

JUL 14 2015



S = 155698
NO.

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LIFESPAN SOCIETY OF BRITISH COLUMBIA and KBEGAN MACINTOSH

PLAINTIFF

AND:

HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff Lifespan Society of British Columbia (“Lifespan”) is a non-profit society incorporated under the *Society Act*, RSBC 1996, c.433. Lifespan’s purposes include advocacy for and advancement of cryonics, cryonics services and cryonics technology within British Columbia.
2. The Plaintiff Keegan Macintosh is a natural person who wishes to obtain services pursuant to a Cryonics Arrangement.
3. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (“HMTQ”), is a body politic enacted by the *Constitution Act*. HMTQ has enacted the *Cremation, Interment and Funeral Services Act*, RSBC 2004, c.35 (“CIFSA”).
4. This proceeding is a challenge to the constitutional validity of s.14 of CIFSA, which prohibits the sale or offer for sale of cryonics services. British Columbia is the only jurisdiction in the world that prohibits the sale or offer for sale of cryonics services.
5. Section 14 of CIFSA provides as follows:

Prohibition on sales, and offers of sale, of arrangement relating to cryonics and irradiation

14 A person must not offer for sale, or sell, an arrangement for the preservation or storage of human remains that is based on:

- (a) cryonics,
- (b) irradiation, or
- (c) any other means of preservation or storage, by whatever name called,

and that is offered, or sold, on the expectation of the resuscitation of human remains at a future time.

6. Section 61(2)(f) of CIFSA provides that a contravention of s.14 of CIFSA is an offence. Section 62 of CIFSA provides for the following penalties:

Offence penalties

62 (1) An individual who commits an offence under this Act is liable to a fine of not more than \$10 000 or to imprisonment for not more than 12 months or to both.

(2) A corporation that commits an offence under this Act is liable, to a fine of not more than \$100 000.

(3) Despite subsections (1) and (2), the court may increase a fine imposed under this section by an amount of up to 3 times the court's estimation of the amount of monetary benefit acquired or accrued as a result of the commission of the offence.

7. The term "cryonics" is undefined by CIFSA, but cryonics is the long-term preservation of the human body after clinical death at very low temperature to halt the processes of decomposition. People undergo this preservation procedure with the intention of future resuscitation. The use of cryonics is predicated on the possibility that currently untreatable medical conditions including the ordinary biological aging process will be treatable in the future at the time of removal from storage, and that persons will not be removed from storage until their conditions are treatable.
8. The Plaintiffs here challenge only the restriction on offering or selling cryonics services that are entered into by a person who (1) clearly consents to the procedure and (2) at the time of the performance of the services, has ceased cardio-pulmonary function (a "Cryonics Arrangement").
9. The term "expectation" within s.14 of CIFSA is not defined, and in particular, it is not clear from the language of the CIFSA whether s.14 is intended to prevent all sales or offers of cryonics services or is intended only to prevent fraudulent exaggeration of the likelihood of resuscitation or cryonics.
10. Lifespan intends to, and were it not for s.14 of CIFSA, would offer for sale and sell the following services pursuant to a Cryonics Arrangement on a non-profit basis:
 - (a) **Vitrification.** Vitrification is the process of substituting, to the greatest extent possible, one or another substance for blood and other water-based liquids within the human body. Vitrification is a common method to preserve, for example, human egg cells (in oocyte cryopreservation) and embryos (in embryo cryopreservation). Vitrification reduces cellular and tissue damage that result when water and water-based liquids are brought to temperatures below freezing. Water expansion and crystallization results in inter-cellular and intra-cellular damage. The process of vitrification is predicated on the future possibility that the gelatinous substance can be safely removed from the body.
 - (b) **Cooling.** Cooling involves various processes and stages of lowering the temperature of a human body after death to the lowest possible temperature without causing damage. Cooling processes can occur prior to, during, or after vitrification (cooling may be an aspect of vitrification). Cooling processes can

occur prior to, during, or after transportation. Cooling can occur prior to and as an aspect of suspension.

(c) Transportation. Transportation involves the movement of a human body to a location outside the Province of British Columbia for long-term storage or suspension. At the time of filing, the most geographically proximate post-mortem transportation services are provided by Alcor Life Extension Foundation based in Scottsdale, Arizona.

(d) Suspension. Suspension involves the indefinite cooling of the human body at ultra-low temperatures. Ultra-low temperatures arrest or nearly arrest all decompositional physical processes. The costs associated with post-mortem suspension are financed by investment of a lump-sum payment, which may be covered by a life insurance policy. Approximately two hundred people are indefinitely suspended in facilities in the United States, including the Alcor Life Extension Foundation facility and the Cryonics Institute facility located in Clinton Township, Michigan. No such facility exists in the Province of British Columbia.

11. In offering, selling and providing the above-noted services pursuant to a Cryonics Arrangement, Lifespan would not guarantee resuscitation or exaggerate the prospects of resuscitation. In particular, Lifespan represents that Cryonics offers a possibility of resuscitation that is meaningful to some persons. The prospects for successful resuscitation depend on a number of profound improvements in future medical science. The numeric probability of successful resuscitation and treatment following suspension is difficult to quantify but the probability of successful resuscitation and treatment is above zero.
12. The Plaintiff Keegan Macintosh wishes to enter into a Cryonics Arrangement with Lifespan for the services set out above. Keegan Macintosh is in very good health and is of sound mind. Mr. Macintosh believes on reasonable grounds that the prohibition under s.14 of the CIFSA would delay and hinder his suspension and would result in degenerative damage that would risk his informational-theoretical death.
13. Information-theoretic death is the destruction of the information within a human (or any cognitive structure that may constitute a person) to such an extent that recovery of the original person is theoretically impossible by any physical means. The term means death that is absolutely irreversible by any technology, as distinct from clinical death. In particular, the prospect of brain repair using molecular nanotechnology raises the possibility that medicine might someday be able to resuscitate patients even hours after the heart stops.

Part 2: RELIEF SOUGHT

14. The Plaintiff seeks the following relief:

(a) a declaration pursuant to s.52 of the *Constitution Act, 1982*, that s.14 of the *Cremation, Interment and Funeral Services Act*, RSBC 2004, c.35 is of no force and effect; or

(b) in the alternative, a declaration that s.14 of the *Cremation, Interment and Funeral Services Act*, RSBC 2004, c.35 does not prohibit selling or offering for sale cryonics services or an arrangement for cryonics services that does not guarantee resuscitation or exaggerate the prospects of resuscitation;

(c) in the further alternative, an Order pursuant to s.24(1) of the *Charter of Rights and Freedoms* “reading in” the words “the basis of an exaggerated representation of the probability” in lieu of the words “the expectation” into s.14 of the *Cremation, Interment and Funeral Services Act*;

(d) costs, including special costs; and

(e) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

12. Sections 14, 61 and 62 of the CIFS Act infringe the right under s.7 of the *Charter of Rights and Freedoms* to each of life, liberty and security of the person and are inconsistent with the principles of fundamental justice, including arbitrariness, overbreadth and vagueness. The restriction cannot be justified in a free and democratic society pursuant to s.1 of the *Charter of Rights and Freedoms*.

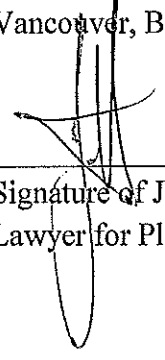
13. The right to life is infringed as the impugned provisions deprive the individual seeking services pursuant to a Cryonics Arrangement of the possibility or probability of extending his or her life. The right to liberty is infringed as the individual seeking services pursuant to a Cryonics Arrangement is deprived of the fundamental choice of disposing of their bodies as they see fit and pursuing future health care, which is a fundamental choice. The right to security of the person is infringed as persons who wish to sell or offer to sell a Cryonics Arrangement are threatened with imprisonment and fines.

Plaintiffs' address for service: Gratl & Company
Barristers and Solicitors
601-510 West Hastings Street
Vancouver, BC V6B 1L8
Attn: Jason Gratl

Place of Trial: Vancouver

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: July 14, 2015



Signature of Jason Gratl
Lawyer for Plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim to declare s.14 of the *Cremation, Interment and Funeral Services Act*, RSBC 2004, c.35, of no force and effect.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Cremation, Interment and Funeral Service Act, RSBC 2004, c.35

Canadian Charter of Rights and Freedoms