

UNITED MOTHERS, FATHERS & FRIENDS
NEWSLETTER

September 10, 2008

Functional and Meaningful Pluralism Provides
Freedom of Conscience
for Doctors and All Canadians

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If you are having trouble reading this, please write to info@unitedmothers.ca and we will forward you the information in a word document.

PLEASE FORWARD OR PRINT THIS NEWSLETTER TO SHARE WITH OTHERS

“I will practice my profession with conscience and dignity....
I will maintain the utmost respect for human life, from the time of its
conception, even under threat, I will not use my medical knowledge contrary
to the laws of humanity.”

The *Declaration of Geneva*, adopted by the General Assembly of the World Medical Association at Geneva in 1948. It is a declaration of physicians' dedication to the humanitarian goals of medicine, a declaration that was especially important in view of the medical crimes which had just been committed in Nazi Germany.

Hi Lois,

I really need your help.

A precedent is about to be established in Ontario which will have profound and far reaching implications for the freedoms of all Canadians and future generations.

The Ontario Human Rights Commission (OHRC) is going after the religious and conscience rights of Ontario's physicians and doctors.

It is critical that you understand that this is just a first step. Further tyrannies will follow.

Imagine a world where doctors, pharmacists, nurses, teachers, civil servants, and anyone holding public office were forced to choose between methodically acting against their conscience and keeping their job.

They have already forced marriage commissioners to make this choice.

This human rights commission is testing the waters and **if it succeeds in influencing the policy of the Ontario College of Physicians and Surgeons the conscience rights of all Canada's doctors and physicians will be in jeopardy and other professional associations should well expect the commissions to start dictating to them what they can and cannot do.**

This impacts you!

If the human rights commission is successful in dictating this policy, they will not stop their expansion until it is impeding your freedoms.

How?

This policy will be used as a precedent in the months and years ahead by human rights commissions, legislators, unions, universities, educational boards and professional associations for discriminating against people with specific beliefs.

It means we may as well not have an election because the Human Rights Commissions are running this country.

I need you to act by this Friday, September 12.

Take Action:

The College of Physicians and Surgeons of Ontario has drafted an anti-discrimination policy for its members in response to pressure from the Ontario Human Rights Commission. The commission is attempting to dictate to physicians how they should act and warning that they may be subject to professional misconduct if they do not comply with the new directive.

It is not yet an enshrined policy.

The College is seeking feedback on this draft **until this Friday, September 12.**

Step 1: Get informed below on how this draft threatens the freedoms of all Canadians.

Step 2: Write to key policy makers and let them know that you value doctors' autonomy in exercising their freedom of conscience and religion.

Request that they soundly reject the CPSO draft.

Send your 1 click letter today to key policy makers. "Promote Freedom of Conscience for Doctors and All Canadians" <http://www.1clicklobbyist.ca/index.php?affid=216>

All it takes is 5 minutes to make a difference!

Step 3: Write letters to the Editor of your local paper in defence of doctors conscience rights and the misconduct of the human rights commissions.*

Step 4: Ask your local candidates what they think should be done to defend conscience rights in Canada and address the abuses of human rights commissions.*

I) Territorial Expansion of Human Rights Commissions

"The sheer arrogance of human rights commission will be their downfall: their conviction that they have a superior understanding of rights compared to anyone else and that once they have pronounced how rights shall be interpreted, the rest of us should fall in lockstep with smiles on our faces and cheery tunes on our tongues, content that our intellectual betters have shown us the error of our ways and revealed the path to enlightenment."

Lorne Gunter, National Post

<http://tinyurl.com/6hhsv>

As you know human rights commissions have far overstepped their original mandate and have been used to prosecute, fine and silence individuals for expressing their fundamental freedoms of speech and conscience.*

The public and media have responded with outrage and a vigorous call for changes to the human rights act and commissions.

Two MPs responded with private members' motions in the last Parliament in order to draw attention to abuses that have been taking place in these Commissions and begin the process of addressing them, including changes to the human rights act.

Unfortunately, nothing has been done to date by our elected representatives. And now Canada faces an election.

This is a critical election issue!

Meanwhile, the commissions are steaming right ahead with their prosecutions and seeking to expand their circle of influence by targeting professional associations and dictating to them what constitutes “professional misconduct.”

*(See our April 15 & June 18 Action Alerts regarding religious freedom and the need to reform the human rights act and commissions
http://www.unitedmothers.ca/newsletter_archive.php)

II) **Backgrounder on the College of Physicians and Surgeons of Ontario (CPSO) Anti-Discrimination Policy Draft**

“If the College of Physicians and Surgeons of Ontario (CPSO) gets its way, Ontario’s doctors will soon be stripped of their right to follow their moral convictions or religious beliefs when treating patients. In other words, doctors will risk losing their licenses if they run afoul of Ontario’s human rights police.”

Lorne Gunter, National Post

<http://www.nationalpost.com/opinion/columnists/story.html?id=730473>

“The College of Physicians and Surgeons of Ontario (CPSO) is the regulatory and licensing authority for physicians and surgeons practicing in Ontario. In February, 2008, the Ontario Human Rights Commission (OHRC) responded to a draft policy of the College with a submission recommending that the exercise of freedom of conscience by physicians be restricted.

“The College, in response, released a draft policy, “Physicians and the Ontario Human Rights Code”, indicating that Ontario **physicians will be expected to sacrifice their freedom of conscience to meet the demands of their patients and avoid prosecution by Ontario’s human rights apparatus.**

“According to the College, the Ontario Human Rights Tribunal **may take action against a physician who refuses to provide or refer for procedures that he finds morally objectionable.** In addition to the possibility of prosecution by the Tribunal, the College states that it will consider the Human Rights Code in adjudicating complaints of professional misconduct. The College’s draft policy also suggests that **the College plans to force objecting physicians to actively assist patients to obtain morally controversial services.**” <http://www.consciencelaws.org/Examining-Conscience-Legal/Legal36.html>

III) **What is wrong with this Draft?**

Read it for yourself here: http://www.cpso.on.ca/Policies/consultation/HumanRightsDRAFT_08.pdf

In particular Section (2) *Moral or Religious Beliefs*

“I will prescribe for the good of my patients according to my ability and my judgment and never do harm to anyone.

“To please no one will I prescribe a deadly drug nor give advice which may cause his death.

“Nor will I give a woman a pessary to procure abortion.

“But I will preserve the purity of my life and my arts.

Hippocratic Oath, 4th Century B.C.

Concern #1 It denies doctors their fundamental freedom of conscience and religion.

Freedom of conscience and religion is the first freedom listed in our charter. 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.

Canadian Charter of Rights and Freedoms - Part I (2)

Everyone has the following fundamental freedoms:

a) Freedom of conscience and religion;

<http://laws.justice.gc.ca/en/Charter/index.html#libertes>

Concern #2 The Human Rights Code is problematic and the College appears to be taking its directives from a human rights commission rather than our elected legislators.

In this draft the College of Physicians has taken its marching orders not from the laws established by our democratically elected representatives, but rather from the Ontario Human Rights Commission’s personal “interpretation” of the Ontario Human Rights Code.

At a time when the public and Parliament are scrutinizing and proposing changes to the human rights commission and human rights act, it is premature and foolish for the commission to attempt to align its policy with the commission.

Concern #3 It fails to apply the balanced pluralism necessary for the function of a free society.

As former Supreme Court of Canada chief justice Brian Dickson wrote for the majority in Big M Drug Mart [1985], “If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have 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.”

Compare this to the CPSO draft which misguidedly suggests, “there will be times when it may be necessary for physicians to **set aside their personal beliefs** in order to ensure

that patients or potential 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.**”

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 inclusive, tolerant and diverse in practice as it purports to be in principle.

This respectful balance means that individuals have the right to procure ethically questionable medically unnecessary procedures in Canada, while physicians and surgeons committed to the oath “to do no harm” have the right to refuse involvement with such procedures, either through direct action or referral.

As explained by National Post columnist Lorne Gunter, “A particular woman may want an abortion for any number of reasons, but unless her own life is in danger from her pregnancy, it cannot truly be said that an abortion is necessary. Similarly with the desire of same-sex couples to have children; it may be a strong desire, but it is hardly a necessity.

“So long as there are no prohibitions against doctors performing these services, the rights of women and gays and lesbians are not violated. They may get what they want without trampling on the rights of conscientious-objector doctors.

“There may be some inconvenience involved. Patients seeking abortions or same-sex conception may have to travel to another Ontario town or city to fulfill their rights, but inconvenience is not the same as discrimination.”

<http://www.nationalpost.com/opinion/columnists/story.html?id=730473>

Concern #4 It fails to differentiate between urgent medical care and non-medically necessary medical procedures

There is a great difference 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, assisted reproduction for same-gender couples, prescribing morning-after or birth control pills, gender-change operations, euthanasia, and some plastic surgery (consider Michael Jackson).

To their credit, many nations are seeking to introduce laws to further strengthen physicians' conscience rights in the face of ethically questionable medical practices.

At the other extreme, doctors in Belgium have lost their ability to exercise their conscience as they have been mandated since 2003 to refer their patients for euthanasia.

In Canada physicians currently have a codified right to conscience objection limited by the Canadian Medical association code of ethics where a patient is in "urgent need for medical care."

Concern #5 Medically Assisted Reproduction must Consider the Rights and Best Interests of the Child

The CPSO draft states that, "a physician who is opposed to same [gender] procreation for religious reasons and therefore refuses to refer a [gay or lesbian] 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 best interests 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". See <http://preservemarriage.ca/eng/index.html>

IV) Why should I be concerned that the OHRC is seeking to influence this policy?

Read it for yourself here: <http://www.ohrc.on.ca:80/en/resources/submissions/physur> in particular (p. 2–3) "Moral or Religious Beliefs."

Concern #1 Human Rights Commissions have already far overstepped their mandate.

The OHRC's response drafts to the College are a disturbing example of their attempts to not only penalize people of conscience and faith through their tribunals but dictate public policy to professional associations.

Concern #2 "Doctors must check their personal views at the door"

The submission seeks to establish a dividing wall between a physician's personal beliefs and professional conduct and validate the claim that moral beliefs have no place in informing a doctor's actions.

Consider the following components of the OHRC submission: "the freedom to hold beliefs is broader than the freedom to act on them."

"Human rights protections are to be interpreted broadly, while defences for discrimination [conscience/religion] are interpreted narrowly."

"It is the Commission's position that doctors, as providers of services that are not religious in nature, must essentially 'check their personal views at the door' in providing medical care."

Concern #3 The Commission seeks to enshrine its viewpoint and stifle competing ones.

The submission recommends that the College remove its assertion that the some of the laws are "unclear" in regards to moral and religious freedom and instead insert in its place the Commission's view that: "A physician's refusal to provide a service or accept a patient on the basis of a prohibited ground, such as [gender] or sexual orientation, is prima facie discrimination, even if the refusal is based on the physician's moral or religious belief."

All Canadians have a moral belief system. We are all "believers."

What differs is what our belief systems are based upon. Each of us has the right to express our beliefs and opinions in the public square in order to inform public policy as we seek for a better society. It doesn't matter whether that belief system is founded on virtues, a gut feeling, atheism, intuition, philosophy, sociology, or religion.

We each have a right to express our views and to engage in seeking to influence public policy.

Some policy makers are now attempting to limit which believers are allowed to bring their views forward. That is wrong and has far reaching implications for all of us.

V) Take Action

Step 1: Write to key policy makers and let them know that you value doctors' autonomy in exercising their freedom of conscience and religion. Request that they soundly reject the CPSO draft.

Send your 1 click letter: "Promote Freedom of Conscience for Doctors and All Canadians" <http://www.1clicklobbyist.ca/index.php?affid=216>

All it takes is 5 minutes to make a difference!

Your letter will be personalized to the College of Physicians and Surgeons of Ontario who have drafted the policy document.

In addition your letter will be personalized and sent to policy makers at the Canadian Medical Association, Ontario Medical Association, the Ontario Attorney General, the Premier, The Prime Minister, the Justice Minister, and your MP.

Step 2: Write letters to the Editor of your local paper in defence of doctors' conscience rights.

Step 3: Ask your local candidates what they think should be done to defend conscience rights in Canada and address the abuses of human rights commissions.

VI) Worth Reading

Response to the College's draft by Will Johnston, MD, President Canadian Physicians for Life <http://tinyurl.com/5c4jyo>

Susan Martinuk "Doctors must always have right to follow conscience"
<http://tinyurl.com/6zuoqx>

VII) Timeline of the OHRC & CPSO Documents

Feb 14, 2008 The Ontario Human Rights Commission responds to a draft policy of the College of Physicians entitled *Establishing a Physician-Patient Relationship*, and *Ending the Physician-Patient Relationship*.

The commission recommends in their submission to the College of Physicians that the exercise of freedom of conscience by physicians be restricted: "Allowing refusal of healthcare based on personally held religious beliefs would deny the equality rights of those requiring this essential service....The [Ontario Human Rights] code does not provide for accommodation of religious belief." <http://www.ohrc.on.ca/en/resources/submissions/surgeons>

End of June 2008 CPSO responds by releasing a draft policy, *Physicians and the Ontario Human Rights Code*, and begins a public consultation process for feedback.

The CPSO apparently failed to issue a press release to inform the public and stake holders about this draft, and interestingly timed the consultation to coincide with the busy summer months when many stakeholders are away.

The CPSO sets August 15 as the final day for feedback on their draft (permitting just a month and a half for feedback).

August 14 Having just learned about this “public consultation” process, a number of organizations - including Canadian Physicians for Life and the Protection of Conscience Project - request a 90 day extension.

The CPSO responds by extending the deadline 29 days to September 12.

Sept 12 The CPSO deadline for feedback regarding their policy document *Physicians and the Ontario Human Rights Code*.

III) SUPPORT OUR EFFORTS: If you appreciate our efforts, newsletter and technology please support us as we work to defend family, faith and freedom!

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United Mothers Inc
P.O. Box 234
339 10th Avenue S.E.
Calgary, Alberta
T2G 0W2

Michele Dow
www.unitedmothers.ca