

Introduction

The Robert Latimer case has become a flash point in the Canadian debate on assisted suicide and euthanasia. Despite his confession to the crime of killing his disabled daughter, two convictions for second-degree murder and two failed appeals to the Saskatchewan Court of Appeal this farmer from Wilkie, Saskatchewan has become a champion for mercy killing.

By his blatant support for the killing of disabled people unable to speak for themselves, Latimer has served one major purpose. He has brought such murders out from behind closed doors and forced the Canadian public to address an issue most would rather not acknowledge.

However, the daughter he killed remains shrouded in the mists of disability. Little is known about her beyond her physical and mental defects and few have bothered to find out who she was or how she communicated with the people around her. She is not alone in that isolation. Her experiences as well as her treatment in the courts and by the media resonate with the disabled community.

Organizations of disabled citizens have objected to the predominantly negative presentation of Tracy inside and outside the courtroom but their objections have been met with at best patronizing pats on the head and at worst outright hostility. The reasons they oppose lenience for Robert Latimer have not been adequately investigated or understood by their fellow Canadians.

This book is an attempt to present that neglected view, to give voice to those who are consistently unheard. Until they are heard, the discussion on euthanasia and assisted suicide will remain incomplete.

Chapter One

Tracy on Trial

The evening of October 12, 1993 Robert Latimer decided to kill his oldest child, Tracy.¹ It had been less than two weeks since Sue Rodriguez lost her Supreme Court bid for a constitutional exemption in her battle for a physician-aided death. Public support for assisted suicide was high.

Earlier that day Latimer's wife, Laura, had taken Tracy to Saskatoon to see Dr. Anne Dzus, a pediatric orthopaedic surgeon, and was told the operation they had been waiting a year for would not reconstruct Tracy's dislocated right hip, as they had expected; instead it would likely remove the upper part of her femur, or thigh bone, leaving her leg limp.

Tracy had already had three surgeries for complications from her severe spastic cerebral palsy. When Laura gave birth to her, the fetal heart monitor was broken, which prevented the attending staff from detecting Tracy's dangerously slow heart rate. When she later testified for her husband in court, Laura blamed the broken monitor for the lack of timely medical intervention for the baby and Tracy's subsequent cerebral palsy. (More recent research blames cerebral palsy on factors often occurring earlier in the pregnancy.²)

The medical staff didn't recognize Tracy's seizures until they were frequent and severe enough to require a transfer to Saskatoon's University Hospital. There they were brought under control and she went home. Four months later the seizures recurred worse than before and this time it took the drug Rivotril to bring the number down to a half dozen minor seizures daily. That rate, which the doctors considered non-threatening, remained stable for the rest of her life.

The result of these difficulties was brain damage leaving Tracy with severe spastic cerebral palsy. She would not develop like other children her age and the distorted messages from her brain would pull her growing body out of alignment.

The first two surgeries to deal with that misalignment came when Tracy was four and eight. They stretched some tendons and severed others to make her more symmetrical and head off the hip dislocation common in children like her. After the second she spent some time in a body cast, which caused some problems in caring for her. However, little evidence surfaced that Tracy herself experienced any more dis-

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comfort than anyone else in a cast. In fact, for the first time in her life she was able to stand propped against a wall or table. Dr. Dzus later testified in court that this soft tissue surgery was considered successful, although Tracy's spine still curved.

By her third surgery on August 27, 1992 her back had bent and twisted, cramping her internal organs and making eating difficult. The surgery attached stainless steel rods to Tracy's spine to reduce her scoliosis.

Tracy came through the gruelling ordeal with flying colours. After such surgery most children stay in hospital at least one to two weeks but Tracy went home after only six days. Her eating improved and she was free of the respiratory ailments that had plagued her before. In mid-September, just a few days after her two-week follow-up visit to Dr. Dzus, she returned to school.

In November the doctor was still hearing reports of Tracy's improving health. Her right hip seemed destined to go out of joint, although at that point the range of motion was still good and Tracy showed signs of pain only when that range was tested. Further surgery had to be postponed for at least a year to allow Tracy's body to heal completely and lay down enough bone to fuse her spine.

By this time the Latimers had had two other children. Brian was almost three years younger than Tracy, and Lindsay was five years younger. Laura had had a miscarriage two years before Tracy was killed and in late 1992 she became pregnant again. To prevent another miscarriage the Latimers used more respite help than they had before.

The Wilkie group home (which Laura had helped plan) was full, so Tracy was booked into a home in North Battleford. That summer she stayed there four times: twice in June as an experiment, then three months from July 5 to October 3 during the last part of Laura's pregnancy and the adjustment to new baby Lee, and again from October 8 to October 11 when Laura had her tubal ligation. Before that summer, the Latimers had used other respite services frequently.

On October 12, doctors determined that Tracy's hip joint was worse than they had thought, and advanced the surgery date to November 4, less than a month later. They also wanted to admit Tracy a few days early to make sure her nutritional status would let her tolerate the surgery; at this point she was severely underweight. Laura later testified that a short time before Tracy died she weighed forty-four and a half pounds, the most she had ever weighed but in court Laura said both she and Irene Froess from the developmental centre had questioned this at the time. When Tracy was weighed before she went to the group home she had weighed thirty-eight pounds and Laura said she had not gained since then. The last weigh-in occurred shortly after

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Tracy got home on October 3, 1993.

Several years earlier the Latimers had refused a gastrostomy, or feeding tube, for Tracy partly on the advice of Robert Latimer's sister, a nurse, who had told them such tubes are just the first step in prolonging the dying process. However, Robert Latimer also had a fear of such devices. He considered vaccinations cruel, and in his youth he had been teased about his squeamishness at facing a dentist. Nevertheless, Dzus said nothing was medically preventing Tracy's surgery.

While Laura and Tracy were in Saskatoon, Kathleen Johnson, a Social Services worker with the Community Living Division in North Battleford, phoned the farm about the application Laura had submitted after the baby's birth to permanently place Tracy in the group home. Robert Latimer answered the phone. He was at home because it was harvest and because he avoided doctor's offices.

A placement meeting had been scheduled for the next day, October 13, but Latimer told Johnson things were not urgent and they didn't want to proceed at that point. Dr. Snyder testified that Social Services assumes responsibility for all such children when they reach adult age and encourages all of them to leave home by the age of eighteen or twenty. Some parents remain involved even after that but some leave all decisions up to this department. According to his confession on November 4 Latimer had no intention of having Tracy institutionalized; he had disagreed with Laura when Johnson discussed the application with them in September.

When Laura got home from Saskatoon she gave her husband the bad news about the change in plans. She said they were both devastated at the thought of Tracy being "mutilate(d)." They disregarded the doctor's assurance that "in the majority of children (the surgery)³ is successful in decreasing their pain" and instead Laura wished for a Dr. Jack Kevorkian (the U.S. advocate of assisted suicide who was receiving much public attention at that time). In his confession Latimer said he decided that evening to end Tracy's life. According to his confession, after spending a week mulling over the method he would use, he settled on exhaust fumes rather than a gun or drugs.

On Sunday, October 24 he waited for Laura to take the other three children to church at 11 A.M., leaving him to take care of Tracy. While Tracy sat alone in the house in her wheelchair, he ran around the yard for half an hour getting the rags, coat, sleeping bag, hoses and clamps his plan required. Then he returned to the house, picked her up out of her wheelchair, carried her to his blue GMC half-ton truck and drove to the quonset at the north end of the yard.⁴

There he propped her behind the wheel with the rags, coat and sleeping bag, leaving her face uncovered. He connected a hose to the

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tailpipe and ran it into the cab through the back sliding window, started the motor and closed the door.

For half an hour he sat on a tractor tire in the box of the truck outside the sliding window watching as Tracy jerked several times while the carbon monoxide levels in her blood climbed to 80 percent. He said he timed the whole thing but did not say why. After a while he couldn't see her anymore because the fumes fogged up the windows. In his confession as reported by Corporal Kenneth Lyons, Latimer said, "I thought if she cried I'd pull her out."

Around noon, half an hour after he started the motor, Latimer turned it off. He drove back to the house and carried Tracy's body, limp and reeking of exhaust fumes, back to her bed in the room she shared with her ten-year-old brother, Brian. He arranged her body to make it appear she had died in her sleep and waited for the rest of the family to come home.

They returned at 1:30 p.m. Laura started to get lunch, then fifteen minutes later went to get Tracy and immediately cried out for her husband to phone the hospital. The personnel there told him to call the police as well.

Constable Nick Hartle of the Wilkie RCMP detachment got the dispatch call at 2 p.m. He phoned Latimer who told him Tracy had died in her sleep. Fifteen minutes later Hartle was at the farm. He had called the Biggar Funeral Home—Latimer's choice—and the coroner was also on his way.

On his arrival Hartle found Latimer on the porch. "Bob was quite calm about it," he told the court. He found Laura and the children in Tracy and Brian's room. Laura was breastfeeding baby Lee. "They weren't crying but they were very red-eyed. They had been crying."

The coroner, Dr. Kislén Bhairo, who had been Tracy's doctor from 1981, when she was six months old, to 1990, arrived. While he examined her body for the cause of death Laura watched, holding two-month-old Lee. Latimer walked in and out of the bedroom.

Not finding the causes of death, such as suffocation from vomit or mucous, common in people with severe cerebral palsy, Bhairo and the police decided on an autopsy and Hartle took pictures of Tracy's body. Before he left the house Bhairo ordered the autopsy for the next morning.

At this point Latimer told Hartle he had put Tracy down for a nap around 12:30 p.m. and that she had had some pain and discomfort. He also briefly recounted her medical history. The police officer phoned the Latimers' relatives and friends to assist the family.

Between 2:45 p.m. and 3:45 p.m. the funeral home collected the body and the autopsy papers. Hartle asked Latimer to leave the chil-

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dren for a private talk in Tracy's bedroom. Latimer reiterated his earlier statement that nothing unusual had occurred before Laura and the children left for church, that there had been no evidence of new medical problems. He talked about Tracy's daily pain from her dislocated hip, her recent three-month stay at the North Battleford Children's Group Home, her surgery a year earlier and what the scheduled surgery was supposed to have done.

Hartle said when he informed Latimer there would be an autopsy Latimer "interjected and said, 'I want her cremated.'" According to Hartle, throughout this examination Latimer was "very controlled" and showed no sign of having cried.

Hartle then took Laura aside for a similar discussion. She was more emotional than Latimer had been although she didn't break down. At the end of the session he told her that her husband wanted Tracy cremated. "She seemed quite shocked at it and I noticed that she was visibly taken aback," he testified. However, after Hartle had finished talking to her, Latimer took her into the master bedroom and, when they emerged a few minutes later, Laura consented to the cremation.

Latimer made Hartle some coffee. At one point he became nervous and dropped some old coffee grounds but when the conversation shifted to the farm, he relaxed. He had "just completed the farming," Hartle said. "It was a good year."

When friends began arriving Hartle left. Back at the office he phoned the coroner advising him of his concern about a possible "mercy killing."

The morning of October 27, the day of Tracy's funeral and cremation, Hartle phoned the pathologist, Dr. Ranjit Waghray, to ensure that he had all the necessary samples before it was too late. When Hartle got the results from the Regina crime lab on November 1 he changed the focus of the investigation from sudden death to homicide and scheduled a search warrant for November 4. This was the day Tracy was to have had surgery.

The North Battleford RCMP, assisting the Wilkie detachment, got Latimer out of bed at 8 a.m. and took him to their own headquarters. They informed him several times of his right to consult a lawyer. Each time he refused. At the station he confessed, breaking down during his account of the murder. The officers treated Latimer with empathy while questioning him. Sergeant Robert Conlon offered him food and took him outside to smoke several cigarettes.

Later that day Latimer showed about a dozen police and various experts around the crime scene. They took photos and a video and collected items from the house, the yard, the quonset where Tracy had been killed and from the burning-barrel where Latimer had tried to destroy evidence. One of the police officers there that day was Corporal

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Allan Lavallee. He had known Latimer socially for nine years and played on the same ball team. To him Latimer “appeared basically normal” but “under a good deal of stress.”

After the walk through—as the police called the search—they took Latimer back to North Battleford where he was formally charged with first-degree murder. Mid-afternoon Laura arrived and asked to see her husband. The police gave them a room where Latimer finally told her what he had done. Later that day he met with two lawyers for the first time.

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“This is terrible!” Georgina Heselton said to her husband, Allan, as she read and reread a little article in the *Regina Leader Post* she was holding that November day in 1993.⁵ It said a forty-year-old farmer in the Wilkie, Saskatchewan area had been taken into custody by the RCMP and had confessed to killing his disabled daughter, Tracy, with exhaust fumes from his truck. The farmer, Robert Latimer, claimed to have done it out of compassion to end her pain.

The story horrified Heselton and in June 1998, looking back on the previous four and a half years of trials and appeals, she was as convinced as ever that Latimer’s behaviour and excuses were inexcusable. “How terrible to kill a child. You just don’t do that,” she said when I spoke to her.

To her, Tracy’s helplessness and the public misinterpretation of the girl’s capabilities made her remember her own childhood. Like Tracy Latimer, Heselton had grown up in rural Saskatchewan. Home was a little log cabin six miles north of Churchbridge near the Manitoba border where she lived with her parents, two sisters and a brother.

In 1953 polio left her completely paralyzed. She was thirteen. Tracy Latimer died one month short of her thirteenth birthday. Like Tracy “I couldn’t feed myself at first,” Heselton said. After a year in hospital where she got little or no physiotherapy, she fought her way back to wellness and, with the help of a doctor in Melville, Saskatchewan she regained enough control of her body to walk with crutches and abandon her wheelchair.

The only lasting effect of her illness was weakness in her hips and right leg. At the time of her complete paralysis no one could have known how self-reliant she would become. Her parents would have wondered when their little girl’s suffering would end or if it ever would. At the time, polio was often fatal and there were few services to accommodate survivors’ needs. Their futures seemed as bleak as Tracy’s did.

However, after Heselton’s recovery her parents didn’t let the dis-

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ability and her prolonged absence from home change her status in the family. As the oldest child she had always taken on many responsibilities so she carried on with house and farm chores in addition to school work.

After leaving the hospital, where she had finished grade eight, she used a correspondence course for grade nine because it wasn't offered in the local one-room school. She finished the secondary grades in the second-floor high school in Churchbridge, which had no elevator. She made her own way up and down the stairs. At home she even took on the traditionally male job of driving a tractor, crawling through dirt and grease to repair a tiller wheel that repeatedly fell off. "I was in my glory," she recalled.

Yet, despite her obvious accomplishments, she was stunned one day to hear relatives whispering about her, "She'll never get married. Who will look after her when her parents are gone?" To them her weaker body parts totally eclipsed her strengths and attractive features just as Tracy's personality was hidden behind her abnormalities. In the limited imaginations of their extended family members, both she and Tracy were doomed to a life of isolation and dependency.

Heselton became one of the first Churchbridge graduates to attend university. She got a bachelor's degree in Commerce, an area she thought would give her a good job, and it did. In 1967 she married Allan, a technical engineer, and tried being a stay-at-home housewife for a few months. That drove her "up the walls" so she went back to work. Even giving birth to and caring for two boys didn't keep her from her career.

She eventually reached and stayed at the management levels of the Saskatchewan civil service until post-polio syndrome forced her to retire in 1987. Throughout her career she owned and drove her own car without special controls.

Despite her long marriage and obvious love for her husband she bristles at the assumption of many people that he is a saint for condescending to marry a disabled woman. "There was none of this he-was-looking-after-me business," she said. In fact, she nursed him through a major illness.

However, she realizes she was fortunate. "If Bob Latimer had been my dad I'd have been different," she said. "We don't know that Tracy might have gone on to do all sorts of things."

Although the Latimer case caught her eye early, she didn't know then how much it would encroach on the lives of disabled people across the country. But her alarm bells had gone off and wouldn't be silenced.

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In November 1993 Pat Danforth, then in Ottawa, was told by a friend about the Latimer case. She too thought, "How terrible," but then put it out of her mind. "Murder is murder. He would be convicted and that would be that."

At the time she didn't foresee the role Latimer would play in the Canadian assisted suicide debate, nor how he would be defended in court a year later.

A decade earlier, disabled Canadians had won their rightful place in the Charter of Rights and Freedoms. It guaranteed them the same protection under the law as able-bodied citizens so it seemed inconceivable that a lawyer would even consider using the victim's disabilities to rationalize murder.

Danforth also didn't know how the media and the public would react or that her own life would take her into the middle of the fray.

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About a month after the murder Heselton was in Winnipeg for a meeting of the Council of Canadians with Disabilities (CCD). She was a representative for the Saskatchewan Voice of People with Disabilities, one of eight provincial organizations and several other national groups forming the national umbrella body.

One evening they saw a BBC2 video dated May 2, 1991 on the Nazis' attempts to rid Germany of its disabled people. When it ended she said, "It's still happening. There's a farmer in Wilkie, Saskatchewan who killed his disabled daughter."

It was the first time the case had been brought to the attention of the council. They didn't respond immediately.

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On Monday morning, November 7, 1994 Robert William Latimer pleaded not guilty to the charge of first-degree murder. As the Honourable Justice Ross Wimmer later explained while charging the jury, while both first- and second-degree murder involve the intent to kill, first-degree also is premeditated, planned.

Since the onus in criminal cases is on the Crown to prove the guilt of the accused beyond a reasonable doubt, Crown counsel Randy Kirkham's witnesses had to prove, not only that Latimer killed his daughter, but that he planned to kill her. They showed that Tracy had died by carbon monoxide poisoning, that the gas could not have been pro-

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duced by a faulty furnace or water heater and that only Tracy's father could have killed her.

Corporal Kenneth Lyons, who together with Sergeant Robert Conlon had taken the confession, quoted Latimer's reason for the murder. "(Surgery) was more complicated than what we had expected so we just couldn't see another operation. She'd be confined to a cast for I don't know what the time was so I felt the best thing for her was that she be put out of pain." Dr. Richard Snyder, a cerebral palsy expert who had examined Tracy in 1985, related the services available to families like the Latimers: financial aid, early school placement, the various therapists assisting with everything from feeding and speech to electric wheelchairs and integration into regular schools and the community. He showed that Robert Latimer had many options other than murder.

Mark Brayford was Latimer's second lawyer. His first was Richard Gibbons but by the end of November 1993 Latimer had switched without explanation to Brayford. The interview by CBC TV Saskatoon, which became evidence in both trials, aired only a few weeks after Brayford took over the case. In the interview Robert Latimer was already talking about receiving public support for his actions.

Because cross-examination follows the initial examination of the witness, Brayford presented no witnesses in this trial. Because Kirkham did not re-examine any witnesses the defence consistently had the last word. In cross-examination Brayford merely asked Crown witnesses to corroborate his client's contention that the victim's life had been a helpless, hopeless existence, that Tracy's constant "torture" was increasing, that Latimer was an honest man and a wonderful father and that Tracy's death had been painless. He argued the murder was necessary to prevent the even greater injustice of letting her live in constant pain.

After consulting with Brayford, Kirkham decided not to call six of his fifteen witnesses who were not essential to his case. The prosecutor had listed Laura Latimer as his witness but, when it was her turn to take the stand, he said he wanted to spare her and her testimony wasn't necessary. However, Brayford successfully persuaded the court to allow cross-examination even if Kirkham chose not to question her. Her testimony was crucial to his argument. Kirkham asked her only one question, whether she had had any dreams for Tracy to which Laura replied that she had wanted the best possible life for her daughter. Brayford then had her recount Tracy's life in terms of the pain she experienced, contrasting her later pain and suffering with her early happy years.

Kirkham did not directly challenge much of the defence's case except to point out Latimer's other options. In his closing remarks to the jury he pointed out that Latimer had initially lied to the police about how

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and when Tracy had died. He also related several of Tracy's enjoyments but during his examination of the witnesses he did not refute the constant pain theory or give a different view of her life. Brayford used his last word to solidify the Latimers' version in the minds of the jurors before they retired to consider their verdict. Because Brayford's points went uncontested during witness testimonies, they became *prima facie* evidence that Tracy's life was indeed as bleak and painful as the Latimers claimed. *Prima facie* evidence is unproven evidence treated as fact because it is not disputed.

On November 15 closing arguments were heard. In his charge to the jury the next day Justice Wimmer rejected the Crown's argument of cold-blooded murder, conceding that Latimer probably acted out of compassion. However, he did not allow the defence of necessity or suicide either.

In this case necessity was the closest the defence could get to a plea of mercy killing. Canadian criminal law does not allow mercy killing, or compassionate homicide as some would call it. Necessity is significantly different from mercy killing. The latter involves killing someone to avoid suffering, however suffering is defined. Necessity as defined by Wimmer meant there were no options other than a fate worse than the one for which the person is on trial. He gave the example of someone facing criminal charges for break-and-enter when the accused had broken into an empty cabin to avoid freezing to death. Self defence would be another example. Wimmer did not allow the necessity plea because Latimer had other viable options.

The jury, after repeatedly asking for clarification on the difference between first- and second-degree murder charges, pronounced him not guilty of first-degree but guilty of second-degree murder which allows for parole after ten years instead of twenty-five. Latimer, in his only statement in court said the jury was "not human." His lawyer appealed the decision.

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Catherine Lambeth first heard about Robert Latimer on her car radio as she drove through Winnipeg to her mother's house. The story caught her attention because her oldest daughter has cerebral palsy and, at the time, Samantha was about Tracy's age.

Lambeth's legal credentials and marriage to lawyer Grant Mitchell also made her sensitive to the arguments defending Latimer's actions. She told me that both she and her husband felt the defence line of reasoning about Tracy was an insult to their profession and to their role as parents.