



# Perspectives

The deVeber Institute for Bioethics and Social Research

2015

Research and Scholarship for an Informed Social Response to Human Life Questions

## Train Wreck: the Supreme Court Decision on Assisted Suicide



**Ian Gentles**  
deVeber Institute  
Research Director,  
Professor of History



**Adam Giancola**  
deVeber Institute Intern  
and Osgoode Hall  
Law Student

On February 6<sup>th</sup> 2015 the Supreme Court of Canada unleashed a constitutional hurricane. Defying the clearly expressed will of Parliament, sidestepping judicial precedents, and flying in the face of recommendations from numerous advisory bodies, including those of the medical profession, the Court nullified the longstanding prohibition on assisted suicide.

It justified overriding the Criminal Code of Canada by reference to recent shifts in public opinion, conflicting evidence from the social sciences, and a new interpretation of the *Charter of Rights and Freedoms*. It also declared that the autonomy of the individual was a paramount constitutional principle, trumping important considerations of the public good.

### 1993: *Rodriguez* Decision

It is worth recalling that in 1993 the Court had pronounced in *Rodriguez v British Columbia*<sup>1</sup> that “*the societal concern with preserving life and protecting the vulnerable renders a blanket prohibition preferable to a law which might not adequately prevent abuse.*”<sup>2</sup> Sue Rodriguez was suffering from ALS or Lou Gerig’s Disease and wanted assistance to end her own life at the time of her choice. The Supreme Court decided that the social good was of higher importance and that the longstanding legal dictum, “hard cases make bad law” applied.



### Senate, CMA and Parliament

Since that time a Special Senate Committee has recommended that all forms of euthanasia remain offences under the Criminal Code.<sup>3</sup> Up until the recent Supreme Court decision, the Canadian Medical Association repeatedly opposed any change in the law on euthanasia or assisted suicide. Parliament has been even more emphatic, turning back numerous private members’ bills to legalize physician-assisted suicide. Most recently, in 2010 Members of Parliament from all parties united to reject such a bill by a definitive majority of 228 to 59.



**“Society’s views have changed” – British Columbia Supreme Court, 2012**

The case on which the Supreme Court pronounced originated in British Columbia. Gloria Taylor, who had the same illness as Sue Rodriguez, brought an action before the BC Supreme Court, arguing that she should not have to make the “cruel choice” between killing herself while she was still physically capable of doing so, or giving up the ability to exercise any control over the manner and timing of her death.”<sup>4</sup>

The judge, Justice Lynn Smith, overturned the precedent set in *Rodriguez* with the observation that society’s views on physician-assisted dying had sufficiently developed to warrant a change in the law. In rendering this decision, Justice Smith seemingly stepped outside of her judicial role.

**Overturned by B.C. Court of Appeal**

In 2013 the B.C. Court of Appeal overturned Justice Smith’s decision, noting that the law set out in *Rodriguez* was still good and that the trial judge was bound by this law on the principle of *stare decisis*<sup>5</sup> — legal Latin for “let the decision stand”, meaning that a previous court decision is authoritative in all future cases in which the facts are substantially the same.

**Supreme Court About-Face: Carter v Canada**

But in 2015, the Supreme Court of Canada overturned the BC Court of Appeal and sided with the trial judge. In doing so, it thereby cancelled two longstanding elements of the Criminal Code, Sections 14 and 241.

**Section 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.

**And Section 241:**

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.

By implication there may no longer be any legal protection for those people who intervene to stop someone from committing suicide. Personal autonomy is now paramount.

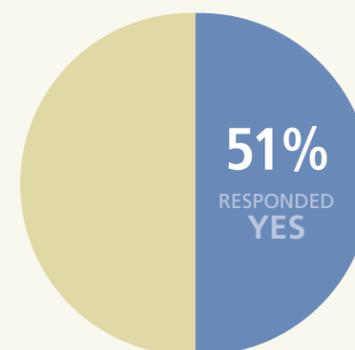
# Canadians Seeking Better Information: Public Opinion Shifts Both Ways

**Shifts in public opinion, as cited by the Court’s decision, are not one way.**

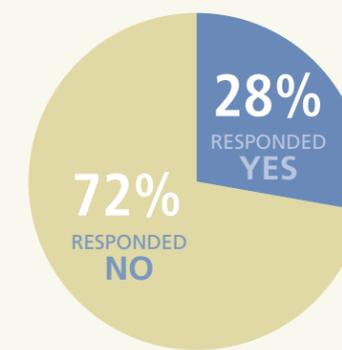
A major opinion shift occurred amongst the audience at a recent, well-attended debate sponsored by the Institute of Medical Science at the University of Toronto. A large number of people changed their minds when they learned of the implications of legalizing assisted suicide.

“ Is Canada ready for assisted suicide and euthanasia? ”

**BEFORE THE DEBATE THE AUDIENCE WAS POLLED ON THE QUESTION, “IS CANADA READY FOR ASSISTED SUICIDE AND EUTHANASIA?”**



**AFTER HEARING THE ISSUE FULLY DEBATED THEY WERE POLLED ONCE MORE ON THE SAME QUESTION. THIS TIME ONLY**



Speaker **Jean Echlin**, Palliative Care nursing specialist, called for a deep consideration of the effects such practices would exert on Canadian medical professionals. “The Supreme Court has given doctors the job of being executioner and they didn’t ask for it. There are no laws, policies, or procedures which will prevent abuse”. Clinical ethicist Dr. Kerry Bowman at Mount Sinai Hospital concluded, “Canada is not ready for this decision”.

**Assisted Suicide to Protect “Right to Life”**

According to the Supreme Court decision, Sections 14 and 241 of the Criminal Code infringed Section 7 of the *Charter of Rights and Freedoms*, which states that “everyone has the right to life, liberty and security of the person... ”<sup>6</sup> In other words, the longstanding prohibition on aiding and abetting suicide, or on

consenting to be *killed* violates your and my *right to life* under the Charter.

The Supreme Court concluded the decision by suspending its judgement for twelve months, giving the federal government until February 2016 to draft new legislation.



## Can anything be salvaged from this judicial train wreck?

It is welcome news that the federal government has at last got around to appointing a three-person **Expert Panel** to review the options and recommend a new law on assisted dying. The panel will be headed by Dr. Harvey Max Chochinov, Canada research chair in palliative care at the University of Manitoba, and will also include Dr. Catherine Frazee, a former co-director of the Ryerson-RBC Institute for Disability Studies Research and Education, and Dr. Benoît Pelletier, a University of Ottawa law professor and former Quebec Liberal cabinet minister.

Let us hope that the Expert Panel will take into account **international experience**:

### From Belgium and the Netherlands:

- where many competent people have been put to death without their consent,
- where assisted suicide is regularly offered to people suffering from depression — a treatable psychological condition,
- where teenagers and infants are also eligible for euthanasia.

### From Oregon:

- where people, feeling pressured not to be a financial burden, have been asked to accept assisted suicide in preference to expensive medical care.

*Let us hope the Expert Panel will recommend a new law that guarantees the rights of medical personnel and institutions such as hospitals and palliative-care hospices not to participate in assisted suicide.*

*Let us hope that the new law will uphold the right of caring people to continue to intervene to stop depressed individuals from killing themselves.*

*Above all let us hope that the Expert Panel will strongly recommend prioritizing progress in pain management and funding for palliative care for all people with serious illness. International studies have shown that when pain is properly managed, and quality palliative care is in place, the demand for assisted suicide virtually evaporates.*

1. [1993] 3 SCR 519 [Rodriguez].
2. Rodriguez, supra note 1 at 605.
3. The Special Senate Committee on Euthanasia and Assisted Suicide, Of Life and Death - Final Report (June 1995); <http://www.parl.gc.ca/Content/SEN/Committee/351/euth/rep/lad-tc-e.htm>
4. Carter v Canada, 2015 Supreme Court 15, [2015] 1 SCR 331 at para 13.
5. Carter v Canada, 2013 BCCA 435, 51 BCLR (5th) 213.
6. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 7.

Read the deVeber Institute's newest publication

### It's Not That Simple: Euthanasia and Assisted-Suicide Today

#### In Memoriam

The deVeber Institute extends condolences to Dr. Barrie deVeber and the deVeber and Plaxton families on the passing of **Iola Plaxton deVeber**, Friday, June 19th, 2015. Iola was a friend of the Institute, a gifted artist, and an inspiration.



## The deVeber Institute for Bioethics and Social Research

Founded in 1982

415 Oakdale Rd., Suite #215,  
Toronto, Ontario M3N 1W7

Tel. 416-256-0555  
Fax. 416-256-0611  
[bioethics@deveber.org](mailto:bioethics@deveber.org)  
[www.deveber.org](http://www.deveber.org)

**Executive Director**  
Kathy Matusiak, BSc  
Charitable Business Number  
11896 4915 RR 0001