

CONSCIENCE IN HEALTHCARE

In this report, we explain what freedom of conscience is, why this *Charter*-protected fundamental freedom is so important, and how we should navigate limitations on freedom of conscience. These concepts are specifically applied to freedom of conscience in healthcare. We provide recommendations for how the government can better protect conscience for healthcare professionals.

The term ‘conscientious objector’ was popularized in Canada during the World Wars. Conscientious objectors refused to bear arms or participate in military service due to their moral objection to the use of lethal force.¹ They were often threatened, ridiculed, or coerced to participate. The issue intensified when the federal government enacted legislation to conscript soldiers to fight in both wars. In 1940, the federal government instituted compulsory military service within Canada, and by 1944, announced that conscripts would also be sent overseas.² The government also appointed mobilization boards to assess the sincerity of a conscientious objector claim.³ Many objectors were willing to serve in the army as a cook, a field medic, or any other job that did not require bearing arms.⁴ They were willing to serve their country on the field of battle, but not by killing the enemy.

While the term ‘conscientious objector’ is relatively new, the idea is not. In the sixth century B.C., a Babylonian emperor commanded that all people in his realm bow to a statue he had made. Three of the king’s

young officials refused, even under threat of death, by appealing to an authority higher than the king: “We have no need to answer you in this matter ... our God whom we serve is able to deliver us from the burning fiery furnace ... But if not, let it be known to you, O king, that we do not serve your gods, nor will we worship the gold image which you have set up.”⁵ Several centuries later, Roman emperors demanded to be hailed as gods. In response, Tertullian stated, “Never will I call the emperor God, and that either because it is not in me to be guilty of falsehood; or that I dare not turn him into ridicule; or that not even himself will desire to have that high name applied to him.”⁶ Because of his conscience, Tertullian could not state as true something he believed to be false.

The conflict between a person’s conscience and the expectations of her country or community manifests in different ways today. With conscription, the challenge for the country’s leaders was whether they could effectively defend the nation from a violent threat while accommodating

Conscience: your consciousness of what you believe is right and wrong.

conscience claims – claims that might not only reduce military manpower, but also implicitly or explicitly criticize the morality of military service itself.⁷ Today, conscientious objection to participation in certain medical procedures, such as euthanasia or abortion, raises questions about the ease of patients' access to those procedures, but also questions about how far the civil government should go to accommodate views that offend majority sensibilities.

A modern-day example of a conflict of conscience may look more like a physician who is directed to make an effective referral for assisted suicide despite believing it is wrong or harmful to patients. After giving an effective referral, one physician stated:

*"I ignored my conscience, opting instead to follow the college policy and convincing myself that I had no choice ... this was destructive to my very core. I felt like a shell of myself. Months later, I often still do. I came very close to leaving palliative care at the time, and every day I continue to question my ability to stay in this field."*⁸

The question ultimately is, if most of the community believes something is good or morally acceptable – be it access to abortion or assisted suicide or various other medical procedures – should that community tolerate those who believe and act otherwise?⁹

What Is Conscience?

By their conscience, people judge their own actions, feeling guilty if they believe they

have done wrong and feeling justified if they believe they have done right. Although conscience can be mistaken, oversensitive, or insensitive, every person has a conscience which governs their own thoughts and actions.¹⁰ While definitions of conscience vary, they centre around the concept of moral right and wrong. These ideas can be summed up by defining conscience as "your consciousness of what you believe is right and wrong."¹¹ A person applies this understanding of right and wrong to judgments about past actions, or to decisions about future action.¹²

A proper understanding of conscience demonstrates that there is diversity within society about beliefs of right and wrong, but also that individuals might choose to break from accepted norms and appeal to a higher authority.¹³ God created humans with a conscience – with moral agency – and thus holds all people to a standard of right and wrong. The apostle Paul wrote, "They [non-Christians] show that the work of the law is written on their hearts, while their conscience also bears witness, and their conflicting thoughts accuse or even excuse them."¹⁴ Elsewhere in the New Testament, the apostles Peter and John were commanded not to speak in the name of Jesus, to which they replied, "Whether it is right in the sight of God to listen to you more than to God, you judge. For we cannot but speak the things which we have seen and heard."¹⁵ Freedom of conscience applies both to those who adhere to a particular religion and those who do not and ultimately finds its roots in the idea of authority.



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Conscience and Authority

In *R. v. Oakes*, Chief Justice Dickson identified the “values and principles essential to a free and democratic society” as including “accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.”¹⁶ The Supreme Court has repeatedly emphasized that a “free and democratic society” rejects majoritarian discrimination and protects minority rights.¹⁷

The limited authority of the state is affirmed in the preamble to the Charter which invokes “the supremacy of God and the rule of law” as principles upon which Canada is founded. The former principle signifies that the state is neither the sole nor the highest authority, nor the ultimate source of rights and freedoms.¹⁸ The latter principle means that all state actors must have intelligible sources for, and limits on, their authority.¹⁹ The preamble to the Charter signals “a kind of secular humility, a recognition that there are other truths, other sources of competing worldviews, of normative and authoritative communities that are profound sources of meaning in people’s lives that ought to be nurtured as a counter-balance to state authority.”²⁰

Conscientious objection is usually understood to involve a conflict between an individual and a civil authority. Therefore, it is important to understand authority and how it relates to individual consciences. Every person has some idea of authority and is subject to various authorities, such as one’s parents, employer, or civil governments. Individual consciences are “formed in such a way to recognize and obey legitimate

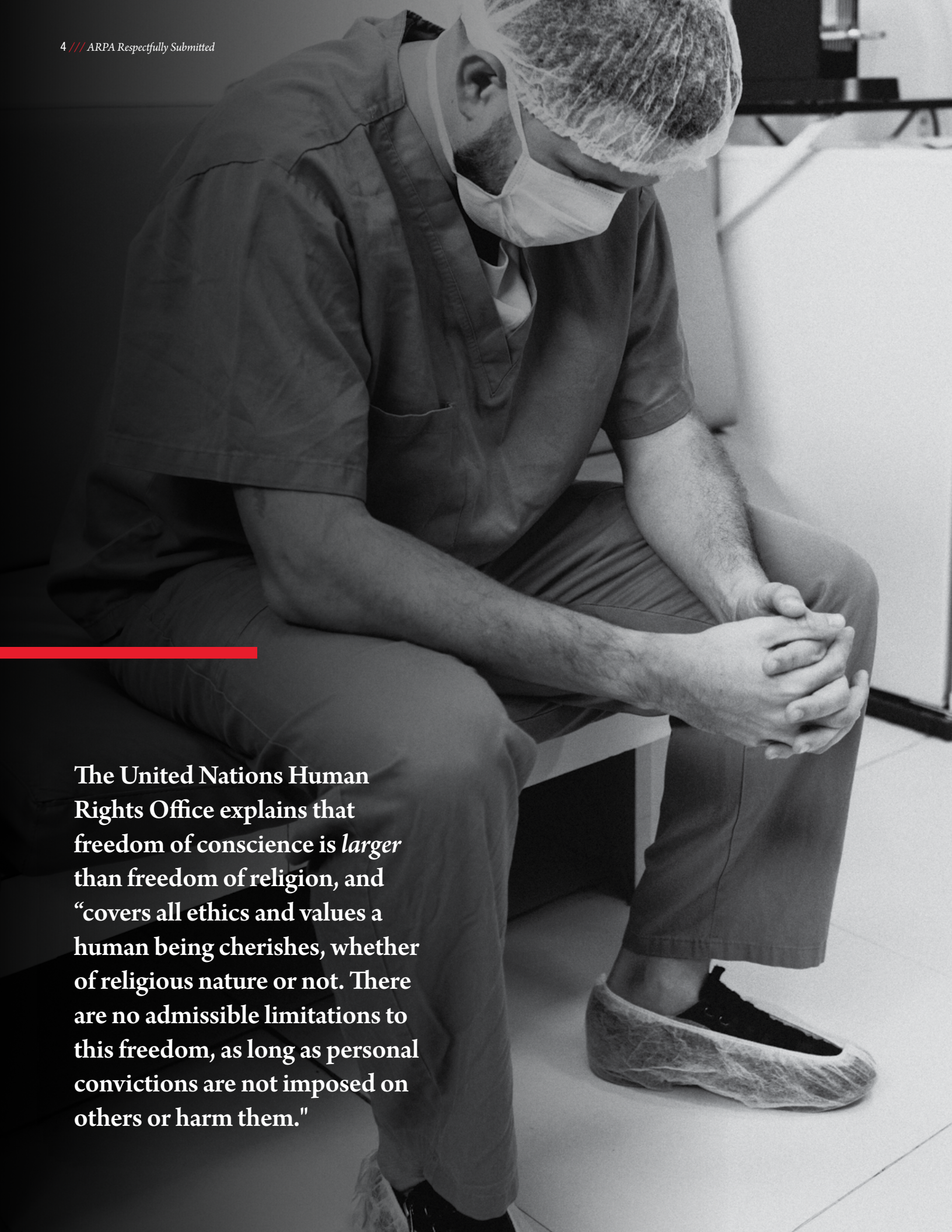
authority.”²¹ God is the only one who has no limits to His power and authority, yet He also gives power and authority to various people in different areas of life, such as the family, the Church, or society. The state also receives its authority from God and exists alongside the other areas of society.²² All earthly authority is derived from God Himself and is subject to Him.²³ While civil governments have authority to preserve order and punish evil actions, the only authority over the conscience is God.²⁴

John Calvin, a sixteenth century theologian, explained that “the political liberty of believers ... is not so much a subjective right as a function of the political office.”²⁵ In other words, religious liberty exists because the authority of the state is limited to a specific realm and does not command the conscience. If political officials respect the duties and limits of their office, liberty will also be protected as a consequence of good government.²⁶ This does not diminish the authority of the state, but places that authority in the proper perspective, pointing to conscience as a matter between God and people, not subject to coercion by earthly authorities.²⁷ Freedom of conscience, then, is also directly related to the sovereignty of God, and His right to command the conscience.²⁸

Abraham Kuyper describes conscience as “the shield of the human person, the root of civil liberties, the source of a nation’s happiness.”²⁹ In response to civil demands to act contrary to one’s conscience, conscientious objectors will act in accordance with principles taught by a higher authority, because their conscience is ultimately subject to God.³⁰

Distinction Between Conscience and Religion

Although often listed alongside freedom of religion, freedom of conscience is a distinct category. Whether a person adheres to a particular religion or not, every individual has distinct views about the world around them and will seek to live according to their beliefs about the nature of truth and how to live the good life.³¹ One legal scholar states that “the idea of conscience implies a moral standard and that standard is both arrived at and applied through reasoning about what constitutes the ‘good’ and how it may best be attained.”³² Whether secular or religious, every person follows a set of moral standards, which may follow a line of conscious or unconscious reasoning.³³ Protecting conscience allows individuals to engage in moral reasoning and act on the conclusions they have reached, within limits required by justice.³⁴ Chief Justice Dickson explained in *R. v. Edward Books* that the purpose of protecting freedom of conscience and religion in s. 2(a) of the *Charter* is “to ensure that society does not interfere with profoundly personal beliefs that govern one’s perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one’s conduct and practices.”³⁵ Regardless of what a person believes about the nature of truth, conscience also refers to what an individual believes they are personally required to do or not do. Conscience claims, though they may be based on an individual’s beliefs regarding universal moral truths, are always subjective. That is, they are based on what the individual understands to be morally necessary for himself. A conscience claim might also be



The United Nations Human Rights Office explains that freedom of conscience is *larger* than freedom of religion, and “covers all ethics and values a human being cherishes, whether of religious nature or not. There are no admissible limitations to this freedom, as long as personal convictions are not imposed on others or harm them.”

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subjective in that a person believes a certain action would violate her conscience yet be acceptable for others or, alternatively, that what is acceptable for her may be unacceptable to others.

Conscience claims are rooted in one's beliefs about the world, whether those beliefs are based in religion, reason, or another higher source of truth. Some conscience claims may be based in religious commitment, and there can be overlap between conscience and religion. However, many issues of moral discourse do not arise solely from religious doctrine. In many cases, religious and non-religious people can come to the same moral conclusions.³⁶ Freedom of religion covers matters of faith and a particular religious doctrine, while freedom of conscience covers matters of moral conviction. While conscience helps everyone, secular or religious, to understand their duties toward others, conscience also points to how they can act in accordance with the truth.³⁷ A secular doctor, for example, might conscientiously object to providing a particular service on the basis of their Hippocratic oath or the doctor's professional opinion of the best interests of the patient.

Freedom of conscience includes the freedom from being compelled to do something a person considers evil which takes precedence over the freedom to act on something a person believes is good.³⁸ Forcing an individual to commit wrong harms that person because she is required to neglect her personal integrity and is hindered from developing her ability to continue to do what is right. On the other hand, if a person

is prevented from pursuing a certain good in a particular manner, she may still be able to pursue other goods or pursue the same good in other ways, without violating her conscience.³⁹ Although government actors determine the legality of an action or practice (e.g. assisted suicide, circumcision, gender transition surgery, etc.), individuals must be permitted to hold and express their beliefs regarding the (un)ethical nature of that action even if it is legal, and be permitted to govern their actions accordingly.⁴⁰

Conscience within a Constitutional Framework

Freedom of conscience and religion are protected by section 2(a) of the *Charter of Rights and Freedoms*. Freedom of conscience can be viewed as a basic building block for the other fundamental freedoms. As Chief Justice Dickson noted in *R. v. Big M Drug Mart*, "What unites enunciated freedoms in the American First Amendment, s. 2(a) of the *Charter* and in the provisions of other human rights documents in which they are associated is the notion of the centrality of individual conscience and the inappropriateness of governmental intervention to compel or to constrain its manifestation."⁴¹ Respect for freedom of conscience is closely related to valuing human dignity, which creates a foundation for the protection of rights and liberties for individuals.⁴² It ensures that any person can pursue the truth and live accordingly. Article 18 of the Universal Declaration of Human Rights declares: "Everyone has the right to freedom of thought, conscience and religion;

this right includes freedom ... either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."⁴³

European societies came to recognize the necessity of respecting individual conscience in the wake of religious persecutions and wars.⁴⁴ Canada's history of religious tolerance was influenced by examples from both American and British religious divides in the 16th and 17th centuries. Canada's political and legal tradition was shaped by the joining together in one dominion of Protestants in Upper Canada and Catholics in Lower Canada. By the time of Confederation, the provinces and colonies sought to expand tolerance of religion and conscience for all Canadians.⁴⁵

Since religion and conscience are defining aspects of a person, they can also raise issues of equality under law.⁴⁶ For example, if a person cannot access a public benefit or service without violating his religious or conscientious beliefs, he is deprived of the equal benefit of the law contrary to section 15 of the *Charter*.⁴⁷ In light of current disputes over conscientious objection, lack of conscience protection can result in discrimination in the area of employment where a public body requires someone to violate her conscience in order to provide an ethically disputed service or else lose her license to practice her profession.⁴⁸

Limits to Freedom of Conscience

The importance of freedom of conscience does not mean it is an absolute right, but it

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does mean that any decisions which are made regarding conscience must not trivialize conscience. As much as possible, it should be protected.⁴⁹ The protection of conscience in section 2(a) of the *Charter* is subject only to demonstrably justified limits in a free and democratic society.⁵⁰

Convictions of conscience occupy a more important and central place in a person's life than mere preference or opinion.⁵¹ Freedom of conscience should be distinguished from general freedom of choice. Conscience is not a right to do whatever one wants. To equate freedom of conscience with absolute autonomy is to say that no one is subject to other authorities and that a person can do what they wish on the basis of individual choice. But there *are* other authorities and moral and ethical considerations that conscientious individuals must be subject to.⁵² Freedom of conscience respects a *limited* sphere of individual authority while still recognizing other legitimate authorities which can impose certain obligations on individuals.⁵³

Sincere and insincere appeals to conscience may be hard to distinguish. For example, during a time of war, someone might claim to be a conscientious objector even if they have no moral objections to war but would simply rather stay home. The abuse of freedom of conscience is a real risk, but as Abraham Kuyper comments, "Ten times better is a state in which a few eccentrics can make themselves a laughingstock for a time by abusing freedom of conscience, than a state in which these eccentricities are prevented by violating conscience itself."⁵⁴ Still, there are times where requests for accommodation should be rejected, such as in cases of manifest insincerity, or in cases where someone tries to appeal to conscience to justify gross evil.⁵⁵ This is often the key issue in protecting freedom of conscience: will the accommodation of an individual's conscientious objection gravely injure the public interest or the fundamental rights of others?

Application: Conscience in Healthcare

Historically, penalties for conscientious refusal have included employment loss, jail

time, or even death.⁵⁶ A major present-day conscience debate involves performing, arranging, or facilitating morally controversial medical procedures. Conflict often arises when two parties have different ideas of the good, as for example in questions of human life or theories of gender and sexuality.⁵⁷

Many people raise moral objections to abortion, euthanasia, circumcision, sex reassignment, body modifications,⁵⁸ and other procedures. People have opposing views on whether such procedures are good for an individual or for society. Moral objections to these and other procedures are not necessarily connected to specific religious beliefs, but they are certainly matters of conscience.

A recent court case involved a *Charter* challenge to a College of Physicians and Surgeons of Ontario policy requiring physicians to provide an effective referral to patients who request euthanasia, or what the College and others refer to as Medical Assistance in Dying (MAiD).⁵⁹ The College defines "effective referral" as "tak[ing] 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."⁶⁰ An "effective referral" is more involved than simply providing a different doctor's name and coordinates. It requires an objecting physician to actively connect the patient with a physician who would perform the lethal act. Despite his ardent criticism of conscientious objection in healthcare, Udo Schuklenk admits that effective referral is not a compromise for a conscientious objector. Rather, if a doctor believes a procedure constitutes murder, they are morally complicit in the act when they pass the patient on to a physician who will commit the act.⁶¹ Understandably, many physicians see an "effective referral" as participation in the act. The Ontario Court of Appeal said the College policy infringed freedom of religion, but deemed the infringement justified under s. 1 of the *Charter*.⁶² However, the court did not analyze the issue of freedom of conscience or consider whether the morality of the service in question could be debated. If the

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Court had done so, it might have left room for disagreement, rather than requiring all doctors to participate in euthanasia, at least indirectly.

Conscience rights for medical professionals and access to care can be more appropriately balanced through means other than effective referral requirements. A regulatory body may require physicians to provide general care to any patient, yet physicians should have freedom to refuse to participate in particular procedures for professional, moral, or conscientious reasons. Professional responsibility requirements should ensure that medical professionals provide the best possible care to patients and communicate conscientious objections with honesty and respect. Medical professionals can be required to give honest answers in response to questions about the legal status of a particular procedure but must not be coerced to assist with or participate in the provision of the procedure.

Conscience rights should be respected for all healthcare professionals – including doctors, nurses, pharmacists, and other healthcare workers – in the matter of elective treatments that are not immediately required to prevent death or serious long-term health consequences to the patient. No healthcare professional should face disciplinary or employment repercussions for declining to provide or participate in controversial medical procedures such as euthanasia, abortion, or sex reassignment.

Likewise, private healthcare entities should be protected from coercion to provide controversial services in their facilities.

Although conscience refers to the thoughts and actions of an individual, freedom of conscience should protect institutions consisting of like-minded conscientious objectors, because it limits government authority to compel morally objectionable conduct. For example, a seniors' residence or a hospice might be run by a community of individuals who object to participating in assisted suicide. Protecting institutions like these will also help ensure greater diversity and choice for patients. Patients in a hospital or seniors in a care home often wish to have care options that reflect their own unique needs and beliefs.

Professional Responsibilities

A patient may disagree with her doctor's opinion. Such disagreement on its own is no basis for disciplinary action against the doctor. A clear example of this is circumcision of male infants. Some parents, for religious or health reasons, choose to have their male infants circumcised. Doctors disagree regarding the health consequences and moral implications of such a procedure. Although circumcision is legal, a doctor can refuse to provide the service to a patient and is not required to give the patient a referral to a different doctor.⁶³ Doctors must always consider the best interests of the patient when providing medical services and in many cases may refuse to participate in a service if, in their professional opinion, a particular procedure is not in the best interest of the patient. When it comes to other controversial services such as abortion or euthanasia, however, doctors in some

jurisdictions in Canada are required to participate in providing the service through an effective referral or other means. In these circumstances, doctors are expected to fill patients' requests on demand without consideration for any of the other factors involved in healthcare decisions. This disrespects physicians' professional and personal integrity.

A patient goes to their doctor for professional advice. That professional advice is based on the physician's education, experience, and best judgment, all of which are grounded in their moral and professional convictions. In *Flora v. Ontario Health Insurance Plan*, the Ontario Court of Appeal affirmed that ethical considerations are essential in medical decision-making.⁶⁴ Ultimately, the decision on which course of treatment to take lies with the patient, and if they do not agree with the medical advice given, the patient is free to find another doctor. A doctrinaire approach to new and controversial medical and ethical issues can cause specific groups of people to feel isolated, marginalized, and suspicious of the system which is supposed to help them navigate difficult medical choices. A medical professional can inform his patient about the services available but should not be required to facilitate or coordinate treatment that he does not believe is good for the patient.

Conscientious refusal to perform a particular procedure should not be misunderstood as a rejection of an individual patient. Doctors are generally free to refuse a requested service, using their professional judgment. This is also the case for lawyers, who are permitted to refuse a client's case, or to refuse to advance

a certain argument or strategy for ethical or professional reasons. Just because a doctor refuses to participate in a medical procedure that she conscientiously opposes, it does not mean she denies the human dignity or equality of those who support that procedure.

Conscience claims may on occasion cause inconvenience or hurt feelings. Inevitably, one person's conscientious beliefs will explicitly or implicitly impugn the beliefs of another person.⁶⁵ However, "if these feelings of hurt and rejection are sufficient to rule out the right of others to make those claims, freedom of conscience becomes useless in any area of life that does not reflect the moral conclusions of our judiciary."⁶⁶ Someone who appeals to conscience is not typically seeking to convince others of their views (though they should be free to try to persuade others), but to live according to their own conscience and to prevent moral harm to themselves.⁶⁷

Diversity in the Healthcare System

To accommodate conscience claims in the medical system is not to give preferential treatment to some. Religious and conscientious convictions are not simply a choice, but core to a person's system of beliefs. Government entities have a duty to protect equal opportunity for persons of various religious backgrounds and varying belief systems to enter the medical system and cannot let factors such as a person's religion or moral compass "diminish a person's opportunities to flourish."⁶⁸ Lack of protection for conscientious objectors can close the door to equal opportunity in a chosen career.⁶⁹

Penalizing (or potentially disqualifying) physicians with conscientious objections to certain controversial services homogenizes and hurts our healthcare system. Such policies will likely cause Canadians from various religious backgrounds and traditions to be underrepresented in the healthcare system and further reduce options for those seeking medical care. If there is a diversity of opinion on certain procedures within the healthcare professions, it stands to reason that a similar diversity exists in the wider population. In 2015, Canada's ratio of physicians to population ranked 29th out of 33 high-income countries. The low ratio

results in longer wait times for patients and difficulty in finding family doctors.⁷⁰

Government and professional regulatory bodies should respect physicians' consciences, first of all, because it is the right thing to do. Coercing people to act against conscience assaults their integrity and, in most cases, involves a violation of the proper limits of civil authority. But respecting conscience has other benefits. Patients should enjoy access to a strong and diverse healthcare system. Medical professionals will have differing professional opinions about what is good for their patients in particular situations, and how they can best pursue

patient health. Canada's healthcare system needs this diversity of ideas and worldviews in order to truly thrive. This allows patients to choose professionals who practice with integrity according to principles similar to the patient's own convictions.

Freedom of Conscience and Robust Medical Debate

There is a strong connection between freedom of conscience and freedom of expression, particularly in the field of medicine.⁷¹ In medicine, as in other professions, individuals are given a responsibility to do what is best for those they





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serve. The history of medicine reveals a strong societal and professional impulse to defend the status quo and to fail to consider whether an accepted practice may be unethical or harmful.⁷² Certain healthcare practices may injure health and harm a patient. A diverse healthcare system allows for new ideas to be tried and tested.⁷³ If a government compels doctors and other healthcare professionals to act contrary to their conscience, it imperils the integrity of the medical system.

The connection between conscience rights and freedom of expression or debate is most clearly seen when the issue is politically charged, forcing activist pressure into doctors' offices. Doctors who dare to

question political-medical trends have been demonized and deprived of prestigious positions for sharing their views.⁷⁴ Doctors who refuse to euthanize a patient on request, or recommend counseling instead of surgery for gender dysphoria, or decline to provide an abortion in a remote community, face inordinate pressure to silence their conscience on what is best for the patient and to instead conform to mainstream treatment options.

Patients suffer when a doctor has been trained to quiet her conscience and follow the crowd. Where doctors are permitted to act according to their conscience, there is more likely to be testing of ideas and challenging of

assumptions within the medical profession, something that benefits all patients.

Government Limitations and Maximum Feasible Accommodation

Civil authorities must respect the right for individuals to live according to their conscience in a way that reflects their view of what is true and good. Government may compel individual action to which some object, such as paying taxes or other civic responsibilities. Likewise, civil authorities must also prevent people from committing evil or injustice based on a conscience claim. However, a heavy burden remains on the

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state to justify coercing someone to act contrary to conscience.⁷⁵ Governments have often abused their power and authority, but, as Kuyper noted, “the only point of support that has ultimately proved invincible and indomitable over against the power of the state is the conscience.”⁷⁶ The government may pursue a variety of objectives, but it must not do so at the undue and unjustified expense of freedom of conscience. Laws will often have unintended impacts on certain segments of the population. When this happens, measures of accommodation may be required to mitigate the negative effects, and the government should seek to provide such accommodation.⁷⁷

Canadian philosophers Jocelyn Maclure and Charles Taylor suggest that there are two premises underlying the obligation to reasonably accommodate conscience. First, there are times when rules are unintentionally discriminatory to certain religious groups, in which case special accommodation of these groups is required. Laws are not neutral, but often favour certain religious or ideological preferences, or are enforced in line with the ideals of the majority. The principle of reasonable accommodation was established to avoid indirect discrimination and majoritarianism, allowing those negatively impacted by broad rules to continue to live according to their conscience.⁷⁸ Second, conscientious and religious convictions “form a particular type of subjective preference that calls for special legal protection.”⁷⁹ Conscientious objections are more than simply a choice or preference that can be changed at will. To refuse to respect someone’s freedom to live according to their conscience impinges on their fundamental beliefs and violates their integrity.⁸⁰

Philosopher William Galston describes the political philosophy of Hobbes and Rousseau as attempting “in different ways to subordinate religious claims to the sovereignty of politics.”⁸¹ He describes this tradition as an effort to return to the “civic totalism” of ancient Greece and Rome, in which “intermediate associations existed solely as revocable ‘concessions’ of power from the sovereign political authority.”⁸² Civic totalism has not triumphed in Canadian legal history, but it will if the civil government or the citizens fail to respect freedom of conscience. A free and democratic society is pluralist, not statist. Thus, a free, pluralistic society should “pursue a policy of *maximum feasible accommodation*, limited only by the core requirements of individual security and civic unity.”⁸³ Canada’s governments – and populace! – must do more to maximize the accommodation of conscientious objectors.

RECOMMENDATIONS

Debate about foundational ethical principles is beneficial to society.⁸⁴ Courts and legislatures must decide whether to give space to differing normative views.⁸⁵ In a democratic society, citizens must enjoy the freedom to debate and to work out and live their moral beliefs.⁸⁶ In *R. v. Big M Drug Mart*, Chief Justice Dickson stated that “the ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.”⁸⁷ As such, unjustified limitations of freedom of conscience violate a critical ideal of a free and democratic society.

All levels of government should respect freedom of conscience in healthcare. Conscience should be accommodated as

much as possible, especially on controversial issues where people reasonably differ in their moral views. Although the recommendations in this report focus on conscience in healthcare, the principles can be applied to multiple areas and issues within Canada.⁸⁸


Recommendation #1:

Euthanasia, commonly referred to as Medical Assistance in Dying (MAiD), is homicide according to the *Criminal Code* (though it is non-culpable homicide when done according to the MAiD rules). The federal government should amend the *Criminal Code* to make it an offence to coerce any healthcare professionals (medical practitioners, pharmacists, nurse practitioners, or social workers, psychologists, psychiatrists, therapists, or other healthcare professionals), or private healthcare entities (such as seniors’ care homes, palliative care facilities) to provide or participate in homicide.

Section 241.2(9) of the *Criminal Code* states, “For greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying.” To provide more teeth to section 241.2(9) and to protect the moral integrity of the medical profession, Parliament should add a further clarifying section: 241.2(9.1) “Any person who compels an individual to provide or assist in providing medical assistance in dying is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than 5 years; or (b) is guilty of an offence punishable on summary conviction.”

Recommendation #2:

Recognizing that Canadians disagree on the morality and/or medical necessity or



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advisability of abortion, the use of opposite-sex hormones, or body modification surgeries, the federal government should make it a criminal offence to coerce any healthcare professionals to provide or participate in elective procedures for non-life-threatening conditions or illnesses.

Recommendation #3:

Provincial governments should legislate protection of freedom of conscience for regulated healthcare professionals who cannot conscientiously participate in controversial procedures and services.⁸⁹ Conscientious objectors must not face disciplinary action or loss of employment based on their conscientious beliefs regarding assisted suicide, abortion, chemical contraceptives, gender reassignment by surgical or pharmaceutical means, or other morally controversial treatments or procedures.

For example, the *Ontario Human Rights Code* provides in section 6: “Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.”

A clarifying statement should be added: 6(2) For greater certainty, the term “creed” in this section includes conscientiously held beliefs.

Similar changes should be made in other provincial human rights instruments.

Recommendation #4:

Provincial governments should respect the freedom of private care institutions, such as seniors’ residences and palliative care facilities, to decline to provide morally

controversial services, especially euthanasia. Put another way, provincial governments should encourage and support – or, at a minimum, not oppose – the founding of care facilities that are founded and operated based on certain ethical beliefs, whether rooted in a particular religion or not.

Recommendation #5:

If a provincial government or medical regulatory body wishes to promote easier patient access to a particular service, the government can set up a centralized system through which patients can find a medical professional willing to provide that service. If asked about a controversial service, medical professionals may be required to provide an honest answer about the legal status or availability of a procedure or practice, while also being permitted to state their conscientious objection or to offer their professional opinion regarding the procedure.

Recommendation #6:

Where employees in the medical field have sincere conscientious objections to being subjected to certain medical procedures themselves (mandatory vaccination policies, for example), the government should pursue a policy of *maximum feasible accommodation* by considering all other options that substantially achieve the same policy goal without violating the conscience of the employee (daily rapid testing for a virus, for example). While such options can be inconvenient for objecting employees, they must not violate the employee’s conscience.

**All citations, with hyperlinks, are included in the electronic version of this report, available at ARPACanada.ca/policy-reports*

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Endnotes

- 1 One man, upon being threatened that he could be shot for not following military orders, stated, "I've looked down too many rifle barrels in my time to be scared that way. This thing is in our blood for four hundred years and you can't take it away from us like you'd crack a piece of kindling over your knee ... We believe in this." Barry W. Bussey, "The Canadian Experience in WWII," in *Should I Fight? Essays on Conscientious Objection and the Seventh-day Adventist Church*, ed. Barry W. Bussey (Belleville, ON: Guardian Books, 2011), 117.
- 2 J.I. Granatstein, Richard Jones, and Andrew McIntosh, "[Conscription in Canada](#)," *The Canadian Encyclopedia*.
- 3 Bussey, "The Canadian Experience in WWII," 119.
- 4 Bussey, "The Canadian Experience in WWII," 109.
- 5 Daniel 3:16-18.
- 6 Tertullian, *The Writings of Tertullian - Volume I*, ed. Anthony Uyl (Ingersoll, ON: Devoted Publishing, 2019), 60.
- 7 Richard Moon, *Freedom of Conscience and Religion* (Toronto, ON: Irwin Law, 2014), 196-197.
- 8 Legislative Assembly of Ontario, Standing Committee on Finance and Economic Affairs, "Medical Assistance in Dying Statute Law Amendment Act 2017" in Official Report of Debates (Hansard) 41st Parl., 2nd Sess., No F-17 (30 March 2017) at F-570, JBA. The Committee witness was Dr. Natalia Novosedlik.
- 9 The principles within this report are applied directly to freedom of conscience in the medical system. However, they could also be applied to provision of government services, as in the case of marriage commissioners, or the provision of services by the creative, artistic, and craftsman industries.
- 10 James Stalker, "[Conscience](#)," *International Standard Bible Encyclopedia Online*.
- 11 Andrew Naselli & J. D. Crowley, *Conscience: What It Is, How to Train It, and Loving Those Who Differ* (Crossway, 2016), 42.
- 12 Stalker, "Conscience."
- 13 Stalker, "Conscience."
- 14 Romans 2:15.
- 15 Acts 4:19-20.
- 16 *R. v. Oakes*, [1986] 1 SCR 103 at para. 136. See also Dickson, C.J. in *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para. 336, where he described a "free society" as "one which can accommodate a wide variety of beliefs ... and codes of conducts." Chief Justice Dickson served as an artillery officer in World War II and would have been familiar with the issue of conscientious objection related to conscripted military service.
- 17 *Andrews v. Law Society (British Columbia)*, [1989] 1 SCR 143, at para. 17; *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para. 92; *Reference re Secession of Québec*, [1998] 2 SCR 217 at paras. 32, 49-52, 79-82.
- 18 Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion" (2005), 29 SCLR (2d); Iain T Benson, "The Limits of Law and the Liberty of Religion Associations" in Iain T Benson and Barry W Bussey, eds, *Religion, Liberty and the Jurisdictional Limits of Law* (Toronto: LexisNexis Canada Inc, 2017), at xxiii, n 5.
- 19 *Reference re Secession of Quebec*, [1998] 2 SCR 217, at para. 71; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, at para. 60.
- 20 Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion," (2005), 29 SCLR (2d), 177.
- 21 David T. Koyzis, *We Answer to Another: Authority, Office, and the Image of God*, (Eugene, Oregon: Pickwick Publications, 2014), 81.
- 22 Abraham Kuyper, *Our Program: A Christian Political Manifesto*, trans. and ed. Harry Van Dyke (Bellingham, WA: Lexham Press, 2015), 70.
- 23 Koyzis, *We Answer to Another*, 132.
- 24 Robert Louis Wilken, "The Christian Roots of Religious Freedom," in *Christianity and Freedom*, eds. Timothy Samuel Shah and Allen D. Hertzke, (New York, NY: Cambridge University Press, 2016), 72. See also Abraham Kuyper, *Lectures on Calvinism*, (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 1931), 109.
- 25 John Witte, Jr., "Calvinist Contributions to Freedom in Early Modern Europe," in *Christianity and Freedom*, eds. Timothy Samuel Shah and Allen D. Hertzke, (New York, NY: Cambridge University Press, 2016), 212.
- 26 Witte, Jr., "Calvinist Contributions to Freedom in Early Modern Europe," 212-213.
- 27 Ed. Harro Hopfl, *Luther and Calvin: On Secular Authority*, (Cambridge, UK: Cambridge University Press, 1991), 25.
- 28 Witte, Jr., "Calvinist Contributions to Freedom in Early Modern Europe," 224.
- 29 Kuyper, *Our Program*, 73.
- 30 Koyzis, *We Answer to Another*, 81.
- 31 Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience*, (Cambridge, MA: Harvard University Press, 2011), 13.
- 32 Mary Anne Waldron, "Putting Conscience Rights in a Box: Can We Take Off the Lid?" *The Supreme Court Law Review* 98 (2d) (2020) at para. 5.
- 33 Waldron, "Putting Conscience Rights in a Box," at para. 59.
- 34 Waldron, "Putting Conscience Rights in a Box," at para. 6.
- 35 *R. v. Edwards Books and Art Ltd.*, [1986] 2 SCR 713, at para. 97.
- 36 Waldron, "Putting Conscience Rights in a Box," at paras. 19-21.
- 37 Barry W. Bussey, "Blazing the Path: Freedom of Conscience as the Prototypical Right," *The Supreme Court Law Review* 98 (2d) (2020) at para. 7.
- 38 Waldron, "Putting Conscience Rights in a Box," at para. 104.
- 39 *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, Factum of the Interveners, Catholic Civil Rights League, Faith and Freedom Alliance and Protection of Conscience Project, at paras. 12-15.
- 40 *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393. Factum of the Interveners, The Evangelical Fellowship of Canada, the Assembly of Catholic Bishops of Ontario, and Christian Legal Fellowship, at para. 16.
- 41 *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295, at para. 121 (S.C.C.).
- 42 Bussey, "Blazing the Path," at paras. 1-5.
- 43 UN General Assembly, "Universal Declaration of Human Rights." *United Nations*, 217(III) A, 1948, Paris (accessed on 27 July 2021).
- 44 Bussey, "Blazing the Path," at para. 16.
- 45 Bussey, "Blazing the Path," at paras. 33-38.
- 46 Moon, *Freedom of Conscience and Religion*, 20.
- 47 Conscience is not an enumerated ground in s. 15 of the Charter, though religion is. There seems to be a good case for conscience to be an enumerated or analogous ground. Section 15 of the *Charter* states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."
- 48 *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393. Factum of the Interveners, The Evangelical Fellowship of Canada, the Assembly of Catholic Bishops of Ontario, and Christian Legal Fellowship, para. 4.
- 49 Brian Bird, "The Reasons for Freedom of Conscience," *The Supreme Court Law Review* 98 (2d) (2020), at para. 80.
- 50 Section 1 of the *Charter* states: "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."
- 51 Maclure and Taylor, *Secularism and Freedom of Conscience*, 13.
- 52 Robert P. George, *Conscience and Its Enemies*, (Wilmington, DE: ISI Books, 2016), 225-226.
- 53 Koyzis, *We Answer to Another*, 139.
- 54 Kuyper, *Our Program*, 73.
- 55 George, *Conscience and Its Enemies*, 129-130.
- 56 Bird, "The Reasons for Freedom of Conscience," at paras. 65-73.
- 57 Waldron, "Putting Conscience Rights in a Box," at para. 22.
- 58 See, for example, Anna Matthews, et al., "Treating Patients with Extreme Body Modifications," *The Journal of Multidisciplinary Care: Decisions in Dentistry*, (11 April 2018) which provides insights to help clinicians provide effective care for patients with extreme body modifications and the health harms that accompany those body modifications. See also, Madeline Vann, "10 Most Dangerous Body Modifications," *Everyday Health*, (16 January 2014) (article medically reviewed by Dr. Niya Jones), in which the author explains that "body modifications can seem fun and sexy, but they also carry real risks, including infection, loss of vision, pain – and regret."
- 59 *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393.
- 60 "[Advice to the Profession: Professional Obligations and Human Rights](#)," *College of Physicians and Surgeons of Ontario*.
- 61 Udo Schuklenk, "Conscientious Objection in Medicine: Private Ideological Convictions Must Not Supercede Public Service Obligations," *Bioethics* 29(5), 2015, ii.
- 62 *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, at para. 5.
- 63 A counter argument might be that, in circumcision, a guardian and not the actual patient (the infant) is requesting the service. However, this misses the point of the comparison: in some situations, doctors can refuse to participate in a legal procedure that is medically consented to by the one who has capacity for that consent.
- 64 *Flora v. Ontario Health Insurance Plan*, 2008 ONCA 538, para. 75.
- 65 Waldron, "Putting Conscience Rights in a Box," at para. 56.
- 66 Waldron, "Putting Conscience Rights in a Box," at para. 97.

- 67 Bird, "The Reasons for Freedom of Conscience," at para. 20.
- 68 Maclure and Taylor, *Secularism and Freedom of Conscience*, 71.
- 69 Maclure and Taylor, *Secularism and Freedom of Conscience*, 25.
- 70 Steven Gliberman, Bacchus Barua, and Sazid Hasan, "[The Supply of Physicians in Canada: Projections and Assessment](#)," (The Fraser Institute, 2018), at page i.
- 71 Legal scholar Derek Ross makes the case that a unifying theme between fundamental freedoms including the freedom of conscience and the freedom of expression is the pursuit of truth. See Derek B.M. Ross, "Truth-seeking and the Unity of the Charter's Fundamental Freedoms," *The Supreme Court Law Review* 98 (2d) (2020).
- 72 See, for example, the story of Dr. Ignaz Semmelweis's struggle to implement hand-washing policies to stop the spread of infection in maternity wards and the medical profession's pushback despite overwhelming evidence of many lives saved. Imre Zoltán, "Ignaz Semmelweis," *Encyclopedia Britannica*, (9. Aug. 2021). Or consider the history of bloodletting in Garry Greenstone, "The History of Bloodletting," *British Columbia Medical Journal* 52(1), February 2010, 12-14; Timothy M. Bell, "A Brief History of Bloodletting," *The Journal of Lancaster General Hospital* 11(4), Winter 2016, 121-122.
- 73 Brian Bird, "[The Case for Medical Conscientious Objection](#)," *National Catholic Register*, April 27, 2021.
- 74 A Saskatchewan doctor, Dr. Francis Christian, was recently suspended from the University of Saskatchewan College of Medicine and fired by the Saskatchewan Health Authority. The reason was that he called for informed consent before giving children the COVID-19 vaccine. Dr. Christian states that he is pro-vaccine but believes that the principle of informed consent is important for the mRNA vaccine, and that parents and children must understand the risks associated with it. Action has been taken against Dr. Christian because his statements were not entirely in line with the view of accepted experts. See David Giles, "USask suspends doctor calling for 'informed consent' for mRNA vaccines," *Global News*, June 23, 2021.
- 75 George, *Conscience and Its Enemies*, 130.
- 76 Kuyper, *Our Program*, 72.
- 77 Maclure and Taylor, *Secularism and Freedom of Conscience*, 67.
- 78 Maclure and Taylor, *Secularism and Freedom of Conscience*, 73-74.
- 79 Maclure and Taylor, *Secularism and Freedom of Conscience*, 73.
- 80 Maclure and Taylor, *Secularism and Freedom of Conscience*, 77. See also Richard Moon, *Freedom of Conscience and Religion*, 20.
- 81 William Galston, "Religion and the Limits of Liberal Democracy," in Douglas Farrow, ed., *Recognizing Religion in a Secular Society* (Quebec City: McGill-Queen's University Press, 2004) 12, at 44.
- 82 Galston, "Religion and the Limits of Liberal Democracy," 44.
- 83 William A. Galston, *The Practice of Liberal Pluralism* (New York: Cambridge University Press, 2005), 20.
- 84 Moon, *Freedom of Conscience and Religion*, 56.
- 85 Moon, *Freedom of Conscience and Religion*, 130.
- 86 Waldron, "Putting Conscience Rights in a Box," at para. 14.
- 87 *R. v. Big M Drug Mart*, S.C.J. no. 17, 1985 1 S.C.R. 295, at para. 122 (S.C.C.).
- 88 Cardus has published a helpful [report](#) that looks at other examples of freedom of conscience outside of the healthcare context. Specifically, their report considers case studies of freedom of conscience related to assisted suicide, provision of goods and services, and the use of preferred pronouns.
- 89 For example, in 2017, Manitoba became the first province to [legislate](#) explicit protection for freedom of conscience for doctors who receive MAiD requests.



We hope you enjoyed reading this policy report.

We know that championing our policy recommendations will take courage, dedication, and hard work. We at ARPA Canada strongly believe that doing so would be consistent with God's calling for you in a position of civil authority (Romans 13), and for promoting the well-being of our neighbours, in line with Canada's constitution and legal history. We are grateful for your service and we remember you in our prayers.

RESPECTFULLY SUBMITTED

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