



THE PROSECUTION OF EVELYN MARTENS

an inquiry into the 2004 trial

by Gary Bauslaugh

The defence did have
three voices, the voices
of Evelyn, Monique and
Leyanne. And they were
voices of courage and
determination. Their
voices were present
throughout the trial.

— Catherine Tyhurst (defence counsel)

I didn't like being
shackled — I had a hard
time getting up the steps
to the plane. — Evelyn Martens

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September 20, 2004,
in the Supreme Court of British Columbia,
City of Duncan:

*Evelyn Marie Martens of Langford,
British Columbia stands charged:*

Count 1

*That she, the said Evelyn Marie Martens, on or about
the 7th day of January, 2002, at the city of Duncan, in
the Province of British Columbia, did unlawfully aid
and/or abet the suicide of Monique Charest contrary
to Section 241(b) of the Criminal Code.*

Count 2

*That she, the said Evelyn Marie Martens, on or about
the 26th day of June, 2002, at the city of Vancouver, in
the Province of British Columbia, did unlawfully aid
and/or abet the suicide of Leyanne Burchell contrary
to Section 241(b) of the Criminal Code.**

* This indictment originally included two charges of counseling a person to
commit suicide under Section 241(a), but these were not pursued.

CHAPTER I

Evelyn Martens

I REALLY HAD NO IDEA WHO EVELYN MARTENS WAS as I made my way to attend the first day of her trial. It was all taking place in my home town of Duncan, British Columbia, in early October 2004. Why was this women being prosecuted for assisting suicide? Why were there such strong feelings, widely reported in the press, about her and her case? I knew little about any of this, but thought that since the trial was nearby I would cover it for the magazine I was editing at the time, *Humanist in Canada*. End of life issues are of interest to the humanist movement because many of the common objections to suicide are based in certain religious beliefs. Humanists are always concerned when such beliefs appear to have influence on public policy. So I wanted to see what this trial was all about, but I had never taken a particular interest in end of life issues and was not especially familiar with those issues or the people who were involved with them. I was particularly curious, though, about some extraordinarily vitriolic attacks that had been made on Martens. Was I missing something?

As I approached the small Courthouse in Duncan, located near a round public building that housed, among other things, the local Crown prosecutor's office, I soon noticed a group of people outside the courthouse, carrying signs in support of Martens. Some of them I recognized as being from a humanist organization in Victoria, about an hour's drive away. There were a couple of television cameras as well and a number of reporters, and other people I did not recognize. I later discovered that some of them were members of the Right to Die Society of Canada. Suddenly there was activity to one side of the

Courthouse. Reporters with microphones and television cameras rushed over to intercept an attractive, dignified older woman who was walking in from the parking lot. Evelyn Martens had arrived. Without stopping or speaking to the reporters, she went directly into the courthouse.

The trial was the culmination of a two-year prosecution process during which Martens had been subjected to a detailed police undercover operation, then arrested, jailed, shackled at times, and had her bail appeal fought by prosecutors. She had been harassed by police in her home, been subjected to abusive accusations by certain organizations, undergone lengthy pre-trial sessions, and now was faced with the very real possibility of a 28-year jail sentence. How had she warranted all of this? Was she a bad and dangerous person, as all of the actions by the police and prosecutors and all of the resources devoted to this prosecution, and some of the public commentaries about Martens, would suggest?

I began to learn the answers to all of these questions as I became absorbed by the riveting events at the trial, and by this calm and thoughtful woman who was under such intense legal scrutiny. I first got to know her as we often spoke in the courthouse hallways during breaks in the proceedings, and I had many conversations with her after the trial as well. What struck me at first was the remarkable similarity between Evelyn Martens and the fictional Vera Drake from the great Mike Leigh movie of the same name. Vera Drake risked her freedom, before abortion was legalized in Britain, to help desperate young women who could find help nowhere else. Vera Drake was eventually caught and prosecuted for her acts of kindness and mercy. Evelyn Martens risked her freedom, in real-life acts of kindness and mercy, to help those desperate to end their own declining lives. And now Martens' own life — at least the freedom to live the rest of her life outside of prison — was in very serious jeopardy. How had it come to this?

There was little in Evelyn Martens' earlier life to suggest that she would become, as she did, a central figure in a national debate in assisted suicide. She was born in 1931 in Saskatchewan, where her family, like so many in prairies at that time, struggled for survival during the years of the Great Depression. Her earliest memories are of those hard times — just finding enough food was an everyday struggle. The family was given access to a quarter section of land near the town of Swift Current, where Evelyn's father raised crops and had some animals that provided food and a small income. They were very poor, but then, Evelyn remembered everyone else was the same. They had little, and life was a struggle, but she remembers it as a good life. She had loving parents and she was

very close to her two sisters, Kay and Gwen, and her brother, Cornelius. Her father was a musician and played organ and violin at dances.

In the winter of 1937, though, things got much worse. Evelyn's father came down with appendicitis and the snow was so deep they could not get into the hospital in town, not could the doctor get out to the farm. When her father finally did get to the hospital, the appendix had ruptured and, with no antibiotics available at that time, he died. One can only imagine the despair of a family suffering the loss not only of a husband and father but of the person who was so instrumental in keeping them all alive. Making the situation worse was the fact that Evelyn's mother was a timid woman with little education who found it very difficult to manage the situation without her husband. She was swindled out of all the family's possessions, such as they were — mostly livestock and equipment. In desperation the family moved to Swift Current to live on "Relief", which paid the family \$20 per month. They ate bacon lard, bread and potatoes. Christmas was a major event for the family because local charities always gave them a package of food that included fresh fruit, something they rarely had, and a turkey, which otherwise they never had.

In Swift Current Evelyn and her family were not only poor, they were the poorest of the poor. The family got some help when Evelyn's mother married again in 1941, and her new stepfather, Peter Wiens, who was a carpenter and a bootlegger, brought in a little money. But he resented the children and did not provide much for them. Evelyn remembers that in high school, a few years later, she had only one outfit which she would wear to school everyday and then wash it on the weekends. She did, though, acquire one thing of value from her mother's second husband: a new brother, Bill Wiens. They became lifelong friends. Peter Wiens died of cancer and then two years later Evelyn's mother married Clifford Reid. This union resulted in yet another sister, Dianne.

Although the difficulties of poverty and an unsympathetic stepfather were ever present, Evelyn did have some things going for her. She was a smart and pretty girl and did well in school. At the age of sixteen she decided to leave home and move to Calgary where her two sisters were living. She supported herself by waiting on tables. Within two years she had met and fallen in love with Jack Batsch, a big, gregarious farm worker who hoped, eventually, to make a career in the army. They were married in 1948 and a year later had a daughter, Millie. Jack was a kind husband and a good father.

But the good times were short-lived. Jack enlisted to fight in the Korean War and in 1952 Evelyn received a telegram informing her of Jack's death — he had stepped on a land mine. Jack Batsch was one of the first Canadians killed in

the War. But Evelyn still had Millie, and they remained very close until Millie's untimely death in 2008.

Too quickly, in 1953, Evelyn married again, this time to Edward Poelzer, and had five more children: Eddie, Bernadette (Berny), Mark, Bart, and Les. She and all the children, including Millie, remained very close through the years. But Edward was physically and emotionally abusive toward Evelyn and the children. He was an eccentric, intelligent, but hard and unsympathetic man, and very difficult to live with. One good result of this was that it helped Evelyn and the children draw that much closer to one another. In recalling her life with Edward Poelzer Evelyn said, "There is bad the best of us and good in the worst of us. The children now speak positively about the practical things they learned from him."

Evelyn divorced Edward Poelzer in 1973, after he had physically abused her. She then had two more unhappy marriages, one in 1983 to a man who drank too much, and another in 1987 to a man who was very possessive. Both marriages lasted less than a year. Being a very attractive woman Evelyn had no shortage of suitors. But like some such women, she seemed to fall into the habit of making bad choices amongst those suitors. She thought she could help them.

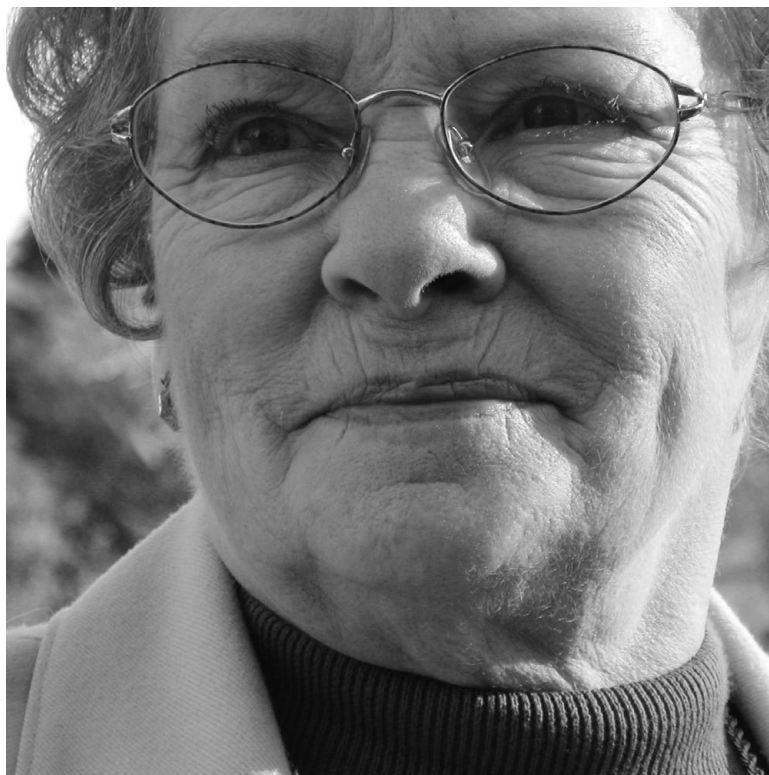
Evelyn had been brought up as a Protestant but converted to Catholicism when she married Edward Poelzer and set up their household in Hinton, Alberta. He was a staunch Catholic; as Evelyn said "he did not do anything by halves." He remained so until his death in 2006. But during the marriage Evelyn herself gradually drew away from the Church. She began to question why she and other women should accept these men telling them they could not practice birth control. She began to doubt the existence of God, and of heaven and hell. She continued to believe that some part of us does not die, but she came to reject organized religion.

As she moved away from the Church and her relationship with Edward Poelzer worsened, she busied herself taking care of the six children. But as Poelzer became increasingly difficult Evelyn began to look for work to gain some degree of financial independence. Poelzer was against her working — he was jealous and possessive, but she strongly felt the need to escape from his domineering control. She did find a job in the accounting office of a nearby mill, in Hinton Alberta where they lived. She stayed two years and then went to the Alberta Liquor Control Board where she stayed for 16 years, supporting herself and the children after the divorce. She started as a Clerk, advanced to Senior Clerk and then to Acting Assistant Manager. She was very bright and capable, and could have progressed to a Manager's position had she been willing to move



from Hinton. She did try moving to Calgary for two years as Senior Clerk, but her children were unhappy there and she returned to Hinton. She was unwilling to move again, in spite of better job possibilities, because her children wanted to stay in Hinton. In 1989 Evelyn retired from the Liquor Control Board and moved to Langford, British Columbia, just outside of Victoria, where she shared a house with her daughter Berny.

A year before moving to British Columbia Evelyn had an experience that changed her life. Her beloved brother Cornelius became deathly ill from bone cancer that had spread to many parts of his body. Evelyn and her sisters Kay and Gwen traveled to Ottawa to be with Cornelius in his final days in the hospital, and they took turns spending every night with him as he lay suffering through a prolonged and agonizing death. Other family members also came to visit and joined in the vigil. As Cornelius worsened and his pain became nearly unbearable — too much even for the strong doses of morphine he was given — Evelyn and her sisters went to the doctor to demand something more for Cornelius' pain. The doctor said anything more would kill him, and if he did so, he said, "it will be on your shoulders." But it got so bad — they could



not even touch him — they insisted that the dose be increased. Mercifully, Cornelius died shortly thereafter. He was comatose for a while, then awakened briefly. The nurse then gave him some oxygen, but he objected, saying he wanted nothing to extend his life. Earlier, when he could still write, he had written a note saying, “If there is a God please take me now. I can’t stand the pain.” The nurse told him that the oxygen would ease his dying, so he accepted it.

Evelyn was deeply affected by this experience with Cornelius. Why did people have to suffer in such a way, when there was no possibility of recovery, no hope for any sort of bearable life? The Catholic Church, to which she had belonged for many years, said that people just had to suffer; only God could determine the time of death. Suffering was part of God’s plan. But Evelyn knew that the men making such claims had never been in Cornelius’ condition. To her it was like the priests denying women birth control: none of them had ever carried a child or been forced to live in poverty with too many children. Cornelius’ unnecessary agony weighed heavily on Evelyn. To her, it was just not right.

After moving to Langford in 1989 Evelyn attended a meeting at a Unitarian

Church in Victoria to hear a talk by Marilyn Seguire, who was President of the organization Dying with Dignity in Toronto. Ms Seguire traveled about the country promoting living wills and advanced directives, ideas that Evelyn strongly supported, but she was disappointed in the talk. These things were not enough. Also attending the talk were some people who agreed with her, including John Hofsess, who shortly afterwards founded the Right to Die Society (RTD) in Victoria. Evelyn joined in 1990.

I once asked Evelyn why she joined the organization, a decision that subsequently led to her legal difficulties. “It was because of my brother’s death,” she said. “I didn’t want to die that way, and I didn’t want others to have to do so either. I always have felt a lot of compassion for others; it sometimes gets me into trouble. I feel their pain — it’s just who I am.”

Evelyn began to volunteer for the RTD, initially stuffing envelopes and helping with mail-outs. She began to take on more and more of a workload and became the main contact person for the organization, making direct contact with people seeking information about suicide, even though such contact could make her liable under the assisted suicide law, which was not at all clear about what exactly constituted assisting. The Martens trial, as will be seen in what follows, clarified this to some extent, but at the time that Evelyn was working for RTD it could well have been the case that giving any information at all about how to end one’s life could constitute grounds for prosecution. This was risky territory for Evelyn and the other brave women volunteering at the office.

Evelyn threw herself into the work — there were so many desperate people out there, so many wanting information to spare themselves an undignified, prolonged and painful death. As word of the organization spread Evelyn began to field enquiries from many different people, sometimes having several conversations with them. Calls came from many different countries. A woman from Ireland, Rosemary O’Toole, phoned at least twenty times (see chapter 6). In the fourteen years Evelyn worked for the organization she took thousands of calls from desperate people who wanted information and help to end their lives, or at least to be in a position to do so should their conditions worsen.

Evelyn said she was careful never to say anything that would encourage people to end their lives and evidence in the trial confirmed this. She would just tell them that if they were determined to go through with it there were relatively benign ways of doing so, and she provided information about these. Evelyn felt very strongly people had a right to know how they could end their lives in a dignified way, information that was already available in books and on the internet. How could it be wrong to help people find this publicly available

information, and to give people the peace of mind of knowing that there was a way of avoiding a terrible death? She knew this could be construed as being illegal, but she was very sure it was not wrong. She knew of many instances where people in desperation had had just shot themselves, leaving the grisly remains for family members to find. *That* was wrong.

Soon the organization branched out and began not only to tell people about the preferred way to die, which was by helium inhalation which avoided a sense of suffocation, but also to sell “exit bags.” These easily made devices facilitated the process of dying though helium inhalation. The bags were plastic with a draw string that went over the head, with an inlet for helium, which was widely available in stores that provided helium tanks for inflating party balloons. Though it might seem like this might have been an illegal activity, according to law it was not. Actually bringing an exit bag to person about to commit suicide might have been considered assisting, but simply selling the bags was not.

Evelyn found that people who wanted to end their lives were often very uneasy about doing so by themselves. Part of this was just not wanting to die alone. Part of it was fear that they would botch the job and survive in a brain-damaged condition and be even worse off than before. So at some point Evelyn and probably other volunteers began to attend suicides to provide comfort and assuage people’s fears. These acts of kindness and mercy were clearly very risky ones. Evelyn was well aware of this, but she went ahead anyway, probably many times, though she never revealed, nor did I ever ask her, how many times. And eventually she was arrested, leading to her landmark trial in 2004.

Was Evelyn Martens a danger to society, as the prosecution and her detractors alleged? Was she a “death zealot,” who ought to spend the rest of her own life in prison, as one organization claimed?

CHAPTER 2

The Trial

THE FINAL DAY

THURSDAY, NOVEMBER 4TH, 2004. Like many others I was still shell shocked by the re-election of American President George W Bush two days earlier. I was stunned by that mind-numbing triumph of reactionary forces in the United States. As I wondered what would happen in the Martens trial, with a verdict possible at any moment, a phrase that Dorothy Parker once used kept going through my mind: “What fresh hell is this?”

The jury had gone out the previous afternoon, after three weeks of Crown testimony, all of which I had witnessed. I had known little about the story beforehand, had not known Evelyn Martens at all, and had only a passing understanding of the central issue involved — assisted suicide. But it seemed to me that, with all of their witnesses — the Crown had called 38 witnesses and the Defence none — the Crown had entirely failed to prove that Martens was guilty of assisting the suicides of two women. But the American election had shaken my confidence in the rationality of public business in western democracies. Of course, though, this was nothing new over a hundred and fifty years ago De Tocqueville, in *Democracy in America*, wrote about the problem of rule by majority:

Now if you admit that a man vested with omnipotence can abuse it against his adversaries, why not admit the same concerning a majority? Have men, by joining together, changed their character?

If the majority in the United States could elect George Bush as their President, what could we expect from this jury, consisting of twelve citizens from the small town of Duncan, British Columbia? De Tocqueville added:

When a man or a party suffers an injustice in the United States to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To the executive power? It is appointed by the majority and serves as its passive instrument. To the police? They are nothing but the majority under arms. A jury? The jury is the majority vested with the right to pronounce judgment...

Martens appeared to be innocent of the charges laid against her, but what if public opinion against her turned out to be so strong that the decision of the jury reflected that view? Do juries often act in a way that defies public opinion? De Toqueville thought not. Even in the original OJ Simpson trial the jury's egregious decision reflected the majority view of the community from which the jurors came — that Simpson was yet another a victim of racial injustice. And in the case of the Martens prosecution the most visible and vocal constituency was one demanding that she be found guilty. This of course is another problem with democratic processes: not only is there a "tyranny of the majority," but also that power of tyranny is sometimes hijacked by an aggressive minority. Maybe, in the Martens case, public opinion and the opinion of the jury had been shaped by forces other than the evidence presented at the trial.

A variety of people attended the Martens trial: reporters, opponents and supporters of Martens, and observers of various sorts. Sometimes, particularly near the end of the trial, the observer seats were almost full, with perhaps fifty or so people. I was there the entire time, as were perhaps eight or ten others, but many others appeared for shorter periods. Martens' son Les Poelzer quit his job in Alberta so he could attend the complete trial. But people hostile to Martens were always there too. During a few days near the end of the trial a severely disabled person was wheeled into the courtroom, apparently as an unofficial exhibit. The purpose of this appeared to be to suggest that people like Martens, in favour of assisted suicide, would cause the deaths of unwilling handicapped

people like the one in the wheelchair. There was no way of knowing if such things were having any influence on the jury.

All of us there, though, probably came to the same view in regard to the significance of what we were witnessing; this could well be a landmark trial. Perhaps it would influence future prosecutions; perhaps it would inspire new legislation. Also at stake, of course, was the future of the woman who had been under investigation for two and a half years by the formidable combined forces of the RCMP and the Crown Prosecutor's office. They probably spent at least a million dollars on the case. Martens was 73 years old at the time of the trial, and if found guilty on the two counts of assisted suicide, could have been given a sentence of 28 years in prison.

Martens never seemed the slightest bit cowed by the state powers that were arrayed against her. Nor did she seem particularly bothered by the constant presence of the Euthanasia Prevention Coalition, an organization that had applauded her arrest. In a newsletter published shortly after her arrest they had proclaimed "death zealot kills two." During the trial their representative, Beverly Welsh, was quoted in the press saying that she hoped and expected Evelyn would go to jail.

Martens remained calm throughout the proceedings — standing motionless when the jury and Judge entered the Court, and then sitting quietly beside her lawyers, Peter Firestone and Catherine Tyhurst of Victoria. While her supporters often seemed nervous and uneasy, Martens showed little sign of concern. She felt strongly she had done nothing wrong — that she had helped people in severe distress who could find help nowhere else. "They can do whatever they want to me," she said to me at a break. "Jail is not that bad." It was a good thing that she felt that way, I thought, because she could well be spending the rest of her life there.

Instructions from British Columbia Supreme Court Justice Barry M Davies had been given to the jury, following closing statements by the Crown and the Defence. Davies told the jury how to proceed and how to evaluate evidence. He also gave a lengthy summary of the cases for both sides. The jury had not been allowed to discuss the evidence until they were sent out for deliberations, after the Judge's instructions, so it was likely that there were things they had to sort through.



It was entirely possible that they would quickly come to the same conclusion I had come to: the evidence clearly showed that Martens was not guilty of the charges against her. As the trial progressed it seemed to me that no compelling evidence against her was being presented, and I began to wonder why the Crown had brought this case forward in the first place — why they had subjected Martens to legal harassment for two and a half years since she was initially arrested, why they had even arrested her in the first place.

It was also possible of course that the jury would come to the opposite conclusion. Others in the gallery, Beverly Welsh in particular, seemed as certain of that as I was of my assessment. To Welsh, and to various associates who came and went, there seemed no doubt about Evelyn's guilt, something they expressed in frequent interviews with the press during breaks in the proceedings. The assuredness of these people made me wonder if I had missed something. And, even if I had not, did the views of Welsh about assisted suicide reflect public opinion and would they perhaps influence the jury's decision, regardless of the technicalities of actual guilt or innocence?

Those in Martens' corner, resenting the continued attacks on Martens by Welsh and the Euthanasia Prevention Coalition, experienced one brief moment of *shadenfreude*. Welch was embarrassed when her cell phone rang two separate times in court, in rapid succession, prompting Justice Davies to ban all cell phones from future proceedings.

In any case it seemed likely that there would be some disagreement amongst the twelve randomly selected people, and that at least some discussion and analysis would be necessary. Jury opinions must be unanimous, so even one person there who reflected Welsh's opinions could result in a hung jury. I did not expect a sudden verdict.

AIDING OR ABETTING

According to Section 241(b) of the Criminal Code of Canada, said Justice Davies, the prosecution depended on proving either that Martens had "aided" the suicide in an active, not passive way, or that she had "abetted" the death by encouraging the women who died to commit suicide. Prior to his instructions to the jury, however, the exact meaning of these terms had been unclear and not tested in court. It was possible that helping in any way, even just attending the suicide to provide comfort, could be considered to be "aiding" and be grounds for prosecution.

Clarity regarding this issue was of central importance in the trial,

because there was no question that Evelyn had attended the two suicides in question — this was never in dispute. It was clear she had gone to see the two women because of their planned suicides. Martens’ defence was that she had gone only to give comfort and emotional support to the two women in their last moments of life, but that she had taken no action to physically assist in the process. The key moment in the trial, then, was when the Judge instructed the jury that such “passive” presence was not a violation of the law. A broader interpretation would have meant that a verdict of guilty might be viewed as inescapable. A broader interpretation, though, would not have been reasonable. We could hardly send a person to jail for giving someone information that is freely available in books and on the internet, or for holding a person’s hands as she legally ended her own lives.

Had Justice Davies given such a broader interpretation of the assisted suicide law — that giving advice or simply attending constituted assistance — then Martens would have been technically guilty. It is still quite possible, however, that the jury would have refused to convict her, just as years before juries had refused to find Canadian doctor Henry Morgentaler guilty of performing abortions, even though this was illegal at the time. This refusal on the part of a jury to convict, even if it was clear that the law was broken, is called jury nullification. It turned out not to be in play in this trial.

Aiding suicide, given Justice Davies’ landmark interpretation, meant that there must be some sort of active participation in the suicides. This could have been providing equipment to bring about death, or providing drugs of the sort that are recommended either to cause death themselves or to facilitate death though sedation prior to the use of other means. Aiding could also mean helping to take the drugs or to use equipment — the equipment in question in the Martens’ cases being the plastic bags called “exit bags” and helium tanks, for the purpose of causing death by inhaling the gas through a tube in the bag and displacing oxygen from the lungs. The bag with helium had become the preferred method for suicide. It is easy to administer, certain to cause death, difficult to detect, and does not have unpleasant effects — it avoids the feeling of suffocation.

Aiding could also mean helping if something went wrong, though this was not explicitly mentioned by Justice Davies. One of the fears people have in wanting to commit suicide is that they might for some reason not fully complete the task, and be left alive with serious brain damage, in an even worse condition than that which made them want to die in the first place, and without the physical ability to complete the job at another time. One of the women in

this case — Monique Charest — had suffered from visions of becoming trapped in a non-functioning body, unable to do anything to end her miserable plight. This is often a fear of those who wish to end their lives, not wanting to wait until they are unable to help themselves, while at the same time knowing that any helpers could get into serious trouble.

When people want to wait until their condition worsens, the law prohibiting assisted suicide makes it difficult for them to do so. This was what was at issue in the famous, or infamous, Sue Rodriguez case, taken to the Supreme Court of Canada in 1993. Rodriguez was already seriously disabled by ALS disease, and she knew her condition was going to steadily worsen. At some point she would not be physically able to take her own life. But she wanted to live as long as she was not completely disabled, and then be able to die when she was disabled to the extent that she could not have any semblance of a normal life. The law made it impossible for this to happen legally, so Rodriguez appealed all the way to the Supreme Court of Canada, arguing that the law was discriminatory in that the able-bodied had the legal right and ability to end their own lives, but that a disabled person, in order to exercise the legal right to suicide, did not have the physical ability to do so. The Supreme Court narrowly defeated the Rodriguez appeal, perhaps bowing to certain public influences (the Catholic Church for one) and permitting this obvious instance of inconsistency in the law that was clearly discriminatory.

Rodriguez did eventually die as her condition worsened, apparently with the aid of friends (including a sympathetic Canadian Federal politician, Svend Robinson) and an unknown doctor, in defiance of the Supreme Court ruling. There was no prosecution of those involved, illustrating a certain general sympathy with Rodriguez' plight — perhaps this should be called "Crown nullification," but the Canadian Government failed to take this opportunity to change the problematic law which remains in effect, a law that makes possible the prosecution of people like those who helped Sue Rodriguez, a law that led to the strange spectacle of the trial of Evelyn Martens.

Abetting suicide, legally, means actively encouraging suicide or, in some serious way, inciting a person to take his or her own life. This aspect of section 241(b) was not of significance at the trial, since any evidence on possible abetting was all in Martens' favour. Brenda Hurn, Martens' friend who attended the Charest suicide with her, and who was subpoenaed to testify, indicated that after a long talk with Ms Charest, Brenda and Evelyn had suggested that she wait a few more months to be sure this was what she wanted, and that then they

would be happy to come back and see her again, and be with her if by then she was still sure this was what she wanted to do.

Further evidence that Martens was not in the business of encouraging people to take their lives came on a tape of her conversation with an RCMP undercover agent posing as the goddaughter of Charest. The tape and the undercover operation (reviewed in chapter 3) — supposedly the key piece of evidence for the prosecution — showed, by secretly recording Evelyn's unguarded comments, that she was a woman motivated by the desire to help people in distress, and that she did nothing to encourage suicide. So, with Hurn's testimony and the undercover tape, abetting was not pursued further by the Crown.

The Crown's case in regard to Monique Charest's death was that the suicide had been aided by the provision of equipment and sedatives by Ms Martens. The evidence for this was circumstantial. The Judge allowed that circumstantial evidence could be used for conviction, but only if that evidence led to just one reasonable inference — that Martens had assisted. If other reasonable inferences could be drawn from the evidence, then the jury would have to find her not guilty, because of reasonable doubt.

The Crown built its case partly on the evidence that Charest had phenobarbital in her blood, among other drugs, and no prescriptions for that particular drug had been given to her by Dr Kerswell, her doctor, and no phenobarbital vials were found in her apartment after her death. However,



Kerswell had been her doctor only since 1999, and no earlier medical records were available. One expert Crown witness indicated that he had seen phenobarbital pills retain their potency for forty years. Moreover, because no criminal charges were anticipated immediately after the suicide, which had initially been taken as a natural death, the apartment was not secured in any way. Charest's friend and executrix Wendy Hepburn had cleared it out the next day. Hepburn's husband and son had stayed in the apartment the night after the death, apparently for security reasons. Mrs Hepburn said she did not know who had keys. Children from the Hepburn family were seen running around in the apartment the morning after the death. So with all of this it was difficult to make a convincing case that Martens had brought, and removed, the drug. Who knows if Charest had had it in her apartment, or what might have happened to the bottle afterwards?

Somewhat more problematic for the Defence was the matter of the equipment, particularly the "exit bag." It was acknowledged by the Defence that Martens and Hurn had taken a satchel to the apartment, but they claimed that the satchel had been empty and was for the purpose of removing the equipment that Charest already had. The reason given for the removal was that Charest had indicated that she did not want the Church to know that she had ended her own life, apparently referring to the Catholic Church. She had been a nun earlier in life, though while in Duncan she had attended a United Church which was only half a block from where she lived. The Crown said that the removal of equipment suggested guilt — that Martens had brought the equipment and then removed it to hide evidence of her involvement. But removing the evidence did not imply guilt. It did not prove how the equipment got there; presumably aiding could only be in play if Martens had brought the equipment on the day of the suicide, not if she merely removed it. And there was another good reason, in addition to Charest's request, for Martens to remove it. There was a legitimate concern, on Martens' part, about possible prosecution. Leaving evidence of suicide might lead police to investigate possible assistance. Even if Martens had played only a passive role in supporting the suicide she still could be prosecuted, given the lack of precision in the law. So apart from the reason Charest had for concealing the suicide, Martens herself had a good reason for what she did in removing signs of the suicide, whether or not she had brought it in the first place.

There was no evidence that Martens had supplied the bag or the helium. Helium tanks are readily available in toy stores, for filling balloons. There were at least two places where tanks might have been purchased within blocks

of where Charest lived. So she easily could have obtained one herself. The bag was a different matter. It was admitted by Brenda Hurn that a bag with a tube attached and a Velcro collar to go around the neck, a bag of the kind that had been sold by Martens and the right-to-die organization for which she volunteered, was used. These are not available in toy stores. When police searched Martens' house they found several such bags. Did it not seem likely that she was supplying these to people, thus "aiding" suicides? And in fact she had been doing this. This was probably the strongest part of the Crown's case, but the case was undermined by the fact that merely giving or selling such bags in itself is not illegal, any more than selling a gun to someone who subsequently uses it to kill himself makes the act of selling it illegal. One cannot make the assumption that the gun, or the bag, is going to be used for the purpose of suicide. The bag, for example, might be wanted for purposes of some sort of demonstration — even the members of the Euthanasia Prevention Coalition, or similar opponents, might want one for that purpose. The Crown had to prove that Martens had brought the bag on the specific day of the suicide, for that specific purpose, and then they might have been able to make a case for assisted suicide. But working against this possibility was the fact that literature on assisted suicides urged people contemplating suicide to assemble all of the necessary drugs and equipment themselves, so as to be sure they are serious, and so as not to implicate those who might be there with them when they chose to die.

Although Martens might have brought an exit bag for Charest, there was no way to prove that she had, and there were other reasonable possibilities that could be inferred by the evidence. Charest could well have obtained the bags elsewhere, as the literature which she had had in her possession had recommended. She might even have obtained them from Martens at an earlier date, which would not have been grounds for conviction.

So the circumstantial evidence that Martens had exit bags in her home and had provided them to other people, which allowed the inference that she might have brought a bag on the day of the suicide of Charest, was insufficient, given the other possibilities. An unbiased jury, it seemed to me, could not really come to the conclusion, beyond a reasonable doubt, that Martens had brought the bag to Charest's apartment on the day Charest died.

Still, the confidence of Beverly Welsh and her colleagues from the Euthanasia Prevention Coalition seemed undiminished and unaffected, and their fervent hope for and apparent belief in the likelihood of a conviction

seemed to be unaffected by crucial though somewhat subtle distinctions such as the one described above.

CHAREST'S HEALTH

Though, as will be explained below, the argument was technically irrelevant, the Prosecution made much of Charest's not-so-terrible state of health. Leyanne Burchell, the other woman who died in Martens' presence, was in the last days of her life, and there was little chance that anyone on the jury would think that her death was premature. Charest's health, however, was a matter of extended debate in the presentation of evidence. This proved to be an annoyance to Justice Davies who could not see the relevance to the charge of aiding or abetting suicide. He was right about this: Martens' guilt or innocence, according to law, did not depend on whether or not either of these suicides were premature, but on whether or not Martens had aided or abetted them. The two women could have been in the best of health and the legal question would be the same — did Martens aid or abet the suicide of one or both of them?

But juries consist of people who can and do make decisions on all sorts of extra-legal grounds. The arguments on the state of Charest's health could have had a direct bearing on how the jury reacted to the case. If Charest had been in good health then the jury may well have been more inclined to think that Martens was remiss in not doing more to prevent the suicide, and more inclined therefore to see Martens' actions as encouragement. Though the prior health of the deceased ought not to have had an influence on any juror's decision, a guilty judgment was more likely on the part of any juror who had felt that Charest should not have died. It was unlikely any juror would have felt that about Leyanne Burchell, given the grim testimony about her illness [see below]. Charest, though, could likely have gone on living for some time.

There was another reason for why the Crown may have made such an effort to sway the jury's feeling by portraying Charest as a relatively healthy woman. They may have been trying to counter the possibility of jury nullification, which is dependent on a jury's sympathy with the accused. The Prosecutor may well have reasoned that, even if a successful case could be made against Martens, the jury out of concern about the injustice of a guilty verdict might find Martens not guilty. Creating the impression that Charest should not have died, or that Martens contributed to a premature death, could undermine the prospect of nullification.

From the testimony of early witnesses in the trial, one might well have

thought Charest to be in quite good health. A neighbour, Lorna Kately, and a friend, Denise Norbury, both gave testimony suggesting that Charest had only minor ailments. Dr Kerswell, Charest's doctor, came in to testify on the third day of the trial. His testimony, initially, confirmed the impression that Charest might have had a few problems but was basically all right. She was a little overweight, she had a thyroid condition, and she had reflux disease. Kerswell also referred to some depression and chronic back pain due to a degenerative spinal disease that caused narrowing of the spinal column. He said Charest believed she also had a disease called porphyria, but he had his doubts. When asked if any of these were fatal conditions he said no. He added that porphyria sometimes is, but a test Charest had taken had come out negative. He also allowed that she had had a blood clot (pulmonary embolism) in her lung in December of 2000, and she had been hospitalized then and he had seen her at the hospital. He had prescribed drugs for her reflux and for her thyroid condition, blood thinner for her embolism, and morphine for her back pain. He also gave her something for her depression but didn't think she had taken it. Asked by the Crown if she had any terminal disease, Kerswell said, "Not that I am aware of."

By this time a picture of a woman with some health problems, none of which were terribly serious, had emerged. The Defence had some work to do here, in order to counter this attempt by the prosecution to influence the jury with this essentially irrelevant testimony. They could have simply dismissed it as irrelevant, but this would have been risky because some jurors may have seen it to be relevant. Instead, the Defence decided to raise doubts about the case the Prosecution was trying to make about Charest's health. In cross examination Catherine Tyhurst pointed out that Kerswell had signed a "Do Not Resuscitate" form for Charest. These are standard forms used by terminally ill people who do not want efforts made to bring them back to life, should they lose consciousness and begin to die. The forms specify that they are to be used only for patients who are terminally ill or who are "near the end of their natural life." Tyhurst pointed out that Charest was only in her 60's and could not be seen to be of an age



where she could be considered to be near the end of her natural life, so signing the document must have indicated that in Kerswell's judgment Charest was terminally ill. The document requires his signature three times, and concludes with a statement that the DNR order reflects his medical opinion.

So was she terminally ill or not? Kerswell's explanation of this discrepancy was that Charest really was not terminally ill, but there were only a limited number of forms and sometimes they did not exactly fit the circumstance.

"You could have written something on the form to fix it, couldn't you?" Tyhurst asked. "But you didn't, did you?"

"No I didn't," he replied.

Tyhurst then proceeded, in her cross examination, to take a close look at Charest's condition, in particular the condition that Charest strongly believed she had: acute intermittent porphyria. This disease affects the nervous system and electrical pathways in the body and death can result from difficulties in breathing. It can get worse if undiagnosed and certain drugs, including phenobarbital that was found in Charest's blood, can exacerbate the condition. The symptoms include burning of the skin, red urine, muscle pain and weakness, dizziness, cramps, shortness of breath, abdominal pains, nausea, tingling on the face, and mental distress sometimes leading to psychosis. It may be an inherited disease, and Charest's father had died from it.

Kerswell agreed that Charest had, at times, complained of burning feeling in her skin, red urine, muscle pain, dizziness, cramps, shortness of breath, abdominal pains, nausea and face tingling. Some of these she had complained of frequently. Her shortness of breath seemed to be getting worse and more frequent. She was anxious when she visited Kerswell and very concerned about her health. He gave her antidepressants from time to time. He agreed that Charest herself was absolutely convinced that she had acute intermittent porphyria, and that he had previously agreed she should see a specialist. However, the closest one was in Winnipeg and the logistics of getting there were too difficult. She did not have much money and her back pain made it difficult to travel. Kerswell agreed that Charest had complete belief that she had this disease and that the only help for it could be found in Winnipeg. He admitted that the one negative test result she had received was inconclusive. He also agreed that she was very concerned that some of the medications she was taking for her other diseases would exacerbate the porphyria.

The exchange clearly demonstrated that Monique believed she was terminally ill, and that she had a written medical opinion stating that she was, from Kerswell. This directly contradicted the impression left after the Crown's

questioning of Kerswell and the two other witnesses. Even though that was not the legal issue in question, the issue of Charest's health could well have weighed heavily on the jury and its attitude toward Martens, and might have caused it to find the Defence's case less believable. Catherine Tyhurst's cross examination of Dr Kerswell may well have been crucial to Martens' defence.

LEYANNE BURCHELL

There was no doubt regarding the desperate condition Leyanne Burchell was in when she took her life. Dr Lutsky, her family physician, had seen her on June 19, 2002, shortly before her suicide on June 26, and he described her condition then as being close to death. He said that her stomach cancer had spread to her bowel and was progressing toward a total obstruction that would prevent her from eating. The blockage was too high up to allow the use of a bag to collect food that she swallowed. If she tried to eat it would just cause her to vomit. When complete blockage occurred she would not even be able to swallow her own saliva. There was nothing that could be done to prevent her death. Lutsky thought she might live another 30 days.

Burchell's abdominal pain was so severe, her sister Denise Huguet testified, that morphine no longer could control the intense pain. Burchell developed her own way of coping with the pain, by using a scalding hot water bottle on her abdomen. This added a new pain that distracted her from the unrelenting internal agony, but the bottle was so hot it actually burned her skin and turned it black. If you were around her when she did this you could smell the burnt flesh. Huguet said that her sister was terrified about the possibility of internal gases trapped by the blockage. Doctors told her this might cause her to explode from inside.

After listening to this compelling, grim testimony, one wondered who could have thought that Leyanne Burchell should have gone on living. Who could have refused to help, or objected to someone else helping, a person in such desperate need? Who could construe such an act of mercy as worthy of a lengthy jail sentence?

Some did. Beverly Welsh, who was a retired palliative care nurse, spoke to the press about how tragic it was for family and friends when someone, even someone in the condition of Leyanne Burchell, took their own life, and about how all that was needed was more palliative care. Interestingly a number of Burchell's family and friends, including her mother, attended parts of the trial, not because they resented Martens' involvement, whatever that actually

consisted of, but because they were deeply grateful to her. It might be that Burchell's family intentionally left her alone when Martens came to be with her, perhaps to avoid becoming implicated themselves. Or maybe Burchell just ensured that she would be alone when Martens came to see her. In any case it was clear, from private discussions I had with them, that they viewed Martens' presence at the suicide, whether or not she had actually intervened or participated in any way, as a courageous act of kindness.

Leyanne Burchell's suicide was different from Monique Charest's in that she was much closer to death when she ended her life, and also in how the death apparently occurred. Forensic pathologist Dr Charles Lee from Vancouver General Hospital, who conducted an autopsy on Burchell's body, stated that he believed the cause of death to be a drug overdose. Burchell had taken what Lee believed to be a lethal dose of a mixture of several different drugs, with a very high level of morphine in her blood, plus other drugs that would likely increase the effect of the morphine. There was no direct evidence that she had used helium or an exit bag, though the Crown had tried hard to make that case. Two empty helium tanks and an apparently used exit bag were found in Martens' van when she was arrested later on the evening of Burchell's death. The police apparently thought they had caught her red-handed with the necessary evidence for prosecution, but that evidence proved of little value, on two grounds. One was the testimony from Dr Lee that he believed death to have been caused by the drugs; the other was that, as in the Charest case, merely removing equipment did not prove that Martens had brought it.

The Prosecution seemed uncertain about how to treat the cause of Burchell's death, arguing at one point that the evidence in the van suggested that Martens was guilty, then bringing in Dr Lee, who said it was a drug overdose, and then trying to suggest that Martens supplied the drugs — a claim based on very flimsy evidence. They might have been better to forget about Lee (could they have not known what he was going to say?) and stick with the equipment being in the car, which though technically irrelevant might have influenced the jury. It looked like being caught red-handed, something that could have unduly influenced the jury.

CHAPTER 3

The Undercover Operation

ON JUNE 26, 2002, EVELYN MARTENS CAME TO VANCOUVER to attend the suicide of Leyanne Burchell. Martens left her Langford home, just outside of Victoria, around 7:00 am that morning, not realizing that she was being followed by three unmarked police cars with RCMP members from the Duncan detachment. Following up on suspicions they had developed about Charest's death, and Marten's possible involvement in that, the Duncan RCMP detachment had arranged that day to engage in an undercover operation designed to produce evidence that Martens had, several months earlier, assisted in Charest's suicide. The RCMP officers had no idea why Martens was going to Vancouver, but knew that she was going because of taped telephone conversations with an undercover agent. The agent had posed as the goddaughter of Charest, and had arranged to meet Martens to discuss her godmother's death.

The agent, whom I will refer to as Corporal Smith since there is a Court Order forbidding the use of her real name, had been with the RCMP for 28 years, working in undercover operations for about the last 20. There is pool of such agents who can be called into particular investigations when needed. She and Corporal Wilton of the Duncan RCMP planned the operation, looking at biographical information on Charest and working out a plausible scheme. Corporal Smith was to pose as Charest's goddaughter, living in Manitoba, and planning to come to Vancouver to take a holiday on a cruise ship to Alaska. She was to claim that she got Evelyn Martens' name from her godmother's personal effects.

On June 20, 2002, at 1:22 pm, Corporal Smith tried to contact Martens by telephone from Vancouver, but only got her answering machine. She just hung up that time but phoned again a few minutes later and left a message, and a fake Manitoba return phone number that would automatically be rerouted to Smith in British Columbia. She tried again at 4:13 pm and left a second message. She got no response from Martens that night, so called her again the next day, and did succeed in reaching her. Smith, playing the goddaughter, talked about her desire to come to Victoria to see Martens, who agreed to do this and help her find a hotel.

"I'll look around for a hotel... you want fairly... economical accommodations, don't you?" Martens asked.

"Well, something middle of the road. I don't wanna be in the slum or anything, and..."

"No, no," Martens said.

"...and yet I, I can't afford to be in the, the Ritz either, so..."

"No, no," Martens repeated.

"I guess something kind'a middle of the road that's, you know... clean and decent, and what have you."

"Okay," Martens replied, and then asked what questions the goddaughter had about Monique Charest.

"...I guess I'm just confused... a, about a lot of things, and I, I, you know I, I think I'm just feeling really guilty."

"Why would you feel guilty?"

"Why would I feel guilty?... 'cause I, I just, I, I wasn't there, I, I wasn't able to come for the... for the funeral... there's just a, a lot of questions, I guess, in, in my mind that's... you know... I, I feel kind'a like a crappy goddaughter."

Martens asked if she was coming out to the coast specifically to talk about her godmother.

"...no, actually I'm going on a holiday. I'm going on a cruise, so..."

"And you're leaving from where, Victoria?"

"...no, it'll actually be from Vancouver."

"Okay," Martens said.

"...you know, I've... I j' just not been sleeping well and everything... and I'm not, I'm not dealing you know, there's j'... I just need, I guess, some reassurances... knowing that everything went well with her."

"Oh, excellently," Martens said. "Very well. She's [Monique was] a wonderful person... okay... I'll certainly agree to meet with you for coffee. I'll, I'll, I'll arrange for a motel... one of the better reasonable ones though. And you

can always catch a cab from the bus depot. You're catching a bus over from Vancouver, right?"

"...Yes... 'cause I have to... catch a ferry at uh, oh, what's the name of the... where I catch the ferry?"

"...Tsawwassen," Martens answered.

"Yes, that's it... okay. I just don't know how to say it."

"...it's pronounced Tsawwassen. It's what the... locals call it."

"Oh, is it?..."

"...but it is T-W, you know."

"Oh, okay, I, yes, it's on my itinerary... here somewhere..."

Martens asked which ferry she would be catching and the agent said it would depend on flights and if they were on time.

"But if you could... you know, just recommend a hotel to me, once I, I get settled in... I could... now, can you be reached at this number?"

"Oh yeah," Martens said. "It's my home."

"Oh, okay."

"And you'll be going... back to Vancouver the following day, is that right?"

"Yes."

"Okay... why don't I arrange to meet you at the ferry? You can call me... to tell me which ferry you're on, even when you're on the ferry, you know."

"Okay."

"And I could, I could meet you at the ferry and we could have coffee in Sidney and there's a motel there and then the next morning you could catch a... cab back to the ferry. It would be a lot cheaper for you."

"Oh, okay, in Sidney."

"Yeah, Sidney, that's a little town right next to the ferries."

The agent agreed and said she would phone when she had any idea which ferry she would be on. Martens said she would call back with the name of the motel so she could register.

"Thank you," the agent said. "I appreciate your help."

"No problem."

Evelyn Martens spoke to me in the corridor during a break in this part of the court proceedings, after the recording of the phone conversations was played, but just before the tape of the meeting between her and Corporal Smith was played.

"This is the worst part for me," she said, "having to listen to these tapes. I'm such a patsy."

Why, I wondered, was it the worst part for her? (She had been through it

twice before in preliminaries). I thought maybe there was something here that might really damage her defence. As it turned out the recordings were a key point in the trial, but not in the way the Prosecution had hoped. It was the worst part for Martens because she was embarrassed by being fooled and she did not like the sound of her own voice. And, because the Prosecution was treating the recording like prime evidence against her, she was worried about how the jury would react to it. But she needn't have worried about any of it.

Marten's appointment with Leyanne Burchell in Vancouver on the 26th happened to coincide with the day the undercover agent had planned to come to Victoria, so Martens offered to meet the agent in Vancouver instead. Martens was going to attend the suicide of Burchell, but the police did not know anything about that. Three police officers trailed Martens from her home on the morning of June 26th, following her onto the ferry, observing her on the ferry, and then following her off the ferry and into Vancouver. The three separate police vehicles, staying in radio contact with each other, were able to keep her in sight most of the time. They tracked her to Burchell's residence on West 22nd Avenue and then kept up surveillance of the house as Martens went in for about an hour.

After Martens left the Burchell residence Vancouver police began to get suspicious, so they entered the house and found Burchell's body. They quickly got together with the three officers from Duncan to review what had happened. One of Duncan's officers, on hearing that another suicide had taken place, with Martens in attendance while under surveillance, said "Holy Shit!" Although they had intended a much more extensive undercover operation, hoping to gather in what they apparently believed to be a network of "international death conspirators," they decided they could wait no longer, perhaps worried that more deaths would occur on their watch. They decided to arrest Martens as soon as possible, though not until after Corporal Smith, posing as the goddaughter, had her meeting with Martens.

After her visit to see Leyanne Burchell, Martens contacted Smith again to arrange a meeting. Smith had set up a cell phone number at which Martens could call her at any time. The police officers involved had wanted to lure Martens to a downtown hotel which they had wired, but Martens was reluctant to drive into an area she was not familiar with. "I'll get lost," she repeated apologetically. So Smith agreed to come over to the neighborhood where Martens was, and Martens suggested a coffee shop she could see from where she was phoning, "The Grind" on the corner of 26th and Main.

"I'll try and be there as quick as I can and... I'll see you there," the agent said, then added "I'm in green shorts.

"I'm in blue slacks and a white top with blue in it," Martens told the agent. "And I'm an older woman. How old are you?"

"How old am I? I'm over 40," the goddaughter said, laughing. "I don't have to tell after that, do I?"

"No, you don't have to tell after that," Martens answered, laughing as well.

"Exactly," the agent said.

Smith arrived a short while later, in her green shorts, to find Martens sitting outside at The Grind. They talked for about an hour as a secret recording was made. There was a lot of background noise from vehicles, and it was hard to hear everything as it was played in court. A transcription was provided to jurors, so they could follow the discussion more closely.

Though I could get the gist of the recording in court, it was impossible to get all the details, which seemed to me to be of importance. If there was some significant evidence here it would be in the exact words that were spoken. I was determined to get a transcript but it was not easy. First I tried Defence lawyer Peter Firestone, who said he could not release it to me. Then I tried the court offices and then the Prosecutor's office. I was told that that the normal



recording service did not transcribe such tapes because they had already been transcribed by another body, in this case the RCMP. If there were official court transcriptions of the entire proceedings they would only say “the tape was played,” but official transcriptions would not be made, anyway, unless someone paid for them. The Prosecutor’s office gave me no encouragement and suggested that it was just not possible to get this document. I kept badgering them, saying that this was a matter of public record and I wanted to make sure the information I included in what I was writing was accurate. It made no sense to make a document public by reading it in court but then preventing reporters from getting an accurate record of it, particularly when so much of it was inaudible.

With some difficulty, and after about a month of trying, I was able to obtain the transcript from the Court Registry, though the people there, too, had initially said it was not possible. The people at the Registry told me I had to send a formal letter requesting transcripts of the undercover operation to Crown Counsel Neil Mackenzie, who was the lead prosecutor in the case, which I did, and then eventually I was directed to the “Curator of Exhibits,” a helpful and competent young woman who helped me pursue the matter and, eventually, get a Court Order, signed by Justice Davies, to release the document to me. This was an extraordinary runaround to get a document that ought to have been readily available to reporters. I wondered why they made it so difficult — when ultimately, if I persisted, they would have to make it available as a document of public record. I guess they hoped I would go away. After reading it I could understand why — there is a level of cruel deceit revealed here that seems extraordinary. While the police and the prosecutors may wish to keep this sort of thing as secret as possible, it seemed to me that such things should be readily available to the public.

The transcribed conversation, along with some explanatory comments, is recorded below, with only some casual conversation omitted where indicated. The transcriptions included the secretly recorded phone conversations, shown above, between Corporal Smith and Martens.

“Her and my mother went to school together,” the agent could be heard saying of Monique Charest, after she and Martens had greeted each other outside The Grind. The agent went in to get a cup of coffee. Then the two of them chatted about smoking (they both smoked), the weather, antiques (there are several antique shops along Main Street), and then finally started to talk about Charest.

“Oh, um, ah, I, I, I really don’t know where to start,” the agent said.

"How did you ever meet Monique?" Martens asked.

"She's my godmother."

"But I mean..."

"Well obviously through my mother."

"Friend of the family," Martens observed.

"That's right... her and my mother went to school together, and then in fact, my mom doesn't talk about it a lot... I, I think something happened but she just doesn't talk about it... but I think she was in a nunnery for a while, and that's probably where they met. But neither of them ever talked about those things... My mother was raised a staunch, staunch Catholic... but not in our houses, I can tell you that... So I don't know. I, I think something horrible happened when she was younger, but it was something that... I mean she always protected me... so I mean she was always my buffer zone. I guess as a kid growing up... when my parents couldn't get me to see reason, she could... and for whatever reason we had a lot in common."

These comments were apparently designed to show that the goddaughter was more like Monique than her own too-Catholic mother, so the goddaughter would likely be in sympathy with her godmother's decision to commit suicide. This would encourage Martens to open up to her.

"We liked a lot of the same things, like we're both animal lovers," the agent added.

Martens indicated that she had observed that as well.

"You know," the agent went on, "it's just one of those things [her compatibility with her godmother] and of course we were both born in December, so... except she's a Sagittarian and I'm a Capricorn, but... but I feel I'm at a loss, I guess."

"When did you last see her?" Martens asked.

"Oh, it's been a number of years, and, and I, I think that's part of why I feel as bad as I do... I got on with my life and we just kind of drifted apart... And I know that she would always be there for me. I could have picked up the phone and she, she would have been there for me. She was... she was just that sweet."

"She was a beautiful person," Martens said, and then mentioned a little memento that Charest had insisted she take. "So, I'd like to have your address. I'd like to send it to you."

"Oh, wonderful."

"I really would."

The agent gave Martens an address in Manitoba, and then objected mildly about the memento: "...if she wanted you..."

"I'd like you to have [it], I, I really do," Martens said. They talked a bit more about this.

"Oh, well, thank you very, very much."

"Yes, I believe you should have it."

"...I really don't know where to start, here, and, and maybe you can help me because I, I'm having, I didn't think I would have such a difficult time coping with all of this."

"How about your mother, is she...?" Martens asked.

"My mother and her, years ago, they, they kind'a, they well they drifted apart... I think a lot of it had to do was... they had very different philosophies to do with life and living... and that sort of thing, and my mother is very, very conservative, and I love her dearly, but, you know, she doesn't necessarily look beyond the obvious, I guess."

Corporal Smith was probing to get Martens to say something about suicide here; she had told Martens that she had seen her name on Right to Die literature, so it was assumed in the discussion that suicide was involved and Martens had been there. Smith was trying to indicate that she did not disapprove of suicide like her mum, "a staunch, staunch Catholic," would have.

"Well, I knew Monique for about two years, two and a half years," Martens said. "I've been up to see her a couple of times, because she asked for a visit. She joined our network. [the Right to Die Society] And I went up a couple of times to see her to have just a visit with her and make sure she really was ill. And apparently she was..."

"I didn't know that. I didn't know she was sick."

"...she had a lot of medications... she really, really wanted to go..."

"I didn't know she wasn't well... she did complain about her back and legs. My mum would talk with her once year at Christmas sort of thing, but they really kind of drifted apart, and I, I just feel badly that there was no one there for her..."

"Well I was and I held her hand," Martens replied, "and believe me she was just a wonderful, wonderful person and it was very, very fast and very painless. She just went to sleep and that's all she knew. She did not suffer. I know. I know."

The undercover agent cried. "I should have been there. I feel so bad."

"No, no. I don't think she would have wanted you to be there." Martens mentioned that Charest had another friend, in Vancouver. She couldn't remember the friend's name but she could find it and it would be someone else the goddaughter could talk to.

“Well, was she there with her too?” the agent said, now wondering if there was another co-conspirator that she might discover.

“She didn’t want anyone with her,” Martens said. “Just my friend and I, and my friend is a very caring person as well. She [Charest] didn’t suffer and she was happy to go...”

“Well I, I’m glad that she didn’t suffer, that, that’s a good thing and I mean I, I remember, oh gosh, I had to be 25 years old and, and, we were talking one night and, and we and my mom being of course as conservative as she is and Catholic to boot... like she doesn’t believe in abortion, she doesn’t believe in pro choice, she doesn’t believe in a lot of things... and... Monique, of course, she had this different philosophy.”

“Yes she did,” Martens said.

“And, and she believed in choices and, and, and so she always encouraged me to go my own way and, and I just wished that I could have been there for her when she needed someone to encourage her to go her own way.”

The apparent thrust of this comment was to try to get Martens to say, in trying to console the goddaughter for not being there to encourage her godmother herself, that not to worry about it because she, Martens, had herself encouraged Charest ‘to go her own way.’ This could well have given support for a charge of abetting suicide. But Martens, who at other times in the conversation indicated that she had, instead, urged Charest to take time and make sure about her decision to die. The discussion was not going in the direction apparently hoped for by the agent.

“Well you know she talked about her convent days a little,” Martens said, Charest having been a nun in her earlier life. “And she said she couldn’t tolerate it any more and that’s why she got out. But she really felt that this was the end of the road for her and she didn’t, really didn’t want to go on — really didn’t want to go on. She had a nice little apartment... and clean and beautiful, but she said ‘I just don’t want to go on anymore, my back is so sore.’ She could hardly walk and she had neurological pains in arms and legs. She was on morphine.”

“She was taking morphine? I wonder why she never told anyone. Like she never mentioned it to my mom. Her family doesn’t even know she was sick.”

“That I know,” Martens said. “She told us. She didn’t want to trouble anyone.”

“Oh, so selfless,” said the agent.

“Yes,” Martens said, “she was, she was a... beautiful person, just a lovely person. I’m so impressed with her... I don’t think you have to feel bad or guilty. This is what she wanted, this is exactly the way she wanted to go. We had talked about it a lot over the last two years, and I made sure that this is what she wanted, and

even at the last moment I said, ‘you know, Monique, we can always change our minds. It’s no trouble at all...’

“I don’t know,” the agent said, “I, I just have nightmares... you know, slashing her wrists or...”

“Oh no,” Martens said.

“You know, this sort of thing, and, and, and I guess I just don’t understand, you know, don’t understand any of it, really.”

Martens mentioned something that was not clear on the tape about Monique and euthanasia, and the agent said she had gathered from Monique, in a letter, that she was contemplating something like that.

“She was very adamant about her having the choice to do this...” Martens said. “And she said she didn’t believe it’s a conflict of her religion to do this. She didn’t believe Christ would want her to suffer any more. She was happy to be going home, that’s what she said. She had a book about angels and different things like that and she was just lovely. She was just beautiful.”

“Yes she was.”

“But... she wasn’t lonely. She had friends.”

“Yes, no, I’m not worried about her, her, her being lonely, it was just that...”

“You wanted to be there,” Martens said.

“I, I, I wanted to be there because, I mean, she would have known that I would have supported her in this.

“Oh, I’m sure she would have [known that].”

“Because it, it would be her, her choice, her, her decision to make... you know I firmly believe that... but I mean... I mean I’ve never been faced with that myself, and, and God it must have been a hard decision to come to...”

Again at this point it appears as though the agent was fishing for an indication that Martens had encouraged Charest to end her life, even though shortly earlier Martens had indicated the exact opposite.

“She said it wasn’t. She said it wasn’t a hard decision at all... she was so happy with it.”

“...I’m so distressed that she was in, in that much pain.”

“But she was happy that we were helping her with it,” Martens added. “I’ve helped other people and I’ve never had anyone that wasn’t happy to go... she said ‘this is the day of my deliverance,’ and this is what she wanted.”

“Oh dear,” the agent said.

“We really talked about it a lot.”

“How long did it [the suicide] take?”

“Five minutes,” Martens said. “It was very fast. She took enough medication to put herself sound asleep.”

“She took medication to put herself asleep? Did she just take her morphine then, or...”

The significance of this question was to try and find out if Evelyn had supplied any drugs.

“Enough of morphine, and others — other medication she had, a mixture, and she went fast asleep... it didn’t take long. Now I really don’t want you to feel guilty, and I know that she wouldn’t. I know that she would want you to be happy for her.”

“I, I am. But I mean, you hear stories about how people died from taking pills that, you know, their liver failed and you know it can be quite painful and...”

“No, it wasn’t though, it wasn’t painful. She fell fast asleep so fast so then we stayed with her...”

“So this was on medication that the doctor had given her?” the agent asked, again trying to get Martens to say she had brought them, but Martens agreed that the doctor had given them.

“And?” the agent added, hoping to draw Martens out.

“But she wanted someone there to make sure she didn’t fail... that’s why I went, of course.”

“Hmm. So was she, did she, was she...”

“She wanted to give us lunch and coffee you know...”

“Well I’m glad you were there for her.”

“...the last thing she said is... ‘thank you so much, Thank you so much.’ And that’s how they feel... I’ve never had one that wasn’t happy to go. You know, unless we’re in a position like they are we can’t really realize how they feel.”

“No that’s true. That’s very true.”

“And you’re so young and vibrant; you can’t even fathom what she felt.”

“No, I can’t.”

A waiter came by to ask them if they wanted anything else, and they each said they were fine.

“I can’t tell you anything that I couldn’t have said on the phone, but...” Martens said.

“No, I feel better for having, you know, met you, and I, I, I want to, you know, thank you for being there for her and... her, her other friend, I’d like to thank her as well. Would that be possible? Could I get her name and address and send her a card. I’m assuming it’s a her. I, I don’t know.”

“Yes, it’s a her. I’ll give you her address. I’ve got it at home so I will give you

her address and you can write to her... I can even call her and tell her about you.” Martens said.

“Well, I’d like to thank her personally, if that’s possible, because it’s... it’s one of those things that...”

“...it makes you feel better.”

“Well it does and it gives me, I guess, a sense of closure, and, you know, I, I know that, well, I’m teary and upset today but I can, you know, go away and, and feel a little more at ease that... you know, she did the right thing and that it wasn’t, you know, some horrible way to go... anything like that.”

“We should all have a happy ending like she did... that would be my wish for myself.” Martens said.

The agent agreed. “So the morphine, did she inject it or did she...” she asked, encouraging Martens to say more about what Charest did, and possibly to say something about how Martens may have helped her.

“No. no, it was in pills... and a bit of alcohol... she had some wine... it exacerbates the effect of the drugs so it works faster,” Martens said.

“It didn’t make her sick or throw up? Oh, that would just have me heaving, I’m sure. I can’t even...”

“No.”

“Oh dear.”

“Well, she had some sleeping pills that she took, as well with the morphine... She didn’t want to be alone. She didn’t want to wake up and still be here. And that’s where I came in.”

“Okay and she took enough that you didn’t... have to...”

“Nothing.”

“...do anything extra or? Oh dear,” the agent said.

Note that this particular exchange, the first part of it at least, (“And that’s where I came in”) was incorrectly read by some, including those at the Canadian Broadcasting Corporation as being inculpatory — this is discussed in chapter 4.

“She just fell into a peaceful sleep and then it wasn’t very long — at the most it was 15 minutes by the time I couldn’t get a pulse any more, so she took a lot. And she wasn’t ill. She had a smile on her face and a peaceful look on her face. I had to leave. I had to leave unobtrusively... of course you can’t be in attendance ‘cause I could be charged just by being there.”

“Why, why ever for?” the agent replied, feigning ignorance of the law.

“Because our government... they could have said I was aiding and abetting.”

“Well,” the agent said.

“But still... she did it herself, but I was still there and didn’t want to take the chance with her...”

“Oh, that doesn’t make any sense to me.”

“Well... with our government the way it is, it does.”

“Well then who found her?”

“Her neighbour.”

“How did that happen?” the agent asked.

“Her neighbour. She had it arranged that her neighbour was going to find her...”

“What do you mean? How did her... her neighbour... her neighbour must have known then?” Another possible co-conspirator?

“No, she had arranged for her neighbour to come and pop in on her for coffee at seven in the evening. We left at four, so she was alone for three hours.”

“Oh, okay, I thought maybe her body’s been there for too...” The goddaughter then cried again.

“No, no, not at all. I’m so sorry [uses her first name, which is banned from publication].”

“Well you probably have to deal with a lot of people like me?” The agent was hoping to get information on other suicides Martens may have assisted.

“Yes I do. It’s hard to lose a loved one. I lost my brother to cancer and he died a horrible death, and I would never want to see anybody go that way.”

“No. But she was still young.”

“I know. I, I pointed this out more than once. But it was her wish, and it was a strong wish.”

“Well if she was in that much pain, and, I, I understand. But it just... I just didn’t know she was hurting that bad.”

“...I know.”

“Oh that is so sad, but I guess a good thing at the end of the day.”

“For her.”

It was clear here and in many other statements that Martens supported suicide only for those who, like Charest, were desperate and determined to die.

“How do you do this?”

This appears to be a question directly asking Martens what she did at the suicide — how she may have helped with it. But Evelyn took it to mean why, not how, she participated.

“I have a lot of compassion for people. I, I feel their pain. I just, sometimes, you know now, it’s just something I feel I have to do, that’s all. I volunteer. I don’t make any money... that was for ten years with the Right to Die Society.”

“Uh huh.”

“And the Hemlock People of the US... have formed chapters where they have their people...”

“The Hemlock People, that sounds like witchcraft.”

“No, it isn’t.”

“Oh.”

“They’re very caring people. No, they, it’s what we do.”

“So is that where your organization started from then. Or what?”

“No, my organization started with a Mr Hofsess, who founded a Right to Die Network. In 1990 his friend called him and asked him to help him die because he had Alzheimer’s, and at that time he couldn’t [help him]. He didn’t know anything about it and his friend jumped off a bridge and died in the hospital days later. And no one knew who he was for the longest time, and then they found out who he was... and Mr Hofsess was so angry with himself that he didn’t have the courage to help him — that he had to do that. So then he founded the Network and I volunteered shortly after and I’ve been looking after the membership and so forth ever since.”

“Well it certainly is more dignified than jumping off a bridge, or... slashing your wrists... or something awful like that.”

“Or with a gun or something like... even a car exhaust. There’s so many horrible ways... and guns are the worst. I mean look what... the survivors have to face.”

“Yes, that’s true,” the agent said.

“Their memories are ugly.”

“You know, I’m, I’m convinced that, that her family knows nothing and, and...”

“She said she wasn’t going to tell them anything. I asked her numerous times about her family and why she wouldn’t contact them. No, she said, she didn’t want to and this was her life and her decision and that’s the way she wanted it. She wasn’t angry with them; she just wasn’t in contact with them. She lost contact with a lot of people.”

“Yes,” the agent replied.

They talked about other things for a bit, the goddaughter telling about her two children who were visiting her boyfriend’s parents in Gimley, Manitoba, at a cottage on the lakes there.

“That’s nice. Oh, that’s nice,” Martens said.

“So they’ll have a wonderful, wonderful two weeks,” the agent said.

“And you’re having a nice well-deserved holiday with your boyfriend.”

They chatted a bit more. There was a break in the recording at this point, during which they started talking about the suicide again, apparently with the agent saying again how much it upset her.

“Probably a lot more than you ever thought it would, right?” Martens asked.

“It did. It did, and I don’t understand why, necessarily. But I, I... know now I’ll walk away feeling better about it.”

“Oh I think you should. She would not want you to worry about it. She absolutely wouldn’t want you to feel guilty, ever. Knowing Monique, I know she wouldn’t want you to.”

“Well I hope that she knew and remembered that she was loved by us.”

“Oh I’m sure she did. I’m sure she did.”

“...so sad. I still wish that I could have been there though.”

“Well, she wouldn’t have wanted you to.”

“Probably not.”

Martens talked about how her brother hadn’t wanted family members with him when he died. “They don’t want to put their loved ones through that, you know,” she said.

“Yes, I guess. It’s very... well I don’t know... I guess that’s... why I have to admire what you do. It must be... it must be terribly brave to help someone through that.”

“Well, if you could see how thankful they are, you realize that it wasn’t [anything special on my part.] If I have ever had any doubts, there’s no way I’ll proceed with anything. You know, never. I’ve had, I’ve had some people that I’ve had to refuse... I just couldn’t because I, I, maybe it was depression, you know, you know you just can’t help people like that. They have a, a life; they can still find a life. But she [Charest] was in a lot of pain and she said she just didn’t want to put up with it anymore. Her back and her legs... she had shooting pains in her legs all the time... it was connected to her back... I did see her medication... she was on morphine.”

“Oh gosh, you know I’m such a horrible, how long had she been on morphine, because...”

“Oh a year at least.”

Martens knew that Charest had been in severe pain for a long time. Charest’s decision was not a sudden one, or one made in temporary depression.

“Oh my goodness.”

“And the morphine didn’t quite control the pain any more, unless she took enough to knock herself out, and she didn’t want to do that any more.”

“Oh dear. No, you don’t want to live your life knocked out. My God.”

“No and then wake up to the pain again. [agent’s first name], we don’t know what it’s like.”

“No you’re right. You’re absolutely right.”

“My brother would wake up he said ‘Am I still here?’ He didn’t want to be here... When you’re in pain, I think the other, the, the other alternative is a welcome release. It really is.”

“Um... well...”

“So, please don’t feel guilty, not, not even one bit. I, I mean she could have contacted you, if she really wanted to.”

“Yes, that’s true.”

“And she knew that you were there for her.”

“Um, dear, well was she seeing a specialist or anything?”

“Oh yes, she’d seen a specialist.”

“Could they have done anything?”

“No.”

“Surgically for her, or...”

“Not that I know of. She said they couldn’t do any more for her.”

“Well, had she had some surgery?” the agent asked.

“Oh yeah. She had some surgery on her back.”

“On her back. Ah, dear.”

“But when they can’t control the pain without putting you to sleep — she was going to go by starvation, and...”

“Ohh...”

“That’s a very, very slow process. And, and she said well then I’ll cut out the water as well. I said no, it’s very painful. You know it’s very painful. It is... And so I said, no let’s think of another alternative, so. She showed me what she had and we talked about it and I went back there, and then, she called and she said I’m ready now with her [indecipherable]. I’m really ready.”

“How long did it take from, from then?”

“A week or two... about a week and a half I think. But she had talked about it a year before that — about six months before that (or was it). I think it was a combination of, of time, and she was ready... she knew that that’s what she wanted.”

“Well I’m glad that you were there for her to, to be there for her.”

“...we held her hand.”

“She obviously trusted you and respected you, and...”

“And my friend [Brenda Hurn] is very compassionate, she’s an older woman

as well... she went with me and she's part of our organization... she held one hand and... I held the other and..."

"Was she friends [with Monique]?"

"She hadn't met her before, but I had."

"Oh, okay. Oh well at least she wasn't with a, you know, a stranger."

"Well, no, no, no..."

Martens mentioned, again, the memento Charest had given her and said she would send it to the goddaughter. Martens wanted her to have the memento — "a cute little clown that has music" — but the agent indicated that this opportunity to talk was more important than "things," and added that Charest's executrix had sent her a box of pictures and other things. She suggested that Martens keep whatever Monique had given her, because that was what Monique had wanted. Presumably the agent was thinking that this might be evidence and it would be better if it was found in Martens' home. Martens indicated that Charest had tried to have Martens and Hurn take "everything", but, Martens said, "we don't like to take things from people." She accepted the one thing, she said, "because I didn't want to insult her." They talked about how "very, very giving" Monique was.

Then the agent reminded Martens that she would like to write to her friend, (Brenda Hurn). She said, laughing, "I'll send her a post card from Skagway." Martens laughed too. They talked about the cruise to Alaska the goddaughter was supposedly taking. She pressed Martens again on the address of her friend. She didn't have it with her but she would send it.

"I feel so much better," the agent said.

"I hope you do," Martens replied.

"I do. And thank you for taking time out of your day. I hope I didn't... you said you had meetings this afternoon..."

Martens said her work there was done and she was only concerned now with making her ferry that evening. She then said: "You know it wouldn't have been much of a trip for you to Victoria. I hope you can come and stay for a day or so."

The agent talked about being in Victoria as a child, and then they talked of the cruise, with Martens suggesting gravel, and then saying "well you're not gonna be sea sick, just tell yourself 'I'm not going to be sick.'" Then Martens added, "Well I hope your boyfriend knows how lucky he is."

"Well, he's been actually very supportive, and it was him, encouraging me to call you, and talk to you, but it's one of those things that, you know, I didn't want to do it over the phone... and, and I, I wanted to..."

"See me in person."

“See you in person. It, it’s a personal thing.

“It is.”

“What happened was a very personal thing and, and, I mean, I’m just so happy she had a friend like you that would, would help her... to be there for her.”

“Well she wasn’t sad to go, so... don’t feel badly.”

“Well I’m glad. I worry about her being afraid and alone and...”

“...no, she wasn’t... she wasn’t the least bit afraid.” Martens went on to talk about Charest’s faith, which she still had when she died, but that she did not expect punishment for what she did. Then Martens said, “I used to be a very staunch Catholic, but I’m not anymore. I have a different philosophy... I’ve evolved to... whatever one does affects [others], because you can see how Monique’s death affected you, and how we all affect one another as we go... what goes around comes around and I like to send out love and then I get it back... and she was like that too.”

They talked about what a good person Monique had been. The agent said, “And I feel really bad ‘cause it would’ve been better if my children could have been touched by her.”

It appears that the agent, here, is trying to draw Martens out by suggesting that if she had not helped Charest die that her children might have had the benefit of meeting her. She did this in a very sly way, first agreeing that it was good that Martens had been there for her godmother, but her godmother was such a wonderful person that it was a shame we did not still have her. As mentioned earlier this is a position frequently adopted by the Euthanasia Prevention Coalition and other opponents of assisted suicide — that we are obliged to stay around because of the joy and happiness we can bring to relatives and friends. Bringing this up in a subtle way might have elicited some sort of response from Martens that could have been useful to the prosecution — something like ‘it’s too bad she hadn’t gone on longer,’ implying that her death was premature. But, as with all of the leading questioning by the agent, Martens seemed to provide no help for the prosecution.

“But you can tell them about her,” Martens said.

“Yes. Yeah, and ah...” the agent said.

“How old are your kids?” Martens asked.

“Ah, they’re in... school. One’s in grade seven and the other is in grade five.”

“Are they girls, or boys?”

“One of each. One of each.”

“Grades five and seven,” Martens said. “Well they’ll enjoy that little clown I have. I want you to have it, it’s beautiful.”

Martens is referring to the memento given to her by Charest, just before she died. Clearly Martens was uncomfortable with receiving any gifts from people whose suicides she attended, even small mementos, and she was pleased to have someone else to give it to.

“Oh... my daughter will love that.”

“...from your godmother, so that’s good.”

“...if you don’t feel you have to send it to me, I...”

Perhaps the agent went on about this again thinking that if Martens did keep something from Charest it might help the prosecution; in trying to influence the jury they might even try to claim that Martens took things from her ‘victims’.

“I’d like you to have it — I really would,” Martens insisted.

“I don’t necessarily want to take things from you.”

“As I said before, we really don’t like to take anything. But she was so generous. She was so eager to give it to us. We just, Brenda and I, just looked at each other... what are we gonna do... She opened her closet and she says you can wear any of these clothes, they’re nice clothes. I said I can see they’re beautiful.”

“Oh great.”

“[I said] Monique... we don’t like to take things... [but] she said, take this, take that, please take this she said...”

“Well... she obviously thought highly of you and because, you know, they’re the types of things that meant something to her... um, so, you know, she just wants to share.”

Martens agreed with this assessment of Charest, but apparently took nothing except the clown that she now wanted to pass on to the goddaughter’s daughter. The agent indicated again how much better she felt after talking to Martens, perhaps hoping to set the stage for a future meeting — she may not have known at this point that, because of the death of Leyanne Burchell, her colleagues were going to arrest Martens that evening when she returned to Victoria. The original police plan had been for a much more extended operation where they might find others in what they thought might be an “international death conspiracy”.

Martens and the agent went on to talk about when the cruise was leaving and about security checks and terrorist threats. Martens talked about the uncertainty in today’s world and how she worries about what the future holds for her grandchildren.

“You don’t want to lose hope,” the agent said.

Perhaps the agent was exploring the notion that Charest should not have lost hope. But, once again, this lead went nowhere for her

They went on to talk about the goddaughter's children and a picture they had supposedly sent to Charest, a picture Martens obviously had never seen. The agent told Martens that she worked as a florist in Winnipeg, and she talked about other things — about the weather, how her hair turned curly on the coast, about being an only child herself, about her children, about Marten's children, about girls going through a stage where they didn't like their mothers. Then the agent used this last topic to return to her godmother:

"I did [not like my mother.] Big time. And actually it was Aunt Monique that... you know, pulled me through that. I think I'd of left my home and gone to live with her if I had my choice. But she was wonderful... I mean I would call collect and she'd just take my calls and..."

"Isn't that nice."

"She would, you know, phone my Mom and straighten everybody out and, she was quite the peacemaker amongst us, really... She was very good at making us see the other person's point of view... she could always see the other side... a very understanding lady... a very, very understanding lady."

"She had a wide view of things. She was not just black and white. There was a lot of..."

"...a lot of colours in her rainbow," the agent added.

The agent was perhaps hoping to get Evelyn to say more about Charest being open to ideas, maybe even to breaking the law, or at least to having someone break the law by helping her take her life. But this too went nowhere.

Martens realized her parking meter was running out. "So I'll let you go," she said.

"All right. Well thank you very much. I gotta give you a hug here."

"You can. You can."

"You made me feel wonderful. Thank you very much..."

"You have a good holiday," Martens said.

"Please thank your friend and..."

"Yes I will."

"And I look forward to hearing from you then," the agent said, referring to the address Martens was going to send her. Martens checked to make sure she still had the agent's address.

"I got it," Martens said.

"You got it. Okay."

"You take care, have a really good time."

“Alrighty,” the agent said. “Well, I’ll send you a, well no I won’t send you a postcard, I guess, but... thank you very much for that. Take care. Bye now... All right, take care.”

After the tape finished — it was close to an hour in length — the Crown Counsel Neil Mackenzie asked Corporal Smith if that was the last time they talked and she said it was. Then Mackenzie asked the agent if the person she had talked to was in the courtroom. Having not looked Martens’ way previously she turned and pointed to her, sitting about ten feet away, and coldly described the clothes she was wearing.

I was sitting directly behind the witness box in the gallery reserved for the press. I was about eight feet from the witness, and maybe twelve from Martens. Smith’s pointing to Martens and description of her, as though Martens was some sort of exhibit, was chilling.

A detailed cross-examination of the undercover agent was made by Defence Counsel Peter Firestone. This is shown in detail in Appendix 1.

The tapes were touted by the Crown as its trump card. But to me the tapes showed a good-hearted, trusting person whose kindness in wanting to help a distressed goddaughter was being used in a deceitful police operation. It was hard to see how this material could be seen as any help whatsoever to the prosecution. It was hard to imagine any unbiased person deciding that this person was any sort of criminal, much less something like a serial murderer.

The Crown’s trump card was, instead, Martens’.

CHAPTER 4

The Verdict

THOUGH I THOUGHT THE LEGAL CASE against Martens seemed very weak I was not at all sure about what was going to happen. Beverly Welsh continued to be very confident that Martens would be found guilty. I knew one of us must be self-deceived about the evidence, but I could not be sure which of us it was.

Clearly Martens' friends and relatives were uneasy as well. As pointed out earlier all that was needed for a hung jury was one implacable opponent of assisted suicide. And a hung jury would be no victory for Martens, as a new trial might be held, and she would have to go through the trauma and expense all over again. But Martens might well be found guilty, as well, and an occurrence on the final day made her supporters very nervous. Around noon the jury came back into the courtroom to ask two questions:

Can members of the jury base their decision on one piece of evidence, namely the taped conversation between Ms Martens and the undercover agent? Is this enough to reach a verdict without any further evidence to support it?

This was the first insight into what was going on with the jury, but what did it tell us? The questions suggested that at least one juror was concerned about something in the undercover tapes, but what was it? Was there something that was viewed as incriminating, say the statement by Martens that she had "helped" people who wanted to die? Was the tape, instead, exculpatory, as I had thought it had been, and one or more jurors thought that this alone was enough to find her innocent? And was it a single idiosyncratic position, or something that concerned many, or most, or all of the jurors?

My first thought was that at least one juror felt there was something inescapably incriminating on the tape. During the next break I asked others in attendance what they thought it meant. Les Poelzer, Evelyn's youngest son who had given up his job to attend the trial, was particularly worried about one statement his mother had made in the undercover interview, speaking of Charest's death:

"She just didn't want to be alone. She didn't want to wake up and still be here. And that's where I came in."

It was conceivable that some jurors might have taken this as equivalent to an admission of guilt, because it seemed to suggest that Martens took some sort of action. The phrase "And that's where I came in" particularly worried Poelzer. This phrase was in fact subsequently cited by the Canadian Broadcasting Corporation as proof of guilt, a charge which I will argue in chapter 6 was erroneous.

Another possibility was another statement Martens had made, again speaking of Charest:

"But she was so happy we were helping her with it [the suicide]. She... I've helped other people and I've never had anyone that wasn't very, very happy to go."

This was a direct admission of "helping", which someone might take as admission of guilt. After all isn't helping the same as aiding? But the Judge had clearly narrowed the definition of aiding to be more than, for example, just being there to offer comfort, which is what Martens suggested a number of times is all she had done. But, still, a juror could have interpreted that one statement, taken in isolation, as an admission of guilt.

Another possibility was that the opposite had happened — that one or more jurors found the tape so compelling, as I had, that they could not possibly find this woman guilty, regardless of whatever else the Prosecution presented.

After lunch the Court reconvened, without the jury, to discuss the questions. The Prosecution and the Defence each made presentations. Peter Firestone argued with the Judge about what should be said to the jury. In the end the Judge called the jury back in and explained the difficulties they were having about the precise meaning of the questions. He reread some of the instructions from the previous day, when he had explained the role of the jury, and then he told them that if they based a guilty verdict on one piece of evidence they could do so, as long as they were satisfied that the single piece of evidence was sufficient to prove guilt; there was no legal requirement for supporting evidence.

It had been a puzzling but fascinating day, with the strange question from

the jury, and with the uncertainty about what was going on. It was most unsettling for Martens' supporters. What indeed would the rest of the day bring? Were these the last few hours of Martens' freedom? With the weeks of testimony, and long hours of waiting, and the scrums with media, and the talks in the corridor during breaks in proceedings, it was difficult to realize that it all would suddenly end, at any moment. It felt more like it was just something that was going to drift on indefinitely. But we all knew, of course, that very serious discussions were taking place amongst the jurors, and that sooner or later they would finish their deliberations, and a verdict would be rendered.

As I waited with all the others who had gathered during the last few days, including many additional media representatives, I wondered about everything that had happened there in the previous month. Why had the police and the prosecutors pursued this thing so vigorously in the first place? How was the public interest being served? How could they have thought they would get a guilty verdict based on the weak evidence? But maybe the jury saw it differently. Maybe they, like the Euthanasia Prevention Coalition, would see Martens as a murderer. Beverly Welsh continued to look alarmingly confident.

I wondered if any of the jurors had heard or seen anything from the Coalition. Certainly Beverly Welsh had spoken to the media at every opportunity. Some felt she was hoping to get at the jury, which had not been sequestered, trying to create the sense that Martens was indeed, without question, guilty. A Court Order prohibited the publication of such opinions, but she did get the Vancouver Sun, on the last day of the trial, to publish her comments about the desirability of sending Martens to jail. A contempt of court charge was entered against the Sun, but later was dropped after it became clear that the article had not influenced the jury.

But what was happening in the jury room? That was all that mattered at this time.

Late in the afternoon at about 5:00 pm there was a bit of activity in the corridor — something was happening. I caught Catherine Tyhurst going into the Judge's chambers and she said all of the lawyers had been called in. She did not know what was going on.

Then, maybe twenty minutes later, the Court reconvened. I went to my usual place up in the press box, with all of the other reporters and observers sitting in a now-crowded gallery. I was expecting that the lawyers would be responding to some issue the Judge had brought up in Chambers, but then the jury filed in. Then it slowly dawned on me that this was it. It was happening now. The jury had decided. Everyone in the Courtroom stood as the Judge entered.

Martens stood with perfect calmness, seemingly unafraid. None of us knew what was going to happen. I wondered, if the verdict was guilty, if Martens would be taken away in handcuffs and shackles, as she had been when first arrested.

The end came very suddenly. The Clerk read out the first of the two charges — the Charest charge, the most problematic one. I glanced at Martens; with the rest of her life up for grabs. She was standing, waiting calmly. I glanced at her son Les Poelzer. He had his hands up to his mouth. Then the Jury Foreman said “we find the defendant not guilty.”

Even before the Foreman read the second verdict we all knew in that moment that Martens was free.

CHAPTER 5

Interviews

QUESTION TO JUROR

ONE JUROR, AS SHE LEFT AFTER THE VERDICT CAME DOWN, turned toward Martens and appeared to say “thank you, thank you.” Curious about this I approached the juror afterwards, and though in Canada jurors are prohibited from revealing what happened in their deliberations, her action took place after the trial was adjourned, so she felt free to explain what she had done, which she gave me in writing:

Mr Justice Barry M Davies declared the trial adjourned before he left the courtroom. I am the person in the jury who mouthed the words “Thank You” to Evelyn Martens. That was done only after I was no longer a juror! The experience has changed my life — forever! I am deeply appreciative of the Canadian perspective. Change is often a daunting process. Thank you Evelyn Martens. Beverly Gail Hickey.

GARY BAUSLAUGH: *How are you feeling now, Evelyn, two and a half months after the trial ended?*

EVELYN MARTENS: The whole thing took a lot out of me — it affected me more than I thought it would. For a while I felt like crawling into hole somewhere, but then I realized I was just being a big sissy. I am feeling better now that I have most of my things back from the RCMP [Earlier that day Evelyn picked up a van full of her possessions, including her computer, which had been in the Duncan police station for two and a half years.] I am going to Greece with my friend Brenda [Hurn] in the spring.

If you don't mind thinking about it all again, can you tell me how you were treated by the police.

Well as you know Corporal Bate was at the Station when we went to get my things back, and he was very courteous then. But after I was arrested he was very irate. He and Corporal Pearson [both from Duncan] took me upstairs [in Sydney where the arrest took place] and I guess he [Bate] was the bad cop. I was arrested at about 5:30 pm and was given nothing to eat or drink until after midnight when they gave me some water. The Sydney police were not bad, fairly polite, but they did not give me any food and I got very thirsty as the cell was very hot.

Were you very upset?

I was but I didn't show it. I felt sick for my family and friends — to think that my actions would have a bad effect on them.

And then they transported you around at times, I understand, in shackles.

I was driven to Duncan that night, then back to Victoria for the next night, and then was flown to Burnaby [Women's Prison] the next day. While being transported to the airport and while flying I was in hand cuffs and leg shackles. The vehicles they drove me in had very hard bare metal everywhere, and sometimes there were other prisoners as well. I was in Burnaby for a few days, because of the long weekend and the difficulty in arranging bail.

How were you treated at the Women's Prison?

It was fine. The guards were polite and I had my own cell. It was my first time in a prison ward, and the other women in the prison were serving sentences for various crimes. But they were all good to talk to and no one was mean. So the guards were good and the convicts were friendly. People don't talk about why they are in there, but one of them knew about me.

*The Prosecution
of Evelyn Martens*

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What was the worst thing about being arrested and jailed?

I couldn't talk to my friends or family. I couldn't call my daughter to tell her I had been arrested and wouldn't be coming home, though at some point I think a member of the Sidney Detachment let her know. And I didn't like being shackled — I had a hard time getting up the steps to the plane. They did try in Sidney and Nanaimo [on the way back from Burnaby] to intimidate and demoralize me. And in the jail cell in the detachments the toilet in the room is right in line with the surveillance camera. Then after I was released they still came into my home every week, and I had to report in every two weeks, and I had to get permission to travel.

Why did they do all of this to you?

Some years earlier a woman in Ireland, Rosemary O'Toole, had contacted me about where to get an exit bag, and asked if I would come and be with her when she ended her life. I couldn't do that but she found a man in West Virginia who would travel to be with people, and he went over. Subsequently, after she died, the police got my name and the man's name off Rosemary's computer. They gave the police here my name, and they began to investigate, thinking that this was an international conspiracy. So when they found out about Monique, whom they thought had not been ready to die, they decided to take action.

Were you very worried about the verdict?

I had been worried about the Judge's attitude. I understand he wanted this case, and he seemed very unfavourable to us most of the time, so this looked bad. But his charge to the jury was a big surprise. Still, I had no idea what would happen. I had steeled myself about going to jail and I was ready for it. I'd take courses, and do lots of things.

Ms Tyhurst was one of the two Defence lawyers for Evelyn Martens. The other was her partner, Peter Firestone. They are based in Victoria BC.

GARY BAUSLAUGH: *What do you think are the larger implications of this trial?*

CATHERINE TYHURST: The most important thing about the trial, of course, is that Evelyn was found not guilty. The most significant legal result of the trial came in the Judge's charge to the Jury, when he gave a quite narrow interpretation of the Criminal Code in regard to assisted suicide — especially if the Police educate themselves as to the interpretation, and do not again make arrests and prosecutions such as they did in this case. We knew this was the critical issue in the trial and we were working on it from day one.

Prior to Evelyn's trial there had been only one judicial interpretation of this section of the Code — no one really knew what it meant. Now, after this trial it is clear that aiding suicide requires active and intentional intervention. The Crown had been of the view, when this case was first pursued, that mere possession of exit bags was incriminating, and that provision of information on how to commit suicide was as well.

There may be another important result of the trial, if Canadian Justice Minister Irwin Cotler follows through on his statement that it is now time to reopen the law on assisted suicide. A number of politicians here on the Island, including Jean Crowder from Duncan and Keith Martin from Victoria, have indicated their interest in the matter.

What sort of law do we need?

We won't get much help from some of the overstated concerns out there, like those of the Euthanasia Prevention Coalition. We should look at what is done in Oregon and Holland, where very civilized procedures, with safeguards, are in place. We need to ensure that people have access to good information and to the most humane ways of dealing with the issue.

The Coalition, and other people, say that they are concerned about how changes in the law might make disabled people more vulnerable to having their lives taken from them. Is that a legitimate concern?

This concern comes from confusion about the issues we are looking at. Suicide is death at one's own hand, and assisted suicide is actively intervening when a person takes his or her own life. The Martens case did not deal with the Rodriguez situation — where a person is unable to take their own life because of illness or infirmity. The Martens case had nothing to do with the disabled.

Why did you decide to go for a jury trial?

I felt from the beginning that this was a jury trial. This is a matter that ultimately affects us all and it was a matter for the community of Martens' peers to decide. Furthermore, our attitude toward assisted suicide is a matter of community standards, so the matter should be decided by community representatives.

What community standards are in play here?

I can't think of any other issue so relevant to the question of personal autonomy — to what extent can we make decisions about our own bodies, to what extent can the state interfere? And should we not have the right to have someone with us when we decide to check out?

Was "jury nullification" ever a possibility in this trial?

It was not necessary because there was not a convincing case to find Evelyn guilty.

How do you think the police behaved?

They were very rough at times. They bullied Bernice Poelzer [Evelyn's daughter who lived in a suite in Evelyn's house.] They did not keep accurate exhibit lists. They panicked in arresting Evelyn when they did, after Leyanne Burchell's suicide. Their treatment of Evelyn was similar to the way they treat most suspects, with a presumption of guilt.

How did the Crown handle the arrest?

I was surprised at how vigorously they opposed bail for Evelyn. They wanted to keep her in custody until the trial, which turned out to be over two years. They thought she was part of some international “death ring,” or something like that, because of her work with the Right to Die Network. They were after the whole Network. We just wanted to get her released, so we had to agree to very strict conditions, including that police officers be allowed to search her house every week. She was put on a curfew. We did not think these conditions were fair at all but we wanted to get her out. She had already been in there for four or five days, because the arrest took place just before the long July 1 weekend..We thought the home search provision in particular was unjustified — that it was a serious invasion of privacy.

The Crown, in these early stages, treated this as seriously as a murder case. They seemed to think they were uncovering an organization with a mandate to kill people.

The Crown’s role in Canada is supposed to be seeking a fair trial, not a prosecution. They are not supposed to be wedded to the outcome. But in reality the system is adversarial, and many prosecutors see their role as trying to win. Though the Crown lawyers first involved seemed overly aggressive, the two who eventually were assigned to prosecute the case — Neil Mackenzie and Susan Rupertus - acted in the true traditions of the bar. They presented evidence in a straightforward manner. They behaved exactly as they should have.

Why were the original Crown lawyers so aggressive?

They saw this as a high profile case, so there may have been some political considerations involved. The Euthanasia Prevention Coalition and others were lobbying for prosecution. They were claiming that it was going to be “open season on the disabled” if Evelyn was not prosecuted. And they did seem to think it was an international conspiracy.

What did you think of the jury’s question after they had gone into deliberation?

Peter thought it was an acquittal question; I thought it was a guilty question.

Given the not guilty verdict that came not too long afterwards I think Peter was right. I think they saw the undercover tape as exculpatory — Evelyn clearly said that she had not done anything.

Why was there so much time spent on the drug testimony? This did not appear to be so crucial to the outcome.

Initially, because of the helium tanks and exit bag found in Evelyn's van when she was arrested, the Crown thought that they had a strong case for aiding the suicide — that Evelyn had provided the means. Then came the autopsy report — oops — she died of an overdose of drugs. So the Crown revised its theory. It was not an exit bag death but a drug overdose, and Evelyn had provided the drugs. In the end they brought both possibilities to trial- not a particularly good strategy.

But to answer your question, it was necessary to contradict the Crown's suggestion that Evelyn had been a drug dealer, i.e. that she was providing drugs to people so they could commit suicide. The only evidence they had were some lists of drugs found in Evelyn's house, lists which did not closely match the drugs found in Leyanne's body, and some pills from Leyanne's house that were found in Evelyn's van. Apparently Evelyn had removed these to remove evidence of suicide, because of her justified fear of prosecution, but because some had prescription labels made out to Leyanne it was clear that Evelyn had not supplied them. The Crown wanted to suggest that Evelyn had taken them to supply to other people, but they were not drugs of choice for suicide. I had to make that clear in cross examination.

What do you think about the undercover operation?

It was difficult for Evelyn — it was such a betrayal. The whole experience of the undercover operation was devastating. The police can lie, and they can secretly record conversations, with judicial authorization.

What worried you most in preparing a defence?

Initially I was most worried about the drug lists in Evelyn's house. These might have bothered the jury. But it was a superficial problem because it became meaningless once examined closely. But that is why I had to do a

lengthy cross examination on this. The other concern was that of Monique's health, and the notion, encouraged by the Crown, that she was perfectly healthy. The Judge was annoyed by my pursuing this, saying how it was irrelevant to the charge of aiding. But it was important in how it might affect the perception of the jury.

Did you think that the discovery of exit bags in Evelyn's house would be a problem?

Such bags are available from various groups. There was no way to show that she had supplied bags to Monique or Leyanne. In fact the literature suggests that it is essential for people to get such things themselves, to ensure they are serious. And the bags are not dangerous in themselves. They require helium to be effective, the bag by itself cannot kill you.

There is an important legal issue here of "specific intent." If you make such a bag you must have knowledge that it is going to be used by a person to kill themselves, in order to be criminally responsible. Guns are a similar example. They are often used to kill people, but the manufacturers are not held guilty for that. Had they made a gun for a specific murder then they could be found responsible, but not for simply manufacturing a gun.

Would you like to mention anything about the women who died?

Yes I would. One of the reporters at the trial mentioned that I had three clients, and I did. The defence did have three voices, the voices of Evelyn, Monique and Leyanne. And they were voices of courage and determination. Leyanne had a wonderful zest for life, which she enjoyed to the fullest for as long as she could. Monique had a deep understanding of what she was doing, and she too was an extraordinary woman. Their voices were present throughout the trial.

CHAPTER 6

Evelyn Martens & the CBC

CANADIANS, MANY OF US AT LEAST, HAVE LONG BEEN PROUD of the Canadian Broadcasting Corporation for its many fine examples of public affairs programming, both on the radio and on television. We objected strongly when various governments, miffed by the CBC's resolute independence, cut its funding. Though there has been some deterioration in CBC programming, probably at least in part because of the cuts, I like many others have assumed that the quality and fairness of its public affairs programming was still at a high level. Then I saw their documentary on Evelyn Martens.

The long-running public affairs program *the fifth estate* devoted its November 23, 2005 edition to Martens and her trial. I had spoken several times to CBC representatives as they were preparing the program, and I had expected a balanced and insightful look at the issues involved. There is a story here similar to the fictional one created by the great film director Mike Leigh in his film *Vera Drake*, but in this case it was a real story, with real people, and a real hero, Evelyn Martens, who risked her freedom to commit acts of human kindness. Many supporters of Martens hoped that the documentary would tell this story, and perhaps even generate a groundswell to reexamine Canadian law on assisted suicide.

The CBC chose to tell another story. Their story was one of distaste and incredulity: how could an apparently decent woman get involved in such unsavory business, and how did she manage to avoid conviction for her crimes? The demeanor and commentary of the show's host, Hana Gartner, suggested

that Martens was a woman who was involved in the infamous and fanciful “international death ring” that the police and the prosecutors had imagined but never found — ghoulish people who went around killing other people, or at least encouraging them to kill themselves.

The compassionate and courageous actions of Evelyn Martens were not part of the CBC story, however. Nor was the important legal ruling that was made in the trial (limiting the grounds for aiding suicide). The CBC, without having its own representatives attend most of the trial, and without heed to the unanimous decision made by twelve independent jurors from Duncan, seemed to take its cue from the prosecutors and the Euthanasia Prevention Coalition and its representative Beverly Welsh. Though more moderate in tone than Welsh — the producers of the show have a way of *sounding fair* and balanced — the thrust of the show was similar. At one point program host Hana Gartner asked Constable Crawford, who had been instrumental in orchestrating the prosecution, if a crime had been committed. “Definitely,” he replied. His reply went unchallenged, and the implication was that the jurors from Duncan, who had arrived at no such conclusion, had let a criminal go free. At another point Gartner suggested that it was clever lawyers’ words that had led to the not guilty verdict, a view that was undoubtedly shared by the prosecutors and Welsh, but which entirely missed the significance of Justice Davies’ ruling and, with that, the lack of any compelling evidence for guilt.

Perhaps if CBC representatives had actually attended the trial they might have had a more balanced sense of what occurred there, and how weak the case was. They might have picked up on the landmark ruling by Justice Davies. Perhaps they would have then understood that, in spite of the million dollar prosecution, in spite of the certainty of biased observers like the Euthanasia Prevention Coalition and Constable Crawford, that there was in fact no evidence a “crime was committed.” They might even have picked up on the real stories.

All that said, however, the CBC has the right to tell the story as they saw it. If that was all there was to it, then there would be little one could say about it. But there is something worse that happened, something that is worthy of further comment. In telling their version of the story the CBC misrepresented and distorted evidence to support the story they wanted to tell. Some of us who had followed the trial closely protested to CBC, claiming that the show was unfairly slanted. We received a response from Executive Producer David Studer who claimed that the program was “fair and balanced.”

Of course slant in regard to opinion is, to some extent, the prerogative of

the producers of *the fifth estate*; it is hard to imagine that an interesting program could be produced without any perspective whatsoever. The problem is that in supporting the particular slant taken on the program — which essentially was that Martens got away with a crime — evidence was not examined fairly and accurately, and it was distorted to support the position taken.

The basic problem with *the fifth estate* program on Evelyn Martens is that it presented evidence as the police and prosecuting lawyers would have presented it, in trying to persuade the jury to find a verdict of guilty. In a court room such bias is expected, and to some extent it is acceptable because both sides have the opportunity to present their cases. A misleading presentation by the prosecution can be challenged by the defence, and vice versa. In a television program, however, all the audience sees is what the producers allow: that is the whole story for the viewers.

I will illustrate, with a few examples, some of the bias and distortions that were presented. These distortions were not simply shortcuts to condense material to fit into the program, as claimed by Studer; they all work to put Martens in an unfavorable and unfair light.

Because most of the readers of this account will not have seen the program, I will briefly describe a number of episodes in the program, in roughly chronological order, and illustrate how these episodes in particular are inaccurate, misleading and unfair.

THE SEQUENCE OF EVENTS ON THE MORNING OF THE DAY OF THE ARREST

The program started with events that occurred on the morning of the day of the arrest, when the undercover operation, discussed earlier, had been set up to entrap Martens. The police agent posing as the goddaughter of one the women who had died had spoken to Martens by telephone, and asked if they could meet to help her deal with her grieving. After some changes in plan they agreed to meet in Vancouver, where Martens was traveling to that day from Langford (near Victoria) where she lived.

To understand how this situation was misrepresented, and how the misrepresentation supports a certain slant to the story, it is necessary to look at the exact wording used in the voice-over on the program:

Crawford's plan [to set Martens up with the undercover agent] began to unravel right from the get go. Instead of keeping that appointment with

the undercover cop in Victoria the suspect boarded the ferry bound for Vancouver. Having no idea where she might be headed all the police could do is follow her.

These words are suggestive of the following:

- ▶ *Martens was behaving in an unpredictable almost capricious way, causing the careful police plan to “unravel”.* This would be something one would expect of hardened criminals trying to dodge surveillance. The impression given was that of someone acting in a furtive and suspicious manner. In fact the police had recorded Martens’ phone discussions with the undercover agent, and transcripts of these recordings prove that they were fully aware of the fact that she was going to Vancouver. So the plan could hardly start to “unravel” when she started out to Vancouver. This is one of the many inaccuracies that could create misleading impressions.
- ▶ *She did not keep a scheduled appointment with the undercover agent, indicating that she is unreliable and inconsiderate.* In fact, as shown in the police transcripts of the secretly recorded phone calls (shown in chapter 3) she went to some trouble to change the appointment the day before, and was most accommodating of the agent, who she thought was the grieving goddaughter of Monique Charest. The transcripts of these interactions show that Martens was extraordinarily thoughtful and considerate, offering to help the goddaughter find a place to stay, and even to meet her at the ferry. If the producers had been interested in an accurate portrayal of Martens they would have seen it in her kindness to this person whom she did not know. One would think that this would be something the producers — at least unbiased producers — would also have discovered and wished to convey. Instead, in this section of the show, and in others, they seemed to go out of their way, and use misleading evidence, to give exactly the opposite impression.

CAUSE OF DEATH OF LEYANNE BURCHELL

The program stated without justification or proof that Leyanne Burchell, the second of the suicides in this case, had died of helium inhalation. What could have been said is that the police initially thought she had died of helium inhalation, because there were helium tanks in Martens’ van when she was

apprehended. However, as discussed in chapter 1, that case fell apart when the autopsy report showed that Burchell died of a drug overdose, and no evidence showing that the tanks had been in Burchell's house could be provided. Now it is possible that Leyanne Burchell had used helium, but there was absolutely no proof that she had, whereas there was proof that she had taken a lethal dose of drugs.

This distinction was central to the case, because the Judge's instructions made it clear that "aiding" suicide required some active involvement in the death, and bringing tanks could have been construed as doing this. This is very likely the case the prosecution had planned to make, before the autopsy report came in. After that report they hastily changed their argument, essentially abandoning the helium tank argument, and suggesting instead, without any real evidence, that Martens might have brought the lethal drugs. So not even the Crown held to the claim of death by helium. All of this was apparently missed by the CBC.

In regard to the provision of the tanks, as pointed out earlier, they can be purchased in many places, probably hundreds of places in Vancouver. They are used for filling balloons at parties. And it is recommended in the literature on suicide that people wishing to take their lives should provide their own apparatus for doing so, and not ask those who might come to be with them when they die to bring it. This is standard practice to minimize the risk to people who come to give comfort to the dying.

Why were the tanks in Evelyn's van? She may have removed them from Burchell's house or the house of someone else after a suicide. But that does not constitute assisting suicide. The other deceased woman, Monique Charest, had requested that the tanks be removed after her death, for reasons of her own, and Martens did this. Those tanks could have been still in Martens' van. But wherever they came from they had no bearing on her possible guilt.

So there was no proof that helium was involved in Burchell's death, and no proof that Martens had supplied a tank. The sole value to the Crown in even introducing this was to create a sense of connection with the discovery of the tanks in Martens' van and the death, and to hope that jurors would conclude there must have been a connection. But this was a weak ploy, not supported by the evidence.

The fifth estate's inaccurate presentation of this key issue — baldly claiming that Burchell died of helium inhalation — distorts perceptions of the situation and creates a false sense of guilt by association with the tanks in the van. So the slant here is clear — perhaps excusable on the part of the prosecution whose

job it is to present a case for guilt, but hardly excusable on a television program purporting to be “fair and balanced”.

MONIQUE CHAREST AND TERMINAL ILLNESS

The claim was made on the program that Monique Charest did not have a terminal illness; this is another clear example of a misleading presentation of part of the evidence, again in a way that shows Martens in unfavourable light. Yes, the prosecutors made much of their claim that Charest was not terminally ill, even though this had no bearing in law on the innocence or guilt of Martens. The issue, in law, is whether or not she assisted the suicide, not whether or not this was the suicide of a terminally ill person. Making much of Charest’s supposed good health served only to try to elicit negative feelings toward Martens — that a healthy person died unnecessarily, and that Martens was somehow party to this bad event. This was clearly an attempt to sway the jury with something that was technically irrelevant. Unfortunately for the Crown’s case, though, the claim that Charest was in good health was entirely undermined during the extensive defence rebuttal (see chapter 2).

The attempt by the Crown to appeal to jury emotions failed. But it did not fail, apparently, to have an impact on *the fifth estate* producers, who dutifully reported the Crown’s case, without any reference to the extended and effective rebuttal.

INDICATION OF GUILT IN THE UNDERCOVER RECORDINGS

In *the fifth estate* program, Hana Gartner made remarks about the undercover tapes, implying that they could be viewed as inculpatory. But this is a very serious case of misleading journalism: it takes remarks completely out of context. It was Gartner’s responsibility to give reasonable and fair reading of the evidence, not a slanted reading to provide support for a case she may wish to make. Let us look again at the exact remarks made by Martens during the undercover operation, and quoted on the program:

She [Monique Charest] didn’t want to be alone. She didn’t want to wake up and still be here. And that’s where I came in.

Executive Producer Studer in his response to our concerns claimed that this could indeed be read as inculpatory. Presumably he means that this is an

admission that Ms Martens had intervened in the suicide, something that may well have been “assisting suicide” according to the Judge’s interpretation of the law. The problem with this interpretation, and with leaving an implication with television audiences that this may well have been an admission of guilt, is that it conveniently ignores what Martens said immediately afterwards, something that was not broadcast. The conversation proceeded in this way:

Agent: Okay and she took enough that you didn’t...

Martens: ...Yeah...

Agent: ...have to...

Martens: ...nothing...

Agent: ...do anything extra or? Oh dear.

“Oh dear,” indeed — there goes the case. Exactly contrary to Studer’s claim, this exchange is exculpatory, not inculpatory. Martens explicitly said that she did nothing to assist in the process, in unguarded comments to a supposed confidant, not knowing that the police were listening in.

Again we might allow the prosecution some latitude in selectively emphasizing certain aspects of the evidence, but such selective reporting is hardly what we expect from the CBC, and again shows clearly how evidence was distorted to imply that Martens had committed a crime.

But what did Martens mean by the statement in contention “and that is where I came in”? Did it mean she was, in fact, prepared to intervene if the suicide failed and Ms Charest was going “to wake up and still be here”? While it is in either case irrelevant, because she then states she did not intervene, it should also be pointed out that this part of her statement, even when taken out of context, means nothing. It could have meant that she was prepared to intervene, but it might also have been referring to the preceding clause “she did not want to be alone.” That, we know, is one way in which Martens did indeed “come in” - she readily admits that her role was to give comfort, and to provide the comfort of a human presence to a dying person. So we know that is where she came in. To assume that she meant anything beyond that is unsubstantiated speculation, and was of no real value to the case for the prosecution.

“NOBODY IN DUNCAN IS THANKING EVELYN MARTENS”

This gratuitous claim, made at one point in the program, is simply incorrect, and it is insufficient to pass off criticism of it, as Studer did, as being “overly literal.”

Some people in Duncan were upset by Monique Charest's suicide, and may have blamed Martens for it. But it is a gross and unacceptable exaggeration to say "nobody" thanked her, and creates the impression that people in general here (where I live) were hostile to her. That is not true. Virtually everyone I talked to in Duncan appreciated what she had done and hoped that she would be found not guilty. The local newspaper expressed its support. And, ironically, in a very touching moment after the verdict was read, one of the jurors turned to Martens and mouthed the words "Thank you, thank you." (See chapter 5).

Was this just rhetorical license that should not concern us? Would it have been acceptable if, in reporting on the trial, I had written "everyone in Duncan supports Evelyn Martens?" Although probably closer to the truth than the statement by Hana Gartner, it would still not be acceptable, because it would represent an attempt to gain support by glossing over the fact that some people do not support her. Saying "nobody is thanking her" appears to be a dishonest attempt to create a negative impression.

MARTENS' DECISION NOT TO TESTIFY

The program treats this decision as something of significance, with Hana Gartner saying ominously that no defence witnesses were called and Martens "doesn't even take the stand in her defence." Doesn't even? It sounds like she is hiding something!

But the reason no defence witnesses, including Martens, were called was that none were needed. While one can never be certain about the outcome of a trial, it is the defence lawyers' job to assess the need for rebuttals of what has been presented, and to give any new evidence that might bear on the innocence of their client. If their assessment is that the case presented by the prosecution is very weak then they would be foolish to call defence witnesses. It is the job of Crown to prove guilt, and if they fail to do so, no more need be said, or should be said. Clearly, given the verdict, Martens' lawyers were entirely correct in their assessment of this. Had *the fifth estate* producers actually attended the trial, or even read a transcript (none was produced for the trial) they might then have understood the weakness of the case, and have understood the decision not to testify. Indeed, more generally, they might have refrained from presenting a position that so consistently mirrored that of the prosecution.

Studer in his response also wonders why Martens did not take the opportunity to use the trial as a platform for her views as a member of the Right to Die Society. But Martens never was a public crusader. She simply wanted to

provide comfort and support to wretched people who could find it nowhere else. Now, under the threat of being sent to jail for the rest of her life, she did not go against the advice of her lawyers and take the stand and use it as a platform. Trying to make something of this, as *the fifth estate* did, simply wasted air time on something of no consequence, while at the same time suggesting to its audience that there was something sinister going on.

Studer wrote, “No television program can be all inclusive... there was simply no room...” There would have been a lot more room if irrelevancies such as this one had been left out, as well as others such as repeated sequences in a pub in Ireland about another case of alleged assisting of a suicide which had taken place there, with no direct relevance to the case at hand.

THE “VICTORY PARTY”

At the end of the program a brief clip of an event that appears to be a victory party is shown. Studer agrees with and defends this perception. In his letter he says:

In fact, I think, most fair-minded people would agree that if not exactly a victory party, the reception we showed was the celebratory prelude to the award presentation to Ms Martens, which was unlikely to have taken place had Ms Martens been convicted.

In fact what was shown was the reception at the annual meeting of the Humanist Association of Canada, six months after the trial, and it would have looked much the same whether or not Martens was there, or whether or not she had been convicted - although in the latter case she of course would not have been able to be there. She'd have been in prison, though almost certainly would have still won the award (Humanist of the Year). Studer indicates that this was an event staged for Martens; it was not so. In fact, there had been another candidate in contention for the award, which was just part of many other things occurring at this annual event.

It should be pointed out that Producer Kit Melamed, who attended the event on behalf of the CBC, spent considerable time at the meeting, filming and talking to people there, and must have been aware of the nature of the meeting. Why was it presented in this misleading way? Perhaps it was just sloppiness, and it is difficult to prove it was anything more than that. But it is also difficult to avoid the suspicion that the producers in attempting to bolster

their negative portrayal of Martens and those involved in the Right to Die movement thought that characterizing the event as a victory party might seem like “dancing on the graves” of the women who had died. Attributing such ghoulishness to those involved is a common way of discrediting supporters of the Right To Die Society. But of course no such thing was going on; most of those at the meeting were not even members of such a society. The Humanist Association of Canada gave the Humanist of the Year award to Evelyn Martens because of her compassion and courage in providing comfort to those who could find it nowhere else, and in doing so at considerable personal risk.

There are other things that could be pointed out to show the systematic bias of the CBC program. For example:

- ▶ The only extended interview with one of Marten’s six children was with the only one who, because of religious convictions, had qualms about his mother’s involvement in the Right to Die movement. Why not, for example, interview the son who quit his job to attend the entire trial, or any of the other children who were fully supportive?
- ▶ Hana Gartner’s sharp comment to Martens: “so it was a business”, referring to her Right to Die activities, seemed gratuitously hostile, and misrepresented Martens’ motivation for being in the movement. This contributed to the general negative and unfair impression the program created regarding Martens, who actually lost a lot of her own money in trying to help people in need, and was demonstrably motivated by feelings of compassion. This should have been evident to anyone who got to know her.
- ▶ Hana Gartner appeared to try, deliberately and unfairly, to put Martens in a bad light in another exchange. Martens said, in referring to people who take their own lives, “you’re not helping them; you’re comforting them when they do die... There’s a difference.” Gartner responded with, “it’s a semantic difference,” to which Martens, apparently not catching the point, nodded agreement. The impression left by this exchange is very misleading. The suggestion made by Gartner would be taken by most people to mean that the difference Martens was referring to was trivial, a play on words, that covered up what she really did which was to assist suicide. Clearly the producers of the show would know that this was not Martens’ intention. Martens knew very well that there was a very

significant difference between assisting suicide and comforting a dying person — that in fact was the substance of her legal defence. Helping is illegal, but being there and offering comfort (according to the Judge’s instructions to the jury) is not. That is why Martens was making the point that “there is a difference”. Martens did then appear to agree with Hana Gartner’s misrepresentation of the difference as semantic, i.e. trivial, but of course Martens could not really have intended any such agreement. That must have been obvious to Gartner and the producers of the show. In the interests of fairness and accuracy the CBC should not have presented Martens’ apparent misunderstanding of Gartner’s comment as her actual opinion.

It should be clear by this point that in this case *the fifth estate* program was anything but fair and balanced. I got nowhere with our concerns when I, along with some others who had followed the events, approached Executive Producer David Studer. We did succeed in getting our objections reviewed by the CBC Ombudsman, but he gave little satisfaction or indication of his understanding of our concerns. We did have some informed opinion that Martens could have sued for defamation of character, but she had no interest in that. Surrendering two years of her life to court proceedings was enough.

CBC representatives offered as a defence of the program that the majority of the responses to the program were sympathetic to Martens. While one hopes this is true (no figures were produced), it in no way excuses the bias shown in the program. If people reacted positively to Evelyn Martens, it was because of her evident decency and kindness, and her dignity under fire, which carried her above the misrepresentations of the CBC.

The fifth estate’s misrepresentation of Evelyn Martens was not a unique event.

Five years earlier, on April 20, 2000, Justice J Douglas Cunningham made a judgment in the case of Dr Francis H H Leenen vs. the CBC and several representatives of the CBC, regarding a *fifth estate* program that featured Dr Leenen. One of those named in the case was David Studer, who 5 years later was the Executive Producer of *the fifth estate* program on Evelyn Martens. Studer’s exact role in the production of the Leenen program is not clear.

Dr Leenen was awarded general, aggravated and punitive damages of \$950,000, and costs of over \$800,000. Among other things Justice Cunningham wrote:

The CBC has enormous power and an incredible ability to inflict damage. For the reasons I have earlier set out and for the malicious manner in which the defendants conducted themselves, their conduct must not be sanctioned. A clear message must be sent so that other vulnerable people will not be attacked in such a fashion. This can never simply be a cost of doing business.

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The message was sent, but was it received? Further details of the judicial comments in the Leenen case are shown in Appendix 2. Interesting parallels can be seen with the CBC's characterisation of Evelyn Martens, particularly in the attempt to create a "bad guy" in Leenen in order to make what they thought would be a more dramatic story.

APPENDIX I

Cross-Examination of the Undercover Agent

The quotes here are taken not from a transcript, which was not available, but from notes taken by Gary Bauslaugh in court.

DEFENCE LAWYER PETER FIRESTONE'S CROSS EXAMINATION of Corporal Smith was withering. He started by asking about her background, as a very experienced undercover agent, and then about how she had worked with Corporal Wilton of the Duncan RCMP to work out a cover story for the undercover operation. They developed a "persona" for the agent, then had her contact Martens and arrange the meeting.

"You chose the goddaughter persona very deliberately," he stated.

"Yes."

"You used your experience to try to determine how to get an 'in' with Ms Martens."

"Yes. The idea of choosing a goddaughter was that it would be easier to portray than other possibilities. A niece would have to know more — a goddaughter could be somewhat removed."

"A goddaughter would be distant enough so that the cover story would be easier to develop."

"Correct."

"You deliberately chose to be a goddaughter to facilitate the meeting."

"Correct."

“Given what you were told it would make sense — it would encourage Ms Martens to talk.”

“It gave a reason for her to talk to me — enough familiarity that I could be upset.”

“It is fair to say that you put considerable thought into creating a persona.”

“I certainly put thought into it.”

“It wasn’t just grabbed out of the air.”

“No, we discussed it and came up with the goddaughter angle.”

“As part of the process a background is created, to help you accomplish the task.”

“Yes.”

“You have done this before.”

“Yes.”

“You created a series of lies developed in order to get Ms Martens to talk.”

“Certainly to gain her confidence.”

“You’re pretty good at it.”

No audible response.

“You had to lie about who you were — a florist from Manitoba. All this was thought out to be believable. You lied about your family and kids.”

“I did make that up.”

“You lied about why you were on the Coast.”

“Yes.”

“You lied about your cell phone — getting a Manitoba number. You lied about your relationship to Monique Charest. You lied about the relationship with her family. This was all calculated to get Ms Martens to speak.”

“Yes.”

“This was all well thought out.”

“Yes.”

Firestone then went through some details about the phone calls prior to the meeting, and then to the meeting at The Grind. Corporal Smith agreed that the discussion had a “jovial” tone on balance.

“On two occasions you appeared to be crying. You were acting, right?”
Firestone asked her.

“I was crying.”

“You did it to facilitate a response, right? Like an actress you cried on cue.”

“When it was appropriate.”

“Your effort was to get her to tell you as much as possible, right?”

“Correct.”

Firestone then referred to some comments in the transcript where Corporal Smith had referred to Monique Charest as “always my buffer zone” and made other comments trying to establish a rapport.

“Correct,” Corporal Smith said.

Firestone asked about the demeanor of Martens during the discussion, establishing that she was comfortable, relaxed and friendly, and that she was looking at Corporal Smith and being genuine. Martens was trying to reassure her, and accepted the ruse entirely, right to the end, and remained genuine to the end. Martens had offered to send some things to the fictitious address in Manitoba, but Smith said not to bother, it was not necessary. Firestone read some more passages from the transcript, where Smith was referring to her godmother: “and she believed in choices, and she always encouraged me to go my own way — I just wish I could have been there with her when she wanted to go her own way. I just wish I could have been there to encourage her to go her own way.”

Firestone said that this was calculated to deliberately to suggest, or get Martens to admit, that she had encouraged the suicide.

“I simply wanted to show her that I believed in choices and would have been supportive.”

“You know the difference between passive and active questions?”

“Correct.”

“In that light then did you not deliberately try to get Ms Martens to admit she encouraged the suicide?”

“No, I was just trying to ingratiate myself and establish a similar philosophy.”

“Ms Martens did not respond, specifically, right away, did she? But later she appeared to respond, saying, ‘I don’t think you have to feel bad or guilty — this was exactly the way she wanted to go.’ She also mentioned that she told Ms Charest that she could change her mind. Doesn’t this seem like a response to your suggestion about encouraging her to go her own way?”

“I can’t say.”

Firestone then made some more comments about Martens’ behaviour — friendly, spontaneous, genuine — and then referred again to Corporal Smith’s crying, twice, during the meeting at The Grind. He pointed out again how Corporal Smith used a persona to deceive Martens and “constantly made references to feeling badly.” And that this was all done in a way to get Martens to respond. It was all thought out ahead. Part of it was to indicate a feeling of guilt so Martens would be sympathetic.

“She was very gentle and comforting, wasn’t she?”

“Yes.”

“She was trying to be protective of you, wasn’t she?”

“I don’t know.

“Earlier she offered to come to the ferry to meet you and to find you a hotel.”

“Yes.”

“Basically her demeanor did not change through all of your discussions with her.”

“No.”

“And you left her with a hug.”

“Yes I did.”

APPENDIX 2

The Leenen Judgment

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(see chapter 6, Evelyn Martens & the CBC)

THE INITIAL JUDGMENT by Justice J Douglas Cunningham in the Leenen suit against the CBC was appealed by the CBC and ruled on by three adjudicators, Austin, McMurtry and Catzman. In describing the case Austin wrote:

What is complained of is that by a sophisticated “cut and paste” process, Leenen was portrayed as one of the “bad guys”, largely by the use of his own statements and appearance. The complaint is not that his words or any of the statements made are false or defamatory in their true and natural meanings, but rather that the “overall impression created by the words and the images is alleged to be defamatory”.

Leenen’s position is that the program created the following innuendoes: i) he supported the prescribing of killer drugs; ii) he was in a conflict of interest; iii) he was receiving a pay-off or a kickback from Pfizer Inc., a world leader in the development and production of pharmaceutical products; and iv) he acted negligently or dishonestly as the chairman of the ad hoc advisory committee of HPB.

Austin quoted extensively from Justice Cunningham’s original ruling. Here Cunningham talks about the power of the media and the responsibility of the CBC:

Television, a very powerful medium, provides widespread and instantaneous dissemination of information. Programs such as the fifth estate have remarkable potential and capacity to cause damage. A program such as this one, by the sensationalized manner in which it was produced, is far more likely to cause damage than other less respected publications or broadcasts. Thus, there is a greater responsibility upon those who produce such programs to ensure that the content is factually correct. A person’s reputation for honesty and integrity is a precious

commodity and when that is put into question the results can be devastating. Just as allegations of conflict of interest are defamatory, to suggest that a person of Dr Leenen's stature lacked integrity, was less concerned about patient safety than about drug manufacturers' profits, and that he conducted himself in a less than professional manner, not only calls into question his credibility as a research scientist, thereby demeaning him in the eyes of his colleagues, but causes his overall reputation in his larger community to suffer irreparable damage.

Cunningham, in commenting that the program was "of public interest" but not "in the public interest:

[The program] had nothing to do with a duty to communicate important information. It had everything to do with sensationalizing an issue, with creating viewer interest through alarm and with providing a podium for its producer's long held views, capably assisted by the over heated concerns of a disgruntled regulator. The program could easily have presented important information in a fair and balanced manner and had it done so, the public interest readily could have been served. By presenting a biased and slanted view, a view which in many respects the CBC knew to be inaccurate or simply untrue, no public interest was served.

Cunningham in responding to the defence case of fair comment:

This program, from its inception, was slanted in one direction. Throughout, the critics of [the drugs in question] were treated in a positive light, while the so-called defenders were treated in a negative way. Fairness would require that viewers be presented with both sides of the argument in a balanced way. In this case, by omitting key information, by deliberately failing to provide Dr Leenen an opportunity to accurately present his views, and by deliberately failing to follow up with further interviews, the CBC cannot claim fair comment when it describes Dr Leenen as an advocate of [the drugs]. The selectivity in the presentation of the material for this program in and of itself demonstrates an inherent unfairness towards those whose views did not mesh with [the producer's]. So much important information was kept away from the viewer, information that, had it been presented, probably would have destroyed the [producer's] thesis. From this, the only conclusion one can reach is

that the defendants never intended there to be fairness... What makes the misrepresentations in this case so alarming is that the CBC knew that its thesis in many respects was ill-founded. The CBC knew or certainly ought to have known that there was little, if any, difference between the views of all the doctors involved in the program on the subject of the use of [the drugs]. Yet it forged ahead with a program depicting defenders versus critics. Any differences [between the doctors], if not imaginary, were so slight that little attention should have been paid to them.

Referring to the impact on Dr Leenen, Cunningham wrote:

...the defamatory innuendoes presented in this broadcast caused great suffering to Dr Leenen and made him feel as though his well-earned reputation for integrity, both professional and otherwise, had been destroyed. These innuendoes would have been devastating for anyone; for a world-renowned research scientist they were almost fatal. This was the CBC firing its guns at Dr Leenen, not some little tabloid to which no one would have paid much attention. How does one respond when the CBC strikes?...

...In the present case, this program reached over one million viewers and its rebroadcast on Newsworld, four hundred thousand. The program itself was a full one-hour documentary taking up the entire episode of the fifth estate. I have found that in fact no crisis [regarding the drugs], apart from the one created by [the producer], ever existed...

...as his nasty little story developed, [the producer] decided to target Dr Leenen as a hypocritical defender of [the drugs] in a story that not once presented in a fair way Dr Leenen's well known and firmly held views. This slanted, one-sided production, I am satisfied, caused devastating damage to Dr Leenen such that ordinary right-thinking, reasonable people, viewing this program would have concluded that Dr Leenen had been seriously compromised. Worse, that he had done wrong. I accept his evidence and that of his wife and nurse that he suffered enormously and that he probably continues to feel that his honesty and integrity are still being called into question.

And dealing with the question of aggravated damages:

This was no spontaneous report, but rather the product of months of preparation and absolute adherence to a slanted and biased story line. There was never an apology or withdrawal of the libel; rather to the very end and throughout the trial there was an uncompromising defence of the activities of the defendants. The pattern of conduct by the CBC was established right at the outset when its in-house counsel refused to accept service for the individual defendants. This scorched earth attitude is evident in the refusal to disclose important information without a court order, with stone-walling on discovery claiming source protection and, most tellingly, with an eleventh-hour adjournment request which I have concluded was made only to thwart the plaintiff. Those involved in the production of this program knew or should have known that Dr Leenen's views on the long acting [drugs] were essentially the same as of those individuals the program portrayed as "good guys".

And on the need for punitive damages:

The CBC has enormous power and an incredible ability to inflict damage. For the reasons I have earlier set out and for the malicious manner in which the defendants conducted themselves, their conduct must not be sanctioned. A clear message must be sent so that other vulnerable people will not be attacked in such a fashion. This can never simply be a cost of doing business.

The appeal on the case was dismissed, with costs, as was an appeal on costs, also with costs.



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I have a lot of compassion
for people. I feel their pain.
[Helping the dying] is just
something I feel I have to
do. — Evelyn Martens