



Protection of Conscience Project

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“The core of a modern pluralism”

Sean Murphy, Administrator
Protection of Conscience Project

Introduction

In 2008 the Ontario Human Rights Commission (OHRC) attempted to suppress freedom of conscience and religion in the medical profession in Ontario on the grounds that physicians are "providers of secular public services."¹ The hostility of the OHRC toward religious believers in the medical profession contributed significantly to anti-religious sentiments and a climate of religious intolerance in the province. This was displayed last year during a public crusade against three Ottawa physicians who refused to prescribe or refer for contraceptives or abortion, in part, because of their religious beliefs.²

Despite the fact that there was no evidence that even a single person in Ontario has ever been unable to access medical services because of conscientious objection by a physician, the College of Physicians and Surgeons of Ontario has now adopted a policy that requires all physicians who object to a procedure for reasons of conscience to direct patients to a colleague willing to provide it.³ A policy to the same effect has been approved in principle by the College of Physicians and Surgeons in Saskatchewan - also without evidence - though it is now under review.⁴

Submissions made by the Protection of Conscience Project to the Colleges in Ontario and Saskatchewan during public consultations included a discussion of religious belief, secularism and pluralism which has been adapted for this presentation. The key points are that a proper understanding of "the secular" includes religious belief rather than excluding it, that the core of a modern pluralism requires the accommodation of different world views in the public square, and that this end is not served by authoritarian edicts issued by medical regulators.

A secular public square includes religious belief.

Those who would suppress freedom of conscience and religion in the medical profession on the grounds that physicians are "providers of secular public services"(emphasis added), erroneously presume that what is "secular" excludes religious belief. The error is exposed by Dr. Iain Benson in his paper, *Seeing Through the Secular Illusion*.⁵

Dr. Benson emphasizes that the full bench of the Supreme Court of Canada has unanimously affirmed that "secular" must be understood to include religious belief. The relevant statement by the Court opens

with the observation that "nothing in the [Canadian Charter of Rights and Freedoms], political or democratic theory, or a proper understanding of pluralism demands that atheistically based moral positions trump religiously based moral positions on matters of public policy."

The Court rejected that view that, "if one's moral view manifests from a religiously grounded faith, it is not to be heard in the public square, but if it does not, then it is publicly acceptable."

The problem with this approach is that everyone has 'belief' or 'faith' in something, be it atheistic, agnostic or religious. To construe the 'secular' as the realm of the 'unbelief' is therefore erroneous. Given this, why, then, should the religiously informed conscience be placed at a public disadvantage or disqualification? To do so would be to distort liberal principles in an illiberal fashion and would provide only a feeble notion of pluralism. The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism.⁶

Thus, the Supreme Court of Canada has acknowledged that secularists, atheists and agnostics are believers, no less than Christians, Muslims, Jews and persons of other faiths. Neither a secular state nor a secular health care system (tax-paid or not) must be purged of the expression of religious belief. Instead, rational democratic pluralism in Canada must make room for physicians who act upon religious beliefs when practising medicine.

However, College officials in Ontario and Saskatchewan are taking exactly the opposite approach. They demand morally significant participation by all physicians in procedures known to be contrary to the teaching of major religious groups. Such policies are inimical to the presence of religious believers in medical practice. Where the Supreme Court has recognized that religious believers and religious communities are part of the warp and woof of the Canadian social fabric, medical regulators in Ontario and Saskatchewan act as if they don't exist - or should be made to disappear.

Accommodate different conceptions of "the good life."

It is worthwhile to contrast the illiberal attitude of College officials with the approach taken by Madame Justice Bertha Wilson of the Supreme Court of Canada in the landmark 1988 case *R. v. Morgentaler*. Addressing issues of freedom of conscience and abortion, Madame Justice Wilson argued that "an emphasis on individual conscience and individual judgment . . . lies at the heart of our democratic political tradition."⁷

At this point in the judgement, Wilson was not discussing whether or not the conscience of a woman should prevail over that of an objecting physician, but how the conscientious judgement of an individual should stand against that of the state. Her answer was that, in a free and democratic society, "the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life."⁸ This statement was affirmed unanimously in 1991 by a panel of five judges, and by the full bench of the Court in 1996.⁹

The accommodation recommended by Madame Justice Wilson and the kind of modern pluralism advocated by the Supreme Court of Canada contrast sharply with the authoritarian approach being taken by Colleges of Physicians and Surgeons in Ontario and Saskatchewan.

Avoid authoritarian solutions.

Making room in the public square for people motivated by different and sometimes opposing beliefs can lead to conflict, but, as we have seen, the Supreme Court warns against that singling out and excluding religious belief or conscientious convictions in order to prevent or minimize such conflict is a perverse distortion of liberal principles.⁶

It is also dangerous. It overlooks the possibility that some secularists - like some religious believers - can be uncritical and narrowly dogmatic in the development of their ethical thinking, and intolerant of anyone who disagrees with them. They might see them as heretics who must be driven from the professions, from the public square, perhaps from the country: sent to live across the sea with their "own kind," as one of the crusaders against the Ottawa physicians put it.¹⁰

University of Victoria law professor Mary Anne Waldron provides a reminder and a warning:

Conflict in belief is an endemic part of human society and likely always will be. What has changed, I think, is the resurrection of the idea that we can and should compel belief through legal and administrative processes, or, if not compel the belief itself, at least force conformity. Unfortunately, that begins the cycle of repression that, if we are to maintain a democracy, we must break.¹¹

On this point, it is essential to note that a secular ethic is not morally neutral.¹² The claim that a secular ethic is morally neutral - or that one can practise medicine in a morally "neutral" fashion- is not merely fiction. It is an example of "bad faith authoritarianism. . . a dishonest way of advancing a moral view by pretending to have no moral view."¹³

Ontario's new policy and the one being considered in Saskatchewan illustrate one of the most common examples of "bad faith authoritarianism": the pretence that forcing a physician who will not kill a patient to find someone willing to do so is an acceptable compromise that does not involve morally significant participation in killing.

Notes

1. Submission of the Ontario Human Rights Commission to the College of Physicians and Surgeons of Ontario Regarding the draft policy, "Physicians and the Ontario Human Rights Code." 15 August, 2008.
(<http://www.ohrc.on.ca/en/submission-ontario-human-rights-commission-college-physicians-and-surgeons-ontario-regarding-draft-0>) Accessed 2018-03-07, citing Norton K.C. "Letter to Ontario's Attorney General expressing concern about allowing public officials to refuse to marry same-sex couples."
(http://www.ohrc.on.ca/en/news_centre/letter-ontarios-attorney-general-expressing-concern-about-allowing-public-officials-refuse-marry) Accessed 2018-03-07.
2. Murphy S. "NO MORE CHRISTIAN DOCTORS." Protection of Conscience Project (March, 2014) (<http://consciencelaws.org/background/procedures/birth002.aspx>).

3. College of Physicians and Surgeons of Ontario, Policy #2-15: *Professional Obligations and Human Rights* (Updated March, 2015)
(<http://www.cpso.on.ca/Policies-Publications/Policy/Professional-Obligations-and-Human-Rights>) Accessed 2018-03-07.
4. College of Physicians and Surgeons of Saskatchewan, Policy: *Conscientious Refusal*
(<http://consciencelaws.org/archive/documents/cpss/2015-01-20-cpss-policy.pdf>).
5. Benson, I.T., "Seeing Through the Secular Illusion" (July 29, 2013). NGTT Deel 54 Supplementum 4, 2013 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2304313) Accessed 2018-03-07.
6. *Chamberlain v. Surrey School District No. 36* [2002] 4 S.C.R. 710 (SCC), para. 137
(<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do?r=AAAAAQALm1hbmRhG9yeSIAAAAAAAB>) Accessed 2014-08-03. Dr. Benson adds: "Madam Justice McLachlin, who wrote the decision of the majority, accepted the reasoning of Mr. Justice Gonthier on this point thus making his the reasoning of all nine judges in relation to the interpretation of 'secular.'" Benson I.T., "Seeing Through the Secular Illusion" (July 29, 2013). NGTT Deel 54 Supplementum 4, 2013 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2304313) Accessed 2018-03-07.
7. *R. v. Morgentaler* (1988)1 S.C.R 30 (Supreme Court of Canada) p. 165
(<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do>) Accessed 2018-03-07.
8. *R. v. Morgentaler* (1988)1 S.C.R 30 (Supreme Court of Canada) p. 166
(<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do>) Accessed 2018-03-07.
9. *R. v. Salituro*, [1991] 3 S.C.R. 654
(<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/820/index.do>); *Québec (Curateur public) c. Syndicat national des employés de l'Hôpital St-Ferdinand*, [1996] 3 S.C.R. 211
(<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1423/index.do>) Accessed 2015-03-05.
10. Murphy S. "NO MORE CHRISTIAN DOCTORS. Appendix C: Radical Handmaids Facebook Page Timeline", T__ M__, 29 January, 2014, 6:56 pm. *Protection of Conscience Project* (March, 2014)
(<http://www.consciencelaws.org/background/procedures/birth002-C-01.aspx>).
11. Waldron, MA, "Campuses, Courts and Culture Wars." *Convivium*, February/March 2014, p. 33
12. The distinction between ethics and morality is mainly a matter of usage. Recent trends identify ethics as the application of morality to a specific discipline, like medicine or law. In a broader and older sense, ethics is concerned with how man ought to live, while the study of morality focuses on ethical obligations. See the entry on "Ethics and Morality" in Honderich T. (Ed.) *The Oxford Companion to Philosophy* (2nd Ed.) Oxford: Oxford University Press, 2005.

13. "The question of neutrality has been profoundly obscured by the mistake of confusing neutrality with objectivity... neutrality and objectivity are not the same... objectivity is possible but neutrality is not. To be neutral, if that were possible, would be to have no presuppositions whatsoever. To be objective is to have certain presuppositions, along with the manners that allow us to keep faith with them." Budziszewski J., "Handling Issues of Conscience." *The Newman Rambler*, Vol. 3, No. 2, Spring/Summer 1999, P. 4
(<http://consciencelaws.org/ethics/ethics007.aspx>).