

POLICY BRIEF: PROTECTING CONSCIENCE RIGHTS FOR ONTARIO HEALTHCARE WORKERS

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April 2022

ISSUE

Section 2(a) of the *Canadian Charter of Rights and Freedoms* recognizes freedom of conscience and religion as a fundamental freedom – the highest form of freedom. Despite this constitutional protection, members of regulated health professions in Ontario lack robust protection for freedom of conscience. While these practitioners are exempt from directly providing procedures that violate their conscience, they are still required to provide effective referrals.

RECOMMENDATION

Ontario should introduce legislation to uphold and protect the conscience rights of all healthcare workers, including those identified by the *Regulated Health Professions Act*. This protection would cover physicians, nurses and nurse practitioners, pharmacists, and pharmacy technicians. Practitioners should not be required to perform or provide effective referrals for procedures that go against their conscience. They should also be protected from employment or disciplinary action in these cases.

BACKGROUND

Cardus has explored the importance of freedom of conscience in greater detail in our report, “Our Inner Guide: Protecting Freedom of Conscience.” In this report, we find that the Supreme Court of Canada has only made one ruling that relied exclusively on freedom of conscience in the past forty years. While freedom of religion has received extensive treatment, freedom of conscience is an effectively dormant provision in the courts. Legislators have an opportunity to proactively define the contours of this freedom, especially in the healthcare setting.

It is important to note that freedom of conscience is complementary to, but distinct from, freedom of religion. Everyone has a conscience but not everyone has a religion. In that vein, the protection of conscience is not limited to adherents of a particular religion. This

universality means that there is no definitive set of procedures that may infringe a person's conscience. For example, in light of the anticipated expansion of assisted suicide (commonly known as MAiD) for mental illness, non-religious doctors may conscientiously object to referring patients for this procedure. Recent reporting on this issue has shown the challenge doctors will face in determining if or when a mental illness is "grievous and irremediable."

For health professionals, registering with their applicable college is necessary to practice their profession. However, the professional standards of these organizations may require practitioners to go against their conscientious beliefs. In 2019, the Ontario Court of Appeal found that physicians must provide effective referrals for procedures that are contrary to their religious beliefs. This decision sided with the professional obligations outlined by the College of Physicians and Surgeons of Ontario (CPSO).

According to the CPSO an effective referral is a "positive action to ensure the patient is connected in a timely manner to a non-objecting, available, and accessible physician, other health-care professional, or agency that provides the service or connects the patient directly with a health-care professional who does." An article in the Canadian Medical Association Journal notes the gravity of effective referrals for procedures such as assisted suicide: "For physicians who object to MAiD on religious or other grounds of conscience, providing a direct referral makes them complicit in the procedure. This is not mere semantics — to be blunt, the physician must ask another healthcare provider to consider killing their patient."

POLICY DETAILS

The prevailing attitude towards conscientious objection in Ontario is that the failure to provide an effective referral is tantamount to blocking a patient's equitable access to healthcare. This balancing has erred disproportionately on the side of patient access over the protection of practitioners' fundamental freedoms. In light of these challenges, legislation should be introduced to uphold and protect the freedom of conscience for health practitioners. These protections should cover the direct or indirect participation in any procedure that violates the practitioner's conscientious convictions.

Manitoba's *Medical Assistance in Dying (Protection for Health Professionals and Others) Act* offers a framework for conscience protection legislation. Following this model, Ontario's legislation should include the following:

- **Protection for all healthcare workers:** The law should extend to all healthcare workers, including those identified by the *Regulated Health Professions Act*.
- **Protection for any objectionable procedure:** The law should not be limited to certain procedures (such as the restriction to assisted suicide in Manitoba), but extend to any procedure or prescription drug that violates the practitioner's conscience.

- **Protection from effective referrals:** The law should protect practitioners from the requirement to provide effective referrals for procedures or prescription drugs that conflict with their conscientious beliefs.
- **Protection from disciplinary or employment action:** The law should protect individual practitioners from any disciplinary or employment action from their regulator or employer if they refuse direct or indirect participation in a procedure based on conscientious objection.

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