The College of Physicians and Surgeons
of Ontario
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Subject: Improper Attempt By The College Of Physicians And Surgeons Of Ontario (the “CPSO”) To Limit And/Or Eliminate Doctors’ Charter Guarantee Of Freedom Of Conscience And Religion, In The CPSO’s Draft Policy “Professional Obligations and Human Rights”

Introduction

This submission, concerning the CPSO’s subject draft policy, is presented in four parts which we abbreviate as follows:

DIFFERING VIEWS CONCERNING “THOU SHALT NOT KILL”
THE AUTHORITY DELEGATED BY THE STATE (ONTARIO)
SIGNIFICANT, ERRONEOUS PRESENTATION BY THE COLLEGE
CONCLUSION

Our presentation refers to the Charter’s guaranteed fundamental freedom of conscience and religion as that guaranteed freedom pertains to physicians and surgeons in Ontario. Those guaranteed freedoms apply to all Ontario doctors; however, when we write of “Catholic doctors”, we specifically refer to those doctors who believe in the faith taught by the Roman Catholic Church.

DIFFERING VIEWS OF GOD’S WILL CONCERNING “THOU SHALT NOT KILL” AND SPECIFIC RELIGIOUS BELIEFS OF CATHOLICS

Our Constitutions Act, 1982 begins “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law”.

Some people do not believe in God; however, the God most often referred to in Canada is the Judeo-Christian God.

Although one of the Judeo-Christian God’s most basic commandments is “thou shalt not kill”, both State and religious authorities accept certain exceptions to that law.

Necessary killing in war is one example of an acceptable exception to God’s law, recognized by the State and by many religions.
Killing in abortions or in doctor-assisted suicide; however, is not an acceptable exception for everyone. We Catholics do not accept such exceptions. We believe human life begins at conception and must not be ended by a deliberate killing act, at any stage of life. Based on our religion, we believe such action to be the equivalent of murder.

We recognize that our religious beliefs, concerning “thou shalt not kill”, are not held by everyone.

However, although our religious beliefs are not held by everyone, they are constitutionally guaranteed by the Canadian Charter Of Rights And Freedoms, in our Constitution Act, 1982.

It would be a guaranteed freedom violation, in the extreme, to require Catholic (and like-minded) doctors to provide patients with medical information, and/or referrals, when the intended end result, to a Catholic conscience and in Catholic religion, would be murder.

THE AUTHORITY DELEGATED BY THE STATE (ONTARIO) TO THE CPSO AND IMPLICATIONS, FOR THE CPSO AND THE MINISTER OF HEALTH, CONCERNING THAT DELEGATED STATE AUTHORITY

The College of Physicians and Surgeons (the “CPSO”) receives its self-regulatory authority from the Province of Ontario (the “State”) under legislation such as The Medicine Act, 1991 and The Health Professions Act 1991.

The Supreme Court of Canada has already made a pertinent ruling, in the matter of abortions, concerning the rights of the individual being paramount to the rights of the State.

A justice of the Supreme Court of Canada, in the Morgentaler case, stated “The decision whether or not to terminate a pregnancy is essentially a moral decision and in a free and democratic society, the conscience of the individual must be paramount to that of the state.”

We repeat, for emphasis and with emphasis, the conscience of the individual must be paramount to that of the state.

How does the CPSO justify using its State-provided authority to issue a policy - which would apply in instances of abortion and doctor-assisted-suicide - requiring Catholic (and like-minded) doctors to provide patients with medical information and/or referrals with the objective being, according to their conscience and religion, murder?

As stated, the Supreme Court has ruled, in the matter of abortion, that the conscience of the individual must be paramount to that of the state.”

Obviously, the Supreme Court would not limit that freedom only to those seeking or obtaining abortions.

Obviously, the Supreme Court would also recognize that medical professionals, who oppose abortion, as a matter of conscience or religion, are equally entitled to having their guaranteed freedoms protected.
There is only one way, provided in Canadian law, by which the Charter rights of anyone - including Catholic (or like-minded) doctors - may be set aside. The Charter, itself, provides that only means. Here is the first statement in the Act, after the heading GUARANTEE OF RIGHTS AND FREEDOMS “1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

With emphasis and for emphasis, we repeat:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

It would be an extreme, and unreasonable limit on guaranteed Charter freedoms to implement a policy, empowered and authorized by the State (Province of Ontario), requiring doctors to participate in what they validly consider, by conscience and/or religion, to be murder.

The next section of our submission discloses the false representation, in the CPSO’s draft policy Professional Obligations and Human Rights, of limits on the guaranteed freedom of conscience and religion.

SIGNIFICANT, ERRONEOUS PRESENTATION BY THE COLLEGE OF PHYSICIANS AND SURGEONS CONCERNING THE BIG M DRUG MART LTD. SUPREME COURT CASE

The College erroneously uses its reference to the Big M Drug Mart Ltd. Case to support its view about limiting the guaranteed freedom of conscience and religion. We quote from page four of the subject draft policy: “the right to freedom of conscience and religion can be limited, as necessary, to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.” See page four of the CPSO draft policy, lines 115, 116 and 117 and referenced footnote 9.

Footnote 9 (supporting the statement in lines 115-117) states “R. v Big M Drug Mart Ltd., [1985] 1 SCR 295 at para 95”. This identifies the Supreme Court case of the Crown versus the said drug mart company, and the location of the Court’s ruling in the Supreme Court Reports.

Let’s look at lines 115-117 again, “The right to freedom of conscience and religion can be limited, as necessary, to protect public safety, order, health, morals, or the fundamental rights and freedoms of others”. The footnote 9 reference to the Big M Drug Mart case erroneously makes it appear the subject court case is an example of such limiting of the fundamental freedom of conscience and religion.

However, a review of the Big M Drug Mart case discloses the following information. Big M Drug Mart had been charged with violating the Lord’s Day Act, 1906. When the case reached the Supreme Court of Canada, the Supreme Court upheld the guaranteed Charter freedom of conscience and religion, without limitation.
Because it **upheld, rather than limited**, the Charter's guaranteed freedom of conscience and religion, the Supreme Court struck down the *Lord's Day Act, 1906*. Here is a quote from the subject Supreme Court Reports: “Respondent is entitled to challenge the validity of the *Lord's Day Act, 1906* on the basis that it violates the Charter guarantee of conscience and religion.”

The College attempted, **quite erroneously**, to use the Big M Drug Mart case to show how the freedom of conscience and religion can be limited.

**The Big M Drug Mart Ltd case does no such thing!** In the subject case, the Supreme Court struck down the *Lord's Day Act, 1906* and confirmed Big M Drug Mart's innocence because the *Lord's Day Act, 1906* violated the Charter guarantee of freedom of conscience and religion.

The Big M case **did not** limit the guaranteed freedom of conscience and religion concerning “public safety”; **did not** limit the guaranteed freedom of conscience and religion concerning “order”; **did not** limit the guaranteed freedom of conscience and religion concerning “health”; **did not** limit the guaranteed freedom of conscience and religion concerning “morals”; and **did not** limit the guaranteed freedom of conscience and religion concerning “the fundamental rights and freedoms of others”!

The Big M Drug Mart Supreme Court case **confirmed the Charter's guaranteed freedom of conscience and religion, without any applied limitation!**

In the preceding second part of our presentation, we **accurately referenced** another instance (the *Morgentaler case*) in which the Supreme Court **upheld** the freedom of conscience and religion. In addition, that case **is more pertinent**, given its issue concerning abortion and given the justice’s statement (emphasis added) **"the conscience of the individual must be paramount to that of the state"**.

Also, in our second part above, we have accurately stated the one, and only, way in which any Charter right can be limited or set aside.

**CONCLUSION**

The College of Physicians and Surgeons of Ontario has seriously failed to accurately present the Charter's guarantee concerning the freedom of conscience and religion as they relate to doctors in this province.

The College of Physicians and Surgeons of Ontario has seriously failed to accurately present the one and only, and onerous, method required to limit or set aside the Charter's guarantee concerning the freedom of conscience and religion. In fact, in this regard, the College provided misleading information (Big M Drug Mart).
The College of Physicians and Surgeons of Ontario has seriously failed to show appropriate respect and concern for its doctors who practise the Catholic faith. The CPSO's draft policy would require those doctors to participate in what, according to their consciences and religion, would be akin to murder.

The College should scrap this seriously flawed draft policy, and start again.