JUDICIARY OF
ENGLAND AND WALES

R oao Nicklinson and Lamb v Ministry of Justice
&
R oao AM v Director of Public Prosecutions

Court of Appeal (Civil Division)

31 July 2013

SUMMARY TO ASSIST THE MEDIA

The Court of Appeal (Lord Chief Justice, Master of the Rolls and Lord Justice Elias) has today unanimously dismissed appeals by Jane Nicklinson and Paul Lamb challenging the legal ban on voluntary euthanasia.

The Court, by a majority decision, allowed an appeal by AM to the policy of the Director of Public Prosecutions in cases of assisted dying. The Lord Chief Justice gave a dissenting judgment.

R oao Nicklinson and Lamb v Ministry of Justice

These appeals concern two individuals who suffer from permanent and catastrophic physical disabilities. Both are of sound mind and acutely conscious of their predicament. They have each expressed a settled wish to end their life at a time of their own choosing in order to alleviate suffering and to die with dignity.

The Court unanimously dismissed appeals by Jane Nicklinson and Paul Lamb challenging the legal ban on voluntary euthanasia.

Lord Judge, in his last civil judgment before he retires as Lord Chief Justice, said:

"….The short answer must be, and always has been, that the law relating to assisting suicide cannot be changed by judicial decision. The repeated mantra that, if the law is to be changed, it must be changed by Parliament, does not demonstrate judicial abnegation of our responsibilities, but rather highlights fundamental constitutional principles.

"The circumstances in which life may be deliberately ended before it has completed its natural course, and if so in what circumstances, and by whom, raises profoundly sensitive questions about the nature of our society, and its values and standards, on which passionate but contradictory opinions are held. Addressing these life and death issues in relation to life before birth, the circumstances in which a pregnancy may be terminated were decided by Parliament. The abolition of the death penalty following the conviction for murder was, similarly, decided by Parliament. For these purposes Parliament represents the conscience of the nation. Judges, however eminent, do not: our responsibility is to discover the relevant legal principles, and apply the law as we find it. We cannot suspend or dispense with primary legislation. In our constitutional arrangements such powers do not exist. They are not vested in any one or any body. Parliament itself cannot suspend

or dispense with primary legislation. It may enact new provisions amending the law. When it does so, the change follows as a result of fresh legislative enactment which, far from suspending or dispensing with the law, confirms that a suspending or dispensing power is a stranger to our constitution." (paras 154 – 155)

He added:

"… whatever the personal views of any individual judge on these delicate and sensitive subjects, and I suspect that the personal views of individual judges would be as contradictory as those held by any other group of people, the constitutional imperative is that, however subtle and impressive the arguments to the contrary may be, we cannot effect the changes or disapply the present statutory provisions, not because we are abdicating our responsibility, but precisely because we are fulfilling our proper constitutional role." (para 156)

R ogo AM v Director of Public Prosecutions

AM (known as "Martin") can end his life but needs the assistance of a third party.

The Court, by a majority decision, allowed an appeal by AM to the policy of the Director of Public Prosecutions in cases of assisted dying. The Lord Chief Justice gave a dissenting judgment.

Counsel for Martin submitted that the DPP's policy provided the necessary degree of clarity for what he described as "class 1 helpers" (spouses, friends or family with emotional ties to the person committing suicide, who act in good faith and out of compassion, and where there are no particular grounds for concern about the motives of the helper or the vulnerability of the person being helped). However, the policy was defective in that it failed to give adequate clarity as to another group, which he described as "class 2 helpers" ((those with no emotional ties to the person committing suicide, such as healthcare professionals).

Lord Dyson, the Master of the Rolls, and Lord Justice Elias, in their majority judgment concluded that: it is not sufficient for the Policy merely to list the factors that the DPP will take into account when deciding whether to consent to prosecution (see para 138). The Policy should give some indication of the weight the DPP accords to the fact that the helper was acting in his or her capacity as a healthcare professional (see para 140).

They said it would be constitutionally improper for the DPP to guarantee immunity from prosecution in respect of any class of helpers (see para 142). Further, it would be impractical, if not impossible, for the DPP to lay down guidelines which would embrace every class 2 case but that it is not impossible or impractical to amend the Policy so as to make its application in relation to class 2 cases more foreseeable than it currently is (see para 144).

In his dissenting judgment, Lord Judge said:

"In the context of Martin's appeal I must record at this early stage my concern that the requirement of the consent of the Director of Public Prosecutions (DPP) to any prosecution for assisting suicide in accordance with s.2(4) of the Suicide Act 1961 (the 1961 Act) should not inadvertently be developed in such a way as to undermine this constitutional imperative." (para 156)

"Save for the purposes of the forensic argument, I do not believe that the distinction between "class 1" and "class 2" helpers is helpful. Naturally, it would come as no surprise at all for the DPP to decide

that a prosecution would be inappropriate in a situation where a loving spouse or partner, as a final act of devotion and compassion assisted the suicide of an individual who had made a clear, final and settled termination to end his or her own life. The policy does not limit, and we know from the responses to the consultation process, deliberately does not restrict the decision to withhold consent to family members or close friends acting out of love and devotion. The policy certainly does not lead to what would otherwise be an extraordinary anomaly, that those who are brought in to help from outside the family circle, but without the natural love and devotion which obtains within the family circle, are more likely to be prosecuted than a family member when they do no more than replace a loving member of the family, acting out of compassion, who supports the "victim" to achieve his desired suicide. The stranger brought into this situation, who is not profiteering, but rather assisting to provide services which, if provided by the wife, would not attract a prosecution, seems to me most unlikely to be prosecuted. In my respectful judgment this policy is sufficiently clear to enable Martin, or anyone who assists him, to make an informed decision about the likelihood of prosecution." (para 186)

"For these reasons, which for the purposes of a dissenting judgment have taken longer to express than I would have wished, in agreement with the Divisional Court, my conclusion would have been that Martin's appeal, too, should be dismissed." (para 188)

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This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.