VITAL SIGNS

Spring 2015

Building a culture of Care, Compassion & Life….

Canadian Physicians for *Life*

Inside this issue:

The euthanasia disaster and the Supreme Court

by Dr. Will Johnston

Unanimous. The most puzzling thing about the Supreme Court decision, which found a Charter right to have a Canadian doctor kill, or arrange the suicide of, a Canadian patient, was the single spirit which apparently gripped all nine of our Supreme Court of Canada judges. This is a central fact about the decision, and the fact which most calls it into question. Not into superficial, partisan, sore-loser question, but into deeply searching question about the future of a country whose ultimate legal arbiter could become so thoroughly unhinged from bedrock principles of logic and judicial restraint, an arbiter so exquisitely tuned to its own will and the popular polls. An arbiter so eager to snub that other instrument of popular will, Parliament, that it could ignore the six euthanasia initiatives set aside by our elected governments since the Rodriguez precedent.

Consider the unappealing logic which found a good friend in each of the nine judges. Our Charter Section 7 right to life was found to require a right to death because the law against assisting a suicide and the law against agreeing to be killed by someone might scare a Canadian into committing suicide sooner, rather than risk being unable to do it later in the course of an illness. This would cost

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Gagging conscience, violating humanity

Introduction

In 2008, when the Council of the College of Physicians and Surgeons of Ontario was considering the final draft of an earlier policy, *Physicians and the Human Rights Code,* a member of the Council seems to have been troubled by the policy direction being given to the Colllege by the Ontario Human Rights Commission (OHRC).

Speaking during the Council meeting, he drew his colleagues' attention to a chilling *New England Journal of Medicine* article by Holocaust survivor, Elie Wiesel: "Without conscience."[1] It was about the crucial role played by German physicians in supporting Nazi horrors. "How can we explain their betrayal?" Wiesel asked. "What gagged their conscience? What happened to their humanity?"[2]

Now, however, to the applause of the OHRC,[3] the College of Physicians and Surgeons of Ontario has approved a policy to gag the consciences of physicians in the province,[4] and Saskatchewan is next in line.[5] We may soon begin to discover the answers to Wiesel's questions.

There is no duty to do what is believed to be wrong.

Policies like those adopted in Ontario and

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Vital Signs *is published by Canadian Physicians for Life, a registered charitable organization.*

Canadian Physicians for Life holds that reverence for every human life lies at the root of all medical tradition. Through the ages, this tradition has been expressed in the Oath of Hippocrates. It was rephrased in modern times in the Declaration of Geneva, which says in part, "I will maintain the utmost respect for human life, from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity." We affirm this declaration.

Letters and submissions for publication are welcome. Membership is by donation. Tax receipts are issued for all donations.

Direct all correspondence to:
Faye Sonier
Executive Director
Canadian Physicians for Life
PO Box 65136 Merivale P.O.
Nepean ON K2G 5Y3
Email: info@physiciansforlife.ca
Ph/Fax: 613-728-LIFE(5433)

WWW.PHYSICIANSFORLIFE.CA

Uniform coercive policy urged for all Canadian physicians

Project submission to the Saskatchewan College of Physicians discloses details

The Protection of Conscience Project has charged that a controversial policy proposed by the College of Physicians and Surgeons of Saskatchewan is unjustified.

The policy, *Conscientious Refusal*, will require all Saskatchewan physicians who object to a procedure for reasons of conscience to facilitate the procedure by referring patients to a colleague who will provide it, even if it is homicide or suicide.

The Project noted that the burden of proof was on the policy's supporters to prove that the policy is justified and that no less oppressive alternatives are available. "They failed to do so," states the submission. "The policy should be withdrawn."

"*Conscientious Refusal* fails to recognize that the practice of medicine is a moral enterprise, that morality is a human enterprise, and that physicians, no less than patients, are moral agents" said the Project, describing the policy as "profoundly disrespectful of the moral agency of physicians."

Using documents provided by the College, the Project's submission traces the origin of the policy to a meeting in 2013. The meeting was apparently convened by the Conscience Research Group (CRG), activist academics whose goal is to compel physicians unwilling to provide morally contested procedures like abortion or euthanasia to refer patients to someone willing to do so. They presented a coercive model policy that had been drafted to achieve that goal.

According to a CPSS memo, College attendees included Saskatchewan Associate Registrar Bryan Salte, Dr. Gus Grant, Registrar of the College of Physicians and Surgeons of Nova Scotia, Andréa Foti of the Policy Department of the College of Physicians and Surgeons of Ontario and a representative of the Collège des Médecins du Québec. They agreed upon a text virtually identical to the CRG model.

In May, 2014, Bryan Salte proposed the policy to Registrars of the Colleges of British Columbia, Alberta, Manitoba and Ontario, who, he reported, agreed to review it and consider implementing it. He later urged all of the Registrars of Colleges of Physicians in Canada to adopt the coercive policy or one very like it, noting that "physician assisted suicide, in particular" would be present a challenge for administrators.

"Any College that is an outlier, either because it has adopted a different position than other Colleges, or because it has not developed a policy, will potentially be placed in a difficult position," he warned.

The CPSS memo discloses that, unbeknownst to physicians, officials in several provinces have been making plans behind closed doors to suppress freedom of conscience in the medical profession.

"One of the disturbing aspects of the story," notes the submission, "is what appears to be a pattern of concealment, selective disclosure, and false or misleading statements that all serve the purpose of supporting the policy."

The Project's most recent submission to the College of Physicians and Surgeons of Ontario identifies a similarly troubling pattern, describing briefing materials supplied to College Council in support of its controversial policy as "not only seriously deficient, but erroneous and seriously misleading."

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that Canadian some self-imposed loss of life, requiring the judges to provide a later suicide in the pursuit of the right to life. Mind you, it is clear that any amount of loss of life caused by not having to be terminally ill when committing an assisted suicide is acceptable, and apparently does not arouse the right to life provision of Section 7.

As I have written before, why should only a predicted future incapacity to control the time of one's suicide be the trigger to claim that a tragically early suicide proves an infringement of Charter section 7? Would a suicide prompted by a feared future incapacity to access a certain drug or access a prostitute signal an infringement of section 7 by the laws against dealing in certain drugs or by laws hampering prostitution? Should the state become hostage to the claims of any suicidal person who could blame some existing legislation for their motivation to destroy themselves earlier rather than die later in life of natural causes? A sane concept of a right to life should be distinct from whether the life is difficult for the citizen in the moment. One might have thought it is the state's highest duty to avoid killing its citizens, regardless of how their day is going.

Next, the Court decided that whether or not you are near death, you qualify for assisted suicide if your illness is grievous and irremediable. What these words mean is left to your discretion, and the discretion of Supreme Court judges on into the perpetual future. This allows us to identify a species of word I have decided to call " Judicially Deformed Adjective (JDA)." A good example of JDA is "irremediable", which now describes any illness during which, for the moment, the suicidal person prefers death to whatever therapy is available and others might gladly receive. Thus a condition can be irremediable on Monday but not on Tuesday, or vice versa. For further explanation, consult Alice in Wonderland.

Now ethically conscientious physicians who abhor euthanasia face a pincer movement which closes in from two sides. While the Supreme Court is torturing the Charter into submission to its will, the anti-conscience agenda of Jocelyn Downie and other publicly funded ideologues continues to infiltrate the provincial Colleges. Ontario has now adopted a coercive policy which would mandate referral for controversial practices as long as they are not illegal. The Saskatchewan college is proposing the same thing. Of course, the promoters of assisted suicide are in enthusiastic agreement. Are the Colleges, the CMA, and the provincial medical associations really unaware that they are being manipulated? After all, we like to think that we do medicine, not politics. This seems to leave us vulnerable.

Will Johnston MD is the Chair of the Euthanasia Prevention Coalition of BC www.epcbc.ca and the President of Canadian Physicians for Life

(Gagging conscience...continued from page 1)

proposed in Saskatchewan are incoherent because they purport to include a duty to do what one believes to be wrong in a code of ethics or ethical guidelines, the very purpose of which is to encourage physicians to act ethically and avoid wrongdoing.

Beyond this, when discussion about difficulties associated with the exercise of freedom of conscience in health care is repeatedly characterized as "the problem of conscientious objection,"[6] it becomes clear that the underlying premise is that people and institutions ought to do what they believe to be wrong, and that refusal to do what one believes to be wrong requires special justification. This is exactly the opposite of what one would expect. Most people believe that we should *not* do what we believe to be wrong, and that refusing to do what we believe to be wrong is the norm. It is wrongdoing that needs special justification or excuse, not *refusing* to do wrong.

> **"There is no duty to do what is believed to be wrong."**

The inversion is troubling, since "a duty to do what is wrong" is being advanced by those who support the "war on terror." They argue that there is, indeed, a duty to do what is wrong, and that this includes a duty to kill non-combatants and to torture terrorist suspects.[7] The claim is sharply contested,[8] but it does indicate how far a duty to do what is wrong might be pushed. In Quebec, in Ontario and in Saskatchewan it is now being pushed as far as requiring physicians to participate in killing patients, even if they believe it is wrong: even if they believe that it is homicide.[9]

This reminder is a warning that the community must be protected against the temptation to give credence to the dangerous idea that is now being advanced by medical regulators in Canada: that a learned or privileged class, a profession or state institutions can legitimately compel people to do what they believe to be wrong – even gravely wrong – and punish them if they refuse.

Forcing someone to do wrong is a violation of humanity, not a limitation of freedom.

Attempts to suppress freedom of conscience and religion in the medical profession are often defended using a statement of the Supreme Court of Canada: "the freedom to hold beliefs is broader than the freedom to act on them."[10]

The statement is not wrong, but it is inadequate. It is simply not responsive to many of the questions about the exercise of freedom of conscience that arise in a society characterized by a plurality of moral and political viewpoints and conflicting demands. More refined distinctions are required. One of them is the distinction between perfective and preservative freedom of conscience, which reflects the two ways in which freedom of conscience is exercised: by pursuing apparent goods and avoiding apparent evils.[11]

It is generally agreed that the state may limit the exercise of perfective freedom of conscience if it is objectively harmful, or if the limitation serves the common good. Although there may be disagreement about how to apply these principles, and restrictions may go too far, no polity could long exist without restrictions of some sort on human acts, so some limitation of perfective freedom of conscience is not unexpected.

If the state can legitimately limit perfective freedom of conscience by preventing people from doing what they believe to be good, it does not follow that it is equally free to suppress preservative freedom of conscience by forcing them to do what they believe to be wrong. There is a significant difference between preventing someone from doing the good that he wishes to do and forcing him to do the evil that he abhors.

We have noted the danger inherent in the notion of a "duty to do what is wrong." Here we add that, as a general rule, it is fundamentally unjust and offensive to suppress preservative freedom of conscience by forcing people to support, facilitate or participate in what they perceive to be wrongful acts; the more serious the wrongdoing, the graver the injustice and offence. It is a policy fundamentally opposed to civic friendship, which grounds and sustains political community and provides the strongest motive for justice. It is inconsistent with the best traditions and aspirations of liberal democracy, since it instills attitudes more suited to totalitarian regimes than to the demands of responsible freedom.

This does not mean that no limit can ever be placed on preservative freedom of conscience. It does mean, however, that even the strict approach taken to limiting other fundamental rights and freedoms is not sufficiently refined to be safely applied to limit freedom of conscience in its preservative form. Like the use of potentially deadly force, if the restriction of preservative freedom of conscience can be justified at all, it will only be as a last resort and only in the most exceptional circumstances.

Notes:

1. Email to the Administrator, Protection of Conscience Project, from P__ H__ (present at College Council meeting 18 September, 2008) (2014-02-11, 10:10 am)
2. Wiesel E. "Without Conscience." *N Engl J Med* 352;15 april14, 2005 (Accessed 2014-02-24)
3. Letter from the Office of the Chief Commissioner, Ontario Human Rights Commission, to the College of Physicians and Surgeons of Ontario, dated 19 February, 2015, *Re CPSO Draft Policy: Professional Obligations and Human Rights*
4. College of Physicians and Surgeons of Ontario, Policy #2-15: *Professional Obligations and Human Rights* (Updated March, 2015) (Accessed 2015-03-16)
5. College of Physicians and Surgeons of Saskatchewan, Policy: *Conscientious Refusal*.
6. For example, Cannold L. "The questionable ethics of unregulated conscientious refusal." *ABC Religion and Ethics*, 25 March, 2011. (Accessed 2013-08-11)
7. Gardner J. "Complicity and Causality," 1 *Crim. Law & Phil.* 127, 129 (2007). Cited in Haque, A.A. "Torture, Terror, and the Inversion of Moral Principle." *New Criminal Law Review*, Vol. 10, No. 4, pp. 613-657, 2007; Workshop: Criminal Law, Terrorism, and the State of Emergency, May 2007. (Accessed 2014-02-19)
8. Haque, A.A. "Torture, Terror, and the Inversion of Moral Principle." *New Criminal Law Review*, Vol. 10, No. 4, pp. 613-657, 2007; Workshop: Criminal Law, Terrorism, and the State of Emergency, May 2007. (Accessed 2014-02-19)
9. Quebec has already passed a law purporting to legalize euthanasia: Murphy S. "Redefining the Practice of Medicine- Euthanasia in Quebec, Part 9: Codes of Ethics and Killing." *Protection of Conscience Project*, July, 2014. The Supreme Court of Canada has ordered legalization of physician assisted suicide and physician administered euthanasia. When the ruling takes effect in early 2016, the Ontario and Saskatchewan policies, as written, will have the effect of forcing physicians unwilling to kill patients or help them kill themselves to find a colleague willing to do so.
10. *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31 (Accessed 2014-07-29)
11. This section of the paper draws from an extended discussion of the subject in Murphy S, Geunis S.J. "Freedom of Conscience in Health Care: Distinctions and Limits." *J Bioeth Inq.* 2013 Oct; 10(3): 347-54

Margaret Somerville: A modest proposal for respecting physicians' freedom of conscience

This article first appeared in The National Post on January 23, 2015 and is reprinted here with the author's permission.

The Ontario College of Physicians and Surgeons is consulting on whether patients' right of access to certain procedures, such as abortion, should trump the rights of those physicians who refuse, for reasons of conscience, to provide them. Dr. Marc Gabel, a College official, chairs the working group looking at this issue, which is drafting a new policy on "Professional Obligations and Human Rights."

Dr. Gabel has been reported as saying that physicians unwilling to provide or facilitate abortion for reasons of conscience should not be family physicians and it seems wants the College to approve that stance. Sean Murphy, of the Protection of Conscience Project, argues that "if it does, ethical cleansing of Ontario's medical profession will begin this year, ridding it of practitioners unwilling to do what they believe to be wrong."

Freedom of conscience, like the other fundamental freedoms enshrined in the Canadian Charter of Rights and Freedoms, is a fundamental pillar of democracy. So how could breaching this right be, as Dr Gabel claims, "required by professional practice and human rights legislation"? The best answer is that it is not. In fact, it would be a perversion of the norms and applications of both professional practice requirements and human rights legislation to interpret them as establishing such a requirement. So why is this argument being made?

Murphy explains that the "crusade for the ethical cleansing of the entire medical profession is not driven by merely practical concerns about access to services such as abortion or, possibly in the future, euthanasia. It is driven by a markedly intolerant ideology masquerading as enlightened objectivity." This is yet another values battle in the culture wars.

In stark contrast to those "crusaders" who seek out physicians with conscientious objections and demand treatment they know they will refuse, I want the opposite. I don't want to be treated by physicians who are willing either to act contrary to their conscience or who undertake interventions I believe to be seriously ethically wrong. For example, if the Quebec law legalizing euthanasia survives its constitutional challenge, I don't want to be cared for by a physician who would be willing to give me — or anyone else — a lethal injection with the intention of killing me, or who would help me — or others — to commit suicide. So how might my "rights" in this regard be respected?

First, physicians with conscientious objections to supplying medical procedures that would destroy human life or contravene respect for it, including euthanasia and assisted suicide, must not be drummed out of the profession as Dr. Gabel proposes.

There may be rare circumstances where physicians exercising their right of conscientious objection would jeopardize a patient's life or create a serious risk to their health and there are no reasonable alternatives. The ethical and legal validity of physicians' refusals in such a situation would need to be determined on a case by case basis, not through steamrollering and obliterating physicians' freedom of conscience as Dr. Gabel's committee proposes.

Consideration should be given to creating a public list of physicians who register as having conscientious objection to providing a specified medical procedure. This would allow people who want to be treated by a physician with such values to identify those physicians, at the same time allowing those who want such procedures to avoid those physicians.

A concern that physicians on such a list would be targets for abuse by those who oppose their values would need to be addressed. Reasonable steps would also need to be taken to ensure sufficient numbers of physicians were available on either side to honour Canadians' choices. We should keep in mind in this regard that sometimes upholding important values, such as respect for freedom of conscience, is not cost-free and we should be prepared to pay what is necessary to do so.

Alternatively or in addition to the above, health-care institutions should have the right to declare themselves, for instance, "euthanasia free" and "physician-assisted suicide free" zones. Patients who object to those procedures could then be confident they would not be subject to them.

Forcing physicians to act against their conscience, to do something they believe is deeply wrong against their will, not only harms them. This coercive violation of their freedom of conscience also harms society and the values that inform its culture.

So-called "progressive values" adherents claim to give priority to respect for individual autonomy when values are in conflict, and pride themselves on their tolerance. Such claims are only tested, however, when "progressivists" do not agree with the stance that another person takes, such as a physician who for reasons of conscience refuses to participate in abortion or euthanasia.

In the current controversy, the "progressivists" are not scoring well on these tests.

Margaret Somerville is the founding director of the Centre for Medicine, Ethics and Law at McGill University in Montreal.

2014 Medical Student Forum

A deep thank you to each of you and to our speakers for making the 2014 Medical Student Forum in Edmonton, Alberta a success. Each year, physicians, bioethicists, and subject matter experts spend a densely-packed weekend engaging pro-life Canadian medical students about the full spectrum of life issues. This year's topics included:

- The abortion debate: equipping to engage
- Post-abortive healing
- Life-affirming conversation: moving from crisis to hope
- International perspectives on abortion
- Pro-life strategies
- Thriving, not just surviving medical school
- Current legal issues in Euthanasia and Physician Assisted Suicide
- National Policy on Reproductive Rights
- Working with pregnancy care centres
- The sexual revolution: reality strikes back
- Infertility and assisted reproductive technologies
- Creating Community: Caring for parents facing a negative prenatal diagnosis

Canadian Physicians for Life members and donors sponsored 29 students from 9 medical schools to attend. The students provided excellent feedback on all of the sessions and expressed their gratitude for your generosity in continuing to make a way for them to attend.

These are subjects not typically covered in the course of their medical education, and the forum provides them with research, resources, and practical skills to defend their pro-life stance and to defend life. Students continue to engage their peers on campus through pro-life clubs, hosting debates and guest speakers, and volunteering their time with their local pregnancy care centres.

Stephanie Gray opened the weekend with a practical session in pro-life apologetics. We are convinced that there isn't a better session than *The Abortion Debate: equipping to engage* for preparing students to talk about abortion and to present convincing evidence-based arguments.

Jutta Wittmeier drew on her years of experience in pregnancy centres to teach students how to have difficult conversations with their future patients who face surprise pregnancies, moving them from a place of crisis to a place of life-affirming hope.

One of the highlights of the forum again this year was a panel of young post-abortive women who spoke to the students from the heart about their experiences. The women had one, two, or three abortions, and suffered physical and psychological aftermath.
Earlier in 2014, some of these women, along with the panel host, CPL board member Dr. Laura Lewis, spent two weeks in Phnom Penh, Cambodia, speaking to other post-abortive women about the value of life. They also spoke to a group of physicians about caring for marginalized women in poverty and prostitution. This experience provided the backdrop for a workshop with the CPL medical students discussion about international perspectives on abortion, and how ethno-cultural values influence patients' decisions when faced with pregnancy.

Dr. Thomas Bouchard and patient ***Shari Tobias*** shared their personal experiences in navigating the challenging pregnancy and birth of Shari's eighth child, Audrey, who was diagnosed at 20 weeks in utero with severe spina bifida, clubfeet, and hydrocephalus. They shared the medical aspects as well as the joys and blessings which Audrey's brief and precious life brought to each of their lives and to countless others.

Save the date!

The 2015 Medical Student Forum will be held on October 30— November 1, 2015 in Montreal, Quebec.

Special thanks and photo credit to Viktor Sekowski, from the University of Alberta medical school

A Warm Farewell and an exciting hello:

As she flies to Phnom Penh to continue her work as part of Back to Life Cambodia, KC McLean is leaving her position at Canadian Physicians for Life to focus on her other callings.

KC has been a valuable and committed part of the team at Canadian Physicians for Life for 7 years and although we will be saying goodbye to her as our administrator, we know that our paths will continue to cross. KC will be moving forward in related work to protect life both nationally and internationally. KC, we appreciate you and wish you all the best as you transition into this next season of your life.

Joining the CPL team as Executive Director is Faye Sonier. She brings with her seven years of experience in the Canadian charitable sector. She has practiced charity, contract and employment law but she has also lobbied, made submissions to government, and appeared before appellate courts and the Supreme Court of Canada to advocate her client's perspective on matters relating to abortion, euthanasia and assisted suicide, and genetic and reproductive technologies. Particularly because of the present unusual threats to physicians' freedom of conscience and religion, CPL will benefit from Faye's constitutional and human rights law experience. We have no illusions about the inhospitable climate we are facing in Canada, but we are greatly encouraged by Faye Sonier's arrival at CPL during this crucial year and we welcome her on behalf of our members.

~ Canadian Physicians for Life Board of Directors

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