

Supplement to Media Watch | 25 May 2009 Edition (#98)

Assisted (or Facilitated) Death: The Debate in Canada

Summarized are notable "developments" – also highlighting those in other countries – that inform discussion in Canada on end-of-life issues, specifically the debate on assisted (or facilitated) death.

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International Perspective: Europe

19 May 2009 – Members of the British House of Lords are to get a free vote (in June) over whether or not to allow people to assist with suicide, including helping relatives to travel to the Dignitas clinic in Switzerland to end their lives. This follows the highly publicized case of Debbie Purdy, a woman who suffers from multiple sclerosis and who failed in her court bid to have the option of an assisted death without risk of prosecution of her husband (if he accompanied her to the Swiss clinic).

12 May 2009 – Parti Québécois MP Francine Lalonde introduced a Private Member's Bill to decriminalize assisted suicide and euthanasia. Her previous attempts, Bill C-407 (**2005**) and Bill C-562 (**2008**), died on the Order Paper with the dissolution of Parliament in the fall of both years.¹

International Perspective: Europe

April 2009 – Margo Macdonald, a Member of the Scottish Parliament, secured sufficient support to force a debate on assisted suicide.

International Perspective: U.S.A.

17 April 2009 – The Patient Choice & Control at the End of Life Act was introduced in the Vermont legislature. The Act, if passed, would allow a person with a terminal illness to request medication for the purpose of hastening death.

N.B. A decision is pending by the Montana Supreme Court on an appeal to overturn a state judge's ruling that residents of Montana have a legal right to assisted suicide. The State Legislature has not acted on a draft bill that would enshrine the lower court's ruling.

Oregon-styled assisted suicide bills are pending in Massachusetts (An Act Relative to Dying with Dignity) and Pennsylvania (Death with Dignity). New Hampshire's Dying with Dignity Act is in committee. Bills to decriminalize Assisted suicide failed in Connecticut, Hawaii and New Mexico.

Oregon reported in March that 88 prescriptions for lethal medications were written in 2008 under the provisions of the State's Dying with Dignity Act; of these, 54 patients took the medications.

5 March 2009 – The State of Washington's assisted suicide bill took effect.

International Perspective: Europe

March 2009 – Luxembourg decriminalized assisted suicide and euthanasia.

12 December 2008 – A jury acquitted Stéphan Dufour on a single charge of assisted suicide. Dufour was charged with helping his ailing uncle, Chantal Maltais, hang himself in **2006** and is the first Canadian to stand trial by jury for assisted suicide. The Crown – to appeal the decision – laid charges against Mr. Dufour under section 241 of the Criminal Code (counselling or aiding suicide).²

International Perspective: U.S.A.

1 October 2008 – The Governor of California signed into law the State's Right to Know End-of-Life Options Act, an amended version of assisted suicide bills that failed in **2005**, **2006** and **2007**.

24 June 2008 – Sam Golubchuk died in a Winnipeg hospital before the Manitoba Law Courts could rule in a highly publicised legal action brought by Golubchuk's family to prevent doctors from removing their father from life support. Three doctors resigned, refusing to care for Golubchuk, on the grounds they were unnecessarily inflicting pain on an individual so close to death.

30 January 2008 – The College of Physicians & Surgeons of Manitoba issued 'Withholding & Withdrawing Life-Sustaining Treatment,' a statement "to assist physicians, their patients and others involved with decisions to withhold or withdraw life-sustaining treatment."³

July 2007 – The RCMP decided not to lay charges in the assisted suicide case of Elizabeth MacDonald, a Canadian with multiple sclerosis (MS) who died in Switzerland with the assistance of the organization Dignitas. Her husband, Eric, was with her when she died. The RCMP stated that no infraction of the Criminal Code was committed in Canada.

June 2007 – A B.C. court sentenced Dr. Ramesh Kumar Sharma for aiding the suicide of Ruth Wolfe, a 93-year-old woman suffering from heart problems, by prescribing her a fatal dose of drugs. The court imposed a conditional sentence of two years less a day to be served in the community. Dr. Sharma's licence was revoked by the B.C. College of Physicians & Surgeons.

1 May 2007 – The Canadian National Palliative Care Survey found a large proportion of patients receiving palliative care for cancer would consider making a request for assisted suicide if it were legally available ... but, only if their worst fears about pain and symptoms actually came true.⁴

N.B. Authors of an article in a **2007** edition of the *Canadian Journal of Public Health* observed that public opinion polls on euthanasia should be interpreted in the light of the wording of the question. Education of the population concerning euthanasia, and other end-of-life decisions, would be an important prerequisite to engage in public debate concerning the legalization of euthanasia.⁵

22 November 2006 – The Canadian Hospice Palliative Care Association released 'Euthanasia, Physician-Assisted Suicide & Quality End-of-Life Care,' a discussion document.⁶

September 2006 – Raymond Kirk pleaded guilty to aiding the suicide of his wife. The Ontario Court of Justice suspended Kirk's sentence and imposed a sentence of three years' probation.

July 2005 – André Bergeron was charged with the attempted murder of his wife, Marielle Gagnon, who had Friedreich's ataxia, an inherited disease that causes progressive damage to the nervous system. Bergeron was sentenced to three years' probation for aggravated assault.

Something Missed or Overlooked?

Please advise this office (contact information below) of any omissions or oversights so that future updates of this document will provide as complete an overview as possible.

June 2005 – Senator Sharon Carstairs published *Still Not There: Quality End-of-Life Care: A Progress Report*, which examined progress on implementing the recommendations made in the Senate of Canada Committee reports tabled in **1995** and **2000**.⁷

N.B. Carstairs called for a renewed commitment to a national strategy on palliative and end-of-life care. She recommended that research be undertaken into how many people are requesting euthanasia, why it is being requested, and whether there are any alternatives that might be acceptable to those making the requests.

International Perspective: U.S.A.

31 March 2005 – Terri Schiavo, a 41-year-old brain-damaged woman who became the focus of a highly publicised, national right-to-die battle died two weeks after doctors removed the feeding tube that had sustained her for more than a decade.

November 2004 – Evelyn Martens was acquitted of aiding and abetting the suicides of two women that took place in **2002**.

September 2004 – Marielle Houle was charged with aiding and abetting the suicide of her 36-year-old son, Charles Fariala, who had multiple sclerosis. Houle pleaded guilty to aiding and abetting the suicide of her son, and was sentenced to three years' probation

International Perspective: Europe

16 May 2002 – Belgium decriminalized euthanasia.⁸

1 April 2002 – Holland decriminalized euthanasia. There was no change in practice, as the new law codified rules and requirements that had developed over the previous 25 years.

11 December 2001 – The Swiss National Council confirmed the assisted suicide law, but maintained the prohibition of voluntary euthanasia. Physician and non-physician suicide was decriminalized in **1941**.

June 2000 – A Senate Subcommittee studied developments with respect to recommendations made in *Of Life & Death – Final Report (1995)* and issued *Quality End-of-Life Care: The Right of Every Canadian*.⁹

N.B. Authors of the Subcommittee report concluded that the calls for a more compassionate and a more comprehensive approach to end-of-life seemed to be assigned a low priority in the existing health care system, and that there had not yet been the required shift of resources to end-of-life care.

19 June 1998 – The Canadian Medical Association (CMA) issued a policy statement opposing the legalization of euthanasia and assisted suicide. The CMA urged its members to uphold the principles of palliative care.¹⁰

N.B. In November **2007**, the CMA made minor changes to its policy, but reaffirming the association's position. The College of Family Physicians of Canada similarly opposed legalization of euthanasia and assisted suicide.¹¹

In October **2005**, a group of Canadian physicians and lawyers issued a joint statement opposing legalization of euthanasia and assisted suicide.¹²

25 March 1998 – Motion M-123, calling for a special committee to review the provisions in the Criminal Code dealing with euthanasia and assisted suicide, was rejected by the House of Commons.

N.B. The motion was introduced in November **1997** by Svend Robinson, who had failed on two occasions to introduce a Private Member's bill to decriminalize assisted suicide (in **1992** and **1994**).

International Perspective: U.S.A.

27 October 1997 – The State of Oregon enacted its Death with Dignity Act, the first such legislation in the U.S., which allows a terminally-ill patient to end their life through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose.¹³

1997 – Canadian researchers published the findings of a comparative survey of physicians, terminally ill cancer patients, and the general population.

N.B. A marked polarization of attitudes was observed. The researchers suggested legalization of euthanasia and/or assisted suicide would be "highly divisive and controversial from a societal perspective."¹⁴

May 1997 – Dr. Nancy Morrison was charged with the first-degree murder of a terminally ill patient who had been removed from active life support.

N.B. In February **1998**, a Nova Scotia judge found that there was not sufficient evidence for a jury to convict Morrison and refused to commit her to trial.

27 October 1996 – The Liberal Party of Canada, at Party's convention in Ottawa, passed a resolution endorsing legalizing euthanasia. No further action was taken on the issue.

1994 – National Angus Reid Poll found that 74% of Canadians believed a medical doctor should be able to legally help a terminally ill patient end their life if this is what the patient wants.

November 1994 – Robert Latimer was convicted of second-degree murder in the asphyxiation death of his 12-year-old daughter, Tracy, who was diagnosed at birth with cerebral palsy. Latimer was sentenced to life in prison with no eligibility for parole for ten years. Subsequently:

February 1997 – The Supreme Court of Canada ordered a new trial for Latimer.

December 1997 – Latimer was sentenced to two years less a day.

November 1998 – The Saskatchewan Court of Appeal confirmed the conviction of Latimer and upheld the original sentence.

January 2001 – The Supreme Court of Canada upheld the decision of the Saskatchewan Court of Appeal.

March 2008 – Latimer was released on parole.

23 February 1994 – A Special Senate Committee was established to examine and report on the legal, social and ethical issues relating to euthanasia and assisted suicide.

N.B. The Committee issued *Of Life & Death – Final Report* in June **1995**, recommending that euthanasia and assisted suicide should not be decriminalized, that priority be given to improving access to palliative care. A minority of the Committee members recommended the creation of a separate offense of compassionate homicide that would carry a less severe penalty than a mandatory life sentence. The report also identified additional issues with regard non-voluntary euthanasia and end-of-life decisions, for example those involving persons in persistent vegetative states.¹⁵

6 February 1994 – Private Member's Bill C-215 was introduced.

N.B. Bill C-215 would have permitted physician assisted suicide upon the request of a terminally ill patient. The Bill was dropped from the Order Paper 21 September **1994**.

15 February 1994 – Prime Minister Jean Chrétien stated that MPs would have a free vote on whether to decriminalize doctor-assisted suicide. This did not come to pass.

14 February 1994 – Justice Minister Allan Rock stated that the issues of cessation of treatment and assisted suicide should be considered by Parliament.

3 November 1993 – The B.C. Ministry of the Attorney General issued guidelines for Crown Counsel with respect to charging persons involved in cases of active euthanasia and/or assisted suicide.

30 September 1993 – In a five-to-four decision, the Supreme Court of Canada dismissed an appeal by Sue Rodriguez in which she challenged the validity of the Criminal Code, which prohibited an assisted suicide, under the Canadian Charter of Rights & Freedoms. Rodriguez was diagnosed in 1991 with amyotrophic lateral sclerosis (ALS).

N.B. Sue Rodriguez committed suicide with the assistance of a physician on 12 February **1994**. The death was investigated by police, but no criminal charge was laid.

April 1993 – An Ontario physician who gave a lethal injection to a seriously ill cancer patient received a three-year suspended sentence after pleading guilty to a charge of administering a noxious substance to endanger life. The original charge of second-degree murder was withdrawn.

22 March 1993 – Federal MPs defeated a motion that called upon the government to consider the advisability of introducing legislation on the subject of euthanasia and ensuring that those assisting terminally ill persons who wish to die will not be subject to criminal liability.

1992 – The Euthanasia Prevention Coalition of British Columbia (EPCBC) was established.

August 1992 – Scott Mataya, a Toronto nurse who had originally been charged with first-degree murder in the mercy killing of a terminally ill patient, entered a guilty plea to a lesser charge of administering a noxious substance to endanger life. Mataya received a suspended sentence and he was ordered to surrender his nursing licence.

30 January 1992 – An unnamed Ontario surgeon was charged with second-degree murder in connection with the death of a seriously ill cancer patient who allegedly died of a cardiac arrest after having been administered morphine and potassium chloride. The physician received a three-year suspended sentence after pleading guilty to a charge of administering a noxious substance to endanger life. The second-degree murder charge was withdrawn.

6 January 1992 – The Quebec Superior Court ruled in the case of Nancy B. (a pseudonym), a woman living with Guillain-Barré syndrome, a neurological disease. The Court ruled that turning off her respirator at her request and letting nature take its course would not be a criminal offence, constituting refusal of treatment and not assisted suicide. Nancy B. died in February **1992**.

International Perspective: The Netherlands

10 September 1991 – In Holland, the Rammelink Commission released findings from a comprehensive study of Dutch euthanasia practices.

N.B. Comparative studies were published in **1995** and **2001**.¹⁶

1991 – The B.C. College of Physicians & Surgeons issued a statement opposing euthanasia following a review of the deaths of two patients of Dr. Peter Graff. A provincial coroner ruled that both patients had died from morphine overdoses and urged the College to review Dr. Graff's actions. The College ruled that the doctor's method of treatment was unacceptable. No criminal charges were laid.

1991 – Dr. Alberto de la Rocha was convicted of administering a noxious substance to endanger life when he administered injections of morphine and potassium chloride. The patient had asked Dr. de la Rocha to remove her breathing tube to end her suffering. The doctor received a suspended sentence and three years' probation. At a hearing of the Discipline Committee of the College of Physicians & Surgeons of Ontario, he pleaded guilty to professional misconduct. His license was suspended for 90-days.

19 June 1991 – Private Member's Bill C-261 was introduced.

N.B. If passed, Bill C-261 would have decriminalized euthanasia for a patient who requested it and who was suffering from an "irremediable condition." The Bill was debated at a second reading on 24 October **1991**, but was dropped from the Order Paper

16 May 1991 – Private Member's Bill C-203 was introduced.

N.B. If passed, Bill C-203 would have protected a physician against criminal liability where the physician did not initiate or continue treatment at the request of the patient or where the physician did not prolong life, except at the patient's request. The Bill would also have protected a physician who administered treatment to a patient even though the effect of that treatment would hasten death.

Bill C-203 received second reading on 24 September **1991** and, subsequently, was referred to a Legislative Committee for consideration. The Committee began hearings 29 October **1991**, but adjourned 18 February **1992** *sine die* (i.e., the matter was stayed permanently).¹⁷

1990 – In *Malette v. Shulman*, the Ontario Court of Appeal upheld the right of a Jehovah's Witness to refuse life-saving blood transfusions and the principle that health professionals have a duty to respect such a refusal.

1990 – David Lewis, a Vancouver man living with HIV, claimed he had assisted eight friends, all suffering from AIDS, in committing suicide. In August **1990**, Lewis took his own life.

1984 – The Canadian Hospital Association, the Canadian Medical Association and the Canadian Nursing Association issued 'A Joint Statement on Terminal Illness,' which established a procedure for Do Not Resuscitate (DNR) orders.

1983 – The (now defunct) Law Reform Commission of Canada released *Report on Euthanasia, Aiding Suicide & Cessation of Treatment*.

N.B. The Commission recommended against legalizing or decriminalizing voluntary euthanasia and aiding suicide. In **1987**, the Commission released proposals for amending the Criminal Code, recommending that mercy killing be treated as second-degree murder ("ordinary murder") rather than as first-degree murder ("premeditated murder"). Second-degree murder would carry no fixed or minimum jail term.

1982 – Dr. Nachum Gal was charged with first degree murder for allegedly ordering a lethal overdose of morphine for an infant. Dr. Gal fled to Israel. The federal government was unable to have him extradited back to Canada. Two nurses involved with the infant's death were suspended from nursing for one year.

June 1980 – The Canadian pro-euthanasia group Dying with Dignity was established.

1972 – The Canadian Parliament decriminalized suicide and attempted suicide.

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2. Canada's Criminal Code: "Everyone who (a) counsels a person to commit suicide or (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years." Scroll down to Part VIII: Offences against the person and reputation and suicide: <http://laws.justice.gc.ca/en/ShowTdm/cs/C-46>.
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Advocacy groups (representative sample):

In favour of decriminalizing assisted (or facilitated) death:

1. Dying with Dignity (Canada) <http://www.dyingwithdignity.ca/>
2. Association Quebecoise pour le Droit de Mourir dans la Dignite <http://www.aqdmd.qc.ca/page1.php>
3. Right to Die Society (Canada) www.rightodie.ca
4. World Federation of Right to Die Societies <http://www.worldrtd.net/>

Opposed of decriminalizing assisted (or facilitated) death:

1. Compassionate Health Care Network: <http://www.chninternational.com/default.html>
2. Euthanasia Prevention Coalition (British Columbia): <http://www.epc.bc.ca/index.html>
3. Euthanasia Prevention Coalition (Ontario): <http://www.euthanasiaprevention.on.ca/>
4. International Task Force on Euthanasia & Assisted Suicide <http://www.internationaltaskforce.org/about.htm>

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