

# **Two Years of Positive Change: Right to Die Progress in North and South America**

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By Richard N. Côté

Liebe Damen und Herren: Sie haben keine Ahnung wie froh ich bin, nach vierzig Jahren, wieder hier in der Schweiz — und besonders mit Ihnen — zu sein. Leider, mein Deutsch is mehr als ein bisschen rostig geworden, und so jetzt geht's los... auf English.

I am extremely happy to report that the Death With Dignity Movement has made major progress in its mission to eliminate the “last bad death” in North and South America in recent years.

In 1980, Derek Humphry expressed the Movement's goal in a simple and unambiguous declaration: “The freedom to die in the manner of our own choosing is the ultimate civil liberty.” To enshrine that right in law is one of the Movement's two primary goals. That would guarantee death-with-dignity for the most people in the future—although getting those laws passed can take decades. The other is to educate and empower people who are terminally ill or suffering from intolerable, untreatable pain or anguish to achieve a legal gentle death by themselves using recently developed technological methods which do not require the assistance by any second person. That would enable people dying now, who might not be able to obtain assistance in dying through legal change for years or decades, to obtain a lawful, peaceful death when they need and choose it.

Sometimes, while trying to bring about a change in the collective consciousness and produce positive legislative change, it seems like we are progressing only as fast as a glacier melts. But in order to appreciate the advances we are achieving, we cannot forget that the Movement is fighting to erase centuries-old embedded myths, taboos, prejudices, and a millennium of self-serving religious indoctrination. Both Roman Catholics and conservative Christians use the intellectually unsupportable “sanctity of life” argument that “since only God can create a life, only God can decide when it is to end.” With this as their justification, they seek to force their

religious ideology upon the general public. The religious right-wing opposition has heavily funded, extremely well-organized, multi-national membership information-sharing (or should I say, *dis*information-sharing) networks. The right-to-die movement has no such coordinated information-sharing capability, and could stand to learn from its opponents in this area.

But lest we despair at the apparently slow progress we sometimes seem to be making, let us never forget this: with the tragic exception of the Rights of the Terminally Ill Act in the Northern Territory of Australia, which was in effect from July 1, 1995 until nullified by the Australian federal government on March 25, 1997, no death-with-dignity law worldwide has ever been overridden.

Through iron-willed conviction and the willingness to face its opponents head-on and fight contrived theology with logic, the Movement's members have achieved major breakthroughs despite the ongoing pressure of intensive, organized misinformation campaigns; outright lies, sloppy or biased news reporting, arrests, and court trials. Now, in the fifteen minutes available today, I will attempt to give you a brief overview of right-to-die the progress made in North and South America since our last conference in Melbourne in 2010.

### **CANADA:**

Canadians, over 75% of whom support the right-to-die, are actively seeking to overturn Section 241(b) of the Canadian Criminal Code, which outlaws assisting a suicide.

In 1991, in *Rodriguez v. British Columbia*, Sue Rodriguez, who was dying from ALS (motor neurone disease) and John Hofsess, founder of the Right to Die Society of Canada, sought to overturn the anti-assisted suicide law. In 1992, in a 5 to 4 decision, the Canadian Supreme Court justices declined to change the law. Ms. Rodriguez ended her life shortly after the court ruling.

In 2002, Evelyn Martens, an exit guide and senior member of the Right to Die Society of Canada, became the target of a police undercover "sting" operation for allegedly assisting the suicides of two elderly women. She was arrested, made bail, and barred from making any contact with any members of the Movement until trial. In 2004, after two years, she was tried and found not guilty of any crimes.

In 2011, Russel Ogden, a Canadian professor of criminology and a formidable scholar of European and NuTech methods of self-deliverance, founded The Farewell Foundation of Canada. Its goal is to again seek the abolition of Canada's anti-assisted suicide law and to replace it with the respected assisted suicide laws used in Switzerland, which stress safeguards,

immediate reporting to government authorities, and complete transparency. Soon thereafter, the British Columbia Civil Liberties Union, launched a separate attack on the law. It became known as *Carter et. al. v. Attorney General of Canada*. The courts rejected the Farewell Foundation's challenge but suggested it join as an intervener in the Carter case, which it did. On June 15, 2012, Justice Lynn Smith of the British Columbia Supreme Court declared Canada's absolute prohibition against assistance with suicide to be constitutionally invalid, but suspended her ruling for one year to give Canada's federal parliament time to draft legislation with her ruling in mind.

On November 15, 2011, Canada's Expert Panel on End-of-Life Decision-Making concluded that "Assisted Suicide and voluntary euthanasia should be legally permitted for competent individuals who make a free and informed choice that their life is no longer worth living. Canada should have a permissive yet carefully regulated and monitored system with respect to assisted death."

In Québec, where public approval of the right-to-die stands at 90%, Francine Lalonde, a Bloc Québécois member of the Canadian Parliament and cancer sufferer introduced in 2009 the second of her three private member bills, C-562, which would establish the right of a terminally ill person to obtain physician aid-in-dying throughout Canada. It failed in 2010 after a concerted effort by a massive mailbox-stuffing campaign by Alex Schadenberg's Euthanasia Prevention Coalition. The bill was later resubmitted. The same year, the Québec College of physicians voted in favor of euthanasia as "appropriate care under certain circumstances when death is immediate and inevitable" and recommended amending the Canadian code of laws to legalize euthanasia across Canada.

## **THE UNITED STATES**

In the United States, there are currently three major death-with-dignity activist groups: The Final Exit Network, The Euthanasia Research and Development Organization, Compassion & Choices, several smaller ones, and the Death With Dignity National Center, a national legal reform support and fundraising organization.

The Final Exit Network, founded in 2004, is the direct ideological descendant of Derek Humphry's Hemlock Society. It respects those seeking legislative change, but focuses primarily on direct member counseling, counseling in the use of humane self-deliverance technologies, and bedside emotional support. Because of its assertive sympathy for classes of seriously distressed

people seeking self-deliverance support but not served by other groups, the Network has been a lightning rod for prosecution.

In 2007, the Network was at the bedside of Jana van Voorhis, a tortured woman with a long, severe history of both physical and mental illnesses which she could no longer bear. Evidence at the scene led to the arrest of four Network members in 2010. Ultimately, none were convicted of any felony offense, with all misdemeanor offense records to be expunged after one year.

In 2010, a Georgia Bureau of Investigations officer posing as “Richard Sartain,” allegedly a cancer victim with a detailed medical history fabricated from scratch by the G.B.I.’s own top medical officer, joined the Network as a member. Six months later, the police raided the house on the night that Sartain had asked the Network’s exit guides to comfort him as he took his own life using the helium method. Four Network members were ultimately arrested. In a countersuit, the Network sued Georgia for arresting them on the grounds that they provided only information—protected speech under the First Amendment of the U.S. Constitution—and that Georgia’s anti-suicide law was therefore unconstitutional. In a unanimous decision, the Georgia Supreme court agreed, and all charges against the Network and its four named defendants were dismissed.

In a 2011 declaration of the U.S. Council of Catholic Bishops, whose theological rulings are binding on all Catholic-owned U.S. hospitals, decreed that church-owned facilities would no longer honor patient advance healthcare directives which differed with church policy, even at the direct written demand of the patient or his or her legal proxy. Compassion & Choices took up the challenge and drew up an enforceable legal document which anyone could use to demand that if their medical treatment directives were to be ignored, the facility would be obligated to allow the patient to move to another facility where their rights would be honored.

Despite constant demand, there have only been four trusted helium exit bag manufacturers since its design by John Hofsess in 1998. The first was Canadian exit guide Evelyn Martens (1999-2002), the second, former Hemlock Society member Rod Newman (2005-2009), and fellow Hemlock alumnus, Sharlotte Hydorn (2009-2011). Hydorn, a ninety-two-year-old retired science teacher and great-grandmother, was arrested in 2011 for making the bags—an act clearly not illegal in the U.S. She was ultimately convicted of failing to file income tax reports on the money she received (most of the checks had never even cashed, as she was making them to help dying people, not to earn money). When her production was halted, Derek Humphry

immediately filled the gap by publishing detailed instructions on how anyone could easily make a hood at home.

Compassion and Choices is the largest and single most powerful organization pushing for legislative change in the United States. Although it has yet to reach the peak membership size of its predecessor, The Hemlock Society, it has the highest level of income in the history of any U.S. right-to-die group. In 2011, its total income was USD \$7,734,479, including \$4,520,540 in contributions, \$2,699,500 in grants, and \$217,766 from membership fees. Much of its growth, income, and influence flows from its two senior executives: Barbara Coombs Lee, its president, and Kathryn Tucker, its director of legal affairs. Compassion & Choices funnels a large portion of its income into stimulating legislative change wherever an opportunity can be found.

In Montana, Kathryn Tucker and Compassion & Choices spearheaded the complex legal and organizational work for *Baxter v. Montana*, a Montana Supreme Court case. Robert Baxter, dying from leukemia, filed a lawsuit to legally obtain assistance from a physician in dying. On December 31, 2008, a lower court recognized that aid-in-dying is a fundamental right protected by the Montana state constitution. The Montana Supreme Court upheld the right of terminally ill Montanans to choose aid-in-dying, making Montana the third state in America, after Oregon and Washington, to do so.

2012 looks to be a strongly positive year for the right to die in the United States. In Hawaii, Compassion & Choices and local right-to-die groups argued strongly that an existing state law going back over one hundred years supports physician aid-in-dying, and recently a group of Hawaii physicians has publicly announced that they are willing to assist dying patients end their life.

In Vermont, the majority of the residents support a proposed death-with-dignity bill, and Compassion & Choices has been working closely to assist local organizers. A 2011 enabling bill, which has strong support in the state legislature, will come to a vote this year. Vermont governor Peter Shumlin reiterated his strong support, saying that if the bill passes, he will sign it.

In May 2012, with no debate, the Massachusetts senate approved a requirement that that all doctors and nurses talk to dying patients about end-of-life options. Even more important, “Dignity 2012” supporters of this death-with-dignity law successfully gathered 79,626 signatures on a ballot initiative to place their proposed Death With Dignity Act on the November ballot. Compassion and Choices was again a major supporter of the effort. If the legislature does not put

the proposed bill on the ballot, backers will have to gather an additional 11,000-plus signatures to do so themselves. It seems certain that Massachusetts voters will likely be able to vote on the bill this November, and polls show over 60% support for the proposed law.

Also in 2012, A Santa Fe, New Mexico woman with advanced ovarian cancer joined with two Arizona doctors to challenge the decades-old law that prohibits physicians from helping terminally ill people die. The lawsuit was filed by the American Civil Liberties Union in April of this year.

### **COLOMBIA, VENEZUELA, AND ARGENTINA**

The driving force for the advancement of the right to die in South America has without a doubt been the people of Colombia.

The unexpected decriminalization of euthanasia and physician aid-in-dying in Colombia came in 1997, when a Bogotá lawyer brought a case to Colombia's Constitutional [Supreme] Court to increase the existing penalty for carrying out a "mercy killing." To the surprise of everyone, the court, in a 6 to 5 vote, stated that a terminally ill person of sound mind had the right to have a physician's assistance to end his or her own life, and that the physician would bear no legal responsibility if the act was carried out in good faith. Since that day, physician-provided euthanasia has been available in Colombia.

The Colombians have had strong advocates for the right to die within the medical community dating back to 1954. At this time, there are four particularly strong and vocal supporters of the cause. Dr. Jaime A. Escobar-Triana, a physician, ethics scholar, and death-with-dignity supporter, led to the creation of Colombia's first Ph.D. program in ethics at the Universidad el Bosque.

Neurosurgeon Dr. Juan Mendoza-Vega, a past-president of the World Federation of Right to Die Societies, helped shape Colombia's definition of brain death and is a strong supporter of his country's position on euthanasia.

But it was the courage of Bogotá's Dr. Gustavo Alfonso Quintana that truly brought the issue into the general public's consciousness. In 1981, he acceded to the request of a patient with a terminal brain tumor to painlessly hasten his death. In 1999, Quintana was the first Colombian physician to state to the media that he performed euthanasia at the request of suitable patients, and by 2012, had performed about 100 cases. In 2012 he took another historic step, which is

announced here publicly for the first time. Quintana performed euthanasia on a terminally ill U.S. citizen, who had heard about Quintana's work and traveled to Bogotá to die.

South America's first death with Dignity Group, the Fundación Pro Derecho a Morir Dignamente, was formed in Colombia in 1979. Señora Beatriz Kopp de Gómez used her social and academic connections to introduce the concepts of death-with-dignity to high-level politicians, physicians, and nursing groups there. In 2006, DMD-Colombia sponsored a sister group in Venezuela, under the leadership of Professor Rafael Aguiar-Guevara. Both groups are members of the World Federation.

And last but not least, Argentina passed a "dignified death" law, enabling patients with living wills or their families to order doctors to discontinue life-support equipment for people in a permanent vegetative state. Prior to the bill's passage, a judge had to be found to authorize the procedure.

In summation: overall, the last two years have seen major advances in right-to-die legislation in North and South America, and the rate of positive change continues to accelerate. Thank you.

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