

## EUTHANASIA AND ASSISTED SUICIDE LAWS ABROAD – EXPANSION AND ABUSE

1. Twenty-six years ago, in the well-known case of *Airedale NHS Trust v Bland*, the English House of Lords held that:<sup>1</sup>
  - No law which ignores the intuitive values that members of a civilised society have over the importance of human life "*can possibly hope to be acceptable*";<sup>2</sup>
  - A civilised society recognises the intrinsic value in human life, "*irrespective of whether it is valuable to the person concerned or indeed to anyone else*";<sup>3</sup>
  - Once euthanasia is recognised as lawful in any limited set of circumstances, "*it is difficult to see any logical basis for excluding it in others*";<sup>4</sup>
  - To permit a doctor to take the life of a patient "*is to cross the Rubicon which runs between on the one hand the care of the living patient and on the other hand euthanasia*".<sup>5</sup>
2. The editor of *The Australian*, Paul Kelly recently phrased these same principles another way:<sup>6</sup>

"Experience in other jurisdictions leads to the unambiguous conclusion: the threshold event is the original legalising of euthanasia. After this there is only one debate — it is over when and how to expand the sanctioned killings..... If you sanction killing for end-of-life pain relief, how can you deny this right to people in pain who aren't dying? If you give this right to adults, how can you deny this right to children? If you give this right to people in physical pain, how can you deny this right to people with mental illness? If you give this right to people with mental illness, how can you deny this right to people who are exhausted with life?"
3. An analysis of developments in those few jurisdictions that have legalised euthanasia and/or assisted suicide leads to the following observations:

### ***Where EAS has been legalised, the number of recipients has increased***

- 3.1 In Belgium, reported deaths by legal euthanasia have increased nearly tenfold (982%) from 235 in 2003 – the first full year of legalisation – to 2,309 in 2017. From 2016 to 2017 alone the increase was 13.85%.<sup>7</sup>
- 3.2 In Oregon, the number of deaths from ingesting lethal substances prescribed under Oregon's Death With Dignity Act reached 143 in 2017 (up 3.6% from 2016, and nearly

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<sup>1</sup> *Airedale NHS Trust v Bland* [1993] AC 789, [1993] 1 All ER 821 (HL).

<sup>2</sup> At 851 per Lord Hoffmann.

<sup>3</sup> At 851.

<sup>4</sup> At 867 per Lord Goff.

<sup>5</sup> At 867.

<sup>6</sup> Paul Kelly, "Legalise euthanasia, and compassionate society dies too", *The Australian*, 1 October 2016

<sup>7</sup> European Institute of Bioethics, *Euthanasia in Belgium: 10 years on*, October 2012, p. 3 <http://www.ieb-eib.org/en/pdf/20121208-dossier-euthanasia-in-belgium-10-years.pdf>; "Belgian euthanasia cases hit record high", *News24*, 27 January 2016; Federal Commission for the Control and Evaluation of Euthanasia Eighth Report to the Legislative Chambers, années 2016 – 2017, p. 2: [https://organesdeconcertation.sante.belgique.be/sites/default/files/documents/8\\_rapport-euthanasie\\_2016-2017-fr.pdf](https://organesdeconcertation.sante.belgique.be/sites/default/files/documents/8_rapport-euthanasie_2016-2017-fr.pdf)

triple the 49 deaths in 2007) continuing a steady rise since 1998, the first year of the Act's operation when 16 people died under its provisions.<sup>8</sup>

- 3.3 In the Netherlands, the number of reported deaths from euthanasia and physician assisted suicide rose from 1815 in 2003, the first year under the new law, to 6585 deaths reported in 2017, representing an increase of 262.8% in the reported number of reported deaths from euthanasia between 2003 and 2017.<sup>9</sup> Theo Boer, a Professor of Health Care Ethics, one of the pioneers of Dutch euthanasia law, and a former member of one of five Regional Review Committees on Euthanasia (2005-2014) had originally predicted that a 'good euthanasia law' would produce relatively low numbers of deaths. He has since reversed that position, writing the following in an article in July 2014:<sup>10</sup>

"In 2007 I wrote that 'there doesn't need to be a slippery slope when it comes to euthanasia. A good euthanasia law, in combination with the euthanasia review procedure, provides the warrants for a stable and relatively low number of euthanasia.' Most of my colleagues drew the same conclusion.

But we were wrong, terribly wrong, in fact.

In hindsight, the stabilization in the numbers was just a temporary pause. Beginning in 2008, the numbers of these deaths show an increase of 15% annually, year after year. The annual report of the committees for 2012 recorded 4,188 cases in 2012 (compared with 1,882 in 2002). 2013 saw a continuation of this trend and I expect the 6,000 line to be crossed this year or the next. Euthanasia is on the way to become a 'default' mode of dying for cancer patients."

***Where EAS has been legalised the debate logically has shifted to who else should be allowed to be medically euthanised or assisted in suicide, with consequential legislative or interpretative expansions of the criteria in many jurisdictions***

- 3.4 A number of countries that have legalised euthanasia or assisted suicide have expanded their original eligibility criteria through **legislation** or **judicial ultimatum**. For example, Belgium (2014) and Colombia (2018) recently extended euthanasia to terminally ill children (Belgium has no age limit; Colombia's age limit is over 6 years of age).
- 3.5 A number of jurisdictions (notably Canada, the Netherlands and Belgium) have seen the expansion of their eligibility criteria through **judicial or practical interpretation**:

***Canada***

- 3.5.1 Canada's Bill C-14, which passed into law in mid-2016,<sup>11</sup> now allows euthanasia or assisted suicide for a person with "a serious and incurable illness, disease or disability", who is in "an advanced state of irreversible decline in capability" and whose "natural death has become reasonably

<sup>8</sup> Oregon Public Health Division, *Oregon Death With Dignity Act: Data Summary 2017, Table 2*, p.12.

<sup>9</sup> Regionale Toetsingscommissies Euthanasie Vijftien jaar euthanasiewet: belangrijkste cijfers 2017, 7 Mar 2018, <https://www.euthanasiecommissie.nl/actueel/nieuws/2018/maart/7/vijftien-jaar-euthanasiewet-belangrijkste-cijfers-2017>

<sup>10</sup> Alex Schadenberg "Dutch ethicist – 'Assisted Suicide: Don't Go There'" (16 July 2014) Euthanasia Prevention Coalition <<http://alexschadenberg.blogspot.com>>.

<sup>11</sup> An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) SC 2016 c 3.

foreseeable". However, euthanasia has already been judicially or medically extended to citizens with non-terminal conditions such as osteoarthritis,<sup>12</sup> rheumatoid arthritis,<sup>13</sup> and "age-related frailty" where an elderly man did not even have a specific illness.<sup>14</sup>

3.5.2 In *AB v Canada (Attorney General)* 2017 ONSC 3759, the Ontario Superior Court of Justice, declaring euthanasia to be "a constitutionally protected civil and human right", interpreted the "reasonably foreseeable" requirement as not requiring any connection whatsoever between the underlying condition(s) for which euthanasia is sought and the reasonable foreseeability of death – which can be based simply on advanced age. The Court also found that physicians can and should rely on their own professional judgment in determining whether a person meets the "reasonably foreseeable" criterion, a finding reinforced by the Canadian Minister of Health.<sup>15</sup>

3.5.3 Just 10 days after Canada's Bill C-14 came into force in June 2016, the [B.C. Civil Liberties Association](#) (which had led the ground-breaking *Carter v. Canada (Attorney General)* case) launched a new court challenge together with Julia Lamb, a 25-year-old woman with a severe neurodegenerative disease, seeking a ruling that Bill C-14's "reasonably foreseeable" criterion was unconstitutional and discriminated against Canadians with a grievous and irremediable medical condition by denying them a medically assisted death.<sup>16</sup> Within 12 months another court challenge on the same grounds was also initiated in Quebec by two Canadians with post-polio syndrome and cerebral palsy, who seek a declaration that Bill C-14 is too limiting of who can access euthanasia or assisted suicide and violates their charter rights.<sup>17</sup> Both cases remain before the courts.

3.5.4 Within a year of Bill C-14 passing into law, a doctor who had championed Quebec's euthanasia law expressed his alarm at "the rapidity with which public opinion seems to have judged [Bill C-14] insufficient". In a blog posted to the Collège des médecins du Québec website entitled "Towards death à la carte?", Dr. Yves Robert, Secretary of the Quebec College of Physicians, wrote:

"Since the coming into force of the Act, and particularly since the debate on the federal bill following the *Carter* decision of the Supreme Court of Canada, some people have invoked a 'new constitutional right': that of obtaining MAID [medical assistance in dying] on demand or even to claim it 'pre-emptively' shortly after being diagnosed with severe or terminal illness, even before suffering from the dreaded incapacities or limitations. For many, it is about having control over their death and the right to choose its moment and manner. While MAID was

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<sup>12</sup> See "Judge says arthritis may qualify woman for euthanasia", Fox News, 28 June 2017; "Woman, 77, with osteoarthritis approved for euthanasia in Canada after confusion over wording of assisted dying law", Daily Mail, 28 June 2017.

<sup>13</sup> See "Medically assisted death allows couple married almost 73 years to die together", The Globe and Mail, 1 April 2018.

<sup>14</sup> Ibid.

<sup>15</sup> Who stated, "the concept of reasonable foreseeability is a concept that respects the professional judgment of a health care provider", Canadian House of Commons, Standing Committee on Justice and Human Rights, Committee Evidence, 42nd Parl, 1st Sess, No 10 (2 May 2016) at 1706 (Jane Philpott).

<sup>16</sup> *Lamb v. Canada (Attorney General)*, 2017 BCSC 1802; see Statement of Claim at <http://eol.law.dal.ca/wp-content/uploads/2016/07/Lamb-v-Canada.pdf>. The case is still under consideration.

<sup>17</sup> See "2 Montrealers with degenerative diseases challenge medically assisted dying law", CBC News, 14 June 2017. The trial commenced before the Quebec Superior Court in January 2019 - see "Quebecers with degenerative diseases in court to challenge assisted dying laws", The Star, 7 January 2019.

reserved for the suffering patient, we see the emergence of speech demanding a form of death à la carte.

But is this really what our society wants? ...If anything has become apparent over the past year, it is this paradoxical discourse that calls for safeguards to avoid abuse, while asking the doctor to act as if there were none. ...

If the goal is euthanasia on demand based on a right, are we still talking about Medical Aid in Dying, or simply Aid in Dying? What would the medical profession have to do with it?"

## Netherlands

3.5.5 Unlike Canada, the Netherlands does not in fact confer on patients a constitutionally protected 'human right to euthanasia' even though extensive practice inclines its public to the contrary view. In fact, euthanasia is prohibited under Dutch law unless a physician is personally convinced that a patient's suffering is unbearable and enduring and there is no reasonable alternative.<sup>18</sup>

3.5.6 Since the 2002 law in the Netherlands was passed, however, its legalization of euthanasia in the Netherlands "has contributed to a normalization of physician-assisted dying and has led, due to its unavoidably flexible and ambiguous nature, to an expansion of its practice".<sup>19</sup> This expansion has involved:

- (a) the expansion of euthanasia from 12 year old children to severely disabled newborn children via the 2004 Groningen Protocol;<sup>20</sup>
- (b) an expansion in recent years from voluntary euthanasia to non-voluntary euthanasia, particularly in cases of dementia where patients are incapable of giving consent, and often (but not always) in reliance on "advance directives".<sup>21</sup> This practice was increased from 12 cases in 2009 to 141 cases in 2016;<sup>22</sup>

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<sup>18</sup> Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (WtI) [Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002], Stb 2001, 194 (NL), art 2.

<sup>19</sup> Koopman J and Boer, T, "Turning Points in the Conception and Regulation of Physician-Assisted Dying in the Netherlands", *American Journal of Medicine* Vol 129, No 8, August 2016.

<sup>20</sup> Developed by Eduard Verhagen, medical director of the Department of Pediatrics at the University Medical Center Groningen, Netherlands; see Verhagen, E. and Sauer, P.J.J. "The Groningen Protocol: euthanasia in severely ill newborns" *N Engl J Med*. 2005; 352: 959–962

<sup>21</sup> As illustrated by the recent case of an elderly dementia sufferer who was drugged by her doctor and restrained by her family before being given a lethal injection; see D Boffey, "Doctor to face Dutch prosecution for breach of euthanasia law", *The Guardian*, 9 November 2018.

<sup>22</sup> Boudewijn Chabot "Worrisome Culture Shift in the Context of Self-Selected Death" (19 June 2017) [TrudoLemmens <https://trudolemmens.wordpress.com>](https://trudolemmens.wordpress.com). See also Koopman, J "Developments in the Practice of Physician-Assisted Death Since Its Legalization in the Netherlands":

"While physicians have long been reluctant to assist in the death of patients with dementia or psychiatric disorders—reflected by only incidentally reported cases in the early years, such cases have become more common, accounting for 109 (2.0%) and 56 (1.0%) cases, respectively, in 2015."

- (c) 431 patients euthanized without explicit consent in 2015, according to the government website "Statistics Netherlands";<sup>23</sup>
- (d) an increase in euthanasia of chronic psychiatric patients, from 0 cases in 2009 to 60 cases in 2016.<sup>24</sup> One such case involved a sexual abuse victim in her twenties who was euthanised because she was suffering from "incurable" post-traumatic-stress disorder as a result of sexual abuse suffered between the age of five and 15. She had severe anorexia, chronic depression, and hallucinations;<sup>25</sup>
- (e) the expansion of euthanasia to elderly people suffering from 'multiple geriatric syndromes' (ie standard medical conditions associated with old age);<sup>26</sup>
- (d) ongoing political pressure by the Dutch Society for a Voluntary End of Life (NVVE), one of the country's most powerful interest groups, for euthanasia to extend to anyone over 70 who is "tired of living".<sup>27</sup>
- (e) the NVVE's creation in 2012 of the national *Levensindekliniek* ("End of Life Clinic"), which operates 40 mobile teams of physicians who travel the country euthanizing those patients whose requests for euthanasia have been rejected by their family doctor. The teams have no means of palliative care. The number of requests submitted to the End-of-Life Clinic increased from 714 in its first year to 1234 in 2015, during which time an average of 59% of requests were made because of physical disorders, 36% because of psychiatric disorders, 9% due to a combination of mostly age-related disorders, and 7% because of dementia.<sup>28</sup> In January 2018, the Clinic agreed to euthanise a suicidal 29 year old woman with a long history of mental illness (depression, borderline personality disorder) whose doctors had refused to grant her request.<sup>29</sup>

### 3.5.7 These developments have led Dr Jacob Koopman to conclude:<sup>30</sup>

"Since its legalization, physician-assisted death has become more common without much public, legal, or juridical disapproval; it is increasingly applied because of less physical and less terminal disorders; it has become a choice for incompetent patients; it is no longer justified as a physician's act of mercy, but

<sup>23</sup> Centraal Bureau voor de Statistiek [Statistics Netherlands] Overledenen naar medische beslissing rond levensinde;leeftijd,doodsoorzaak [Defendants to medical decision about end of life, age, cause of death] (24 May 2017) StatLine <  
<http://statline.cbs.nl/Statweb/publication/?DM=SLNL&PA=81655NED&D1=a&D2=a&D3=a&D4=l&VW=T>

<sup>24</sup> Boudewijn Chabot "Worrisome Culture Shift in the Context of Self-Selected Death", " (19 June 2017) TrudoLemmens <  
<https://trudolemmens.wordpress.com>>.

<sup>25</sup> See "Euthanasia debate reignited by 20yo sexual abuse victim" NZ Herald, 16 May 2016.

<sup>26</sup> Baroness Illora Finlay: "Review of Data from the 2016 official reports of the Dutch Termination of Life on Request Termination of Life on Request and Assisted Suicide and Oregon's Death with Dignity Act", which states: "In 2010, of 3,136 Dutch PAS/PAE notified, 2781 (89%) were related to cancer, cardiovascular and neurological disorders and 11 per cent to other conditions. By 2016 a rising proportion (17%) related to multiple geriatric syndromes, dementia (n=141), psychiatric disorders (n=60), and other conditions. Statistics Netherlands data confirms this trend." Accessible at: <  
[https://spcare.bmj.com/content/8/Suppl\\_1/A45.2](https://spcare.bmj.com/content/8/Suppl_1/A45.2)

<sup>27</sup> Ibid. See also C de Bellaigue, "Death on Demand: Has euthanasia gone too far?", The Guardian, 18 January 2019.

<sup>28</sup> Koopman J and Boer, T, "Turning Points in the Conception and Regulation of Physician-Assisted Dying in the Netherlands", American Journal of Medicine Vol 129, No 8, August 2016.

<sup>29</sup> Linda Pressly, "The troubled 29-year-old helped to die by Dutch doctors", BBC News, 9 August 2018

<sup>30</sup> Ibid.

rather with an appeal to the patient's autonomy; it has become a possibility for unbearable suffering as experienced subjectively instead of assessed objectively; and it is not only performed in long-standing relationships between physicians and patients, but also by the quick-acting End-of-Life Clinic."

3.5.8 To similar effect, Professor Theo Boer observes in his July 2014 article:<sup>31</sup>

"Alongside this escalation [in the number of euthanasia cases] other developments have taken place. Under the name 'End of Life Clinic,' the Dutch Right to Die Society NVVE founded a network of travelling euthanizing doctors. Whereas the law presupposes (but does not require) an established doctor patient relationship, in which death might be the end of a period of treatment and interaction, doctors of the End of Life Clinic have only two options: administer life ending drugs or sending the patient away. On average, these physicians see a patient three times before administering drugs to end their life. Hundreds of cases were conducted by the End of Life Clinic. The NVVE shows no signs of being satisfied even with these developments. They will not rest until a lethal pill is made available to anyone over 70 years who wishes to die. Some slopes truly are slippery.

Other developments include a shift in the type of patients who receive these treatments. Whereas in the first years after 2002 hardly any patients with psychiatric illnesses or dementia appear in reports, these numbers are now sharply on the rise. Cases have been reported in which a large part of the suffering of those given euthanasia or assisted suicide consisted in being aged, lonely or bereaved. Some of these patients could have lived for years or decades.

Whereas the law sees assisted suicide and euthanasia as an exception, public opinion is shifting towards considering them rights, with corresponding duties on doctors to act. A law that is now in the making obliges doctors who refuse to administer euthanasia to refer their patients to a 'willing' colleague. Pressure on doctors to conform to patients' (or in some cases relatives') wishes can be intense. Pressure from relatives, in combination with a patient's concern for the wellbeing of his beloved, is in some cases an important factor behind a euthanasia request. Not even the Review Committees, despite hard and conscientious work, have been able to halt these developments.

I used to be a supporter of legislation. But now, with twelve years of experience, I take a different view. At the very least, wait for an honest and intellectually satisfying analysis of the reasons behind the explosive increase in the numbers. Is it because the law should have had better safeguards? Or is it because the mere existence of such a law is an invitation to see assisted suicide and euthanasia as a normality instead of a last resort? Before those questions are answered, don't go there. Once the genie is out of the bottle, it is not likely to ever go back in again."

## **Belgium**

3.6 Since the *Belgian Act on Euthanasia of May 28 2002* came into effect, its euthanasia criteria have expanded in Belgium in two key ways. First (as above), the law was

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<sup>31</sup> Alex Schadenberg "Dutch ethicist – 'Assisted Suicide: Don't Go There'" (16 July 2014) Euthanasia Prevention Coalition <<http://alexschadenberg.blogspot.com>>.

amended in 2014 to remove the age restriction (as above).<sup>32</sup> Consequently, two children aged 9 and 11 years old have already been euthanized by lethal injection.

- 3.7 Second, the law's eligibility criteria have in recent years been interpreted and applied more expansively, resulting in particular in a steady increase in the number of euthanasia deaths of people with dementia and psychiatric disorders (particular in cases of mood disorder).<sup>33</sup> Such cases were relatively rare in the first years of the euthanasia law. Between 2014 and 2017 there were 60 cases of euthanasia of dementia sufferers.<sup>34</sup> During the same period, a total of 201 people were euthanised for "organic mental disorders" (the 60 cases of dementia noted above, including Alzheimers) or for psychiatric disorders including mood disorders such as depression, bipolar disorder (73 cases); personality and behavioural disorders (23 cases); neurotic disorders, disorders related to stressors including posttraumatic stress disorder (16 cases); schizophrenia and psychotic disorders (11 cases); organic mental disorders, including autism (10 cases) and complex cases involving a combination of several categories (8 cases).<sup>35</sup>
- 3.8 Of these, 25 cases involved the euthanasia of people aged under 40 who, according to the Belgian oversight body the Federal Control and Evaluation of Euthanasia Committee ("the Review Committee"), suffered from "mainly personality and behavioral disorders" arising in some cases out of "serious psychological trauma at a very young age ... such as domestic violence, psychological neglect or sexual abuse".<sup>36</sup>
- 3.9 The law has also been applied liberally to extend beyond psychiatric conditions to more generalised psychological suffering. In December 2012, identical twin brothers were euthanised on the grounds of their psychological distress at learning they were both going blind.<sup>37</sup> On 30 September 2013 a Belgian transsexual was euthanised because of his unhappiness following a sex change operation.<sup>38</sup> On 15 September 2014 a Brussels appeal court ruled that Frank Van den Bleeken, a mentally impaired man who had been detained since the 1980s for rape and murder, could legally be granted his request for euthanasia. Van den Bleeken had argued he had no prospect of release as he could not overcome his violent sexual impulses and wanted to die in order to end his unbearable suffering.<sup>39</sup>

"I'm in my cell 24 hours a day. That's my life. I don't feel human here. What do I have to do? Do I have to sit here and waste away? What's the point in that?"

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<sup>32</sup> Loi modifiant la loi du 28 mai 2002 relative à l'euthanasie, en vue d'étendre l'euthanasie aux mineurs [Amendment Act modifying the Act of 28 May 2002 on euthanasia, to extend euthanasia to minors] of 28 February 2014, *Moniteur Belge* [MB] [Official Gazette of Belgium], 12 March 2014, 21053; see generally Kristoff van Assche and others "Capacity for Discernment' and Euthanasia on Minors in Belgium" (2018) 0 *Med L Rev* 1.

<sup>33</sup> See eg Dierickx S, Deliens L, Cohen J and Chambaere K: *Euthanasia for people with psychiatric disorders or dementia in Belgium: analysis of officially reported cases* *BMC Psychiatry*, 23 June 2017

<sup>34</sup> Commission fédérale de Contrôle et d'Évaluation de l'Euthanasie Huitième rapport aux Chambres législatives années 2016 – 2017, p. 46.

<sup>35</sup> *Ibid*, p 46.

<sup>36</sup> *Ibid*, p 48.

<sup>37</sup> B Waterfield, "Belgian identical twins in unique mercy killing", *The Telegraph*, 13 January 2013.

<sup>38</sup> B Waterfield, "Mother of sex change Belgian: 'I don't care about his euthanasia death'", *The Telegraph*, 2 October 2013.

<sup>39</sup> L Deardon, "Belgian rapist and murderer Frank Van den Bleeken denied request to die in prison"

- 3.10 Although Belgian doctors later decided not to proceed with euthanising Van den Bleeken, the Justice Ministry announced that the ruling did not mean that prisoners could no longer request euthanasia.<sup>40</sup>

### *Where euthanasia or assisted suicide has been legalised there have been abuses*

- 3.11 The expansion of euthanasia and assisted suicide in those few jurisdictions that have legalised it has been accompanied by abuse. For example:

#### *Belgium*

- 3.12 Belgium has increasingly come under criticism for widespread abuse by doctors and even by the Review Committee of the processes and safeguards built into its euthanasia law. Three examples follow:

#### Failures to report euthanasia deaths

- 3.13 Although the Belgian Act on Euthanasia requires any doctor who has performed euthanasia to report the death to the Review Committee,<sup>41</sup> a study conducted just 5 years after the enactment of the euthanasia law found that only one out of two euthanasia cases were being reported by doctors in the most populated region of the country (Flanders, with 68.5% of the population).<sup>42</sup>
- 3.14 Of the doctors who told the study that they had not reported a case, 76.7% claimed they did not view their act as euthanasia, 17.9% stated that they did not report because reporting was "too much of an administrative burden", 11.9% because the legal due care requirements had possibly not all been met, and 9% because euthanasia is a "private matter between physician and patient" (8.7%). 2.3% did not report a case because they feared possible legal consequences.

#### Illegality and impunity in the overseeing Review Committee

- 3.15 In September 2017 Dr Ludo Vanopdenbosch, a strong supporter of euthanasia, resigned from the Review Committee in protest over its failures in properly overseeing the practice of euthanasia, stating: "I do not want to be part of a committee that deliberately violates the law".<sup>43</sup>
- 3.16 Vanopdenbosch also alleges the Review Committee "silenced" him when he expressed concerns over abuses, and that because many of the doctors on the Review Committee are leading euthanasia practitioners they protect each other from scrutiny and act with "impunity".<sup>44</sup> According to his resignation letter, the Review Committee failed to refer to authorities a doctor who Vanopdenbosch says had euthanised a

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<sup>40</sup> Ibid.

<sup>41</sup> Section 5.

<sup>42</sup> Smets, T Bilsen, J Cohen J, Rurup, M, Mortier F and Deliens L *Reporting of euthanasia in medical practice in Flanders, Belgium: cross sectional analysis of reported and unreported cases* BMJ 2010;341:c5174. See also Cohen-Almagor, R: *First do no harm: pressing concerns regarding euthanasia in Belgium* International Journal of Law and Psychiatry Vol 36 (2013) 515-521.

<sup>43</sup> Symons X, "Belgium's euthanasia commission under fire after shock letter by whistleblower", BioEdge, 17 February 2018. See also Cheng M: "Ethics Dispute erupts in Belgium over euthanasia rules" Associated Press - Friday, February 16, 2018

<sup>44</sup> Symons X, "Belgium's euthanasia commission under fire after shock letter by whistleblower", BioEdge, 17 February 2018.

demented patient without his consent, at his family's request." Vanopdenbosch wrote:<sup>45</sup>

"The most striking example took place at the meeting of Tuesday, September 5, 2017: a euthanasia of a deeply demented patient with Parkinson's disease, by a general practitioner who is totally incompetent, has no idea of palliation, done at the request of the family. The intention was to kill the patient. There was no request from the patient... The motives of those who did not want to forward it [for prosecution] are fundamentally political in nature: defending euthanasia in any circumstance, promoting the desire for euthanasia in dementia, and fearing that there will be less euthanasia in Wallonia. With this decision, this FCEE is proven to be obsolete. This does not stretch the law, but violates it.

### Dangerous doctors

3.17 In 2015, Belgian psychiatrist Dr Lieve Thienpont was the lead author of a study published in the medical journal BMJ Open, in which she tracked 100 of her psychiatric patients who had requested euthanasia between 2007 and 2011, 48 of whom were approved. Doctors in Belgium were surprised by the high numbers of requests she had received and how many she had approved. Some experts estimate Thienpont has been involved in about a third of all euthanasia cases for psychiatric reasons in Belgium,<sup>46</sup> with one psychiatrist remarking, "That one single psychiatrist in Belgium has had such a major impact on the practise of euthanasia in psychiatric patients is very alarming".<sup>47</sup>

3.18 In 2017 the Associated Press revealed that Thienpont had fallen out with a number of prominent euthanasia practitioners in Belgium including Dr Wim Distelmans, the chairman of the Review Committee, whose end of life clinics Thienpont had referred her patients to for euthanasia. In February 2017 Distelman and colleagues wrote to Thienpont expressing concern that some of her patients may have been euthanised without meeting the legal requirement that an independent consultation first be carried out. Their letter advised:<sup>48</sup>

"Your euthanasia cases will not be treated anymore within our operation. The reason is a difference of opinion on how a request for euthanasia must be approved. We have already communicated this several times orally, but to no avail."

3.19 Since 2018 Thienpont has been under criminal investigation and faces trial for euthanising a 38 year old woman in highly dubious circumstances, just two months after diagnosing her with Asperger's syndrome.<sup>49</sup> The woman's family have challenged the speed with which the diagnosis was made, have identified numerous irregularities in her death, and have accused Thienpont of blocking an investigation into her conduct. Thienpont is also now the subject of a case being brought against Belgium to the European Court of Human Rights by a man whose mother she euthanized in 2012 for depression.<sup>50</sup>

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<sup>45</sup> Smith W: "Belgian euthanasia corruption exposed", National Review, 19 February 2018

<sup>46</sup> M Cheng, "Europe's top rights court to hear Belgian euthanasia case", Associated Press, 9 January 2009.

<sup>47</sup> M Cheng, "What could help me to die? Doctors clash over euthanasia", Associated Press, 27 October 2017.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid. See also M Cheng, "Belgium investigates doctors who euthanised autistic woman", Associated Press, 28 November 2018 (reprinted in Stuff online, 28 November 2018).

<sup>50</sup> Supra, M Cheng, "Europe's top rights court to hear Belgian euthanasia case", AP, 9 January 2009.

## Oregon / California

- 3.20 David Seymour has claimed that in 20 years of assisted suicide, "there has never been one case of malpractice" in Oregon.<sup>51</sup> That is not correct:
- 3.20.1 In violation of the legal requirements that only assisted suicide (not euthanasia) is permissible and that only a physician may prescribe lethal medication, two Oregon nurses euthanised cancer patient Wendy Melcher without her doctor's or her family's knowledge. The nurses claimed Melcher had requested assisted suicide. Her daughter claimed one of the nurses had been having an affair with Melcher's partner. After an investigation, the Oregon State Board of Nursing decided not to report the crime to law enforcement agencies. No criminal charges were filed.<sup>52</sup>
  - 3.20.2 In violation of the legal requirement that a patient must be referred for a psychological examination if a physician believes the patient's judgment is impaired by a psychiatric or psychological disorder, depressed and mentally ill patients have been prescribed lethal medication without any such referral.<sup>53</sup>
  - 3.20.3 None of these kinds of violations have been prosecuted. The Oregon Department of Human Services has stated that it has no legal authority to investigate individual Death with Dignity cases, and that it is neither required nor authorised by the Death with Dignity Act to investigate.<sup>54</sup>
- 3.21 Between 63.3% and 66.9% of all assisted suicides during the past five years in Oregon were of poor people on low incomes who were accessing state health care insurance through the Oregon Health Plan.<sup>55</sup> The Oregon Health Plan has also denied coverage to terminally-ill citizens for their chemotherapy or drug treatments, instead offering to pay for them to kill themselves under the laws permitting physician-assisted suicide.<sup>56</sup> Barbara Wagner, a 64-year-old Oregon woman with lung cancer was prescribed a

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<sup>51</sup> David Seymour: "Opponents running a campaign of fear, uncertainty and doubt", NZ Herald, 27 May 2018

<sup>52</sup> Peter Korn: "Nurses role in death probed", Portland Tribune News, 5 July 2007.

<sup>53</sup> Michael Freeland, a 64 year old lung cancer patient with a 43-year medical history of acute depression and attempts at suicide, was prescribed lethal medication without even a cursory psychiatric examination, by a physician who was an assisted suicide activist and who did nothing to retrieve the medication after a county court declared the patient incompetent to make his own medical decisions; see N. Gregory Hamilton, M.D., *Testimony to the Select Committee on the Assisted Dying for the Terminally Ill Bill*, House of Lords, Portland, Oregon, December 10, 2004. In 2011 Oregon physician Dr Charles Bentz referred a 76-year-old patient to a cancer specialist for evaluation and therapy. The patient became depressed during therapy and expressed a wish for assisted suicide to the cancer specialist. Rather than making any effort to deal with the patient's depression, the specialist instead acted on the request by asking Dr Bentz to be the second concurring physician. Dr Bentz declined and proposed that instead the patient's depression should be addressed. Two weeks later the patient was dead from a lethal overdose prescribed by the specialist. Dr Bentz wrote: "In most jurisdictions, suicidal ideation is interpreted as a cry for help. In Oregon, the only help my patient got was a lethal prescription intended to kill him ..... Don't make Oregon's mistake". See Dr Charles Bentz, "Oregon's assisted suicide law isn't working", *The Province*, December 5 2011.

<sup>54</sup> DHS news release, "No authority to investigate Death with Dignity case, DHS says," March 4, 2005.

<sup>55</sup> Oregon Public Health Division, Oregon Death With Dignity Act: Data Summary 2018, 6: "The proportions of patients who had private insurance (32.4%) and Medicare or Medicaid insurance (66.9%) in 2018 were similar to those reported during the past five years (35.8% and 63.3%, respectively)". Medicaid Insurance is a federal program managed by the State of Oregon through the Oregon Health Plan which provides health insurance for low-income individuals.

<sup>56</sup> Bradford Richardson "Insurance companies denied treatment to patients, offered to pay for assisted suicide, doctor claims" *The Washington Times* (online ed, United States, 31 May 2017).

\$4,000-a-month life-saving drug by her doctor. The Oregon Health Plan refused to pay for the drug, instead offering to cover her doctor-assisted suicide.<sup>57</sup>

- 3.22 Stephanie Packer, a California woman suffering from scleroderma, was told by her insurers that instead of funding her chemotherapy they would fund her suicide, "and you would only have to pay \$1.20 for the medication".<sup>58</sup>
- 3.23 Since 1998, 57 Oregonians who have been assisted to commit suicide have stated that "financial implications of treatment" was the reason or one of the reasons they chose to die (9 stated this in 2018).

### Canada

- 3.24 In Canada, where Bill C-14 now allows euthanasia or assisted suicide for a person with "a serious and incurable illness, disease or disability", who is in "an advanced state of irreversible decline in capability" and whose "natural death has become reasonably foreseeable", patients with non-terminal conditions such as osteoarthritis,<sup>59</sup> rheumatoid arthritis,<sup>60</sup> and "age-related frailty" (where an elderly man did not even have a specific illness) have been euthanised.<sup>61</sup>
- 3.25 In a number of Quebec hospitals, emergency physicians were for a time withholding treatment from people who had attempted suicide and letting them die, even though they could have saved their lives. The Association of Quebec Emergency Physicians said the law change permitting euthanasia and its accompanying publicity may have "confused" the physicians over their role:<sup>62</sup>

"It's possible it has confused doctors a little bit," he said. "Patients are being given the right to no longer live, and doctors are even being asked to help them in certain cases."

- 3.26 On 12 April 2019, the United Nations Special Rapporteur on the Rights of Persons with Disabilities issued an End of Mission Statement regarding Canada's treatment of its disabled citizens. In respect of Canada's euthanasia law, she reported (emphasis added):<sup>63</sup>

#### "Right to life

**I am extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective.** I have been informed that there is no protocol in place to demonstrate that persons with disabilities have been provided with viable alternatives when eligible for assistive dying. **I have further received worrisome claims about persons with disabilities in institutions being pressured to seek medical**

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<sup>57</sup> Susan Donaldson James "Death Drugs Cause Uproar in Oregon" *ABC News* (online ed, United States, 6 August 2008).

<sup>58</sup> Bradford Richardson "Assisted-suicide law prompts insurance company to deny coverage to terminally ill California woman" *The Washington Times* (online ed, United States, 20 October 2016).

<sup>59</sup> See "Judge says arthritis may qualify woman for euthanasia", Fox News, 28 June 2017; "Woman, 77, with osteoarthritis approved for euthanasia in Canada after confusion over wording of assisted dying law", Daily Mail, 28 June 2017.

<sup>60</sup> See "Medically assisted death allows couple married almost 73 years to die together", The Globe and Mail, 1 April 2018.

<sup>61</sup> Ibid.

<sup>62</sup> Hamilton G, "Some Quebec doctors let suicide victims die though treatment was available", National Post, 17 March 2016.

<sup>63</sup> United Nations Office of the High Commissioner for Human Rights: *End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada*, Ottawa, Canada, 12 April 2019.

**assistance in dying, and practitioners not formally reporting cases involving persons with disabilities.** I urge the federal government to investigate these complaints and put into place adequate safeguards to ensure that persons with disabilities do not request assistive dying simply because of the absence of community-based alternatives and palliative care.”

- 3.27 In 2017, the mother of 25 year old Candice Lewis, hospitalised for treatment of her spina bifida, cerebral palsy and chronic seizure disorder, was taken aside by a doctor and told that her daughter was “dying” and was being given the option to end her life. Candice Lewis, who was in earshot of the conversation, had already been criticised by hospital staff for being a “frequent flyer” at the hospital. When the mother declined the offer, the doctor told her she was “being selfish”.<sup>64</sup>
- 3.28 In 2018, Ontario patient Roger Foley initiated litigation against his Ontario hospital, several health agencies, the Ontario government and the federal government, alleging that hospital health officials denied him the medical option of assisted home care, instead offering him euthanasia or assisted suicide.<sup>65</sup> Foley, who has an incurable neurological disease, published audio recordings of hospital staff asking if he was interested in assisted dying and suggesting that he could apply to get it.<sup>66</sup>
- 3.29 In May 2018, the Quebec College of Physicians wrote to the Health Minister warning that a lack of palliative care services in parts of Quebec could be forcing patients to choose euthanasia or assisted suicide as a way to end their lives. Noting that Quebec is suffering from uneven levels of palliative care services across the province and a lack of specialized doctors following a recent downturn in the number of doctors choosing to specialise in palliative care, the College warned the Minister that patients requesting medical aid in dying were getting priority access to available resources, “to the detriment of other patients” at the end of their lives. The letter stated: “Palliative care cannot be limited to access to medical aid in dying”.<sup>67</sup>
- 3.30 In early 2018, in a Jewish nursing home that prohibits euthanasia or assisted suicide on its premises out of respect for Jewish beliefs and concern for its residents (some of whom include Holocaust survivors), an EAS practitioner crept in after hours and euthanised a resident who had requested it.<sup>68</sup>

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<sup>64</sup> G Bartlett: “Mother says doctor brought up assisted suicide option as sick daughter was within earshot”, CBC News 24 July 2017.

<sup>65</sup> *Foley v Victoria Hospital London Health Sciences Centre* Ontario SCJ CV-18-592072, 14 February 2018 (Statement of Claim).

<sup>66</sup> “Chronically ill man releases audio of hospital staff offering assisted death” CTV (online ed, Canada, 2 August 2018).

<sup>67</sup> CBC News, “Lack of palliative care pushing Quebecers toward medically assisted death, College of Physicians says”, 31 May 2018.

<sup>68</sup> Lazaruk S, “Jewish care home accuses doctor of ‘sneaking in and killing someone’”, Vancouver Sun, 5 January 2018