SOURCES **PARAGRAPHS**

Official Problem, the Wilson Moot 2013……………………………... 1- 9, 11-14, 18, 20-21, 24, 26, 32, 35-39, 41, 51, 57, 59, 67, 68, 70-71, 74