

Euthanasia in Canada

Two sections of Canada's Criminal Code are relevant:

"14. No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

"241. Everyone who counsels a person to commit suicide or 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."

The reality of modern medicine is that doctors do practise passive euthanasia; not all of them, but rare is the doctor that has not, at the request of the patient, the patient's family, or on his or her own accord, decided to discontinue life-support.

Studies also show that many doctors have acquiesced to life-ending drug doses in cases of advanced terminal conditions. But try finding one to admit it.

Assisting suicide or intentional killing, even to reduce suffering, is criminal conduct.

More interesting is the situation where a doctor decides to withhold or withdraw medical care for euthanasia reasons. **Section 215 of the Criminal Code says that:**

"... every one is under a legal duty to provide necessaries of life to a person under his charge if that person is unable, by reason of (...) illness, mental disorder or other cause, to withdraw himself from that charge and is unable to provide himself with the necessaries of life."

The Courts have captured medical treatment under this section, essentially preventing doctors from withholding or withdrawing life-sustaining procedures.

Doctors are also under legal obligation to ensure that patients, for whom a risk of suicide exists, are prevented from harming themselves.

On the other side of the coin, Canadian citizens have a basic right to refuse medical care and treatment and they have a right to decide what medical treatment they accept or reject, even if the rejection of a life-saving procedures leads to their death. This is part of the Canadian Charter of Rights and Freedoms : **"every one has the right to (...) security of the person and the right not to be deprived thereof."** Quebec's Civil Code reiterates this principle. This would include, for example, Jehovah Witnesses refusing blood transfusions.

[see Dubaime.org; Lloyd Dubaime is a Member of the Law Society of British Columbia, former member of the Law Society of Quebec (1985-1998; aka Barreau du Quebec), one-time member of the Law Society of Alberta (September 2001), present or former member of the Canadian Bar Association, the Trial Lawyers Association of British Columbia, the Victoria Bar Association and the Association des juristes d'expression française de la Colombie-britannique.]

from Euthanasia and Assisted Suicide in Canada

Prepared by: Mollie Dunsmuir, Marlisa Tiedemann
Law and Government Division
Revised 23 February 2006

Euthanasia is the deliberate act undertaken by one person with the intention of ending the life of another person in order to relieve that person's suffering. Assisted suicide is the act of intentionally killing oneself with the assistance of another who provides the knowledge, means or both.

Voluntary euthanasia occurs when the act is done in accordance with the wishes of a competent individual or a valid advance directive. **Non-voluntary euthanasia** occurs when the act is done without knowledge of the wishes of a competent individual or with respect to an incompetent individual. Involuntary euthanasia, which is indistinguishable from murder or manslaughter, occurs when the act is done against the wishes of a competent individual or a valid advance directive.

A number of Criminal Code provisions impinge upon the issues of euthanasia and cessation of treatment.

Section 14 of the Code provides that:

No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

In the medical context, a doctor who, at a patient's request, gives the patient a lethal injection would be criminally liable.

Theoretically, one would expect euthanasia to be prosecuted as first-degree murder, because there is an intent to cause death, which is the definition of murder, and the act is most often planned and deliberate, which is the definition of first-degree murder. However, charges of euthanasia have been influenced principally by other criteria: the fact that **the primary intent is to relieve suffering; the unpredictable attitude of juries; and technical difficulties in proving the exact cause of death when a person is in any case close to death and taking considerable pain medication.** Charges in Canada have ranged from administering a noxious substance, to manslaughter, to murder.

What is the difference between euthanasia and assisted suicide?

One way to distinguish them is to look at the last act – the act without which death would not occur.

Using this distinction, if a third party performs the last act that intentionally causes a patient's death, euthanasia has occurred. For example, giving a patient a lethal injection or putting a plastic bag over her head to suffocate her would be considered euthanasia.

On the other hand, if the person who dies performs the last act, assisted suicide has taken place. Thus it would be assisted suicide if a person swallows an overdose of drugs that has been provided by a doctor for the purpose of causing death. It would also be assisted suicide if a patient pushes a switch to trigger a fatal injection after the doctor has inserted an intravenous needle into the patient's vein.

Isn't "kill" too strong a word for euthanasia and assisted suicide?

No. The word "kill" means "to cause the death of."(9)

In 1989, a group of physicians published a report in the New England Journal of Medicine in which they concluded that it would be morally acceptable for doctors to give patients suicide information and a prescription for deadly drugs so they can kill themselves.(10) Dr. Ronald Cranford, one of the authors of the report, publicly acknowledged that this was "the same as killing the patient."(11)

While changes in laws have transformed euthanasia and assisted suicide from crimes into "medical treatments" in Oregon and the Netherlands, the reality has not changed – patients are being killed.

Proponents of euthanasia and assisted suicide often use euphemisms like "deliverance," "death with dignity," "aid-in-dying" and "gentle landing." If a proposed change in public policy has to be promoted with euphemisms, this may be due to the fact that the use of accurate, descriptive language would make its chilling reality too obvious.

From: International Task Force on Euthanasia and Assisted Suicide; Euthanasia and Assisted Suicide: Frequently Asked Questions by Rita L. Marker and Kathi Hamlon
<http://www.internationaltaskforce.org/faq.htm>

From *Robert Latimer's story – a perspective (see robertlatimer.net)*

Stage A: Physical Handicaps

Nov.23/1980

- Tracy Latimer born with severe cerebral palsy.
- This is not a genetic defect but is due to critical oxygen deprivation at birth.
- CP is not a stable condition but increasingly degenerative.
- Mental age capacity judged as 'set' about four-five months.

1980

- At four months, her convulsions became continuous, preventing sleep.
- With drugs (Rivitol), these seizures were reduced to five or six a day.
- Unable to walk, talk, swallow food (throat had to be massaged to activate swallowing reflex), frequent vomiting, chronic respiratory problems.

1984

- First surgery to release tension and pain caused by degenerating abductor muscles in groin area.
- Result: lessening of muscle tension in left leg; onset of unrestrained 'spring' in right leg and pain from this motion.
- Lost ability to kick legs/roll over.
- Continuous pain. Pain became a serious problem.
- Painkillers: could not go beyond regular Tylenol for more powerful painkillers would, in combination with her anti-seizure and anti-convulsant, further suppress muscle reflexes and inhibit respiration.
- Anything stronger than regular Tylenol would have rendered her comatose, requiring hospitalization with life support.

1984-1990

- Scoliosis (curvature of spine) developed to 50 degrees off perpendicular.
- Hip dislocation.
- Problems with eating, vomiting as spine and vital organs compressed by pressure from scoliosis curvature.
- Seizures increase.

1990

- Second surgery to relieve muscle tension, distribute strain and alleviate pressure on hips to deal with ongoing body degeneration and pain and potential hip dislocation.
- Pain killers: only regular Tylenol.

1992

- Scoliosis cont'd resulting in curving spine to 75% off perpendicular affecting vital organs.
- Third surgery of 8 hours to place two stainless steel rods on each side of her spine.
- Results: relieved muscle compression and bone pressure only for a few months.
- Only pain relief - regular Tylenol.

Stage B: Physical Agony

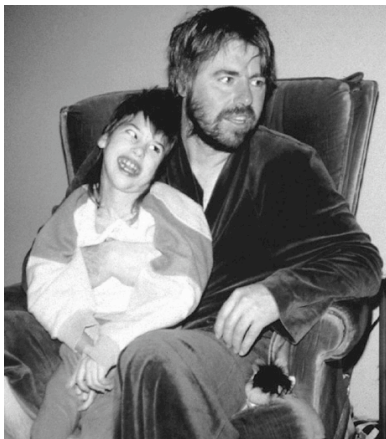
1992

- Pain, which became a matter of grave concern in 1984, became an increasingly acute concern after the third major surgery. Great pain, problems sleeping, resting.
- Right hip became fully dislocated. In severe pain.
- More surgery would leave her in extreme pain as surgery could not simply put the hip back in place. X-rays showed that the ball joint in her hip was too badly eroded to permit successful reconstruction.
- Postoperative period would leave her in incredible pain according to doctors and recovery could take a year.

1993

- Obvious to family & doctors she was in traumatic pain. Skin on left side breaking down.
- Unable to sleep or rest. Increasing loss of weight.
- Surgery discussed but doctors were certain that her body would continue to deteriorate and require more surgery and that the surgery would not end either her ongoing physical degeneration nor her pain.
- Essentially, surgical intervention could no longer keep pace with the rapid degeneration of her body and its concomitant pain as her bones and organs deteriorated.
- Proposed fourth surgery would have involved sawing off the upper quarter of her right leg. The surgeon testified at the trial that the operation would be excruciatingly painful and pain would continue long afterwards. Additional surgeries would be required for the rest of Tracy's life as her body progressively degenerated. Medical testimony stated that current medical technology could neither stop this degeneration, nor, importantly, deal with the physical agony caused by her body's breakdown.
- Her pain increased as her body degenerated. However, the only painkiller that could be used was regular Tylenol. Any painkiller stronger than regular Tylenol would have rendered her comatose and in hospital on life support.

With special thanks to Edwina Taborsky, Pat Latimer Martin and Paul Zollman, for working so carefully to complete this brief and informative outline.



[November 1996]

**An Open Letter from Council of Canadians with Disabilities Re: Robert Latimer Case
To: Supporters of Disability Rights in Canada**

The Latimer case signals grave danger for all people with disabilities. We must never lose sight of the responsibility which this danger invokes. If we are not all vigilant, too many more will be murdered like Tracy Latimer. Too many more will have to fight for their lives. Too many more voices will never be heard.

That is why the voice of the Council of Canadians with Disabilities and its Member Groups spoke with passion throughout the public furor around Robert Latimer's conviction, sentencing and appeals.

We, as people with disabilities, are afraid for our lives. We are afraid that others could be empowered to decide whether we live or die. We are afraid to be in a society which weighs the severity of a child's disability in its judgment of whether and how to judge the actions of her murderer.

People with disabilities and our allies across Canada have been touched on a very deep level by the murder of Tracy Latimer. We feel Tracy's vulnerability. And we feel our own vulnerability heightened as our neighbors and colleagues suggest that there was something noble and human in what Robert Latimer did to his daughter. We grieve Tracy's senseless death. We are pained and horrified each time we see Tracy Latimer portrayed as a creature less than fully human. We are enraged by the insinuations that Tracy's life was not a life worth living.

CCD has been particularly appalled by the media portrayal of Tracy. The media continually focused upon her pain and portrayed her as less than human. In fact, Tracy attended school each day, she laughed, responded to music, enjoyed watching hockey games and sitting around family bonfires. The real Tracy was never seen by the public because the media portrayal of her was so negative.

Canadians with disabilities in response to this case came together with feelings of fear, vulnerability, pain and anger. People with disabilities came together to affirm our humanity, our passion for life and our solidarity. The Council of Canadians with Disabilities seeks support from other communities. In solidarity, we ask you to affirm that our lives are worth living. Taking our lives to spare us our pain and our struggles is a crime. A crime that must be met with the full force of the law.

CCD asks you to endorse the attached position statement. CCD will make public your endorsement of our position.

We trust that you will understand our position but would be most willing to talk with you further should you require clarification.

Sincerely

Eric Norman
National Chairperson

Robert Latimer's Story – as summarized by the Government of Canada

The most controversial euthanasia case in Canada occurred after Robert Latimer had killed his disabled 12-year-old daughter Tracy in 1993 by placing her in the family truck and then piping exhaust fumes into it. Evidence showed that Tracy had a severe form of cerebral palsy, and could not walk, talk or feed herself. She had suffered considerable pain; Mr. Latimer told the police that “his priority was to put her out of her pain.”

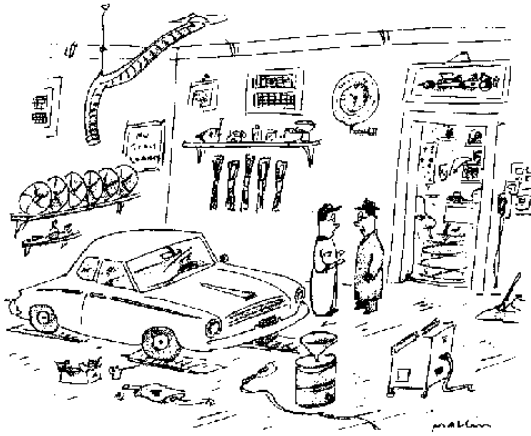
Mr. Latimer was charged with first-degree murder, convicted of second-degree murder by a jury, and sentenced to life imprisonment with no possibility of parole for ten years. He subsequently lost an appeal to the Saskatchewan Court of Appeal. However, in February 1996, the Supreme Court of Canada agreed to hear a further appeal; and in June 1996, the original Crown prosecutor was charged with attempting to obstruct justice through jury tampering. In February 1997, the Supreme Court of Canada ordered a new trial for Mr. Latimer because of the allegations of jury tampering.

After a new trial, Mr. Latimer was again found guilty of second-degree murder in late 1997. At the sentencing hearing, Mr. Latimer's lawyer argued that he should be given a “constitutional exemption,” or that the judge should find the mandatory minimum sentence of ten years to be “cruel and unusual punishment” in the circumstances, and therefore a violation of Mr. Latimer's rights under the Canadian Charter of Rights and Freedoms. On 1 December 1997, in a decision that surprised most legal commentators, the sentencing judge found that a ten-year sentence would indeed be “grossly disproportionate” to the offence. He sentenced Mr. Latimer to two years less a day, half of which would be served in a provincial jail and half on his farm.

On appeal, the Saskatchewan Court of Appeal confirmed its earlier decision, and substituted the mandatory minimum sentence of ten years, noting that it is always “open to Parliament to modify the existing law by appropriate legislation that establishes sentencing criteria for ‘mercy’ killing.”

The Supreme Court of Canada granted Mr. Latimer leave to appeal on the grounds of whether the defence of necessity should have been left to the jury, whether the trial judge should have informed the jury that Mr. Latimer had the legal right to decide to commit suicide for his daughter as her surrogate decision-maker, and whether the minimum sentence for murder is cruel and unusual punishment in these circumstances contrary to the Charter. In January 2001, the Court upheld the conviction and the sentence. It did, however, note that section 749 of the Criminal Code provides for the royal prerogative of mercy, which is a matter for the executive, not the courts, to consider.

[from <http://www.parl.gc.ca/information/library/prbpubs/919-e.htm#1thecriminal>]



"Sure it has some life left in it, but you might ask yourself just what kind of life it would be."

(New Yorker — December 12, 1994 — page 114)



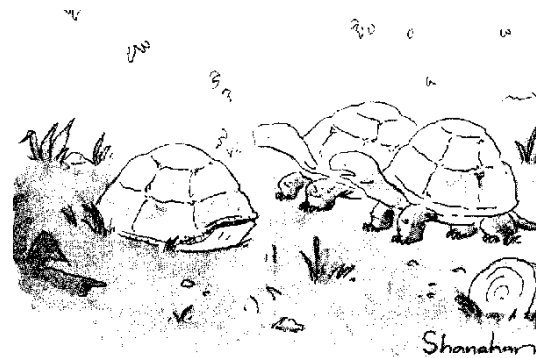
"One thing about Earl — Earl knows when to fold."

(New Yorker — May 10, 1999 — page 63)



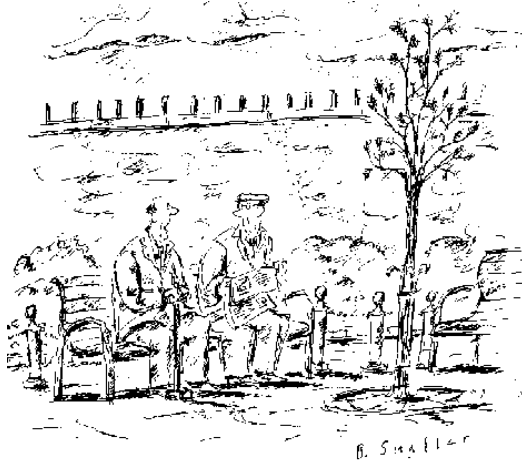
"While it's not a cure, it does mean a guaranteed income for me."

(New Yorker — September 23, 1996 — page 63)



"At least he died at home."

(New Yorker — September 29, 1997 — page 50)



"My goal is to die before there's a technology breakthrough that forces me to live to a hundred and thirty."

(New Yorker — June 19 & 26, 2000 — page 96)



"And I'll have that lightly sedated, please."

(New Yorker — June 5, 2000 — page 87)



About Pacific Theatre

Pacific Theatre is a professional theatre company that aspires to delight, provoke, and stimulate dialogue by producing theatre that rigorously explores the spiritual aspects of human experience. Its programming and productions aim to foster new work alongside established plays, and promote emerging artists, who share our theatre space with seasoned professionals. Through its operations Pacific Theatre strives to operate with artistic, spiritual, relational, and financial integrity.

Since its inception in 1984, Pacific Theatre has mounted seventy professional mainstage productions. The excellence of the company's artistic work has resulted in ongoing operating support from all three levels of government, the Vancouver Foundation, the Leon and Thea Koerner Foundation, and the Angus Reid Foundation, among others. Pacific Theatre has moved into a valued place in the artistic community, garnering seventy-seven Jessie Richardson Award nominations in fourteen seasons of eligibility, and receiving 11 awards, including Outstanding Production for *Grace* in 2007.

About Dr. Paul Chamberlain



Dr. Paul Chamberlain is the director of the Institute for Christian Apologetics at Trinity Western University (ACTS division) and has taught ethics and Christian Apologetics at TWU since 1990. He has also worked with Ravi Zacharias International Ministries during part of that time. He is an effective communicator both in and out of the classroom. His humorous, down-to-earth manner appeals to a wide variety of people. Drawing from the media and using a professional power point presentation, his seminars are both interesting and relevant. Dr. Chamberlain has appeared on numerous radio and television talk shows, debated on university campuses, and is a frequent guest speaker at public functions. He is the author of *Can We be Good Without God, Final Wishes*, and *How To Talk About Good and Bad Without Getting Ugly: A Guide to Moral Persuasion*, as well as a number of articles addressing current social and moral issues.