

The Death of a Giant

Gary Bauslaugh

The Supreme Court of Canada's historic decision in February of 2016, striking down our law prohibiting assisted suicide, did not take place in a vacuum. As with most progressive social changes, there were many people over many years who courageously led the way, often in direct defiance of the law they believed to be unjust, often endangering their own freedom to help relieve the suffering of others.

A different progressive change occurred through the Court's 1988 ruling on abortion, which struck down another cruel law that, like the assisted suicide law, made criminals of decent and compassionate people and punished the innocent. And of course it discriminated against the poor who did not have the means to seek help elsewhere. Again we can see a parallel to assisted suicide. These laws, part of our "justice system," were the opposite of just.

Women have access to abortion in Canada now thanks to the actions of one brave man, Henry Morgentaler, who carried out abortions – at least 5,000 of them – in open defiance of the law. Morgentaler made no secret of what he was doing and most people understood that these were acts of human kindness. Even some of those who publicly opposed abortion sought Morgentaler's help when a woman they knew got into trouble.

But there was that law prohibiting abortion. What were the authorities to do? They tried to prosecute Morgentaler four times, but could never find even one juror who would vote to find him guilty. Finally the Court rescued the

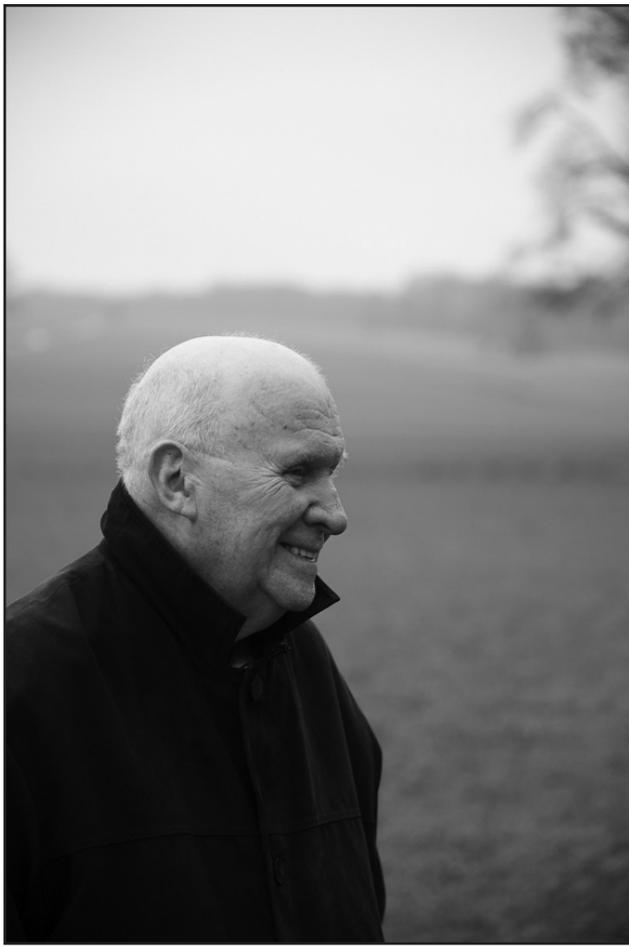
country from this impasse and declared the abortion law to be unconstitutional.

The actions of Henry Morgentaler, leading to a fundamental change in Canadian law, have saved thousands of women from unwanted pregnancies or from dangerous back-alley abortions. Some people, of course, place an undue value on arbitrary rules taken from ancient scriptures, and such people like to classify Morgentaler as a "murderer." But few if any Canadians have ever prevented so much unhappiness and unnecessary suffering.

Do we have one similar, major galvanizing figure in the fight to legalize assisted death?

It is not so clear that there is just one such person who brought us to last year's Supreme Court decision; rather, there were many who contributed to a growing public support for assisted death. That shift in public attitudes can be seen in looking at the 1993 Court ruling in the Sue Rodriguez case, where a five to four majority refused to allow assisted death even in extreme cases like that of Rodriguez. One of the reasons cited by the Court was that public opinion was not in favour of assisted death. By 2015, however, a strong majority of Canadians clearly supported assisted death, and the Court voted unanimously for it.

Why this radical change? In my recent book, *The Right to Die*, I look at cases over the past 75 years or so that have helped lead us to the point of such powerful and unequivocal Court support for assisted death.



*John Hofsess, in late
February in his final days.
(Basel, Switzerland)*

[Photo by Troy Moth.]

There were some who, like Jean Brush in 1994 in Stoney Creek, Ontario, found the situation of her husband Cecil too terrible to bear. After a very good life together, Cecil by the age of 84 had developed very serious health problems: he had some dementia, had gone blind and had become very depressed by his condition, which was not going to get better. Finally, seeing no help for the predicament they were in, Jean gave them each a overdose of drugs that she thought would kill them both. It did not and they recovered, with Cecil subsequently moving to a nursing home. One day Jean came to pick up her husband, ostensibly to go to lunch, but instead she took him to their home, spread out some blankets on the floor, lay down with him and stabbed him several times in the stomach, and then did the same to herself.

Their daughter found them a little later, lying together in a pool of blood. He died; she lived and was found guilty of manslaughter, but was given a suspended sentence by a merciful judge, who wrote:

I can see no principle of sentencing that would cause me to incarcerate Jean Brush . . . She has

already suffered a harsher sentence than could ever be imposed by this Court, the loss of her loving and devoted husband under these tragic circumstances and the trauma of becoming involved in a very public criminal prosecution at this stage of her life ... I will not compound this tragedy by incarcerating Jean Brush.

I cannot think about this story without having tears come to my eyes – the evident desperation of these people, the utter difficulty they had in trying to escape from a life that had become a misery, the shock to the daughter of finding her parents lying there on the bloody blankets. And, too, the humanity of the judge.

Can anyone hear the story of Jean and Cecil and not think there must be a better way for people like them?

There were many other stories that affected the public perception of assisted death, although perhaps there is no single figure, like Henry Morgentaler, who dominated this struggle to correct an unjust law. But there is one person who stands out for his courage and his influence.

John Hofsess was, in his youth, an avant garde filmmaker of some considerable note. He

later became a film critic for Maclean's magazine and then a freelance writer. In 1991, he founded the Right to Die Society of Canada and was the first to try to help Sue Rodriguez, who was suffering from ALS and would eventually become almost completely paralyzed. She did not want to live on in that condition, but of course would be unable to end her life herself. Hofsess took the extraordinary step of making a public pledge to help her:

I, John Hofsess, do agree to assist Sue Rodriguez in terminating her life at a time of her choosing, preferably by permission of Canadian law but failing that, by the moral authority of personal conscience.

Had this assistance actually taken place, Hofsess would likely have been charged with murder and faced a minimum of ten years in prison, if found guilty.

This did not happen because of a misunderstanding that led to politician Svend Robinson and lawyer Chris Considine stepping in to take over the case, which was lost at the Supreme Court. Hofsess felt that the strategy used by Robinson and Considine was flawed and the case could have been won. In the absence of a legal sanction, an unnamed doctor did, apparently, help Rodriguez die.

The Rodriguez case, which Hofsess had initiated with the help of University of Victoria philosopher and bioethicist Eike-Henner Kluge, brought much attention to the cause of assisted death.

After the Rodriguez case was lost and a much-touted Senate Committee on Death and Dying failed to provide any significant recommendations, Hofsess became discouraged about

the prospects of changing the law. He decided that the best thing he could do was to start an underground euthanasia service, available to members of his Right to Die Society or any other similar society. This was a highly illegal operation,

in absolute defiance of the law. Legal help was not possible for desperate people wanting to die. So he made the choice to do it illegally. His assistant in this service was Evelyn Martens.

In defense of his actions Hofsess would again, as he did in the Rodriguez case, cite the moral authority of personal conscience. In doing this he was acting in the spirit of Gandhi, who said:

There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts.

Of course there are problems with taking the

law into one's own hands, and the last chapter of my book examines this difficult issue. But, regardless of the inherent difficulties in going against the law, at some point obedience to the law would seem to be unconscionable.

That is why Martens and Hofsess risked their own freedom to help people die. Critics have accused them of being ruthless and uncaring "death zealots," but I spent much time with each of them and am entirely persuaded that they acted out of human compassion, not from some sinister motive. Both had undergone excruciating experiences with dying friends and relatives, and both believed that such unmerciful treatment of the dying was wrong. Hofsess thought of his operation as akin to the Underground Railroad where desperate black people were illegally helped to escape from slavery in the American South.

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To both Martens and Hofsess, laws that caused unnecessary human suffering were cruel and wrong. They felt they had a moral obligation to oppose such laws. While most of us might not choose their means of opposition, their motivation seemed clear. Hofsess himself would have preferred it to be otherwise: he very much wanted a legal, controlled process for assisting death. But in the absence of such a process, he felt he could either ignore people who wanted to die or break the law and help them. He chose the latter.

His most famous client was the poet Al Purdy; Hofsess's story of that death was carried in detail in the last issue of *Humanist Perspectives*.

Eventually, in 2002, Martens was caught attending two different deaths and was prosecuted for assisting suicide. But the authorities could not prove that she had actually taken part in these deaths and she was found not guilty. Her prosecution, however, again brought much public attention to the issue of assisted death. I wrote a detailed account of her trial in issue 152 (Spring 2005) of *Humanist Perspectives* (then *Humanist in Canada*).

After the arrest of Evelyn Martens, Hofsess gave up his underground operation – it was now too exposed. Basically he lay low for the next dozen years or so, until his revelations about Al Purdy's death in the March issue of this magazine and also in *Toronto Life* magazine.

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Hofsess died in Switzerland on February 29, 2016, in the company of Richard Thain, a supporter from Ottawa, Madeline Weld, co-editor of *Humanist Perspectives* magazine (also from Ottawa) and Michael Irwin, a retired doctor from Britain who has been a long-time advocate of physician-assisted death.

Over his last year I met with Hofsess many times, while working on my book, and we became friends. He wanted me to travel with him on his final trip, but for a number of reasons, including medical ones, I could not do so. Still, I cannot escape the feeling that I let him down.

But with Richard, Madeline and Michael he was in good company.

In 2015, with pending new legislation on assisted death, Hofsess felt it was time to tell his story, focusing on the role he and Martens had played in the death of Purdy who, it was generally thought, had died of natural causes. Purdy's wife, Eurithe, still living, was against publishing the story, but Hofsess, who was not in good health and did not want to go on living much longer, wanted the true story to come out, both in the interests of historical accuracy and because Purdy's example, he thought, might help Canadians become more accepting of the idea of voluntary euthanasia. Al Purdy himself wanted his story to be told and he and Hofsess agreed that it would be released at the time of Hofsess's choosing.

Hofsess believed that most people want someone to carry out the procedure for them, not just to assist in their suicide, and he hoped that new legislation would allow for the possibility of voluntary euthanasia as well as assisted suicide. The recent Supreme Court ruling striking down the law on assisted suicide leaves open this possibility, referring to "assisted death" rather than assisted suicide, and at the time of this writing it appears that the new legislation will allow for this possibility.

The story was initially due to come out in *The Walrus* magazine in November of last year, with preparations and consultations with the magazine taking place during the previous year. That was when Sandra Martin of *The Globe and Mail* and I both began writing books on the Canadian right-to-die movement. His story would be featured in each book. Our books were both scheduled to come out in April of this year, so were mostly written late last year, with both of us expecting the Purdy story to come out in *The Walrus* article. Sandra planned to extend her coverage of the story by attending Hofsess's death in Switzerland.

Then things got complicated. For reasons that were not apparent to me (and still are not), *The Walrus* suddenly, sometime in the late fall of last year, pulled out. Another possible publisher did as well. I realized, as I imagine Sandra

did, that all of a sudden we were both in the position of breaking the story when our books came out in April. Normally, for a journalist, this would be a welcome situation, but in this circumstance it was tied to John's determination to go to Switzerland when the story came out. Yikes, I thought. Now our books would precipitate John's death!

The situation caused me a considerable amount of anxiety for several weeks, as I imagine it did for Sandra. She decided not to attend the death, whenever it was going to take place. I talked to Hofsess about the situation, explaining that my book was in final editing now and would be difficult to change. He reiterated that if the books came out in early April he would have to leave for Switzerland before that. He was also working on his own book that he wanted to finish before he left and now needed more time to do that.

At the last moment, my publisher and I decided that the Purdy section of my book would be removed from the final proofs of my book.

The moral dilemma implicit in this odd situation disappeared with Hofsess's agreement with *Toronto Life* magazine to publish a version of the Purdy story at the beginning of March, just after Hofsess's planned death on February 29. Still, he felt pressured by the April publication date of Sandra Martin's book, which would reveal incriminating, specific information about Purdy's death. There was the *Toronto Life* situation too, but the implication is that he would have delayed that deal were it not for Sandra Martin's book. He spoke of a "gun being held to his head."

Do I think, as some have suggested, that Sandra Martin is to be blamed for the timing of Hofsess's death by not altering her book? I do not. She had talked to Hofsess about this and apparently he did not ask her to change anything, and at some point even gave her some sort of written agreement to use any material they had talked about. Mind you, this took place after the *Toronto Life* agreement was in place, so it was a moot point by then.

Neither do I wish to claim any sort of moral high ground for pulling the Purdy story from my

manuscript. On my own I may have gone with it – my journalistic impulses may well have triumphed over my better judgment. But my publisher, James Lorimer, wisely intervened.

Hofsess did not want to stay around when the story came out, and he was adamant about this though I questioned his decision several times. He felt that there was a good chance he could be prosecuted, which would entail, among other things, losing his passport and the opportunity to go to Switzerland, where he wanted to die. When I argued that, following the Supreme Court decision to legalize assisted death, prosecution for past offences would be unlikely, he pointed out that since what he had done was voluntary euthanasia, not assisted suicide, he could still be liable for murder, even if assisted suicide was legalized.

The uncertainty about Canadian legislation was also a reason he felt he needed to go to Switzerland to die: there was no guarantee that he would be eligible for assisted death under new legislation here. And he was determined to die. Why? He was a lonely man in failing health, and he felt it was wrong for the Canadian health system to spend more money keeping him alive. And aside from the distress of being prosecuted, he thought such prosecution could waste millions more dollars. And, of course, he did not relish the idea of spending his final days in prison. Perhaps more than that, though, he hated the idea of being at the center of a storm of publicity and controversy. He always had tried to stay out of the spotlight and was very uncomfortable with that prospect. All in all, he preferred the idea of going to Switzerland.

I did not agree with John that he should end his life in Switzerland. In my opinion, he did not have to go to Switzerland at all. He was not about to die from his various illnesses. I think prosecution based on his revelations about Al Purdy would have been unlikely at this point, especially with the new Liberal government predisposed to a progressive position on assisted death. A Harper government might have tried to make an example of Hofsess, in order to appease its conservative base, but I just cannot see Trudeau sanctioning such an action, especially

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with new legislation pending. Also, I do not think a great wave of unwanted publicity would have engulfed Hofsess; in fact the story has barely if at all made the news in most of Canada. Nevertheless, there was a risk that John's concerns could become reality and he was not willing to gamble on that.

I hoped he would stay around longer, in part because we had become friends. We met many times, over his last year, at his small subsidized apartment, where he spent much of his time working on his book – his “life’s work.” He had little money and survived, I think, on his Old Age Pension and gifts from some people who knew and admired him. Often I would bring him a coffee from a nearby coffee shop – a large Americano with just a touch of cream. We talked for many hours about the right to die movement, which was of great help in writing my book, but he was scrupulous in not trying to unduly influence me. He wanted to tell his story, to be sure, but he left to me to decide what to make of it. He declined my offer to read some of my manuscript, I think because he believed it would be improper to do so.

John was a very perceptive man and an exquisite writer. He showed me some of his earlier writing on films; especially impressive was a piece he did on the director Stanley Kubrick. John had managed to get an interview with Kubrick and his story was published in the *New York Times*.

John could not afford a car and usually would take the bus or walk to medical appointments, of which there were many. He had a lot of ailments. I offered to drive him sometimes but usually he declined. He did like to go to nice restaurants, so I took him out a few times. I wish now I had done so more often.

Of course I much admired the courage John had demonstrated in operating his underground railroad. Those of us who write about him can tell his story and carry his message forward. But the live voice of the man whose actions, per-

haps more than those of any other Canadian, have led us to our current state of national acceptance of assisted death is now silenced forever.

Although Hofsess was a diminutive man, he was

truly a giant in the right to die movement in Canada.

We actually will hear his voice once again when his book, *The Future of Death: True Stories about Assisted Dying*, is published later this spring by Canadian Humanist Publications. •

Gary Bauslaugh is former Editor of Humanist Perspectives and is the author of several books, including, in April of 2016, The Right to Die - the courageous Canadians who gave us the right to dignified death, published by James Lorimer and Co.

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