

Belgium

[Excerpted from: [Carter v. Canada \(Attorney General\), 2012 BCSC 886 \(CanLII\)](#)]

[505] The Belgian *28 May 2002 Act on Euthanasia*, B.S. 22 June 2002 [the Belgian Act] came into effect in September 2002. Its contours are similar to the Dutch Act upon which it is based, though its provisions are more detailed. ...

[...]

[507] According to Professor Luc Deliens, a medical sociologist and Professor of palliative care in Belgium, new legislation regarding patients' rights and palliative care was implemented in Belgium in 2002 at the same time as the Belgian Act. The patients' rights legislation stressed the right of all patients to be informed of diagnosis and prognosis, and to consent to treatment decisions. The palliative care legislation provided that every patient has a right to palliative care, and contained measures for the development of palliative care services in Belgium.

[508] The Belgian Act defines euthanasia as "intentionally terminating life by someone other than the person concerned, at the latter's request" (s. 2). Although assisted suicide is not explicitly included in this definition, the Belgian euthanasia oversight body – the Federal Control and Evaluation Commission ("FCEC") – has determined that it encompasses physician-assisted suicide. Because of this framework the experts on the Belgian regime use "euthanasia" as a compendious term including euthanasia and physician-assisted death. This should be kept in mind when considering the evidence concerning Belgium.

[509] Section 3(1) of the Belgian Act provides that a physician who performs euthanasia does not commit a criminal offence when he or she ensures that:

- (a) the patient is over the age of majority, and is conscious and competent when making the request;
- (b) the request is voluntary, well-considered, repeated and not the result of external pressure (the request must also be in writing (s. 4)); and
- (c) the patient is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable disorder caused by illness or accident.

[510] Section 3(2) sets out a number of procedural requirements for the physician. In each case, he or she must:

- (a) Inform the patient about his or her condition and life expectancy, and discuss with the patient his or her request for euthanasia, as well as possible therapeutic and palliative options. Together with the patient, the physician must come to the belief that there is no reasonable alternative to the patient's situation and that the patient's request is completely voluntary.

- (b) Be certain of the patient's constant physical or mental suffering, and the durability of the euthanasia request. To this end, the physician is to have several conversations with the patient spread out over a reasonable period of time, taking into account the progress of the patient's condition.
- (c) Consult with another physician about the serious and incurable character of the medical condition, and inform him or her about the reasons for the consultation. The consulting physician must be independent of both the patient and attending physician, and must be competent to give an opinion about the medical condition in question. The consulting physician must review the medical record, examine the patient and be certain of the patient's constant and unbearable physical or mental suffering that cannot be alleviated. The attending physician must inform the patient about the results of the consultation.
- (d) If there is a nursing team that has regular contact with the patient, discuss the patient's request with the team.
- (e) If the patient so desires, discuss his or her request with relatives appointed by the patient.
- (f) Be certain that the patient has had the opportunity to discuss his or her request with the persons he or she wishes.

[511] The Belgian Act imposes additional safeguards where the physician is of the view that the patient is clearly not expected to die in the near future, that is, is not in the terminal phase. In such circumstances, s. 3(3) requires that the physician must also:

- (a) Consult a third physician, who is either a psychiatrist or a specialist in the medical condition in question. The consulting physician must be independent of the patient and the attending physician. The consulting physician must review the medical record, examine the patient and be certain of the patient's constant and unbearable physical or mental suffering that cannot be alleviated, and of the voluntary, well-considered and repeated character of the euthanasia request. The attending physician must inform the patient about the results.
- (b) Allow at least one month to elapse between the patient's written request and the act of euthanasia.

[512] The Belgian Act establishes the FCEC, which is comprised of 16 members including doctors, lawyers and individuals from groups that routinely deal with issues relating to the terminally ill.

[513] A physician who has performed euthanasia must complete and deliver to the FCEC a prescribed registration form which includes such information as the biographical details of the patient; the nature of the patient's condition, the suffering and why it could not be alleviated; the elements underlying the assurance that the request was voluntary, well-considered and

repeated, and not the result of any external pressure; and, the manner in which euthanasia was performed and the pharmaceuticals used.

[514] The FCEC determines whether the euthanasia was performed in accordance with the Belgian Act. If a two-thirds majority of the committee is of the opinion that the required conditions have not been fulfilled, it will turn the case over to the public prosecutor.

[515] For the benefit of the Belgian Parliament, the FCEC is required to prepare biennial reports setting out statistical information derived from the registration forms submitted to the committee; an evaluation of the implementation of the law; and if required, recommendations that could lead to new legislation or other measures concerning the execution of the Belgian Act.

[516] Section 14 of the Belgian Act provides that no physician may be compelled to perform euthanasia. Should the physician consulted refuse to perform euthanasia, then he or she must inform the patient of this fact in a timely manner, and explain her reasons for refusing. If the refusal is based on medical reasons, then those reasons are noted in the patient's medical record.

[517] Section 15 states that any person who dies as a result of euthanasia performed in accordance with the Belgian Act is deemed to have died of natural causes for the purposes of contracts that he or she has entered into, in particular, insurance contracts.