Applications for judicial authorisation of assisted dying in Canada heard between February and June 2016

Notes:

1. This table outlines, in chronological order, cases decided in the period in 2016 following the decision of Canadian Supreme Court in *Carter v Canada* (2016) [2016] SCC 4, when it suspended the declaration made the year before (*Carter v Canada* [2015] SCC 5) that the ban on assisted dying was constitutionally invalid for a period of a further 4 months in light of the practical obstacles to enacting remedial legislation posed by a federal election. The Supreme Court in this later decision ('*Carter 2016*') did so on the basis that, during that additional 4 month period, those who wished to seek assistance from a physician in accordance with the criteria set down in the earlier decision could apply to the superior court of their jurisdiction for relief in their individual cases. The Supreme Court considered that "[r]*equiring judicial authorization during that interim period ensures compliance with the rule of law and provides an effective safeguard against potential risks to vulnerable people*." *Carter 2016* at para 6.

2. The cases in this table were taken either from Canlii (https://www.canlii.org/en) or, where transcripts were not available, from the database maintained by the Health Law Institute at Dalhousie University (http://eol.law.dal.ca/?page_id=242).

3. In addition to the cases set out below, one case (*Canada (Attorney General) v E.F.*, 2016 ABCA 155 (CanLII)) was appealed by the two Attorneys General involved (one, in British Columbia, because of the physician identified who was willing to give assistance was located there) to Court of Appeal in Alberta in part on the basis of alleged inadequacy in the evidence presented on the application as to the irremediability of the applicant's medical condition. There are a number of other publicly available decisions determined during this period relating to anonymity of applicants, but these are not recorded here.

4. The table summarises the parts of the judgments relating to the questions of the individual applicant's capacity (or competence in Canadian law) and potential vulnerability.

Date	Case Title	State/province, court and judge(s)	Judge's description of applicant's condition	Consideration of capacity/coercion	Outcome
29 February 2016	*HS (Re)*, 2016 ABQB 121	Alberta Court of Queen's Bench Honourable Madam Justice S.L. Martin	[1] Ms. S. is an adult woman in the final stages of amyotrophic lateral sclerosis ("ALS")	**A. Ms. S. is a competent adult** [95] I find that Ms. S. is a competent adult. While competence is presumed, the record also is clear that she is mentally alert. There is no suggestion in any of the medical reports attached to her Initial Affidavit that her illness has in any way affected her mental capacity. Statements from her treating physician, assisting physician and her long-time friend support her competence. Indeed, her treating physician was "very impressed by [Ms. S.'s] clarity of thought." I note that Ms. S. attended the hearing of this application and it was clear to me from seeing her in the courtroom that she was fully engaged in and attentively following the proceedings.	[118] Based on the foregoing analysis, I find that Ms. S. meets the criteria set forth at para 127 of ***Carter 2015*** and is therefore entitled to the constitutional exemption granted by the

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				[96] In the absence of any suggestion that Ms. S. lacks competence, there is no need to have evidence from a psychiatrist. Nowhere in the Supreme Court's decision is there a requirement for psychiatric evaluation. Such is not required in the Québec legislation or the British Columbia *Notice*. Only the Ontario *Practice Advisory* suggests that the applicant should include evidence from a psychiatrist.[1] I am confident in these circumstances that the Court may make findings in respect of the ***Carter 2015*** criteria without the assistance of a psychiatrist. [97] In ***Carter 2012***, the trial judge placed great emphasis on the issue of depression, referring to it at para 640 as a "crucial issue." The Supreme Court adopted a differently worded test, but what is paramount is that the evidence establishes that Ms. S. is not depressed. Indeed, she attests to that in her Initial Affidavit and I am mindful of her background as a clinical psychologist. In addition, her best friend M.V., a retired social worker, confirms that Ms. S. is fully competent mentally and is not depressed. [98] There was some reference in part of the evidence to a one-time score on an ALS depression test which indicated a "possible mild depression." However, going back to the original source of this statement, dated July 22, 2015, her palliative care physician at the Calgary ALS and Motor Neuron Disease Clinic noted that on that day Ms. S. reported that "her mood is actually quite good and stated unequivocally at today's visit, 'I am not depressed.'" [99] That physician concluded:	Supreme Court of Canada in ***Carter 2016***. Like Ms. Taylor, she is not a vulnerable person who requires the protection of those sections of the *Criminal Code* impugned in ***Carter 2015***.

[1] These refer to a *Practice Advisory – Application for Judicial Authorization of Physician Assisted Death* (http://www.ontariocourts.ca/scj/practice/application-judicial-authorization-carter/) published by the Chief Justice of the Ontario Superior Court of Justice and *Notice Regarding Applications for Exemption from the Criminal Code Prohibition Against Physician Assisted Death* published by the Chief Justice of the British Columbia Supreme Court. As the judge noted in this case (para 63), these were intended as "practice advisories or practice notes within their provinces on such issues as notice, confidentiality, and the type, amount and form of evidence, as well as matters of timing and scheduling."

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				I actually do not think that [Ms. S.] is depressed, although she does meet the criteria for mild depression on the ALS depression index. [100] In a subsequent letter dated October 14, 2015, the same physician said: [Ms. S.] has no current plans to end her life, however, and feels that her mood is quite good. Looking at her ALS depression index, I would say that she is doing better than at our last visit as she is able to say that she is still finding meaning in life, looking forward to each day and no longer feels "empty inside" most of the time. Her score is no longer reflective of mild depression. [101] Accordingly, I need take no position on whether depression should be considered as part of determining an applicant's competence as Ms. S. is not depressed. [102] The Attorney General of British Columbia argued that any order should require that competence be established both at the time of application to the superior court and at the time of death. I do not believe this is necessary for two reasons. First, I am of the view that an ongoing determination of competence is part of and flows from the physician-patient relationship. I do not believe it is necessary for a court order to require this. Second, as a practical matter, the evidence before me is that, if her application is granted, Ms. S. will seek a physician-assisted death in the very near future. Therefore, I see no need to order a reassessment of her competence beyond the obligation placed on physicians to obtain genuine, ongoing, and informed consent to treatment. **B. Ms. S. clearly consents to physician-assisted death** [103] I am satisfied that Ms. S. fully and freely consents to the termination of her life. She clearly states this in her Affidavit.	

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				[104] Her application is not made in a moment of weakness and her desire for physician-assisted death is long-standing. The evidence is that, since her diagnosis, she has explored various options around physician-assisted death. At various points in time she explored going to Switzerland, Basel and Québec. Her friend M.V. confirms this, stating that Ms. S. has been thinking about physician-assisted death for two years. The letters attached to Ms. S.'s Affidavit from the Calgary ALS and Motor Neuron Disease Clinic indicate that she had discussions with professionals there by at least July 2015. Those letters indicate that Ms. S. also discussed this subject with her spouse and her friends. She sought out the physician who will assist her. Ms. S. also expressly states that she waited until the release of ***Carter 2016*** before making this application. She states that she "would like to pass away peacefully and [is] hoping to have physician-assisted death soon." [105] There is no suggestion in any of the documentation before the Court that Ms. S. was not rational or was being subjected to external pressure. Indeed, it appears that her spouse, who is her primary caregiver, was tearful, said he did not want her to die, and was resistant at first. After months of discussion, he respects her right to make this choice. Ms. S.'s friend M.V. confirms that Ms. S. is under no pressure from her husband or friends. Her treating physician notes that Ms. S. "has not swayed from her resolve of ending her life in a peaceful manner." [106] Ms. S. understands her medical diagnosis and prognosis. She attended the Calgary ALS and Motor Neuron Disease Clinic and has been informed of the feasible treatments, including options in relation to palliative care. She has received counselling in relation to palliative care. [107] Ms. S. has been informed of the risks associated with physician-assisted death and the probable result of the medication proposed for use in her physician-assisted death. [108] She understands fully that it is her choice and that she has a continuing right to change her mind about terminating her life.	

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17 March 2016	*A.B. v Canada (Attorney General)*, 2016 ONSC 1912	Ontario Superior Court of Justice Perell J	[1.] A.B., who is an 81-year-old gentleman with advanced-stage aggressive lymphoma	[44] On February 29, 2016, the geriatric psychiatrist performed a capacity assessment of A.B. and the psychiatrist also conducted insight, judgment, and cognition assessments of A.B. Based on the definition of capacity in the *Health Care Consent Act, 1996*, *supra*, which requires that a patient is able to understand the information that is relevant to making a decision about the treatment and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision, the opinion of the geriatric psychiatrist is that A.B. has the capacity to make a decision about physician-assisted death. [45] The hematologist, the palliative care physician, and the geriatric psychiatrist, respectively, deposed that they had reviewed the Practice Advisory issued by this Court. I quote from the palliative physician's affidavit: > In response to the criteria set out in the practice advisory issued by the Ontario Superior Court of Justice related to applications for physician assisted death, which I have reviewed: (a) I confirm that it is my opinion that AB has a grievous irremediable medical condition that causes suffering. (b) Based on my experience, observation, and interactions with AB, he is suffering enduring intolerable pain, fatigue and nausea that cannot be and has not been alleviated by any treatment acceptable to him. (c) I was not the physician who diagnosed AB's medical condition. Based on the medical records available to me and based on my interactions with AB, I can confirm that AB was advised of his diagnosis by the diagnosing physician. I have discussed AB's condition with him and I believe based on those discussions that he understands that he has a grievous irremediable medical condition, the prognosis, treatment options, palliative care options, and the risks associated with a physician assisted death.	[52] I, therefore, grant A.B. a declaration that he satisfies the criteria for the constitutional exemption granted in *Carter-2016* for a physician-assisted death.

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				(d) AB currently makes his own medical decisions pursuant to the *Health Care Consent Act*. While I have not been designated a capacity assessor, I have not observed anything to call into question AB's mental capacity to make a clear, free and informed decision about physician assisted death. (e) AB wishes the assistance of a physician in his death. (f) AB has advised me that he wishes and consents to physician assisted death. I have not observed any undue influence, coercion, or ambivalence. (g) I have advised AB that his request for an authorization for a physician assisted death may be withdrawn at any time. AB advised me that he understood my advice and I believe him. (h) I have asked AB whether he makes the request for authorization for a physician assisted death freely and voluntarily. He has advised me that he does and I believe him. (i) I have advised AB that if the authorization is granted, the decision to use or not use the authorization is entirely AB's decision to make. AB advised me that he understood my advice and I believe he did. […] [49] Having reviewed the evidentiary record, I conclude that A.B. satisfies the criteria; namely: (1) he is a competent adult person; (2) he has a grievous and irremediable medical condition including an illness, disease or disability; (3) his condition is causing him to suffer enduring intolerable suffering; (4) his suffering cannot be alleviated by any treatment available to him that he finds acceptable; and (5) he clearly consents to the termination of life. [50] I am also satisfied by the evidence that: (1) A.B. is a resident of Ontario; (2) he commenced his application after having been fully informed about his medical condition, diagnosis, prognosis, treatment options, and	

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				palliative care options; (3) he is aware that his request for an authorization for a physician-assisted death may be withdrawn at any time; (4) he is aware that if the authorization is granted, the decision to use or not use the authorization is entirely his to make; and (5) he consents without coercion, undue influence, or ambivalence to a physician-assisted death.	
18 March 2016	*Patient v. Attorney General of Canada et al*, 2016 MBQB 63	Manitoba Court of Queen's Bench Joyal, CJQB	[2] The applicant is an adult who suffers from and is in the final stages of two terminal diseases. As a consequence of those diseases, the applicant is living with and enduring unbearable pain. The applicant's health is rapidly deteriorating. The applicant likely has about one month to live.	***The applicant is a competent adult*** [65] The applicant in the present case submits that "competence" refers to a decision-making capacity. The applicant is presumed to be competent. The applicant submits that the common law definition of capacity in the context of making healthcare decisions speaks of "being able to understand the nature, the purpose and consequences of proposed treatment." See ***Cuthbertson v. Rasouli***, 2013 SCC 53 (CanLII) at para. 19, [2013] 3 S.C.R. 341. "Treatment" is defined as "anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment …." See ***The Health Care Directives Act***, C.C.S.M. c. H27 at s. 1. The Supreme Court acknowledges that administering medication to hasten death clearly constitutes "treatment". See ***Cuthbertson***, *supra*. [66] In Manitoba, ***The Health Care Directives Act*** uses "capacity" to describe a person's ability to understand information relevant to making a decision and their ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision. See ***The Health Care Directives Act***, s. 2. [67] In the circumstances of the present case, the applicant's capacity has been confirmed by all the physicians who provided affidavits. Each physician acknowledged that the applicant is fully competent. [68] It is worth noting that Physician D assessed the applicant from the perspective of a physician whose specialty is psychiatry. In that regard, Physician D did note that the applicant experienced reactive depression and anxiety when diagnosed with one of the terminal diseases approximately two years ago. The applicant explains that he/she dealt with	[82] In the result, I am satisfied, based on the evidence before me, that the applicant meets all the criteria under para. 127 in ***Carter 2015***. The applicant is accordingly permitted a physician-assisted death if the applicant so chooses.

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				some depression and anxiety in the face of that disease in a positive and proactive way, including following a treatment regime with Physician D. For the purposes of this application, Physician D notes at para. 8 of his/her affidavit that the applicant is able to reasonably assess the treatment options available and that he/she is competent to choose the course of action that best suits his/her needs and wishes. [69] It need also be observed that Physician D took the added step of having consulted with Physician A, Physician B and Physician C, each of whom was of the opinion that the applicant was not actively depressed or suffering from any severe depressive episodes or other psychiatric illnesses that may have shaped the applicant's decision for requesting physician-assisted death. [70] Finally, I note that the applicant's spouse has also confirmed in his/her personal view, the applicant is fully capable of making his/her own decisions. That view on the part of the applicant's spouse is formed on the basis of what is asserted as the applicant and the spouse's close, personal and longstanding relationship, including the numerous conversations about the applicant's wishes respecting physician-assisted death. [71] I have concluded that there is in fact nothing on the evidence that calls into question either the applicant's competence or capacity. ***<u>The applicant clearly consents to the termination of life</u>*** [72] I am satisfied that the applicant fully and freely consents to the termination of his/her life. The applicant has attested that the decision to obtain a physician-assisted death was made freely and voluntarily and that he/she has not been influenced or coerced by anyone. [73] It is similarly clear that the applicant understands his/her medical condition, diagnosis, prognosis, palliative care options and the risks associated with the treatment and palliative care options and any risks associated with a physician-assisted death. The applicant demonstrates similar understanding of the process that will be used to provide the physician-assisted death. [74] I am satisfied that the applicant's decision to seek a physician-assisted death has not been entered into lightly. His/her desire for a	

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				physician-assisted death seems to be longstanding. The applicant has been contemplating this decision since his/her diagnosis with one of the diseases two years ago. The applicant asserts that he/she understands fully that this is his/her decision and that it is a decision which he/she can change at any point in time. [75] It is also the opinion of the applicant's physicians that the applicant's consent to physician-assisted death is one which is informed, free, voluntary and clear. [76] Finally, on the issue of the applicant's clear consent, I note the applicant's spouse's affidavit which confirms the applicant's family's lengthy discussion about the progression of the applicant's medical condition. In that context, the applicant's spouse's affidavit addresses the applicant's request for assistance in preparing for a physician-assisted death and the applicant's ongoing determination in seeking out such end of life.	
30 March 2016	*A.B. v Ontario (Attorney General)*, 2016 ONSC 2188	Ontario Superior Court of Justice Conlan J	[35] A.B. is a person who is married and has two adult children. A.B. is between 40 and 75 years old. A.B. was diagnosed with a serious medical condition several years ago and has since lost all degree of independence and mobility. Family devotion and strength has kept	[38] Is A.B. capable of making this request? Yes. The medical evidence confirms that A.B. is competent and capable of asking this Court to do what it is being asked to do. Remember, I have evidence from three physicians to rely upon. [39] Is A.B.'s request to terminate life a clear and unequivocal one, cloaked with informed consent and not clouded by any hint of involuntariness, hesitancy, coercion or undue influence? Yes. The evidence from A.B. is crystal clear. Those wishes are fully supported by all of the immediate family members. The medical professionals have explained to A.B. the details of the medical condition, the prognosis, the procedure for and the gravity of terminating life. I have not the slightest concern that this is anything but A.B.'s sincere, unwavering and completely free choice.	[40] As such, A.B. has met all of the requirements for the relief being sought – procedural and substantive. I grant the Application.

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			A.B. alive, notwithstanding the excruciating pain and loss of enjoyment of life. [36] Does A.B. have an eligible medical condition? Yes. A.B. has a relatively rare form of a progressive, permanent and irreversible disease.[2]		
1 April 2016	*A.A. (Re)*, 2016 BCSC 570 (CanLII)	British Columbia Supreme Court The Honourable Chief Justice Hinkson	[5] The petitioner is an adult woman who suffers from multiple sclerosis.	**a) Competence** [18] I adopt the analysis of Chief Justice Joyal in *Patient* at para. 65 with respect to the criterion of competence: > [65] The applicant in the present case submits that "competence" refers to decision-making capacity. The applicant is presumed to be competent. The applicant submits that the common law definition of capacity in the context of making healthcare decisions speaks of "being able to understand the nature, the purpose and consequences of proposed treatment." See *Cuthbertson v. Rasouli*, 2013 SCC 53 (CanLII) at para. 19, [2013] S.C.R. 341. "Treatment" is defined as "anything that is	[33] In the result, I am satisfied that the petitioner meets all the criteria under para. 127 in *Carter 2015*. She is accordingly permitted a physician-assisted death up to and

[2] Note, an earlier order by the court prohibited identification of A.B.'s gender or age or the precise condition rom from which they were suffering (see para 13).

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				done for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment…" See *The Health Care Directives Act*, C.C.S.M. c. H27 at s. 1. The Supreme Court acknowledges that administering medication to hasten death clearly constitutes "treatment". See *Cuthbertson*, *supra*. [19] As I have stated above, the petitioner is an adult. In the circumstances of the present case, the petitioner's capacity has been confirmed by both of the physicians who provided affidavits. Each physician acknowledged that the petitioner is fully competent. While both commented that the petitioner has experienced depression in the past; that condition was successfully treated with medication. Both of the doctors have confirmed that in each of their views, the petitioner is able to reasonably assess the treatment options available to her and that she is competent to choose the course of action that best suits her needs and wishes. [20] The views of these physicians are shared by the petitioner's husband. [21] I therefore find that the petitioner has the competency and capacity to consent to the termination of her life. **b) Consent** [22] I accept that the petitioner understands: a) her medical condition, diagnosis, prognosis, care options; b) the risks associated with her treatment and the care options; c) the risks associated with a physician-assisted death; and	including the 4th day of May 2016, if she so chooses.

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				d) the process that will be used to provide the physician-assisted death. [23] The petitioner's physicians have formed and expressed their opinions that her consent to physician-assisted death is one which is informed, free, voluntary and clear. [24] The petitioner's husband also addresses her request for assistance in preparing for a physician-assisted death and her choice to seek a physician-assisted death. [25] The petitioner has sworn that she understands fully that this is her decision and that it is a decision which she can change at any point in time. She has sworn, and I accept, that her decision to obtain a physician-assisted death was made freely and voluntarily, without influence or coercion by anyone. [26] I am satisfied that the petitioner has carefully and thoughtfully come to her decision to seek a physician-assisted death and that she fully and freely consents to the termination of her life.	
5 April 2016	*W.V. v. Attorney General of Canada*, 2016 ONSC 2302.	Ontario Superior Court of Justice Raikes J	**16** The Applicant is 66 years old. She was injured in a very serious motor vehicle accident several years ago. The accident left her significantly disabled and suffering from chronic pain. She had multiple	**38** The evidence also satisfies me that she clearly consents to the termination of life and has the capacity to give that consent. She has brought this application aware of its implications and desirous of its outcome. The evidence clearly supports a keen awareness of her medical condition, its prognosis, treatment options, palliative care options, and the risks and implications of a physician-assisted death. She is aware that even if the court grants the order that she seeks, she need not pursue physician-assisted death. Her doctors and a psychiatrist have assessed her capacity and unequivocally confirm that she is fully informed, competent and capable of making this decision. Her consent is without coercion, undue influence or ambivalence.	Order granted allowing application (not appended to publicly available transcript of judgment)

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			surgeries including skin grafts that harvested most of the skin on her back. She tried various medical alternatives to deal with the pain which provided minimal relief. Her mobility was dramatically less than before the accident. Nevertheless, she persevered. She bore the pain and adapted as best she could for many years. **17** In 2014, the Applicant noticed a lump in her abdomen. She had surgery to remove the mass from her abdomen. During the surgery, the mass ruptured. Soon after the surgery, she was diagnosed	**39** In my Endorsement of March 24, 2016, I specifically included a provision which requires that her capacity be further assessed when and if she decides to invoke the exemption so as to have a physician-assisted death. That further assessment is a prerequisite to any steps by the physician to assist her. It will ensure that her death, although physician-assisted, is the result of her competent decision.	

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			with clear cell ovarian cancer. Because the mass ruptured during surgery, her oncologist deemed the cancer to be stage IC. Had the mass not ruptured during surgery, there was a prospect that the progression of the disease could be slowed with radiation. **18** Clear cell ovarian cancer is an aggressive cancer that does not respond well to treatment. The Applicant was advised by doctors that it was considered to be "platinum resistant" ovarian cancer.		

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12 April 2016	*C.D. v. Canada (Attorney General)*, 2016 ONSC 2431.	Ontario Superior Court of Justice Perrell J	[1] CD is being ravaged by stage 4 metastatic breast cancer that has spread to her lungs, limbs, bones, and lymphatic system.	[9] I find as a fact that CD is a competent adult person. She has been informed and understands her medical diagnosis, prognosis, and treatment options including palliative care options. Her family doctor, who has known her for almost two decades, and the consulting psychiatrist opined that she has the capacity to make a decision about physician-assisted death. [10] The psychiatrist, who performed a capacity assessment, added that she is not suffering from any active psychiatric or mood disorder. [11] CD has been informed of the physician-assisted death process and of the risks involved. There is no evidence of coercion or anyone influencing her decision, and I find that she clearly and freely consents to the termination of her life. She has expressed and understands that the decision to obtain a physician-assisted death is hers alone. [12] I am also satisfied by the evidence that: (1) CD is a resident of Ontario; (2) she commenced her application after having been fully informed about her medical condition, diagnosis, prognosis, treatment options, and palliative care options; (3) she is aware that her request for an authorization for a physician-assisted death may be withdrawn at any time; (4) she is aware that if the authorization is granted, the decision to use or not use the authorization is entirely hers to make; and (5) she consents without coercion, undue influence, or ambivalence to a physician-assisted death.	[14] I, therefore, grant CD a declaration that she satisfies the criteria for the constitutional exemption granted in *Carter v. Canada (Attorney General),* 2016 SCC 4 for a physician-assisted death.
19 April 2016	*X.Y. v. Canada (Attorney General),* 2016 ONSC 2585	Ontario Superior Court of Justice McEwan J	[1] X.Y. is a woman in her seventies suffering from late stage amyotrophic lateral sclerosis ("ALS").	[14] I find that X.Y. meets the criteria set out by the Supreme Court of Canada in *Carter* – 2015 and *Carter* – 2016 for a physician-assisted death. The record demonstrates that X.Y. is a competent adult person who clearly consents to the termination of life. She clearly has given this decision a great deal of thought over an extended period of time. [15] I am also satisfied by the record filed that X.Y. is a resident of Ontario. She has commenced her application after being fully informed about the ramifications of ALS, her prognosis, treatment options and	21] In keeping with the existing case law and the orders necessary to implement X.Y.'s request for a physician-assisted

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				palliative care options. She is aware that she may withdraw her request for a physician-assisted death at any time and she is aware that the decision to use the authorization, or not, is entirely hers to make. Her decision has been made without coercion, undue influence or ambivalence. X.Y., for at least a year, has been discussing some form of physician-assisted death with her doctors. As a result of the decision in *Carter* – 2016 she decided to pursue this application.	death I grant the following orders: 1. X.Y. meets the requisite criteria to avail herself of the constitutional exemption granted in *Carter* - 2016;
27 April 2016	*EF v Canada (Attorney General)*, 2016 ONSC 2790	Ontario Superior Court of Justice Perell J	[5] EF is almost 80 years old. Two decades ago, after a diagnosis of renal cell carcinoma, her right kidney was surgically removed, and the cancer appeared to have been cured. Unfortunately, in 2012, the renal cancer returned, metastasized, and	[11] The geriatric psychiatrist did a capacity assessment of EF on March 30, 2016, and then re-assessments on March 31, April 4, 6, 8, and 12. Throughout these assessments EF has re-stated her wish for a physician-assisted death. The psychiatrist's opinion is that EF has the capacity to make a decision about physician-assisted death. Based on their own observations, the palliative care physician and the physician prepared to assist with the death agree that EF is competent to make a decision about a physician-assisted death. [12] The opinions of the palliative care physician, the physician prepared to assist in the death, and the geriatric psychiatrist are that: (a) EF has a grievous irremediable medical condition; (b) there is no hope for recovery or improvement in EF's medical condition; (c) EF likely has less than three months to live; (d) EF is experiencing suffering that is intolerable to her, which cannot be and has not been alleviated by any treatment	[19] For the above reasons, I grant EF the following order: THIS COURT ORDERS THAT 1. EF meets the requisite criteria to avail herself of the

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			spread to her bones, spine, skull, lungs, pancreas, and adrenal glands.	acceptable to EF; (e) EF has the mental capacity to make a clear, free, and informed decision about a physician-assisted death; (f) EF understands that her request for a physician-assisted death can be withdrawn at any time; (g) EF makes her request for a physician-assisted death freely and voluntarily; (h) EF understands that it is entirely her own decision to use or not use an authorization for a physician-assisted death. [13] EF's cancer is grievous, terminal, and irremediable. The cancer is causing her to endure excruciating pain and intolerable suffering. Her suffering cannot be alleviated by any treatment. She is a competent adult person. She has been informed and understands her medical diagnosis, prognosis, and treatment options including palliative care options. She has the capacity to make a decision about physician-assisted death. [14] EF has been informed of the physician-assisted death process and of the risks involved. There is no evidence of coercion or anyone influencing her decision, and I find that she clearly and freely consents to the termination of her life. She has expressed and understands that the decision to obtain a physician-assisted death is hers alone. [15] I am also satisfied by the evidence that: (1) EF is a resident of Ontario; (2) she commenced her application after having been fully informed about her medical condition, diagnosis, prognosis, treatment options, and palliative care options; (3) she is aware that her request for an authorization for a physician-assisted death may be withdrawn at any time; (4) she is aware that if the authorization is granted, the decision to use or not use the authorization is entirely hers to make; and (5) she consents without coercion, undue influence, or ambivalence to a physician-assisted death	constitutional exemption granted in *Carter v. Canada (Attorney General)*, 2016 SCC 4 (CanLII); […]
28 April 2016	*G.H. v. Attorney General of Canada*,	Ontario Superior Court of Justice	[3] The Applicant is a man in his sixties who was diagnosed with	[7] Without question, I find that G.H. is a competent adult person. He understands completely his medical condition, and its prognosis. He is well informed about the various treatment options. The opinion of the psychiatrist who assessed the Applicant on April 25, 2016 is that he has the capacity to make a decision about physician-assisted death. He	[10] As a result, I grant G.H. a declaration that he satisfies the criteria for the

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	2016 ONSC 2873.	D. A. Wilson J	Stage IV lung cancer in March 2016.	is not depressed; rather he wishes to be able to have the option of a physician-assisted death if he so chooses. [8] I am satisfied on the record before me that the Applicant has been fully informed about his medical situation, his diagnosis and prognosis and the various treatment options that are available. He is aware that his request for an authorization for a doctor assisted death may be withdrawn at any time and it is entirely his decision to make. I am satisfied that there has been no coercion or undue influence brought to bear in the making of this decision.	constitutional exemption granted in Carter 2016 for a physician-assisted death
5 May 2016 (written judgment 26 May 2016	*Re WBB* 2016 BCSC 1005	British Columbia Supreme Court The Honourable Chief Justice Hinkson	[5] The petitioner is an adult male who suffers from amyotrophic lateral sclerosis ("ALS"), sometimes referred to as Lou Gehrig's disease.	**a) Competence** [18] As I have stated above, the petitioner is a single adult. He has no children. His mental capacity has been confirmed by 2 of his siblings and the 2 physicians who provided affidavits. The doctors have confirmed that in each of their views, the petitioner is able to reasonably assess the lack of treatment options available to him and that he is competent to choose the course of action that best suits his needs and wishes. [19] I accept that the petitioner possesses the mental competence to make the choice that he wishes; to end his life with the assistance of a physician. I therefore find that the petitioner has the competency and capacity to consent to the termination of his life. **b) Consent** [20] The petitioner's physicians and his two siblings who have sworn affidavits have expressed their opinions that his consent to physician-assisted death is one which is informed, free, voluntary and clear.	[35] In conclusion, I have determined that W.B.B. meets the requirements set out in *Carter 2015*, and therefore comes within the class of persons to which the Supreme Court of Canada granted a constitutional exemption from the extension of the suspension of the declaration of invalidity of

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				[21] The petitioner has sworn that he understands fully that this is his decision and that it is a decision which he can change at any point in time. He has sworn, and I accept, that his decision to obtain a physician-assisted death was made freely and voluntarily, without influence or coercion by anyone. [22] I am satisfied that the petitioner has carefully and thoughtfully come to his decision to seek a physician-assisted death and that he fully and freely consents to the termination of his life. [23] I accept that the petitioner understands: i) his medical condition, diagnosis, prognosis, and his limited care options; ii) the risks associated with his treatment and the care options; iii) the risks associated with a physician-assisted death; and iv) the process that will be used to provide the physician-assisted death.	ss. 14 and 241(b) of the *Criminal Code* in *Carter 2016*
6 May 2016	*Tuckwell (Re)*, 2016 ABQB 302	Alberta Court of Queen's Bench Honourable Justice S.J. Greckol	[23] Mr. Tuckwell is 53 years of age. In October of 2012, he was diagnosed with ALS. […] [27] Mr. Tuckwell states	**1. Whether Mr. Tuckwell is a competent adult** [35] I find that Mr. Tuckwell is a competent adult. Competence is presumed, and there is nothing in the record before me that challenges that presumption. There is no suggestion in the medical reports that illness has affected Mr. Tuckwell's mental capacity. The affidavit containing Mr. Tuckwell's evidence shows that he is intelligent and thoughtful and charting his own course through his illness. [36] Physician A, Mr. Tuckwell's treating neurologist, observes that Mr. Tuckwell has had cognitive testing and scored very high, well above	**VII. Conclusion and Terms of Order** [69] I am satisfied based on the affidavit evidence filed, and on the submissions of counsel, that Mr. Tuckwell meets

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			that he has *bulbar limbus* ALS, a form of ALS that started in his mouth, throat and diaphragm. His ALS initially progressed slowly so that he could continue to hike, ski, dive, entertain and travel with family and friends. He planned a trip to Peru for the fall of 2015, but was forced to cancel due to his health. His condition is deteriorating and, as he states in his affidavit, regardless of the form of ALS, it is a terminal disease.	normal range. Though he has understandably experienced periods of sadness, the evidence does not indicate that he is depressed. [37] I agree with the views expressed by Martin J in the decision ***HS (Re)***, that in the absence of any suggestion that the applicant lacks competence, there is no need to have evidence from a psychiatrist. I am confident in these circumstances that this Court can make findings in respect of the ***Carter 2015*** criteria without the assistance of a psychiatrist. **2. Whether Mr. Tuckwell clearly consents to a physician-assisted death** [38] Mr. Tuckwell asserts, and I accept, that he is fully informed about his medical condition and his prognosis. His doctors have advised him, and he accepts, that there are currently no treatments available that can alter the course of his ALS. [39] Since his diagnosis of ALS, Mr. Tuckwell has asked questions of his ALS team about options available to him when his disease progresses to the stage that his suffering becomes too much to bear. After the release of the ***Carter*** decision, when the Alberta Government began to consider its options for dealing with the question, Mr. Tuckwell became a member of the Alberta Health Services Provincial Physician-Assisted Dying Steering Committee. He has served as the Patient and Family representative on that Committee since November 2015. He expresses his view that because of this involvement, he is a uniquely knowledgeable layperson on the question of physician-assisted death, its risks and alternatives. [40] He has also questioned doctors about, and researched the subject of, physician-assisted death as well as the other options available to him. He is aware of the hospice and palliative care facilities available in Edmonton, options that he finds no more tolerable for enduring the progression of the disease. He is aware of the option of withdrawing from care and feeding under palliative sedation. This path is starvation and could	the criteria set out by the Supreme Court of Canada in ***Carter 2015*** so as to be entitled to proceed with a physician-assisted death; and that he comes within the scope of the constitutional exemption granted by the Supreme Court of Canada in ***Carter 2016***.

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				take days or weeks. He states that physician- assisted death is the best option for him given his circumstances. He confirms that his request for a Court Order allowing him to access a physician-assisted death is made freely and voluntarily. Based on the material before me, I accept that to be so. [41] I accept Mr. Tuckwell's view that he is not clinically depressed, but that he makes this decision as a logical one, based on the options he has and the progression of his ALS. [42] Mr. Tuckwell is close with his parents and his sister and has discussed with them his decision to seek an order to allow him to access physician-assisted death; they respect and support his decision. [43] Mr. Tuckwell has met with the doctor who has agreed to assist him if the Order is granted. He is aware of the process that will be followed and the potential risks involved. He understands them and accepts them. [44] Mr. Tuckwell is also aware that if the Court grants this Order authorizing a physician-assisted death for him, the decision whether or not to use that authorization remains entirely his decision to make. [45] Physician B and Physician C swore Affidavits in support of this application. Both confirm that they had complete and full discussions with Mr. Tuckwell about physician-assisted death wherein he communicated with them via his computer. Both confirm he indicated to them in a very clear fashion that it is his wish to end the suffering he is enduring by bringing his life to an end. [46] Both Physician B and Physician C confirm that after full discussions with the Applicant, they are satisfied that he understands the ramifications of his request and as a result, has given his consent to end his life with physician assistance. They confirm that Mr. Tuckwell is fully informed, understands the information given to him by them, appreciates the foreseeable consequences of his decision and ably communicated to them his decision to end his life through physician assistance.	

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				[47] Both physicians B and C have confirmed in their affidavits that they will provide medical assistance to Mr. Tuckwell to help him end his life. [48] I am satisfied on the evidence before the Court that Mr. Tuckwell clearly consents to a physician-assisted death.	
20 May 2016	*M.N. v Canada (Attorney General)*, 2016 ONSC 3346	Ontario Superior Court of Justice Firestone J	[1] The Applicant M.N. suffers from terminal ampullary cancer which has metastasized to her liver and ovaries. The medical evidence confirms that her current life expectancy is less than six months in light of the malignancy of the cancer, her functional status, and her current rate of deterioration.	[9] M.N. is a competent adult. She currently makes her own decisions pursuant to the *Health Care Consent Act*. Her consulting psychiatrist has confirmed that, based on his assessment, M.N. has the mental capacity to make a decision about a physician-assisted death. Her consulting psychiatrist, palliative care physician and the physician proposed to assist with death have not observed anything to call into question M.N.'s mental capacity to make a clear, free and informed decision about physician-assisted death. […] [13] M.N. clearly consents to the termination of her life. [14] This application was commenced after M.N. was fully informed about, and with an understanding of, her medical condition, diagnosis, prognosis, and treatment options. She has made the decision to obtain, and consents to, a physician-assisted death freely, without coercion, undue influence or ambivalence. It has been explained to her and she understands that her decision to obtain a physician-assisted death is hers alone. She is aware that the request for an authorization for a physician-assisted death may be withdrawn at any time before the application is heard and that if the application is granted, the decision to use or not use the authorization, and when to use it, is entirely her own decision to make. The physician-assisted process has been explained to her in detail by the physician proposed to assist death. She understands that the medication to cause death would be administered intravenously and would result in certain death.	[15] I, therefore, grant M.N. a declaration that she satisfies the criteria for the constitutional exemption granted in *Carter v. Canada (Attorney General),* for a physician-assisted death.

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24 May 2016	*I.J. v. Canada (Attorney General)*, 2016 ONSC 3380	Ontario Superior Court of Justice Perell J	[4] I.J. is almost ninety year old man. Although his medical conditions are not imminently terminal or life-threatening, they are horrific. [5] I.J. has: spinal stenosis; discogenic disease; neurogenic claudication; lumbosacral facet osteo-arthropy, spondylolisthes; rotoscoliosis; major kyphosis; and sacroiliac joint complex pain disorder. He is deformed to the point where he cannot stand erect or sit comfortably. His chin rests on his chest, and he feels like he is being strangled. He has difficulty breathing,	[14] I am satisfied by the evidence that: (I) I.J. is a resident of Ontario; (2) he commenced his application after having been fully informed about his medical conditions, diagnosis, prognosis, treatment options, and palliative care options; (3) he is aware that his request for an authorization for a physician-assisted death may be withdrawn at any time; (4) he is aware that if the authorization is granted, the decision to use or not use the authorization is entirely his to make; and (5) he consents without coercion, undue influence, or ambivalence to a physician-assisted death.	[25] For the above reasons, I grant: a. An order declaring that I.J. meets the requisite criteria in order to permit him to avail himself of the constitutional exemption authorizing a physician-assisted death;

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			swallowing, and speaking. He has pain in all his limbs, his buttocks, his back, his hip, his neck. His skin itches. The condition of his bone and joint pain are worsening, and he is beginning to lose the ability to hold a pen and eating utensils. He can walk with a walker albeit just barely and painfully. His digestive, bowel, and urinary systems are dysfunctional. He is in constant excruciating pain, and the pain is increasing. He has no energy because it is taken up fighting the pain. He has sleep apnea from the pain and the itchiness. Pain		

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			medications aggravate his severe constipation and digestive issues. He is exhausted and stressed but he does not want for mental acuity and capacity. He describes the mental anguish that comes from being trapped in a pain- wracked, constipated, effectively immobile body as an intolerable state of being. He says his life is unbearable. He says that he will starve himself to death if the assisted death application is refused. He says he cannot take this suffering or existence anymore.		

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28 May 2016	*H.H. (Re)*, 2016 BCSC 971	British Columbia Supreme Court The Honourable Chief Justice Hinkson	[5] The petitioner is an adult woman who suffers from a constellation of medical difficulties. Her condition is known as mitochondrial encephalomyopathy, lactic acidosis, and stroke-like episodes, or by the acronym "MELAS". In her affidavit in support of her petition, she described the onset of the symptoms of her syndrome beginning in 2000, leading to a stroke in December of 2014 and a second stroke in the following month. Her condition has required surgery, affected her memory and manifested itself in aphasia, hemiparesis,	**a) Competence** [14] As I have stated above, the petitioner is an adult. The Attorney General for British Columbia initially opposed the application, expressing concern through her counsel as to the petitioner's capacity to consent to a physician-assisted death. In the result, the hearing of the petition was adjourned at the petitioner's request, so that she could obtain further affidavit evidence with respect to her capacity to consent to the relief that she seeks in her petition. [15] That evidence has now been filed in the form of further affidavits from the petitioner, her husband, her general practitioner, her palliative care physician and Dr. Wiebe, as well as that of a Canadian-trained and certified consulting psychiatrist who practices in Los Angeles, California. The psychiatrist conducted a detailed evaluation of the petitioner's mental state via what she referred to as telemedicine, on May 8, 2016. She concluded that the petitioner is fully capable of requesting an authorization for a physician-assisted death, and has the mental capacity to make a free, clear, and well-informed decision about receiving aid in dying. [16] The petitioner's mental capacity has been confirmed by each of the physicians who provided affidavits. The doctors have sworn that in each of their views, the petitioner is able to reasonably assess the treatment options available to her and she is competent to choose the course of action that best suits her needs and wishes. [17] The views of these physicians are shared by the petitioner's husband. [18] The affidavits of the physicians have satisfied the concerns of the Attorney General respecting the petitioner's cognitive and psychiatric state, and I have no such concerns.	[42] In conclusion, I have determined that H.H. meets the requirements set out in *Carter 2015*, and therefore comes within the class of persons to which the Supreme Court of Canada granted a constitutional exemption from the extension of the suspension of the declaration of invalidity of ss. 14 and 241(b) of the *Criminal Code* in *Carter 2016*.

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			myoclonus, hemianopia and hearing loss. She is in pain as a result of her condition and fears experiencing another stroke. She states that her illness is incurable and that her physical and psychological suffering from her condition is intolerable to her.	[19] While she is suffering from memory loss and aphasia, I accept that her mental faculties have not been compromised to the extent that she cannot competently make the choice that she wishes; to end her life with the assistance of a physician. I therefore find that the petitioner has the competency and capacity to consent to the termination of her life. **b) Consent** [20] The petitioner's physicians and the consulting psychiatrist have formed and expressed their opinions that her consent to physician-assisted death is one which is informed, free, voluntary and clear. [21] The petitioner's husband also addressed her request for assistance in preparing for a physician-assisted death and her choice to seek a physician-assisted death. [22] The petitioner has sworn that she understands fully that this is her decision and that it is a decision which she can change at any point in time. She has sworn, and I accept, that her decision to obtain a physician-assisted death was made freely and voluntarily, without influence or coercion by anyone. [23] I am satisfied that the petitioner has carefully and thoughtfully come to her decision to seek a physician-assisted death and that she fully and freely consents to the termination of her life.	
15 June 2016	*O.P. v Canada (Attorney General)*, 2016 ONSC 3956	Ontario Superior Court of Justice Perell J	[1] O.P., who is in his sixties, has end-stage (Stage 4) glioblastoma multiforme, an	[58] I am satisfied on the evidence that: (1) O.P. is a resident of Ontario; (2) he commenced his application after having been fully informed about his medical condition, diagnosis, prognosis, treatment options, and palliative care options; (3) he is aware that his request for an authorization of a physician-assisted death may be withdrawn at any time; (4) he is aware that if the authorization is granted, the decision to use or not use the	[63] For the above reasons, I grant: a. An order declaring

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			incurable brain cancer in his left temporal lobe. His prognosis is that he will die in three months.	authorization is entirely his to make; (5) he has the mental capacity to give an informed consent to a physician-assisted death; and (6) he consents without coercion, undue influence, or ambivalence to a physician-assisted death. [59] I am satisfied that there are physicians willing to assist O.P. in dying if a physician-assisted death were authorized by court order and that the physicians believe that providing assistance would clearly be consistent with O.P.'s wishes and that they understand that the decision to use or not use the authorization is entirely O.P.'s to make. [60] I find as a fact that O.P. meets the criteria set out by the Supreme Court of Canada in *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), and *Carter v. Canada (Attorney General)* for a physician-assisted death. [61] In *A.B. v. Canada (Attorney General)*, 2016 ONSC 1912 (CanLII), I described the criteria that must be satisfied for the court to authorize a physician-assisted death; namely: (1) the person is a competent adult person; (2) the person has a grievous and irremediable medical condition including an illness, disease or disability; (3) the person's condition is causing him or her to endure intolerable suffering; (4) his or her suffering cannot be alleviated by any treatment available that he or she finds acceptable; and, (5) the person clearly consents to the termination of life. On the evidence, I find that all of these criteria are satisfied in the immediate case.	that O.P. meets the requisite criteria for the court to authorize a physician-assisted death; […]

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		and judge(s)			
No date seen on transcript	*Patient 0518 v RHA 0518*, 2016	Saskatchewan Court of Queen's Bench Popescul, C.J.Q.B	[1] Patient 0518 [also referred to as the "Applicant"], is an adult woman who has two serious and despairing medical conditions for which there is no cure. She has Amyotrophic Lateral Sclerosis [ALS] which her doctor describes as a "rapidly progressive, invariably fatal neurological disease that attacks the nerve cells responsible for controlling voluntary muscles … The disease is characterized by the gradual degeneration and death of motor neurons." She also has metastatic bone disease. These two conditions are causing her ongoing suffering, both physically and mentally, despite best medical efforts.	**IV Analysis** *a) Patient 0518 is a competent adult.* [12] The record before the Court establishes, without question, that Patient 0518 is a competent adult. [13] The common law definition of capacity in the context of making health care decisions is being able to understand the nature, the purpose and the consequences of proposed treatment. See *Cuthbertson v Rasouli*, 2013 SCC 53 (CanLII) at para 79, [2013] 3 SCR 341 [*Cuthbertson*]. Administering medication to hasten death constitutes "treatment". See *Cuthbertson* at paras 61 and 68. [14] Three physicians have assessed the Applicant's competency and found that she is competent. Physician C0518 states: 12. Based on my assessments of the Applicant, it is my expressed medical opinion that the Applicant is fully competent and understands the diagnosis, projected prognosis, and all treatment options available. It is my opinion that the Applicant is not being influenced by outside sources and continues to experience suffering on a daily basis. It is also my opinion that the treatment options available to the Applicant are not acceptable to her. [15] The Applicant is able to communicate by looking at a board of letters to formulate individual words. The Applicant's daughter and care aide are able to translate the communications. The Applicant has filed an affidavit. The affidavit is coherent. There is nothing in the record to indicate anything other than competency or capacity. According to one of the Applicant's doctors, there are no signs of a severe depressive episode or other	**V Conclusion** [34] I find, on the evidence before me, that Patient 0518 meets the criteria set out in *Carter 2015* and therefore qualifies for the constitutional exception granted by the Supreme Court of Canada in that case.

				psychiatric illness that could be shaping the Applicant's decision to request physician-assisted death. [16] I find that the first criterion has been met. *b) Patient 0518 clearly consents to the termination of life.* [17] The Applicant has sworn an affidavit in which she states that her decision to obtain a physician-assisted death was made freely and voluntarily and that she has not been influenced or coerced by anyone. Her desire to seek a physician-assisted death has been longstanding. She has been seriously contemplating hastening her death since being diagnosed with ALS. [18] The Applicant states in her affidavit that she understands fully and completely that the decision to seek physician-assisted death is her choice and that she understands that she has the right to change her mind at any time. [19] The Applicant also deposes that she understands her medical condition, diagnosis, prognosis, palliative care options, and the risks associated with a physician-assisted death. [20] Each of the Applicant's three physicians who have filed affidavits have attested to their respective beliefs that the Applicant's consent to physician-assisted death is informed, free, voluntary and clear. [21] Further, the Applicant's family members, including her children and sister, all attest that the Applicant has requested their assistance in seeking physician-assisted death and speak of her determination to seek out such a process. [22] I find that the second criterion has been met.	
