Constitutional Challenge in Ireland

Ireland’s prohibition on assisted suicide is being challenged by former University College of Dublin law lecturer Marie Fleming (59), and her husband Tom Curran. Marie suffers from multiple sclerosis and Tom is her full-time caregiver. They argue that Ireland’s ban on assisted suicide is unconstitutional because it discriminates against severely disabled individuals and that it is contrary to the European Convention on Human Rights. The Swiss Federal Court has already recognized, in 2006, that Article 8 of the European Convention includes the right to decide the time and manner for ending one’s own life.

The Irish case has similarities to the Carter case in British Columbia. Ireland’s constitution has an equality protection similar to that found in Canada’s constitution and the wording of Ireland’s 1993 law prohibiting aiding suicide is similar to Canada’s law. The Irish case follows the argument advanced by Gloria Taylor in British Columbia – the absolute prohibition on assisted suicide discriminates against severely disabled individuals who cannot end their lives without assistance.

But, a fundamental difference is that Marie Fleming is not seeking medical assistance to end her life. She hopes to avoid the complexities of medical ethics and prescription restrictions by making the case for non-medical and non-prescription assistance with ending her life, possibly by oxygen deprivation by breathing nitrogen or helium.

The idea of demedicalizing assistance with suicide means physicians would not be obliged...
What’s the Law in Montana?

In addition to Oregon and Washington, which have Death with Dignity Acts to allow lethal prescriptions for terminally ill patients, it is often claimed that assisted suicide is also legal in Montana. This is not correct.

In 2009 the Montana Supreme Court said a physician may invoke the consent of a terminally ill patient as a defence to a charge of homicide. The reference case is Baxter v. Montana. The Court said that physician assistance in dying was not against Montana’s public policy and that the consent of a terminally ill patient to physician assistance in dying was a valid defence to a charge of homicide against the aiding physician.

Montanans Against Assisted Suicide recently asked the Montana Board of Medical Examiners to revoke its policy on “Physician Aid in Dying,” claiming it was too permissive. The Board refused to do so.

In all matters of medical practice, including end-of-life matters, physicians are held to professional standards. Montana Board of Medical Examiners

The Montana Board’s current policy says:

―In all matters of medical practice, including end-of-life matters, physicians are held to professional standards. If the Board receives a complaint related to physician aid-in-dying, it will evaluate the complaint on its individual merits and will consider, as it would any other medical procedure or intervention, whether the physician engaged in unprofessional conduct as defined by the laws and rules pertinent to the Board.‖

Massachusetts Disappoints

Death with Dignity Initiative Narrowly Defeated

On November 6, 2012 voters in Massachusetts defeated the Death with Dignity initiative with 49% for and 51% against. The law would have been similar to initiatives that have passed in Oregon and in Washington, allowing terminally ill patients the right to end their lives with a prescription. Interestingly, 63% of voters passed a law on marijuana, making Massachusetts the 18th state to legalize prescriptions for medical marijuana.

Las Vegas Man Sentenced for Six Years for Importing Barbiturate to USA

In October, 2012, a Las Vegas man suspected of assisting a suicide in Mexico was sentenced to six years for trying to smuggle pentobarbital, a euthanatic, into the USA.

Jeff Ostfeld, 36, pleaded guilty to importing a controlled substance. It was alleged he had purchased pentobarbital in Mexico and planned to use it for assisted suicides.

Ostfeld was charged shortly after 29-year-old Oregonian Jennifer Yolanda Malone died in a Mexico hotel.

Las Vegas Man Sentenced

for Six Years for Importing

Barbiturate to USA
Australia's Dr. Philip Nitschke returned to Vancouver, BC, for the third EXIT workshop in four years. EXIT workshops are based on The Peaceful Pill Handbook, which offers detailed information about self-deliverance methods, including liquid veterinary pentobarbital, powder form barbiturates, and inert gas systems. The Peaceful Pill Handbook is the only book banned by the Australian government in the past 35 years, a strategy that has backfired as censorship has a tendency to pique interest. The book is available at Amazon.com and Exitinternational.net. An e-edition is updated twice a year which gives subscribers current information about EXIT products and the availability of pharmaceuticals from various international sources.

Dr. Nitschke explained that while he supports legislative reforms such as that advocated by Canada’s constitutional cases in British Columbia and Quebec, law reform generally advocates a medical model for assisted death, helping only the very ill and only under the control of medical assessment and medical paternalism.

EXIT supports an alternative path, the “patient controlled process.” Attendees at the workshop were told that when people have access to reliable information about end-of-life options, they worry less and feel empowered. “Empowerment,” says Dr. Nitschke, “promotes a longer, happier life.”

Max Dog Brewing is a new nitrogen delivery system developed by EXIT. A person breathing in a 100% nitrogen environment will experience almost instant loss of consciousness and death within minutes. In August, the Max Dog system was the focus of a formal complaint to the Australian Health Practitioner Regulation Agency (AHPRA) by anti-choicers who alleged Dr. Nitschke was not fit to practice medicine because of his pro-euthanasia activities. On November 20th the Australian Medical Association president, Dr Steve Hambleton said Dr Nitschke’s personal views should not be subjected to an AHPRA investigation if they did not affect his practice of medicine. Dr. Hambleton was quoted by the Medical Observer saying, “Has he ever promoted that [euthanasia] product in the consulting room? Should someone’s utterances which are unrelated to their medical practices lead them to be examined by their accreditation body when it may have no impact on their practice? Where has he transgressed good medical practice? Where does it say…that he’s not allowed to hold a certain point of view? Should [AHPRA] have jurisdiction in the matter?”
**Book Review**

**In Search of Gentle Death**

*By Jean McKendry*

*In Search of Gentle Death: The Fight for Your Right to Die with Dignity*, by Richard N. Côté was published in April 2012. The book is a contemporary historiography of the international death-with-dignity movement and offers a highly readable “Who’s Who” and “Who Was Who” of the personalities who contributed to the movement over the past 40 years.

Richard Côté travelled extensively during the past five years to conduct interviews for this 397 page book, taking the reader to fifteen countries to meet the remarkable individuals who have formed the international death-with-dignity movement. Many of these individuals – e.g. Jack Kevorkian, Philip Nitschke, John Hofsess, and Derek Humphry – have been scrutinized in the courts, vilified by the press, or publicly censured on the Internet, yet they continue their social justice work for the right-to-die movements in their respective countries.

A recent Frontline PBS program exposed the activities of the Final Exit Network and two important court cases in Arizona and Georgia. Côté’s Chapter 19, “The Big Sting” gives an excellent history into the formation of the Network in 2004. Interestingly, Torontonian Ruth von Fuchs, a Dying with Dignity Canada board member and President of the Right to Die Society of Canada, is among the founding members of the Network.

Several countries in Europe have legalized euthanasia or allow assisted suicide: Switzerland (1942), The Netherlands (2002), Belgium (2002), and Luxembourg (2009), as well as the U.S. states of Oregon (1994), Washington (2008), Montana (2009) will allow a consent defence for doctors charged with aiding suicide, but assisted suicide is not specifically legal or regulated in that state.

Richard Côté references numerous books, articles, and documentaries on the right-to-die movement and the activists interviewed for his book. The 30 pages of source notes and 10 page bibliography are valuable resources for anyone interested in advanced study of this topic.

There are many Canadian connections in Côté’s book. Chapter 5 tells the Sue Rodriguez story, and explains the origins of various Canadian right-to-die organizations. For example, in 1980, Marilyn Seguin, a nurse, with the help of Derek Humphry, best-selling author of *Final Exit*, established Dying with Dignity in Toronto, Canada’s first such organization. In 1991, again with the help of Derek Humphry, John Hofsess established the Right to Die Society of Canada in Victoria, BC. Hofsess helped Sue Rodriguez to challenge Canada’s law against assisted suicide. This was denied 5 to 4 by the Supreme Court of Canada. In defiance of the courts and with clandestine assistance, she ended her life in 1994.

Chapter 6 provides the history of the NuTech movement, which was founded in 1997 in Victoria, BC. NuTech was responsible for the development of inert gas self-deliverance, which is now immortalized in the 3rd edition of *Final Exit* and used across America by the self-help group, Final Exit Network. The NuTech movement attracted both medically and non-medically trained technicians along with their various mechanical self-deliverance devices as well as one academic researcher, Russel Ogden, who is the only researcher in the world who has witnessed self-deliverance with helium and published the results in peer-reviewed journals. Chapter 18 gives a fuller account of Ogden’s academic research with non-medical euthanasia and assisted suicide in Canada, and internationally.

Chapter 7 is about Evelyn Martens, the only Canadian right-to-die activist ever prosecuted for aiding a suicide. In 2004, facing 28 years in prison, a jury acquitted Martens of two charges of aiding suicide, and clarified that simple attendance at a suicide is not a crime.

In 2011, the Farewell Foundation for the Right to Die was established in British Columbia and a constitutional challenge by the Foundation for demedicalized assistance similar to the Swiss model was rejected by the BC Supreme Court. Farewell then became an intervener in the *Carter* case.

*Gentle Death* continued on page 7
Remembering Gloria Taylor

Gloria Taylor of Westbank, BC, died on October 4, 2012. Diagnosed in 2009 with ALS—a fatal degenerative disease, Gloria died suddenly and unexpectedly in Kelowna General Hospital, due to an infection. Gloria will be remembered for her courageous participation in a landmark constitutional court case for the right to die with the assistance of a doctor. She won a special right to receive court authorization for either physician assisted suicide or euthanasia.

The oldest of four girls, Gloria grew up in Castlegar, BC. In her younger days Gloria enjoyed motorcycling and rode a Harley Davidson. Gloria established the Interior Association for Injured Motorcyclists, which provides aid to fallen bikers.

Despite the progressive disability due to ALS, Gloria continued to live independently in her own home with the support of family and professionals. She told the BC Supreme Court that one of her greatest fears was being reduced to a condition of dependence on others to meet her needs.

In a statement published by the BC Civil Liberties Association, Gloria’s mother, Anne Fomenoff, remembered her legacy: “Gloria will be dearly missed by her devoted family and friends, but we are grateful that Gloria was given the solace of knowing that she had a choice about how and when she would die. Thanks to the ruling of the BC Supreme Court, Gloria was able to live her final days free from the fear that she would be sentenced to suffer cruelly in a failing body. The exemption she was granted allowed her to face her illness and death with dignity and grace. In the end, Gloria was spared a long and painful death from ALS—she was able to die peacefully surrounded by her friends and family. Until the moment she died, Gloria firmly believed that all Canadians should have choice in dying, and we, her family, completely supported her in that belief. I am so proud of my feisty, determined daughter—she struggled to make the world better for Canadians. I speak on behalf of my entire family when I say we are so proud of her legacy. We are blessed to have known and loved this special woman.”

Anne Fomenoff, Gloria Taylor’s mother

“Until the moment she died, Gloria firmly believed that all Canadians should have choice in dying, and we, her family, completely supported her in that belief. I am so proud of my feisty, determined daughter—she struggled to make the world better for Canadians. I speak on behalf of my entire family when I say we are so proud of her legacy. We are blessed to have known and loved this special woman.”

Gloria Taylor’s courageous legacy will live in the minds of Canadians and in the constitutional case that she was such a significant plaintiff in, as the case proceeds to the BC Court of Appeal in 2013.
Dutch Film:

A Good Death

Dutch playwright Wannie de Wijn’s has made his film debut with a screen adaptation of his successful stage production, *A Good Death*. The English subtitled film begins late in the afternoon before the planned euthanasia of Bernhard Keller, who is dying from lung cancer. Bernhard’s daughter, Sammy, is unable to accept her father’s planned death, scheduled for 9:00 a.m. The family situation is complicated because Bernhard has two brothers, Michael, who is a cold and calculating businessman, and suspicious that Bernhard’s decision was not independently made. There is tension because Michael’s former wife of seven years, Hanna, has taken Bernhard as her lover and Michael thinks she is after the estate. Bernhard’s youngest brother, Ruben, is autistic and child-like. Ruben, naïve and socially awkward, who asks the sorts of questions that otherwise would not be asked: Why? Will we watch? Are you scared? The tunnel must lead somewhere?

Bernhard’s doctor and friend, Robert, has agreed to do the euthanasia. He had stopped doing them for his patients because the decision process was becoming more difficult each time, but now he will be euthanize his friend and cope with the family’s emotions. *A Good Death* mixes humour, philosophy and conflict. Bernhard jokes that he might oversleep and miss his appointment with death. He reflects on the existence of God, and interrupts his sleep to intervene in a charged outburst between his loved ones.

This sensitively produced film is 82 minutes long and shows several views about euthanasia, loss, pain, and suffering.

Bernhard and Hanna sharing a laugh in *A Good Death*.

Terry Pratchett Film Wins Two Awards

The BBC documentary, *Choosing to Die*, presented by Sir Terry Pratchett was recently awarded an International Emmy and also a Grierson British Documentary Award. Choosing to Die was reviewed in Vol. 1(2) of our newsletter and can be seen online at the Farewell Foundation’s blog.

The program showed the assisted death of ALS sufferer, Peter Smedley, at Dignitas.

The Suicide Plan

Frontline, a highly respected PBS current affairs program aired *The Suicide Plan* on November 13, 2012. The 83 minute investigative documentary explores the underground of self-chosen death in the United States and the groups that help people to die.

There are revelations about Compassion & Choices, the group that has led law reform efforts in several states. Compassion & Choices consultation program is shown to provide very detailed information to patients in states where assisted death is not legal. A terminally ill patient is shown examining a lethal combination of drugs allegedly ordered through Compassion & Choices.

Also featured is the Final Exit Network, which helps non-terminally ill as well terminally ill people to die, often with helium and a plastic hood. The Network has been the target of law enforcement in Arizona and Georgia, and has successfully defended itself against charges of aiding suicide.

*The Suicide Plan* can be viewed online: www.pbs.org/wgbh/pages/frontline/suicide-plan/.
Residents of Gabriola Island, invited Farewell Foundation director, Russel Ogden, to give a presentation at the community hall. Ogden’s presentation on November 11, 2012 was attended by 30 islanders. He explained Canada’s historical prohibition against assisted suicide and Farewell Foundation’s view that a demedicalized model for humane assistance is optimal for Canada. Paul Grignon filmed the talk for some islanders who could not attend on the holiday weekend and has generously provided copies for redistribution. DVDs of the 80 minute presentation can be ordered from Farewell Foundation for a suggested donation of $10.00. Request a copy from info@farewellfoundation.ca.

Freethinkers at UBC
End-of-Life Forum

The UBC Freethinkers hosted an end-of-life forum on November 21st. Russel Ogden opened the session with a presentation of the history of the law on assisted suicide in Canada. UBC philosophy professor Scott Anderson presented an argument for assisted suicide and Dr. Will Johnston of the Euthanasia Prevention Coalition presented an argument against assisted suicide.
Documented as a footnote in the 1905 federal report of Criminal Statistics, Canada’s first officially recorded case of aiding suicide was a prosecution of a man who attempted suicide and his wife who urged him on. On March 1, 1905, Mr. and Mrs. Hexum were arrested in Vancouver after Mr. Hexum slashed his throat with a razor. Mrs. Hexum was accused of assisting him by saying that he should kill himself after losing $500 in a business deal.

The Daily News Advertiser reported that the Hexum’s were binge drinking when Mr. Hexum slashed his throat with a razor. A police doctor stitched him up and the pair were arrested and transported to the police station in a horse-driven taxi.

The Police Magistrate had harsh words for Mrs. Hexum who persisted in interrupting the Court and insisted that they could not have been drunk since there was only one bottle of liquor at the home. In releasing Mrs. Hexum, the Magistrate said that she was so obnoxious it would have been more appropriate if the charge had been “driving him to suicide.”

The Farewell Foundation believes that its members have the right to make choices about their own bodies, their physical and psychological integrity, and their basic human dignity.

The Foundation believes its members should have the right to receive assistance to end their lives.

The Foundation’s primary objectives are law reform and implementation of free services once that is achieved.

For more information or to become a member, please contact the Farewell Foundation at:
322-720 6th Street,
New Westminster, BC, V3L 3C5
604.521.1110
info@farewellfoundation.ca
www.farewellfoundation.ca
www.facebook.com/FarewellFoundation

DIRECTORS
Russel Ogden
Laurence Elisabeth Cattoire
Erling Christensen
John Lowman
Paul Zollmann

GRAPHIC DESIGNER
Laura R. Copes

FAREWELL HOUSE UPDATE

We have raised $60,000 towards our goal of $750,000 for Farewell House. Not everyone wishes to die at home, or is able to do so. Farewell House, like Dignitas’s famous blue house in Switzerland, will one day become a safe place for members of the Foundation to safely and humanely conclude their lives. Your generous support will one day allow for a supportive and non-judgemental place where members can end their lives peacefully.