

Welcome the good death

In Canada, it's a crime to help the ill die when they choose. A U.S. state offers a model solution, says ethicist ARTHUR SCHAFFER

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A grieving Montreal mother, Marielle Houle, has been in court this week, charged with helping her 36-year-old son to die. Her son, a playwright who worked as a hospital orderly, had been diagnosed with multiple sclerosis and knew his fate. At the time of his death, he was still in good health. Now his mother is at the centre of a renewed debate about the ethics of assisted suicide.

Suicide was a criminal offence in Canada until 1974. In that year, however, the Trudeau government amended the Criminal Code: No longer could the state criminally prosecute a person who attempted but failed to take his or her own life. Although suicide was decriminalized in 1974, counselling or assisting suicide continued to be an offence, under the code's Section 241.

This seeming paradox -- that one commits a criminal offence by counselling or assisting someone to do an act that is itself now legal -- can be explained by a desire to protect vulnerable people. Society quite properly wants to guard against the danger that greedy relatives or impatient caregivers may abuse or exploit dying people.

Unfortunately, however, current Canadian law is so broadly worded that it denies end-of-life help to people who may truly seek a dignified or gentle dying. Sue Rodriguez fought all the way to the Supreme Court of Canada in an effort to win legal recognition for her right, as a disabled person, to have physician assistance in ending her life at a time of her choosing. She knew that her progressive brain disease (ALS) would ultimately kill her, but she wanted to avoid the terrible suffering that would otherwise be her fate.

Overwhelmingly, Canadians supported Ms. Rodriguez, who was viewed as an intelligent and courageous woman. Still, she lost her appeal when the Supremes found against her, in a 5-4 vote. The Chief Justice voted with the minority, supporting her legal right to physician-assisted suicide.

Despite losing her legal battle, Ms. Rodriguez nevertheless got the help she sought to end her life. Significantly, the doctor who assisted was never charged with a crime. B.C.'s then-attorney-general issued guidelines for prosecutors in such cases, one of which stipulated: Don't bring a charge unless there is a reasonable likelihood of conviction. And probably no jury in Canada would have convicted the doctor who helped Sue Rodriguez to die.

Now, we face not only the Houle case, but also that of a 73-year-old grandmother in Victoria, B.C., Evelyn Martens, who is on trial for counselling and assisting the suicides of two terminally ill women. One of the women Ms. Martens allegedly assisted to die was suffering from ALS, the other from advanced cancer.

Groups such as Dying With Dignity and the Right-to-Die Network are campaigning for law reform in Canada. The courts may clarify what is meant by "counselling" suicide, so that neither family members nor the medical profession need any longer fear prosecution if they fully discuss end-of-life options with the dying. But realistically, Canadian courts are unlikely to overturn the law against assisted suicide, because the issue is seen as one that should more properly be addressed by Parliament. Whatever the law may say, however, Canadian juries could simply refuse to convict those charged with committing this crime, at least when the patient understands her situation and genuinely wants assistance to hasten death.

No one advocates a total elimination of the law against hastening the death of another person. Vulnerable patients need to be protected. But Canadians should take a closer look at the Death with Dignity Act in Oregon (1997).

A terminally ill patient resident in Oregon now has the right to physician-assisted suicide, but only if a number of safeguards are met. These safeguards are intended to ensure that any patient who requests assistance to die is aware of all her options, including pain management, and palliative or hospice care. Two physicians have to confirm that the patient is terminally ill and that her judgment is unimpaired. Moreover, the patient must persist in her request for 15 days, and the voluntary nature of the patient's request must be confirmed by two individuals who are neither family members nor primary caregivers.

Oregon's experience may be a useful guide for Canadian legislators. The number of individuals who avail themselves of physician-assistance in dying is comparatively small: only 38 out of about 30,000 deaths each year in Oregon. But large numbers of the terminally ill feel comforted by the knowledge that if things got very bad for them at the end of life, all options, including hastened death, could be considered. After more than six years of experience, there is no evidence that the elderly or the disabled have suffered from abuse or exploitation because of the Death with Dignity Act. Those who predicted a slippery slope, whereby the cash-strapped U.S. health-care system would prefer to bump off the dying rather than invest in palliative care, have been proven wrong. Pain management and comfort care have, if anything, improved.

Whatever the outcome of our current court cases, perhaps it's time for Canada's Parliament to take a second look at law reform. We owe it to the memory of Sue Rodriguez, and to ourselves.

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