

Free Speech and Reasonable Limits

By Gregory D. Sim, Partner, Field Law

The College of Physicians and Surgeons of Alberta is mandated to protect the public,ⁱ including from harm that could damage trust and confidence in the medical profession.ⁱⁱ

Does the College regulate what physicians say?

Everyone in Canada has the right to freedom of expression. The *Charter of Rights and Freedoms* states that everyone has the fundamental “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”ⁱⁱⁱ Expression is protected so that everyone can manifest their thoughts, opinions and beliefs.^{iv}

Freedom of expression includes the right to express unpopular, or even offensive views,^v and to criticize public institutions.^{vi} Such criticism enhances public confidence by demonstrating that those with the greatest knowledge and ability to create changes are prepared and permitted to speak out. Nowhere is this more evident than in health care. In *Strom v. Saskatchewan Registered Nurses’ Association*, the Saskatchewan Court of Appeal stated:

Such criticism, even by those delivering those services, does not necessarily undermine public confidence in healthcare workers or the healthcare system. Indeed, it can enhance confidence by demonstrating that those with the greatest knowledge of this massive and opaque system, and who have the ability to effect change, are both prepared and permitted to speak and pursue positive change.^{vii}

Some are concerned that the College would be infringing freedom of expression by pursuing complaints about physician’s public comments, such as on social media. This has led the Alberta government to propose new legislation.

Are there currently any limits on freedom of expression?

Charter rights, including freedom of expression, are not without limits. Freedom of expression protects any activity whose form or content attempts to convey meaning, but violence as a form of expression is not protected, for example.^{viii} Section 1 of the *Charter* states that *Charter* rights are subject “to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”^{ix} This means that regulators like the College can enforce standards as long as those standards are reasonable, proportionate limits on *Charter* rights.^x

In *Doré v. Barreau du Québec*, the Supreme Court of Canada addressed the case of a lawyer who was reprimanded by the Québec Law Society for writing a rude and insulting letter to a judge. Mr. Doré’s letter contravened the Law Society’s *Code of Ethics* which required lawyers’ conduct to “bear the stamp of objectivity,

moderation and dignity.” The Supreme Court weighed Mr. Doré’s freedom of expression to write the letter against the objectives of the *Code of Ethics*, which the Court said were to ensure civility in the legal profession. The Court concluded that reprimanding Mr. Doré was a reasonable and proportionate balancing of his expressive rights with the objectives of the *Code of Ethics of Advocates*.^{xi}

More recently, the case of *Gill v. Health Professions Appeal and Review Board* addressed a physician’s social media posts during the COVID-19 pandemic. Dr. Gill posted or re-posted statements that there was no medical or scientific reason for public health lockdowns, that vaccines were unnecessary, and that contact tracing, testing and isolation were ineffective. In court, Dr. Gill challenged a College of Physician and Surgeons of Ontario order that she be cautioned for some of her posts. The Court recognized the value in free expression, but it held that some of Dr. Gill’s posts were inaccurate, misleading and irresponsible. She had no *Charter* protected right to state “as medical facts things that were verifiably false.” Her statements were dangerous because they could cause members of the public to ignore public health directives. The Court said that ordering Dr. Gill to be cautioned for posting misinformation was a reasonable and proportionate balancing of her right to free expression with the objectives of the Code of Ethics, “[t]o develop, establish and maintain standards of professional ethics” for physicians.”^{xii}

Most recently, in *Trozzi v. College of Physician and Surgeons of Ontario*, cancellation of the physician’s registration was upheld as reasonable and proportionate, in part due to his publication of extreme misinformation that the COVID-19 pandemic was a “fake” and “deceptive criminal campaign”.^{xiii}

These cases demonstrate that there are limits to freedom of expression. The College has a duty to enforce standards, including to protect the public’s trust and confidence in the medical profession. Inaccurate or misleading information can be dangerous as the public may rely on that information to the detriment of their health or the health of others. The College has adopted the Canadian Medical Association’s [Code of Ethics and Professionalism](#) as a Standard of Practice. Physicians should be familiar with all of the [Standards of Practice](#), but paragraph 41 of the *Code of Ethics and Professionalism* requires that physicians:

Provide opinions consistent with the current and widely accepted views of the profession when interpreting scientific knowledge to the public; clearly indicate when you present an opinion that is contrary to the accepted views of the profession.

Physicians can exercise their *Charter* rights and participate in public discourse, provided they meet their obligations under the Standards of Practice and the *Code of Ethics and Professionalism*. Physicians must acknowledge the limits of their own knowledge and skills.^{xiv} When interpreting scientific information to the public, physicians must also ensure that their opinions are consistent with current and widely accepted views of the profession, or clearly indicate if they are not.^{xv} These may be reasonable and proportionate limits on freedom of expression when applied to protect the public from inaccurate or misleading information.

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ⁱ *Health Professions Act*, RSA 2000, v. H-7, s. 3(1)(a)

ⁱⁱ James T. Casey, *The Regulation of Professions in Canada*, looseleaf (Toronto: Thomson Reuters, 2024) Vol 1 at 1:1

ⁱⁱⁱ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, s. 2(b)

^{iv} *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927

^v *R v. Keegstra*, [1990] 3 SCR 697

^{vi} *R. v. Kopyto*, 1987 CanLII 176 (ONCA)

^{vii} *Strom v. Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 at para. 160

^{viii} *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927

^{ix} *Ibid*, s. 1

^x *Doré v. Barreau du Québec*, 2012 SCC 12 at paras. 7-8, 55-58

^{xi} *Ibid* at paras. 66-71

^{xii} *Gill v. Health Professions Appeal and Review Board*, 2024 ONSC 2588

^{xiii} *Trozzi v. College of Physician and Surgeons of Ontario*, 2024 ONSC 6096

^{xiv} *CMA Code of Ethics and Professionalism*, section A

^{xv} *Ibid*, paragraph 41