Queensland Court of Appeal Decision in Aiding Suicide Case:

A Red Flag for Assisted Suicide Law

In a unanimous decision by three judges of the Queensland Court of Appeal handed down in Brisbane on 19 June 2020 in the case of *R v Morant [2020] QCA 135*, Graham Morant's appeal against his conviction for aiding the suicide of his wife was rejected on all four grounds of appeal and the sentence of 10 years imprisonment was upheld as fair.

Morant was convicted on two counts under s311 of the Queensland Criminal Code. The first was that he had counselled Ms Morant to kill herself and thereby induced her to do so. The second was that he had aided her in killing herself.

One of the grounds of appeal was the belated discovery of two emails Ms Morant had exchanged with Dr Philip Nitschke. The emails presumably showed that she had suicidal ideation and was actively considering means of suicide.

However, these things were already apparent from evidence presented at Mr Morant's trial. As Sofronoff P concluded (at 38):

The evidence could not have helped the appellant. It would, instead, have reinforced Ms Morant's vulnerability to the appellant's inducements.

Sofronoff P explains (at 47):

It was implicit in the jury's verdicts that the appellant had counselled Ms Morant to kill herself with the intention that she should commit suicide. It also follows that the jury found that the counselling was effective to induce her to commit suicide so that, but for the appellant's counselling, she would not have gassed herself on 30 November 2014.

Morant stood to benefit from three life insurance policies to the total of $1.4 million.

His efforts to induce his wife to commit suicide included recounting to her a story about "*a customer of his [who] had taken out policies of insurance in favour of his wife and had then killed himself*." Mr Morant told his wife that that was "*an amazing and wonderful thing*" to have done. He encouraged her to do the same for him.

Sofronoff P concluded (at 64-65):

The present case is a paradigm case that exhibits the wickedness of the offence of counselling and thereby inducing a victim to kill herself. The offence was committed against a woman who was vulnerable to the appellant's inducements. His actions were premeditated, calculated and were done for financial gain… The offence was a serious one that involved a killing of a human being.

One of the judges, Boddice J summarised (at 248-249) the case against Graham Morant:

[T]he deceased was a vulnerable person with difficulties with her physical health, who was already suffering depression; and the fact that the appellant, by his conduct, took advantage of those vulnerabilities in order to persuade her to kill herself and then assisted her to do so.

In addition to those matters, the more serious aspect of the offences, counselling suicide, occurred over a period of months. Its seriousness was aggravated by the fact that the appellant had also aided the deceased to kill herself, being the end result of that extended period of counselling.

This case should be a big red flag to those intent on legalising assisted suicide and euthanasia as the current Queensland Government intends to do if re-elected on 31 October 2020. It has charged the Queensland Law Reform Commission with preparing draft legislation and is instructed in doing so to "have regard to" the draft legislation prepared by Ben White and Lindy Willmott.

That draft legislation proposes that the two doctors assessing requests for euthanasia or assisted suicide must, among other things, undergo "approved assessment training" and assess the request as "made voluntarily and without coercion".

The approved training prepared by Ben White for doctors licensed to kill by lethal injection or to prescribe poison to people in Victoria under its euthanasia and assisted suicide law contains a total of just over 5 minute (including a 2 minute 20 second video and slides which take a further 2 minutes 50 seconds to read) assessing voluntariness, including assessing the absence of coercion.

As a co-author of "an article entitled "Biggest decision of them all – death and assisted dying: capacity assessments and undue influence screening", published in the *Internal Medicine Journal* in January 2019, White dissented from the recommendations of his co-authors proposed "*Guideline for clinicians assessing capacity and screening for undue Influence for voluntary assisted dying".*

Issues identified in this insightful report but **completely ignored in the training prepared by White** for Victorian doctors include:

- *undiagnosed depression;*
- *cognitive impairment associated with Motor Neuron Disease and its effect on decision making capacity;*
- *the use of supported decision making "*allowing one person to communicate or assist with communicating another's decision raises concerns about potential for undue influence, especially given the gravity of the assisted suicide or euthanasia decision".

If Queensland passes a law permitting euthanasia and assisted suicide it will be removing from vulnerable Queenslanders like Ms Morant, the protection of Section 311 with its absolute prohibition on counselling, inducing and aiding suicide.

Instead manipulative, greedy, coercive, murderous perpetrators like Graham Morant, will simply need to suggest to a vulnerable spouse or parent or "friend" that accessing legal doctor provided euthanasia or taking doctor prescribed lethal poison is "all for the best dear".

Indeed, no jurisdiction that has legalised assisted suicide has even made any serious effort to establish a genuinely safe framework in this regard. No such framework is possible. Any law permitting assisted suicide or euthanasia will result in wrongful deaths from coercion.