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REPORT

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**RE: *Access to Abortion Services Act (British Columbia)*
Implications for conscientious objectors**

Abstract

The *Access to Abortion Services Act* (British Columbia) makes it an offence for anyone within an access zone to express disapproval of abortion by any means, or for anyone other than an abortion provider to give information about abortion, or advise someone against abortion. No exemption is provided for conscientious objection by health care workers, nor for personal or clerical counsellors responding to a patient request for advice. The government of British Columbia has been aware of this since 1995, but refuses to amend the Act, and will not provide assurance that the Act will not be used to suppress conscientious objection.

While working in access zones, clergy, counsellors and health care workers should take what precautions they can to ensure that advice given to patients or a refusal to participate in abortion will not be used as a basis for prosecution.

Introduction

The *Access to Abortion Services Act* (hereinafter the Act) was passed by the provincial legislature in British Columbia in June, 1995. It was intended to restrict anti-abortion demonstrations or protests by prohibiting them within access zones (commonly called bubble zones) defined by the Act or by order of the Lieutenant Governor in Council.

Sections 5(2), 6(1) and 7(1) of the Act established access zones centred on abortion facilities and the offices and residences of all doctors providing abortion services. The boundaries of access zones, measured from the property line, were set at 50 metres from abortion facilities, 160

**PROTECTION OF CONSCIENCE PROJECT
REPORT**

metres from doctors residences, and 10 metres from doctors offices. By Order-in-Council, access zones around specific offices may be extended up to 20 metres.

Note that if a doctor who provides abortion maintains an office in a hospital, an access zone would exist at the hospital without the need for it to be designated by Order-in-Council.

The provisions of the Act may be enforced by injunction (Section 10) and by arrest with or without warrant (Section 11). Upon conviction, offenders are liable (depending upon the offence and circumstances) to fines ranging from \$1,000.00 to \$10,000.00 and to imprisonment for up to one year, or to both fine and imprisonment. Up to two years probation may also be imposed (Section 14).

Among other things, the Act forbids protest and sidewalk interference within an access zone. These terms are defined as follows (Section 1):

protest includes any act of disapproval or attempted act of disapproval, with respect to issues related to abortion services, by any means, including, without limitation, graphic, verbal or written means;

sidewalk interference means

(a) advising or persuading, or attempting to advise or persuade, a person to refrain from making use of abortion services, or

(b) informing or attempting to inform a person concerning issues related to abortion services

by any means, including, without limitation, graphic, verbal or written means.

The Act provides a defence to a charge of sidewalk interference for those providing abortions, and for women seeking abortions or those supporting them for that purpose.

The issue

No defence or exemption is provided in the Act for conscientious objection by health care workers. In consequence, a health care provider in an access zone who declines to participate in abortion may be liable to prosecution for having thereby expressed disapproval of the procedure by any means .

Further: counsellors, clergy, or family friends who, in private conversation - even if their advice is sought by a patient - are liable to prosecution if they express disapproval of abortion, or suggest that an abortion not be performed.

Speaking in the legislature when the bill introducing the Act was being debated, then Minister of

PROTECTION OF CONSCIENCE PROJECT **REPORT**

Health, Paul Ramsey, explained that the Act was deliberately drawn broadly to say that acts of protest should not occur here. Those engaged in such activities would do well to read this definition very broadly. ¹

Addressing the issue

Concern about the application of the Act to conscientious objectors was brought to Mr. Ramsey's attention in August, 1995.² His response:

With respect to your comment about *Access to Abortion Services Act*, you have asked about the interpretation of 'protest' within the meaning of the Act. While the definition of protest is broadly worded, it is not intended to apply to the type of situation you have described involving the actions of an employee inside a facility. The refusal of a health care worker employed by a hospital to participate in an abortion would be dealt with under the terms of the collective agreement (all acute care hospitals in the province are covered by a collective agreement) and might possibly be subject to investigation and discipline by a professional body. I would like to emphasize that this Act does not require individuals to be involved in abortions against their personal will - it simply ensures that they continue to be available to individuals without fear of harassment or intimidation.³

Conscientious objectors among health care professionals were not liable to prosecution as long as the Act applied only to doctors' residences, free-standing abortion facilities, and to doctors' offices not attached to hospitals or other general health care facilities. However, the Act was still without an exemption for conscientious objectors when, on 27 October, 1998, an Order-in-Council established two access zones at Vancouver General Hospital, where abortions had long been performed.

In 2000, as plans were being made to establish facilities for abortion at Kelowna General Hospital, the possibility of the imposition of an access zone at the hospital was raised. The British Columbia Civil Liberties Association wrote to the government expressing concerns about the imposition of an access zone at the hospital, though it does not appear that the BCCLA letter referred to conscientious objection. In any case, the Association received no formal reply to its letter.⁴

The Project Administrator wrote to the Okanagan Similkameen Health Region, pointing out the potential difficulties that could arise if an access zone was proclaimed at the hospital. He suggested that it would not be appropriate to suppress manifestations of religious or conscientious conviction by hospital employees and others, who are in the hospital for the purpose of providing health care, pastoral care or personal support for patients, and asked for written assurance that the Act would not be applied for that purpose.⁵

The initial response from the Chair of the Health Region stated simply: ...the Okanagan

**PROTECTION OF CONSCIENCE PROJECT
REPORT**

Similkameen Health Region is committed to fulfilling its many obligations in a thoughtful, caring and responsible manner. That approach has served us well over the past 3 years and I anticipate will continue to do so in the future. ⁶

The Administrator again requested written assurance that the Act would not be used to prosecute or suppress the manifestation of religious or conscientious convictions. ⁷

You are asking for the Board to review a what if position on a legislated act and its implications to employees of Kelowna General Hospital or other health services under the Okanagan Similkameen Health Region. The Board has not had this debate and I do not anticipate it having this discussion unless the situation you describe does arise or the act is proclaimed.

We believe that we have maintained a very open policy with all groups answering their specific concerns or issues and hopefully through this approach, can avoid some of the difficult situations that some facilities and programs have found themselves in. ⁸

While corresponding with the Okanagan Similkameen Health Region, the Administrator also wrote to the Minister of Health, Michael Farnworth, and asked that the Act be amended to exempt manifestations of religious or conscientious conviction by hospital employees and others. Pending such an amendment, the Minister was asked to provide his written assurance that the Act would not be used to prosecute or suppress the manifestation of religious or conscientious convictions. ⁹

Effie Henry, Director of the Women's Health Bureau at the Ministry of Health, responded on behalf of the Minister:

The *Access to Abortion Services Act* does not apply to conversations between individuals working within facilities where an access zone is in place. As you stated in your letter, protest is defined explicitly as an act. Private conversation between staff members could never be interpreted as an act of protest. The purpose of the Act is not to prevent private discussions, but, rather, to provide a mechanism to deal with situations that impede access to abortion services.

Abortion is a sensitive and deeply personal issue and it is up to every woman to determine how to approach the issue of pregnancy within the context of her own values. Pastors who counsel women who wish to receive such support in the area of pregnancy would definitely not be in violation of the Act. I have enclosed a fact sheet . . . to provide more details of the practical application of the Act. ¹⁰

The response was promising but erroneous. It appears that Ms. Henry did not consult the Act itself when forming her opinion about the legal meaning of the statute. She may also have been

PROTECTION OF CONSCIENCE PROJECT **REPORT**

misled by the Ministry of Health fact sheet accompanying her letter, which did not accurately set out the legal definition of protest.¹¹

The Administrator brought these points to the attention of the Minister, suggesting the need to revise the Act, and again requesting assurance that the law would not be used to prosecute or suppress the manifestation of religious or conscientious convictions of hospital employees and others, who are in the hospital for the purpose of providing health care, pastoral care or personal support for patients.¹²

A third request for assurance, sent the following month,¹³ elicited a final letter written on behalf of the Minister:

The Minister of Health does not have the authority to direct the application of the law, since this is within the purview of Crown Counsel, judges and police. However, I would like to reiterate that the purpose of the Act is not to prevent private discussion between willing participants. Rather, the Act provides a mechanism to deal with situations that impede access to abortion services where someone dissuades, or attempts to dissuade providers from delivering services or patients from accessing services. While this legislation has never been used to prosecute health care workers for the types of examples that you outlined in your letters, where there could be concern is when private conversations form an act of protest and could be intimidating, depending upon where the conversation was held, and in front of whom. At this time, the Act will not be amended. . .¹⁴

Summary

- a) The *Access to Abortion Services Act* makes it an offence for anyone within an access zone to express disapproval of abortion by any means. No exemption is provided for conscientious objection by health care workers or others.
- b) The Act makes it an offence for anyone within an access zone, other than those providing or seeking abortions, to provide information about abortion, or to attempt to dissuade someone from having an abortion. No exemption is provided for clergy, counsellors or others whose advice is sought by patients.
- c) Despite having been made aware of the potential for the Act to conflict with freedom of conscience, the Government of British Columbia did not amend the Act before imposing access zones at the Vancouver General Hospital.
- d) Access zones could exist around other hospitals if a doctor who provides abortions maintains an office in the institution.
- e) For the moment, the Okanagan Similkameen Health Region is unable to provide assurance that the Act will not be used to suppress conscientious objection at Kelowna

PROTECTION OF CONSCIENCE PROJECT REPORT

General Hospital should the hospital become an access zone.

- f) The Minister of Health has stated, through a departmental official, that the Act will not be amended at this time, and has refused to provide assurance that it will not be used to suppress conscientious objection. On the contrary: it appears that he foresees situations in which prosecution might result from an expression of disapproval through conscientious objection, or advice given by clergy or counsellors.

Conclusion

While working in access zones, health care workers who have conscientious objections to abortion should take what precautions they can to ensure that a refusal to participate in abortion will not be used as a basis for prosecution under the *Access to Abortion Services Act*. Such precautions may include discussion with legal counsel, administrators and union officials.

Similarly, clergy and counsellors working in access zones should take what precautions they can to ensure that they are not prosecuted under the Act for expressing disapproval of abortion, providing information about abortion or for attempting to dissuade someone from having an abortion. Such precautions may include discussion with their employers or church leaders, legal counsel and administrators.

Notes

1. Hunter, Justine, Abortion protest bill approved: Most Liberals support legislation to put buffer zones around clinics *Vancouver Sun*, 28 June, 1995.
2. Letter from Sean Murphy to the Minister of Health, 9 August, 1995
3. Letter from the Minister of Health to Sean Murphy, 23 October, 1995
4. Letter from the Executive Director (BCCLA) to Sean Murphy, 21 August, 2000
5. Letter from the Administrator to the Okanagan Similkameen Health Region, 21 July, 2000
6. Letter from the Board Chair (OSHR) to the Administrator, 8 August, 2000
7. Letter from the Administrator to the Board Chair (OSHR) 15 August, 2000; repeated 16 September, 2000
8. Letter from the Board Chair (OSHR) to the Administrator, 28 September, 2000
9. Letter from the Administrator to the Minister of Health, 21 September, 2000
10. Letter from the Director (WHB) to the Administrator, 21 August, 2000

**PROTECTION OF CONSCIENCE PROJECT
REPORT**

11. Compare the legal definition of protest to the following from the Ministry of Health Fact Sheet: Protesting: Picketing or handing out leaflets in protest of issues related to abortion services is prohibited within an access zone.

12. Letter from the Administrator to the Minister of Health, 28 August, 2000

13. Letter from the Administrator to the Minister of Health, 21 September, 2000

14. Letter from the Director (WHB) to the Administrator, 4 October, 2000