Let It Go – The Charter and the Right to Be Frozen

This article was written by law students for the general public.

What's the Issue?

Cryonics is a method of preserving dead bodies. The process uses low temperatures to avoid decomposition. This allows people to have their bodies frozen after death, with the hope of eventual resuscitation.

Section 14 of the *Cremation, Interments and Funeral Services Act* makes selling cryonics services illegal in British Columbia.[1] The Lifespan Society of British Columbia wants to sell cryonics services to Mr. Keegan Macintosh. Lifespan and Mr. Macintosh want the law prohibiting cryonics to be declared unconstitutional. They claim it violates section 7 of the *Charter of Rights and Freedoms*, which is part of the Canadian Constitution.[2] Section 7 protects the right to life, liberty and security of the person.[3]

Things to Consider

Life – The applicants claim that the *Cremation, Interments and Funeral Services Act* violates the right to life. They say it denies people the chance of extending their life through cryonics. This could be a problem because the applicants define cryonics as preservation of the body after clinical death.[4] So, does the right to life extend past death, like the applicants suggest? This would be a very novel interpretation of the right to life.

Liberty – The applicants say the prohibition against cryonics also violates the right to liberty. They claim it interferes with liberty because people cannot dispose of their bodies as they wish, nor can they seek care after clinical death. People can donate organs after they die, and can choose to be cremated or buried. So, why not allow cryonics? However, to demonstrate that a potential harm will infringe the section 7 liberty right, there needs to be a connection between the government action and the potential harm. This link must be probable and capable of proof.[5] In this case, that link might be difficult to establish because Lifespan does not promise resuscitation. Instead, they say that cryonics "offers a possibility of resuscitation," depending on the future of medicine.[6]> So, is the link between the cryonics prohibition and the denial of future treatment established?

Security of the Person – Finally, the applicants claim that the security of the person right is infringed, since the people who sell cryonics can face jail and fines. Imprisonment is a physical deprivation of a person's liberty.[7] As such it, seems like the possibility of jail would more likely affect the liberty right. Additionally, economic consequences, such as fines, are not protected by section 7.[8] A court will have to look at whether the ban on selling cryonics reaches this threshold. So, does the *Cremation, Internments and Funeral Services Act* violate the personal security of cryonics providers because of possible

imprisonment and fines?

The constitutional issues raised in this case are complex. It will be very interesting to see how the courts deal with them.

This article was jointly written by Mark Moore, Filippo Titi and Juliana Ho.

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[1]*Cremation, Interment and Funeral Services Act*, SBC 2004, c-35, s 14

[2] *Lifespan Society of British Columbia and Keegan Macintosh v British Columbia*, BCSC (Plaintiffs' Notice of Civil Claim)

[3] *Canadian Charter of Rights and Freedoms*, s 7,Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

[4] *Supra* note 2 at para 7

[5] *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at 456-458

[6] *Supra* note 2 at para 11

[7] *Reference Re BC Motor Vehicle Act*, [1985] 2 SCR 186 at 515

[8] *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at 53

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