

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CHRISTIAN MEDICAL AND DENTAL SOCIETY OF CANADA,  
THE CANADIAN FEDERATION OF CATHOLIC PHYSICIANS' SOCIETIES,  
DR. MICHELLE KORVEMAKER, DR. BETTY-ANN STORY, DR. ISABEL NUNES,  
DR. AGNES TANGUAY and DR. DONATO GUGLIOTTA

Applicants

- and -

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

Respondent



**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

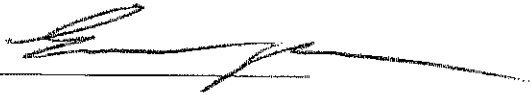
THIS APPLICATION will come on for a hearing on Date to be set, at 10:00 a.m., at 161 Elgin Street, Ottawa, Ontario K2P 2K1.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 20, 2015

Issued by 

Local registrar: 161 Elgin Street  
Ottawa, Ontario K2P 2K1

TO: COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO  
80 College Street  
Toronto, Ontario M5G 2E2

**THE APPLICATION IS FOR:**

1. The Applicants, the Christian Medical and Dental Society of Canada ("CMDSC"), the Canadian Federation of Catholic Physicians' Societies ("CFCPS"), Dr. Michelle Korvemaker, Dr. Betty-Ann Story, Dr. Isabel Nunes, Dr. Agnes Tanguay and Dr. Donato Gugliotta (the "Individual Applicants") make application for:
  - a. An Interim and Permanent Injunction prohibiting the College of Physicians and Surgeons of Ontario ("CPSO") to enforce Policy Statement #2-15: *Professional Obligations and Human Rights*;
  - b. A declaration that the CPSO is subject to and bound by the *Canadian Charter of Rights and Freedoms*;
  - c. A declaration that the CPSO cannot implement and enforce policies which violate the *Canadian Charter of Rights and Freedoms*;
  - d. A declaration that Policy Statement #2-15: *Professional Obligations and Human Rights* violates the section 2(a) *Canadian Charter of Rights and Freedoms* right to freedom of religion of the Individual Applicants and other physicians;
  - e. A declaration that Policy Statement #2-15: *Professional Obligations and Human Rights* violates the section 2(a) *Canadian Charter of Rights and Freedoms* right to freedom of conscience of the Individual Applicants and other physicians;
  - f. A declaration that Policy Statement #2-15: *Professional Obligations and Human Rights* violates the section 15 *Canadian Charter of Rights and Freedoms* right to equal treatment and benefit under the law of the Individual Applicants and other physicians;
  - g. A declaration that Policy Statement #2-15: *Professional Obligations and Human Rights* is *ultra vires* the CPSO's authority;
  - h. A mandamus order modifying Policy Statement #2-15: *Professional Obligations and Human Rights* to remove its requirements that the Individual Applicants and other physicians act in violation of their religious or moral beliefs;

- i. In the alternative, a mandamus order requiring the CPSO to reconsider Policy Statement #2-15: *Professional Obligations and Human Rights* while balancing its policy objectives with *Canadian Charter of Rights and Freedoms* values of freedom of religion, freedom of conscience and equal treatment and benefit under the law;
- j. Their costs of this Application on a substantial indemnity basis; and,
- k. Such further and other costs as this Honourable Court deems just.

2. The grounds for the application are:

**The Applicants**

The Christian Medical and Dental Society of Canada

- a. The Applicant, the CMDS, is a national and interdenominational association of Christian doctors and dentists who strive to integrate their Christian faith with medical or dental practice with approximately 1,700 members across Canada, representing a wide variety of specialties and practice types and many different Christian denominations. The CMDS's members are Catholic and Protestant Evangelical Christian physicians and medical students across Canada. Over 90% of the CMDS' members identify as Protestant Evangelicals and represent many different Christian denominations.

The Canadian Federation of Catholic Physicians' Societies

- b. The Applicant, the CFCPS, is a national association of Catholic Physicians' guilds, associations and societies from eleven cities across Canada, four of which are in Ontario.
- c. The physicians represented by the CMDS and the CFCPS hold sincere religious and moral beliefs which form the basis of their moral or religious objection to certain procedures, pharmaceuticals and procedures which a patient may request.

- d. The CPSO was created and derives its authority to regulate the practice of medicine in Ontario from the *Regulated Health Professions Act*, S.O. 1991, Chapter 18 and the *Medicine Act*, S.O. 1991, Chapter 30 as well as their regulations.

Dr. Michelle Korvemaker

- a. The Applicant, Dr. Michelle Korvemaker is a physician licensed to practice medicine in Ontario. Dr. Korvemaker practices emergency medicine, palliative care and family medicine in Woodstock, Ontario.
- b. Dr. Korvemaker is subject to regulatory and disciplinary proceedings by the CPSO. Dr. Korvemaker is subject to and bound by Policy Statement #2-15: *Professional Obligations and Human Rights*.
- c. Dr. Korvemaker is a committed Protestant Evangelical Christian. Dr. Korvemaker's sincerely held religious beliefs inform and direct her positions on certain procedures, pharmaceuticals and procedures which a patient may request.
- d. Dr. Korvemaker's sincerely held religious beliefs and her conscience prevent her from participating in a number of procedures or providing a number of pharmaceuticals to which she objects on religious or moral grounds.

Dr. Betty-Ann Story

- e. The Applicant, Dr. Betty-Ann Story is a physician licensed to practice medicine in Ontario. Dr. Story practices family medicine in an independent practice in Brantford, Ontario.
- f. Dr. Story is subject to regulatory and disciplinary proceedings by the CPSO. Dr. Story is subject to and bound by Policy Statement #2-15: *Professional Obligations and Human Rights*.

- g. Dr. Story is a committed Protestant Evangelical Christian. Dr. Story's sincerely held religious beliefs inform and direct her positions on certain procedures, pharmaceuticals and procedures which a patient may request.
- h. Dr. Story's sincerely held religious beliefs and her conscience prevent her from participating in a number of procedures or providing a number of pharmaceuticals to which she objects on religious or moral grounds.

Dr. Isabel Nunes

- e. The Applicant, Dr. Isabel Nunes is a physician licensed to practice medicine in Ontario. Dr. Nunes practices family medicine in Welland, Ontario.
- f. Dr. Nunes is subject to regulatory and disciplinary proceedings by the CPSO. Dr. Nunes is subject to and bound by Policy Statement #2-15: *Professional Obligations and Human Rights*.
- g. Dr. Nunes is a committed Protestant Evangelical Christian. Dr. Nunes' sincerely held religious beliefs inform and direct her positions on certain procedures, pharmaceuticals and procedures which a patient may request.
- h. Dr. Nunes' sincerely held religious beliefs and her conscience prevent her from participating in a number of procedures or providing a number of pharmaceuticals to which she objects on religious or moral grounds.

Dr. Agnes Tanguay

- a. The Applicant, Dr. Agnes Tanguay is a physician licensed to practice medicine in Ontario. Dr. Tanguay practices emergency medicine in Ottawa, Ontario.
- b. Dr. Tanguay is subject to regulatory and disciplinary proceedings by the CPSO. Dr. Tanguay is subject to and bound by Policy Statement #2-15: *Professional Obligations and Human Rights*.

- c. Dr. Tanguay is a committed Roman Catholic. Dr. Tanguay's sincerely held religious beliefs inform and direct her positions on certain procedures, pharmaceuticals and procedures which a patient may request.
- d. Dr. Tanguay's sincerely held religious beliefs and his conscience prevent her from participating in a number of procedures or providing a number of pharmaceuticals to which she objects on religious or moral grounds.
- e. In 2014, a complaint against Dr. Tanguay was made to the CPSO because of Dr. Tanguay's decision not to prescribe specific pharmaceuticals or to provide referrals for such pharmaceuticals because doing so would violate her conscience and her sincerely held religious beliefs.
- f. The complaint was investigated by the CPSO which concluded that Dr. Tanguay had not violated any policy or procedure.

Dr. Donato Gugliotta

- g. The Applicant, Dr. Donato Gugliotta is a physician licensed to practice medicine in Ontario. Dr. Gugliotta practices family medicine and anaesthesia in Trenton, Ontario.
- h. Dr. Gugliotta is subject to regulatory and disciplinary proceedings by the CPSO. Dr. Gugliotta is subject to and bound by Policy Statement #2-15: *Professional Obligations and Human Rights*.
- i. Dr. Gugliotta is a committed Protestant Evangelical Christian. Dr. Gugliotta's sincerely held religious beliefs inform and direct his positions on certain procedures, pharmaceuticals and procedures which a patient may request.
- j. Dr. Gugliotta's sincerely held religious beliefs and his conscience prevent him from participating in a number of procedures or providing a number of pharmaceuticals to which he objects on religious or moral grounds.

## The consultation processes

### First consultation

- i. In or about the spring of 2014, the CPSO announced that it would be beginning a consultation process to revisit its policy, Policy #5-08: *Physicians and the Ontario Human Rights Code*. In the process of the consultation, the CPSO invited submissions from the general public with a deadline of August 5, 2014.
- j. The CPSO received at least 1,270 written submissions from physicians, public-interest groups and members of the public. The overwhelming majority of the submissions urged the CPSO to respect physicians' freedom of religion and freedom of conscience.
- k. The CPSO received thorough and detailed submissions from the Applicants, the CMDS and the CFCPS which set out the CPSO's legal obligation to introduce a policy which adhered to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982* c 11. (the "*Charter*") and to respect and protect physicians *Charter* rights to freedom of religion and freedom of conscience.
- l. The CPSO also included an anonymous poll asking the question "Do you think a physician should be allowed to refuse to provide a patient with a treatment or procedure because it conflicts with the physician's religious or moral beliefs?". The poll received 32,912 votes with 77% (25,230 votes) answering "yes", 23% (7,616 votes) answering "no" and 0% (66 votes) answering "don't know".

### The Draft Policy

- m. Following the consultation process, in or about December 2014, the CPSO released a draft version of its revised policy, *Professional Obligations and Human Rights* ("the Draft Policy").
- n. The Draft Policy contained two clauses which offended many physicians, including the Individual Applicants and the CMDS and CFCPS.



## Effective Referral

- o. The first clause required physicians holding a religious or moral objection to a particular procedure or pharmaceutical to provide patients with an “effective referral”. The clause in question read as follows:

Where physicians are unwilling to provide certain elements of care due to their moral or religious beliefs, an effective referral to another health care provider must be provided to the patient. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician or other health-care provider. The referral must be made in a timely manner to reduce the risk of adverse clinical outcomes. Physicians must not impede access to care for existing patients, or those seeking to become patients.

- p. The obligation to provide an “effective referral” for a procedure or pharmaceuticals to which the physician objects on moral or religious grounds is, for some physicians, unconscionable. Requiring a physician, including the Individual Applicants, to participate in a procedure or facilitate the administration of pharmaceuticals to which he or she objects on moral or religious grounds by providing a referral is a violation of that physician’s *Charter* right to freedom of conscience and/or freedom of religion.
- q. The CMDS and CFCPS advised the CPSO that requiring physicians to violate their religious or moral beliefs by engaging in such mandatory referrals would be challenged and would not survive *Charter* scrutiny.

## Urgent Care

- r. The second clause which offended the Applicants was a clause requiring physicians to provide pharmaceuticals or perform procedures to which they object on moral or religious grounds if the care is “urgent” or “otherwise necessary”. The clause in question read as follows:

Physicians must provide care that is urgent or otherwise necessary to prevent imminent harm, suffering, and/or

deterioration, even where that care conflicts with their religious or moral beliefs.

- s. The requirement that a physician provide “care” that is “urgent or otherwise necessary” even where that “care” violates their religious or moral beliefs is a violation of certain physicians’, including the Individual Applicants’, *Charter* right to freedom of religion and freedom of conscience.
- t. The CMDS and CFCPS advised the CPSO that requiring physicians to violate their religious or moral beliefs by engaging in such mandatory referrals would be challenged and would not survive *Charter* scrutiny.

#### The second consultation

- u. After releasing the draft of its revised policy, *Professional Obligations and Human Rights*, the CPSO again invited submissions from the public with a deadline of Friday, February 20, 2015.
- v. The CPSO received submissions from physicians, public-interest groups and members of the public. The overwhelming majority of the submissions urged the CPSO to respect physicians’ freedom of religion and freedom of conscience.
- w. The CPSO again received thorough and detailed submissions from the Applicants, the CMDS and the CFCPS which set out the ways in which the draft *Professional Obligations and Human Rights* would result in the violation of the *Charter* rights to freedom of religion and freedom of conscience of physicians in Ontario.

#### The CPSO vote

- x. On March 6, 2015, at a meeting of the CPSO Council, the CPSO acknowledged receiving 15,977 submissions from physicians, public-interest groups and members of the public in the course of both consultations. Of the 15,977 submission, 90% (or approximately 14,300) came from members the public and public-interest groups, and 10% (or approximately 1,600) came from members of

the CPSO. The overwhelming majority of the submissions urged the CPSO to respect physicians' freedom of religion and freedom of conscience.

- y. In the course of the March 6, 2015, the CPSO acknowledged that approximately, 10,000 of the submissions it received were received after February 11, 2015.
- z. During the March 6, 2015 meeting, two members of the CPSO Council suggested that the vote be delayed so that the Council take the time to consider and analyze the submissions received and the implications of the draft policy. The CPSO refused to delay its vote on the draft policy and proceeded, fourteen days following the consultation deadline, to pass the *Professional Obligations and Human Rights* policy (the "Final Policy") with some revisions.
- aa. The Final Policy still included the obligation for physicians who object to certain pharmaceuticals or procedures, including the Individual Applicants, to provide an "effective referral" and still included the obligation for physicians, including the Individual Applicants, to provide "care" in an "emergency where it is necessary to prevent imminent harm".
- bb. The CPSO voted to implement the Final Policy ostensibly after having considered the approximately 16,000 submissions provided, including the submissions of the Applicants, the CMDS and CFCPS.
- cc. The CPSO voted to implement the Final Policy in a 21 to 3 vote.
- dd. The CPSO did not provide reasons for implementing the Final Policy

**The Final Policy should be set aside**

- ee. The Final Policy is *ultra vires* in that the *Regulated Health Professions Act* and the *Medicine Act* do not give the CPSO the authority to implement policies which violate the *Charter*.
- ff. The CPSO failed to interpret its statutory objectives in a manner which reasonably considered *Charter* values including the *Charter* values of freedom of religion,

freedom of conscience, equality rights of religious individuals and Canada's multicultural heritage.

- gg. The Final Policy violates sections 2(a) and 15 of the *Charter* and such violations cannot be demonstrably justified in a free and democratic society.
- hh. The Final Policy violates the section 2(a) and 15 *Charter* rights of the Individual Applicants and such violations cannot be demonstrably justified in a free and democratic society.
- ii. The Final Policy violates the rights of the Individual Applicants under the *Human Rights Code*, RSO 1990, c H.1.
- jj. Further, or in the alternative, the CMDS and CFCPS have public interest standing to assert an infringement of sections 2(a) and 15 of the *Charter* and the *Human Rights Code*:
  - i. There is a serious justiciable issue raised by the Final Policy in that the question raised is an important and substantial constitutional and quasi-constitutional issue;
  - ii. The CMDS and CFCPS have a real stake and genuine interest in the issue in that they have a real and continuing interest in protecting the rights of their members and constituents to practice medicine in a way which does not violate their religious or moral beliefs and to be free from discrimination; and,
  - iii. This application is a reasonable and effective means of bringing the matter before the Court.
- kk. The CPSO ignored relevant facts, including:
  - iv. The Individual Applicants', and other physicians' rights under the *Charter*, including their freedom of conscience, freedom of religion and

- their right to equal treatment under the law without discrimination based on religion;
- v. The beliefs which lead the Individual Applicants, and other physicians to object to certain procedures or pharmaceuticals are sincerely held and grounded in religious beliefs or conscience;
  - vi. The Individual Applicants and other physicians are not subject to or bound by the *Charter*;
  - vii. For the Individual Applicants and other physicians to refuse to participate in or provide certain procedures or pharmaceuticals does not amount to discrimination;
  - viii. For the Individual Applicants and other physicians to refuse to participate in or provide certain procedures or pharmaceuticals does not violate the *Charter* rights of patients;
  - ix. For the Individual Applicants and other physicians to refuse to participate in or provide certain procedures or pharmaceuticals does not violate the *Human Rights Code*;
- ll. The CPSO erred by assuming that the Individual Applicants and other physicians were subject to and bound by the *Charter*.
- mm. The CPSO erred by assuming that it was not subject to and bound by the *Charter*.
- nn. The CPSO's consultations were conducted in such a manner as resulted in a denial of natural justice. Before, during and after the consultation processes, members of the CPSO acted in a manner that displayed actual bias on the part of the CPSO and its members or, in the alternative, gave rise to a reasonable apprehension of bias.
- oo. *Regulated Health Professions Act*, S.O. 1991, Chapter 18.

pp. *The Medicine Act*, S.O. 1991.

qq. *Statutory Powers Procedure Act*, RSO 1990, c S.22.

rr. *Human Rights Code*, RSO 1990, c H.1

ss. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

tt. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

uu. Rules 14.05(2) and 38 of the *Rules of Civil Procedure*.

3. The following documentary evidence will be used at the hearing of the application:
- a. The submissions filed in the first and second consultations;
  - b. The affidavits of the Applicants, to be sworn, and the exhibits thereto; and,
  - c. Such further and other material as counsel may submit and this Honourable Court permit.

**DATED** at Ottawa, Ontario, this 20<sup>th</sup> day of March 2015.

**VINCENT DAGENAIS GIBSON LLP/s.r.l.**  
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**THE CHRISTIAN MEDICAL AND  
DENTAL SOCIETY OF CANADA et al.**

and

**COLLEGE OF PHYSICIANS AND  
SURGEONS OF ONTARIO**

Applicants

Respondent

Court File No. 15-

8377

**SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Ottawa

**NOTICE OF APPLICATION**

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