



## Protection of Conscience Project

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# “Insubordination”

Sean Murphy, Administrator  
Protection of Conscience Project

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## Introduction

*Cecilia Moore was a probationary employee of the British Columbia welfare department when a client asked for medical coverage for an abortion. The abortion would have been a criminal offence under the law in force at the time, and was, in the view of the attending physician, not only unnecessary for medical reasons but actually contra-indicated. Moore refused to approve coverage on the grounds that the client was ineligible under departmental policy. However, her supervisor ordered her to sign authorization for coverage. Moore persisted in her refusal, citing policy, the criminal law and her own conscientious objections to abortion. Although rated as “an excellent worker,” she was dismissed.*

*Seven years later the BC Council of Human Rights ruled that Moore had been a victim of ‘adverse effect discrimination,’ awarding \$7,703.80 for compensation in lost wages and \$1,000.00 as compensation for “humiliation”.*

*For a critique of the judgement, see “Commentary on Cecilia Moore’s Case” on the Project website.*

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Cecilia Moore was raised in a Catholic family in Vancouver, British Columbia. She demonstrated strong religious commitment in nourishing and practising her faith.<sup>1</sup> This was evident in her resumé and was discussed during her job interview, though the subject of abortion did not arise.<sup>2</sup> In fact, despite her upbringing, Moore had not been involved in pro-life activities.<sup>3</sup>

In November, 1984, Moore commenced work for the Ministry as an auxiliary financial assistance worker (FAW). Her duties included determining the eligibility of applicants government financial assistance.<sup>4</sup> During her two weeks of training and orientation there was some discussion about service to pregnant women, but nothing was said about abortion.<sup>5</sup>

On 27 February, 1985, Moore was advised that a client would see her the following day to apply for medical coverage for an abortion.<sup>6</sup> Surprised by the request, she spontaneously remarked, “I don’t believe in abortion.”<sup>7</sup> District Supervisor Arthur Temple was present, but appears not to have heard the comment.<sup>8</sup>

## Ministry policy

As the subject of financial coverage for abortion had not been covered in her training, Moore reviewed the relevant policy manuals.<sup>9</sup> Unemployable welfare recipients were permitted medical coverage for “essential health care benefits;”<sup>10</sup> only temporary medical coverage was available for employable recipients, if they were “urgently” in need of “an essential medical service.”

In order to authorize temporary coverage, FAW's were required to “verify the medical need by means of a prescription from a licensed practitioner” and obtain the District Supervisor's approval for payment. Moore had been taught in training that “the onus was on the client to establish eligibility by specific documentation.”<sup>11</sup>

## Medical coverage denied; confrontation with supervisor

. . . a letter from the client's doctor . . . explained that abortion was actually contra-indicated due to the client's “fear of the procedure and guilt about having a termination.”

When the client arrived the following day, she told Moore that a past abortion had caused her sleepless nights. The client wanted an early abortion “so that it would be easier to block out the experience.”<sup>12</sup> Moore asked for the documentation required by regulation to verify the medical need for the coverage, but the client responded that her doctor believed that there were “no medical reasons for having an abortion.”<sup>13</sup> Moore confirmed this with the doctor's office.<sup>14</sup>

Since she considered the woman employable, Moore concluded that Ministry policy precluded medical coverage. She verified her conclusion with a more experienced

co-worker who had no moral objections to abortion.<sup>15</sup> In Moore's view, a conflict of conscience did not arise because her decision was based upon Ministry policy, not her beliefs about abortion.<sup>16</sup>

At the end of the interview in which she advised the client of her decision, Moore imprudently remarked that, given her views on abortion, she could not have facilitated the client's request even if policy had permitted it.<sup>17</sup> She advised the client of her right to appeal,<sup>18</sup> but expected the appeal to fail because she understood Art Temple to be very strict in applying policy.<sup>19</sup> In this case, however, Temple granted the appeal, overruled Moore, and on 5 March ordered her to sign the authorization for temporary coverage.<sup>20</sup>

At first, Moore asked if Temple's decision was not contrary to policy, but was told “not to worry about that.” She then explained that, policy aside, she could not sign the authorization because it was “against her beliefs and her conscience.” She was warned that she might lose her job if she refused to sign the authorization, but she persisted in her refusal.<sup>21</sup> Moore quite properly pointed out that an abortion performed without a medical reason would be a criminal offence,<sup>22</sup> but this appears to have been given no weight by her supervisor.

Art Temple signed the authorization in Moore's place on 6 March. Later, the client involved visited Moore to affirm her admiration and respect for her, and offered to provide information or testimony if that was needed to protect her job. Moore thanked the client, but she did not believe that her employment was at risk.<sup>23</sup> She was mistaken.

Excellent worker, but . . .

About two weeks later, Temple met with Moore and a union representative. Moore re-stated her view that coverage was contrary to Ministry policy and also “violated her beliefs and conscience.”<sup>24</sup> By this time Moore had received a letter from the client’s doctor, who had known the client from birth. The letter not only stated that there were no physical or mental reasons for abortion, but explained that abortion was actually contra-indicated due to the client’s “fear of the procedure and guilt about having a termination.”<sup>25</sup> The letter appears to have made no impression on Temple, who was interested only in establishing that Moore would obey his directions. He refused to entertain the union representative’s suggestion that assignments involving a conflict of conscience might be given to someone else.<sup>26</sup>

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Moore was “totally overwhelmed” by the meeting. Torn between the fear of losing her job and the thought that she should simply resign, she wrestled overnight with a suggestion that Temple had made: that signing the authorization would not “really” involve her in abortion because Moore, herself, was neither making the decision nor performing the abortion. Ultimately, she decided that she would not sign authorizations for abortion, and would not resign.<sup>27</sup>

When he met with Moore again the following month Temple advised her that, though she was an “excellent worker,” he would attach an addendum to her performance evaluation to the effect that her religious and moral beliefs interfered with her job.<sup>28</sup> Unknown to Moore, District Managers had met to discuss her case and had agreed that they “couldn’t allow this kind of action in the Ministry.”<sup>29</sup>

On April 15th Moore was assigned to two Ministry offices, spending half of each day in each. District Supervisor Bill Little called her in on the first day to confront her on the issue. It was here that she learned that district supervisors in her region were “appalled” by her action. Little, an abortion supporter, told her that she had no right to deny coverage because it was permitted by policy, and that he would not tolerate such behaviour in his office. Moore asked Little to point out the section of policy providing for abortion coverage; he dismissed her question with the comment, “It is in policy.”<sup>30</sup>

Moore’s performance evaluation, which she received on 8 May, 1985, appears to have rated Moore highly as an employee. The shop steward, noting that it was difficult to get such a rating from Temple because he was reputedly a “tough” supervisor, believed that the evaluation demonstrated her suitability for the job.<sup>31</sup> However, it included a statement by Temple that, while Moore’s assessment of the pregnant client as employable was “correct on technical grounds,”<sup>32</sup> her subsequent refusal to provide coverage on moral grounds was unacceptable. When he presented the evaluation, Temple advised her that a decision to terminate her employment would be made in short order.<sup>33</sup>

### No accommodation

As a result of Temple’s adverse comments on the performance evaluation, Moore and a union shop steward were called to meet with supervisor Robert Wilmot the following week.<sup>34</sup> Moore told him that her refusal was based upon her Catholic faith, but not exclusively so; she took pains to explain

that the decision was also “supported by scientific evidence and human reason.” It appears that Moore believed that her supervisors had stereotyped her as a religious fanatic; she was anxious that they understand that she was acting not only faithfully but reasonably.<sup>35</sup>

The shop steward again raised the possibility of accommodating these beliefs, but Wilmot rejected accommodation as ‘inappropriate;’<sup>36</sup> The Ministry had no policy for accommodating such a request.<sup>37</sup> Wilmot repeatedly asked Moore how she would respond in a similar situation in future. She said that she would refer cases involving a conflict of conscience to her supervisor, “and if instructed to assist the client, that she would not comply with those instructions.” Framing the issue as one of “insubordination,” Wilmot recommended that Moore be dismissed.<sup>38</sup>

### Dismissal and consequences

Senior ministry officials accepted the recommendation and notified Moore of her dismissal in a letter dated 21 May, 1985: “This action is being taken because you have, on at least two occasions, advised supervisors that under certain circumstances you will not follow their instructions to perform specific duties related to your position.”<sup>39</sup>

Since the collective agreement did not contain a clause protecting employee exercise of religion, the British Columbia Government Employees Union rejected Moore's application to file a grievance, nor would it support her undertaking a grievance proceeding on her own. The BCGEU's policy, like that of other unions or associations, was that she should have followed orders and filed a grievance later.<sup>40</sup>

Moore was denied four weeks of Unemployment Insurance Benefits because she was considered to have lost her job by reason of misconduct.<sup>41</sup> She later identified five job opportunities lost, she believed, because employers learned about the reasons for her dismissal from the Ministry. In one case she was told that her principles were too strong; in another she was informed that she was “a threat.”<sup>42</sup>

### Human Rights Council hearing and decision

Moore filed a complaint with the provincial Human Rights Council about five months after her dismissal,<sup>43</sup> but, following her lawyer's advice, asked that the complaint be held in abeyance pending the outcome of a court challenge based on the Canadian Charter of Rights and Freedoms. The court challenge was unsuccessful and the Human Rights action was reinstated in April, 1989.<sup>44</sup> The Ministry argued that accommodating conscientious objectors was not possible because it “could have a detrimental impact on service delivery,” claiming that it would have to accommodate Catholics not only in cases of abortion, but in “requests involving contraceptives or sterilization.”<sup>45</sup> In June, 1992 - seven years after her dismissal - the BC Council of Human Rights ruled that Moore had been a victim of ‘adverse effect discrimination’ awarding \$7,703.80 for compensation in lost wages and \$1,000.00 as compensation for “humiliation.”<sup>46</sup>

‘Adverse effect discrimination’ refers to a situation in which an employer, for *bona fide* business reasons, “adopts a rule or standard which is on its face neutral” and applies to everyone, but which adversely affects some employees because of their race, religion, sex, etc..<sup>47</sup> In such cases, the employer is entitled to maintain the general rule, but is obliged to accommodate the minority who are adversely affected, “provided the employer can accommodate them without undue hardship.”<sup>48</sup>

While the Ministry lost the case, the Council was also critical of Moore for having accepted the client seeking abortion coverage. It was the Council's opinion that Moore ought to have declined the case at the outset, since, having the views she did she could not authorize coverage for abortion.<sup>49</sup>

## Notes

1. *Summary of the Evidence of Cecilia Moore*, paragraphs 1-9. (Cited hereinafter as *Summary*)
2. *Summary*, 10
3. *Summary*, 45
4. *Moore v British Columbia [Ministry of Social Services]*, Canadian Human Rights Reporter, Vol. 17, Decision 24, paragraph 1. (Cited hereinafter as CHRR)
5. *Summary*, 12
6. CHRR 15
7. CHRR 16
8. CHRR 17
9. CHRR 18, 56
10. CHRR 20
11. *Summary*, 14.  
“Taken as a whole, the evidence before the Council indicated that coverage for abortion, while not officially authorized, was nonetheless rationalized by creative policy interpretation on an *ad hoc* basis, and accommodation of conscientious objectors provided for in the same way. Perhaps this was the result of poor administration; perhaps ambiguity was thought to be desirable in view of the political and legal issues surrounding abortion at the time. Whatever the case, this style of management would naturally generate confusion and conflict among workers who had not been initiated into the ‘winks and nods’ system of decision making exemplified, in particular, by Temple and Little.”  
Murphy, Sean, *Commentary on Cecilia Moore’s Case*.  
<http://www.consciencelaws.org/Examining-Conscience-Issues/Legal/Articles/Legal03.html>
12. *Summary*, 15
13. CHRR 23
14. CHRR 23
15. CHRR 25; *Summary*, 15

16. CHRR 24

17. *Summary*, 15

18. CHRR 27)

19. CHRR 24)

20. CHRR 30)

21. CHRR 30)

22. *Summary*, 19

23. *Summary*, 20

24. CHRR 33; Summary 21

25. *Summary*, 22

26. CHRR 34

“ . . . at the time, Moore’s supervisors lacked both experience and the subsequently developed legal framework to assist them in their decision making.

The fact remains that they refused to consider the accommodation suggested by the union representative, who was also without the benefit of experience or legal guidance. Moore had repeatedly told Wilmot that she would refer cases involving conflicts of conscience to her supervisor . . . ”

Murphy, Sean, *Commentary on Cecilia Moore’s Case*.

<http://www.consciencelaws.org/Examining-Conscience-Issues/Legal/Articles/Legal03.html>

27. *Summary*, 38, 40

28. CHRR 36

29. CHRR 38

30. *Summary*, 24. See Note 11.

31. *Summary*, 27

32. CHRR 39

33. *Summary*, 26.

“But there was no evidence before the Council that Moore actually was affected by bias or

partiality in her dealings with the client. In fact, there was no evidence before the Council that Moore's religious beliefs were in play at any point before Temple ordered her to sign the authorization." Murphy, Sean, *Commentary on Cecilia Moore's Case*.

<http://www.consciencelaws.org/Examining-Conscience-Issues/Legal/Articles/Legal03.html>

34. CHRR 40-41

35. *Summary*, 33, 34

36. *Summary*, 29, 43

37. CHRR 47

38. *Summary*, 27, 44

39. CHRR 46

40. *Summary*, 30; McKave, Marianne, "When conscience conflicts with jobs," *The Catholic Register*, 8 March, 1986

"A labour lawyer familiar with the case has noted that the British Columbia Government Employees Union could have been found liable because it failed to support Moore. Remedies lie under labour legislation in most Canadian provinces, and the Union might also have been sued for discrimination under human rights legislation. However, the issue was not adjudicated because the case was against the government and did not deal with the Union's duty of fair representation."

Murphy, Sean, *Commentary on Cecilia Moore's Case*.

<http://www.consciencelaws.org/Examining-Conscience-Issues/Legal/Articles/Legal03.html>

41. *Summary*, 43

42. *Summary*, 43

43. CHRR 7

44. CHRR 13

45. CHRR 67

46. CHRR 80-81

47. CHRR 49, quoting *O'Malley v Simpsons-Sears Ltd.*[1985], 7 CHRR D/3102

48. CHRR 50, quoting *Central Alberta Dairy Pool v. Alberta* (Human Rights Commission) [1990], 12 CHRR D/417.

49. CHRR 62-64.

However, “this retrospective criticism presumes three things; first: that the client was clearly eligible for assistance; second: that Moore ought to have foreseen that her views on abortion would conflict with her clear duty to provide medical coverage; third: that her employer would have been more accommodating had she raised the matter at the start. Closer examination will demonstrate that these presumptions were not supported by the evidence.”

Murphy, Sean, *Commentary on Cecilia Moore’s Case*.

<http://www.consciencelaws.org/Examining-Conscience-Issues/Legal/Articles/Legal03.html>