Protection of Conscience Project

www.consciencelaws.org

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19 September, 2000

The Executive Council,
B.C. Civil Liberties Association,
425 - 815 West Hastings Street,
Vancouver, B.C.
Canada V6C 1B4

Dear Executive Council Members:

The Council has been presented with an agenda item that focuses on conscientious objection to abortion by health care workers. The Project invites the Executive Committee to adopt a broader approach by framing the issue somewhat differently, and to accept and defend four general principles.

The primary principle is that one should not be compelled to participate, directly or indirectly, in something to which one objects for reasons of conscience, nor suffer adverse consequences for refusal to participate. This principle protects fundamental goods of the individual and society.

I thank you for the opportunity to make this submission and look forward to hearing from you. Please contact me if the Project may be of further assistance.

Sincerely,

Sean Murphy,
Administrator

PROTECTION OF CONSCIENCE PROJECT

SUBMISSION

TO THE

EXECUTIVE COUNCIL

OF THE

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

19 September, 2000

The Issue

Should people be compelled to participate, directly or indirectly, in medical procedures to which they object for reasons of conscience?

Conflicts: Past, Present and Future

The Project website documents a number of cases involving repression of freedom of conscience that have arisen over the years,[1] and takes note of circumstances that suggest a potential for further conflict.[2] That many of these cases concern abortion is largely an accident of history, a result of the legalisation of what continues to be a controversial medical practice.

Developing technology promises to generate *more* moral controversy, not less. Disputes are already underway about the ethics of artificial reproduction, eugenics, genetic engineering, embryonic experimentation, organ harvesting and tissue trafficking. Lobbies for the legalisation of assisted suicide and euthanasia have been successful in some jurisdictions and continue to be persistent in others.

The provision of such procedures would impact many who are employed in health care and research. Naturally enough, those debating the new technologies or legalization of assisted suicide and euthanasia have concentrated on arguments about the rights of those seeking them; little or no attention is paid to the position of those who do not wish to participate in the procedures, yet may be expected to do so. In consequence, the issue of conscientious objection tends to be left out of political, policy and legal analyses, arising (if at all) only as a peripheral concern in implementation.[3]

The position of conscientious objectors is made more difficult when professional organizations or public institutions impose faith-based moral or ethical norms, frequently in the service of what is considered to be secular public policy.[4] This is an exercise of power and influence reminiscent of that exercised by organized religion before the separation of Church and State .

For example: the College of Pharmacists of British Columbia states that pharmacists who object to dispensing certain pharmacy products for moral or religious reasons must refer patients to colleagues who will provide such services, and in the end deliver these services themselves if it is impractical or impossible for patients to otherwise receive them. . Further, the College warns pharmacists that future services might expand to include preparation of drugs to assist voluntary or involuntary suicide [sic], cloning, genetic manipulation, or even execution . . . .[5]

This policy conflicts with moral or religious beliefs that absolutely proscribe direct involvement in the service in question, and dismisses as inconsequential any concerns about moral culpability arising from referral.[6] Yet the College asserts an absolute right to force its institutional moral judgement upon those who disagree:

> The moral position of an individual pharmacist, if it differs from the ethics of the profession, cannot take precedence over that of the profession as a whole. [7]

When asked if conscientious objectors would be compelled to dispense drugs intended to kill people if euthanasia, assisted suicide or execution by lethal injection were legalized [8] the Registrar offered the following response:

> Until such time as these are made legal or likely to be made legal, our College will not establish whether such procedures are recognized pharmacy services. In future, if any are determined to be recognized pharmacy services, our profession would be expected to provide them according to our Code of Ethics. [9]

In an article published in the Canadian Pharmaceutical Journal, this policy was urged as the ethical norm for the profession by Frank Archer, a B.C. pharmacist and member of the ethics committee of the College of Pharmacists of B.C.[10] The article - defective in several respects [11] - was cited favourably at the June conference of the Canadian Pharmacy Association. Not coincidentally, spokesmen for conscientious objectors at the conference were told by more than one colleague that they should leave the profession.

Framework for Discussion

Discussion of freedom of conscience in health care must move beyond ongoing debates about the morality of particular procedures. The practical reason for this is that piecemeal efforts cannot keep pace with new technological and social developments. More important, to ask whether or not Procedure X is morally or socially acceptable is to ask the wrong question when one is attempting to establish how freedom of conscience is to be accommodated in a pluralistic society.

Instead, there is **a need for a principled approach**. One must re-examine the concepts of freedom, of morality, of conscience, and the dignity of the human person, to discover how differing views about these fundamentals can be resolved or accommodated, and contribute as fully as possible to the common good.

In pursuit of this objective, it is also necessary to reconsider the language of public discourse. One may question, for example, how far values language clarifies or obscures points in issue.[12] Moreover, rights talk, customary in discussions about equality, is too confining when one must address issues of conscience. An alternative is suggested by the Charter of Rights, which distinguishes between *rights* and *freedoms*. There is **a need for adequate language**, a language of freedom.

Finally, the moral outlook of conscientious objectors is incomprehensible to many of their colleagues, often because their colleagues incorrectly consider their own views to be dictated by fact rather than faith. A closer examination frequently shows that the supposed faith-free position of those who oppose freedom of conscience in health care is equally an expression of beliefs that must be held on faith. In the interests of justice, there is **an urgent need to recognize the faith-based bias of a supposedly faith-free secularity**. [13]

Responding to the Issue

A. One should not be compelled to participate, directly or indirectly, in something to which one objects for reasons of conscience, nor suffer adverse consequences for refusal to participate. This principle protects fundamental goods of the individual and society.

B. In cases of conflict in health care that involve freedom of conscience, solutions that adversely affect freedom of conscience should not be considered unless other measures cannot be attempted without imminent danger of death or serious bodily impairment.

C. Adverse impacts on freedom of conscience that cannot be avoided must be minimized.

D. Ethical issues must not be overwhelmed by the rapid pace of developments in biotechnology, driven, in part, by consumer demand . Introduction or modification of health care delivery systems, procedures, products and services should be preceded and accompanied by ethical impact studies (analogous to environmental impact studies) to ensure that the changes will not harm the ethical environment , and that the moral and ethical interests of all parties are accommodated to the greatest possible extent.

NOTES

1. http://www.consciencelaws.org\Crimes.html

2. http://www.consciencelaws.org\ExaminingtheIssues\Background\IssuesBack01.html

3. See, for example, *Re: Rodriguez and Attorney General of British Columbia et al*, Supreme Court of Canada, 30 September, 1993: Court File 23476 107 D.L.R. (4th) 342, 85 C.C.C. (3d) 15, 20 W.C.B. (2d) 589.

Lamer, C.J.C. (dissenting) . . .I have held that S. 241(b) violates the equality rights of all persons who desire to commit suicide but are or will become physically unable to do so unassisted . . . . One of McEachern C.J.B.C.'s conditions is that the act of terminating the appellant's life be hers and not anyone else's. While I believe this to be appropriate in her current circumstances. . . why should she be prevented the option of choosing suicide should her physical condition degenerate to the point where she is no longer even physically able to press a button or blow into a tube? Surely, it is in such circumstances that assistance is required most. Given that Ms. Rodriguez has not requested such an order, however, I need not decide the issue at this time.

With respect, the Chief Justice appears not to have recognized that the arguments he had heard for and against Rodriguez rights and freedoms did not address the rights and freedoms of those to whom such an order would have been directed.

4. For the insights into secular fundamentalism see Benson I T. *Notes Towards a (Re) Definition of the Secular*. (2000) 33 U.B.C. Law Rev. 519 -549, Special Issue: "Religion, Morality, and Law", p. 521. Mr. Benson has written a popular summary of the main points in the Law Review article in *There are no Secular Unbelievers*, which appeared in Centre Points:Vol. 4, No. 1, Spring, 2000, the newsletter of the Centre for Cultural Renewal.
(On line at www.consciencelaws.org\ExaminingtheIssues\Ethical\Articles\Ethical10.html)

5. College of Pharmacists of British Columbia, Bulletin March/April 2000 Vol. 25 No. 2; *Ethics in Practice: Moral Conflicts in Pharmacy Practice*

6. See Murphy, Sean, *Referral: A False Compromise*.
(On line at www.consciencelaws.org\ExaminingtheIssues\Ethical\Articles\Ethical12.html)

7. See note 5.

8. Letter dated 29 April, 2000, from the Administrator, Protection of Conscience Project, to the Registrar, College of Pharmacists of British Columbia

9. Letter dated 9 May, 2000, from the Registrar, College of Pharmacists of British Columbia to the Administrator, Protection of Conscience Project

10. Archer, Frank, Emergency Contraceptives and Professional Ethics . *Canadian Pharmaceutical Journal*, May 2000, Vol. 133, No. 4, p. 22-26.

11. Murphy, Sean, *In Defence of the New Heretics: A Response to Frank Archer* (unpublished MS, July 2000) (Available at www.consciencelaws.org\Archive\Documents\NewHeretics.html)

12. Benson, Iain T., *Are Values the Same as Virtues ?*. Centrepoints, Vol.ÿ2, No. 2, Article #1, Fall, 1996 (Newsletter of the Centre for Cultural Renewal).
(On line at www.consciencelaws.org\ExaminingtheIssues\Ethical\Articles\Ethical04.html)

13. See note 4, and the *Project Submission to the All-Party Oireachtais Committee on the Constitution (Ireland).*
(On line at www.consciencelaws.org\Archive\Documents\Irishcommittee.html)