

Received via email September 12, 2008

It would appear to me that the OHRC is trampling on the very rights it is their responsibility to protect. I ask that the YHRC examine this situation in Ontario closely so that they can guard against such abuse of power infecting the YHRC now and in the future.

Received via email September 10, 2008

Dear Honorable Marian Horne,

It is vital that public policy formation in Canada reflect a meaningful and functional pluralism.

For this reason, I am writing to express my profound concerns regarding both the College of Physicians and Surgeons of Ontario's (CPSO) draft policy document entitled, "Physicians and the Ontario Human Rights Code," and the Ontario Human Rights Commissions (OHRC) response to that draft.

The CPSO should soundly reject this policy draft as it fails to apply the balance of rights necessary for the function of a free society and specifically denies doctors the fundamental freedoms of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms.

At a time when there is an acute shortage of medical practitioners it is inconceivable that the CPSO would be considering a policy which would drive its own professionals out of the province and possibly out of the country by failing to protect and promote physicians primary freedoms.

Throughout the centuries the definition of freedom has fundamentally included the ability to reasonably exercise one's conscience free from state coercion. Without this principle a society is not truly free.

Supreme Court of Canada chief justice Brian Dickson writing for the majority in the Big M Drug Mart [1985] case explained this value underlying the Charter: " If a person is compelled by the state or the will of another to a course of action or inaction which he would not have otherwise chosen, he is not acting of his own volition and he cannot be said to be truly free. ...Freedom in a broad sense embraces both the absences of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience."

It is critical that a distinction be made between a physician denying a patient "urgent" medical care and a physician refusing to provide, or refer, ethically questionable non-

medically necessary procedures such as abortion when the mother's life is not endangered, assisted reproduction for same-gender couples, sex-selective abortions, euthanasia, sex-change operations, some types of plastic surgery, and prescribing morning-after or birth control pills.

In this age when such ethically questionable procedures are available in Canada I am grateful that Canada's physicians have a codified right to conscience objection (limited only by the Canadian Medical Association code of ethics where a patient is in "urgent need for medical care").

Thus, individuals are free to pursue medical procedures and treatments they desire which are not medically necessary. Similarly physicians and surgeons committed to the oath "to do no harm" have the right to decline involvement with procedures that would violate their conscience or religion either through direct action or referral.

Unfortunately, the OHRC lacks balance in its approach to how conflicting rights should be handled between patients and doctors. Rather than suggesting the establishment of a respectful accommodation for both parties that recognized both patients' rights and physicians' rights in their submission to the CPSO, the Commission picked sides with one of the parties and directed the other, the doctors in this case, to "check their personal views at the door in providing medical care." This shows an unconstitutional bias on their part, and I urge the College to resist playing into their hands. A physician's morality or religion, if it does not affect their treatment of life-threatening or urgent medical issues, is not for the OHRC to regulate, inspect or set in law.

This viewpoint is also misguidedly ingrained in the CPSO draft which states, "there will be times when it may be necessary for physicians to set aside their personal beliefs in order to ensure that patients...are provided with the medical treatment and services they require....Physicians should be aware that decisions to restrict medical services offered...that are based on moral or religious belief may contravene the Code, and/or constitute professional misconduct." It is not misconduct for a physician to be guided by their own morals and religion, however it is clearly in my opinion misconduct for the OHRC to attempt to strong-arm the College into accepting this biased position.

Additionally, the CPSO document encourages physicians to refer patients "to specialists for the elements of care that the physician is unable to manage directly," even when doing so would deny doctors the exercise of their fundamental freedom of conscience and religion.

It is important to highlight that the Supreme Court has made it clear that there is no "rank-ordering" of rights in Canada with some taking a higher place than others. As Chief Justice Lamer stated in the *Agenais v. CBC* case [1994], "When the protected rights of two individuals come into conflict...Charter principles require a balance to be achieved that fully respects the importance of both sets of rights."

This is reasonable. It is called meaningful and functional pluralism.

Canada must become as inclusively tolerant and diverse in practice, as it purports to be in principle.

Doctors must be free to act with integrity in keeping with their deepest convictions and not be forced to perform, or refer, non-medically necessary health procedures they believe are to the detriment of the patient based upon their conscientious or religious beliefs.

Another area of concern with the CPSO draft is its failure to consider the best interests of children. The draft states that, "a physician who is opposed to same sex procreation for religious reasons and therefore refuses to refer a homosexual couple for fertility treatment may be in breach of the Code."

It is important to note that other nations have recognized, as many physicians do, the importance of recognizing the rights of children first when it comes to assisted reproduction. For example, under current law in France medically assisted reproduction is limited to heterosexual couples who are either married or who can prove a minimum of two years of common law relationship. This is based upon the best interests of the child contained in article 3 and 7 of the UN Convention on the Rights of the Child.

Article 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 7 states that the child "shall have, as far as possible, the right to know and be cared for by his or her parents".

Let us put the rights of children above the biased agenda of the OHRC and just say no to their tactics!

Lastly, as you are aware human rights commissions have expanded their jurisdiction far beyond their original mandate and consequently have recently come under profound public criticism and scrutiny for their actions and interpretation of the human rights act and code.

The public, media, and many politicians have expressed a vigorous call for changes to the human rights act and the manner in which these commissions operate.

In the last session of Parliament two private member's motions (Liberal and Conservative) were put forward to draw attention to abuses that are taking place in these commissions and begin the process of addressing them, including changes to the Human Rights Act. One of these motions was before the House of Commons Standing Committee on Justice and Human Rights prior to the election being called.

In conclusion, I question the prudence of the CPSO taking its policy directives from a

commission whose very activities are at this time under investigation.

Does it not seem untimely and premature for the College to be attempting to align its policy with the commission's narrow interpretation of the code?

If the CPSO were to establish this policy would it not preempt the process begun by our democratically elected representatives?

It seems reasonable to allow the work of Canada's elected officials to proceed at this time with public input prior to the CPSO considering whether any changes are necessary to their policy.

Thank you for your consideration of my concerns.

Sincerely,

Rod Carty