



“Ms. Conduct” and Mr. Andy Curnew: An analysis of a recent RCDSO complaint decision holding dentists responsible for their spouses' speech and social media

Malcolm X said, “The media is the most powerful entity on earth. They have the power to make the innocent guilty and make the guilty innocent, which is power. Because they control the minds of the masses.” Every dentist should be terrified should their turn come to be mentioned in the media by Public Health.

The Canadian Charter of Rights and Freedoms states that everyone has the following fundamental freedoms: Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication¹

A recent decision of the RCDSO holds dentists responsible for statements made by members of their family even in the context of litigation, statements made in public and statements made on social media. This case poses a conflict between two values recognized in our society -- the need to regulate the scope of professional communications of dentists on the one hand and the value of free expression on the other. This case takes the Regulation a step further by holding dentists accountable for things members of their family may say on social media or others. How many dentists are married to anti-vaxxers? Moreover, what if their spouse went public on social media about being an anti-vaxxer? The RCDSO decision signed on

¹ <https://laws-lois.justice.gc.ca/eng/const/page-12.html>

November 1st, 2021, has all sorts of implications that could violate the constitutional rights of dentist family members.

In an email to the RCDSO which was private, Mr. Curnew referred to a public health inspector as a sexist woman-hating man. Curnew further stated that the section 13 order was based on the word of that health inspector who had admitted his hate on women. The RCDSO Investigation and Complaints Review Committee (ICRC) found Dr. Rita Kilislian guilty of professional misconduct.

The panel commented that this communication was confrontational, unprofessional and undermining public health and its authority. The panel expressed its concerns that Dr. Kilislian's husband's communications had a considerable impact on the public interest given the importance of public faith in public health institutions. The panel ordered Dr. Kilislian and her team to participate in a course in professional communications. The panel went on to infer that Mr. Curnew, too, would need to participate in the course in order for Dr. Kilislian to satisfy her requirements. The panel then stated that Dr. Kilislian's professional judgement could be remediated through the course. Notably, there is no such course readily available.

Social Media Issue

The subject matter of the investigation was posts alleged to have been made by Mr. Curnew that showed disdain for a medical officer of health. Curnew had posted a picture of his and Dr. Kilislian's daughter performing a kick with a gender equality sign near her. Someone took the post from Mr. Curnew's social media account, photoshopped it with the medical officer of health's head appearing to be kicked by Mr. Curnew and Dr. Kilislian's daughter.

The complaints panel found Dr. Kilislian to be responsible for circulating the photoshopped meme of the medical health officer because the original post stemmed from a dentist's husband's Instagram account. The decision infers that the RCDSO expects dentists to police their family's social media. Then the question is what is ok and what is not ok to post as a family member of a dentist?

Analysis Of Issues

The panel had evidence that a health inspector from Peterborough Public Health was charged with criminal extortion for shaking down local businesses. The panel had evidence that the medical health officers had made meritless complaints in the past, and the panel had sworn evidence that demonstrated the health inspector did make posts that were sexist and promoted sexism.

The panel states that bringing this information about the health inspector's sexist's views was unprofessional of Dr. Kilislian's husband, and she should be responsible for her husband's speech. The panel states it was Dr. Kilislian's husband who undermined public health's authority by drawing attention to the sexism issues at public health. The complaints panel made no comment or observation that sexism within public health undermined Public Health's authority and not Dr. Kilislian's husband putting a spotlight on it.

Sexism in Dentistry

In December 2014, it came to light that a significant number of male fourth-year students in Dalhousie University's Faculty of Dentistry had posted sexist, misogynist, and homophobic remarks and images on Facebook. Some of the posts focused on their female classmates, using

derogatory, demeaning, and sexually violent terms. A group of dental students had formed a male-only Facebook group in their first year at the dental school. It remained a closed group, with membership by invitation only. One member showed a highly disturbing post to a classmate because she was one of the female dental students mentioned in it by name. He let her take a screenshot of the post on his computer. The young woman contacted University authorities, intending to lodge a complaint. She also showed the screenshot to other women named in the post. Meanwhile, the University tried to contain the crisis within its walls using its own policies. Within a week, someone had leaked more than 50 screenshots of the Facebook group to the press. Shocking, nauseating, and deeply unsettling, the content and speculation about what it meant dominated the news for weeks. And there were other troubling revelations. For years, dental students had been adding layers of sexist, misogynistic, homophobic graffiti to the wall behind the bar in “The Cavity,” a dental students’ lounge. Requests to have it painted over had been brushed aside. Female dental students had complained to authorities about some professors’ behaviour in class and were never told what action the Faculty or University took, if any. The Faculty of Dentistry and the University came under heavy fire as traumatized students, worried parents, and an outraged public demanded action, demanded names, demanded expulsions and resignations, and above all, demanded answers. Many others called the furore a tempest in a teacup—the Facebook posts were just locker-room talk that meant nothing. Voices were raised in variations on the “boys will be boys” theme. But it soon became clear that the Facebook posts, and the institutional response to them, did real and lasting harm. Before the school year came to an end, 13 Facebook posters had been suspended for two months from working in the dental clinic, putting their ability to graduate in jeopardy. Twelve had spent over 150 hours in an array of sessions with facilitators, faculty members, and experts as part of a restorative justice process.

A large number of their classmates, both female and male, had joined them. They preferred to give the 12 a chance to learn from their actions rather than see angry men leave without graduating. In the end, all of the Facebook posters graduated. But with licensing bodies reviewing their applications very closely, their professional future remains uncertain.

On Dec. 30, 16 anonymous current and former staff of the Royal College of Dental Surgeons of Ontario (RCDSO) sent provincial government and opposition politicians — as well as the Public Appointments Secretariat of Ontario — a list of allegations.

“Bullying and harassment...persist,” reads the letter from the 16 authors, who say they have kept their identities secret for fear of repercussions. “Swearing, shouting, racist and sexist remarks, intentional marginalization of female and racialized staff and sexualized behaviour are all ongoing problems. No one bothers to report such incidents to (human resources) because they have been normalized and no remedial action would be taken anyway.”

In September of 2019, a Medical officer of health complained to the RCDSO about the actions of Dr. Kilislians husband Andrew Curnew. There is a legal question as to whether a medical officer of health can even complain, as only a member of the public can complain about a dentist. A medical officer of health is clearly not a member of the public. She complained that Curnew had searched her staffs open social media and uncovered the sexist posts. Rather than investigate sexism within public health, both the RCDSO and the MHO blamed Kilislian for Curnew uncovering the sexist posts and bringing social media attention to same.²

² Report of the Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry, June 2015

The Regulation of Professional Advertising and Freedom of Expression -- General

Considerations

“Dr. Howard Rocket and Dr. Brian Price were dentists practising their profession in Ontario. They were prominently featured in an advertisement published in several Canadian magazines and newspapers under the heading "New Faces of the Canadian Establishment."

Alongside photographs of the two dentists, the following text appeared:

Drs. Howard Rocket and Brian Price, Founders, Trident Dental Centres, at the Holiday Inn, Toronto Downtown.

They work 12 hour days, including weekends and together log some 300,000 kilometres in business travel a year. In 1979, Dr. Rocket and Dr. Price foresaw the future of dentistry in the concept of delivering dental services from shopping malls to make it more convenient and accessible for the public. They formed Trident Dental Centres and in 1980 opened their first outlet in a Toronto suburb. The response from the public was overwhelming. By 1985 Trident had grown from three to a staff of fifteen hundred, becoming North America's largest storefront dentistry group. Today they have over 70 outlets in Canada and the United States, a figure expected to increase by more than 20 each year.

Success like this occurs when business people recognize a need for change and respond to it. Holiday Inn is recognizing and responding to their changing needs. That is why when Drs. Howard Rocket and Brian Price travel on business; they stay at a Holiday Inn hotel.

-- Holiday Inn -- A Better Place to be.

As a result of their participation in this advertising campaign, Dr. Rocket and Dr. Price were charged with violating ss. 37(39) and (40) of Regulation 447, R.R.O. 1980, made pursuant to the *Health Disciplines Act*. They brought these proceedings challenging the constitutionality of s.

37(39), a provision that explicitly restricts dentists' advertising, and seeking a declaration that s. 37(40), the Regulation's general professional misconduct provision, was inapplicable.

Although it has been clearly held that commercial expression does not fall outside of the ambit of [s. 2\(b\)](#), the fact that expression is commercial is not necessarily without constitutional significance. Regulation of advertising may offend the guarantee of free expression in [s. 2\(b\)](#) of the *Charter*, but this does not end the inquiry. The further question of whether the infringement can be justified under [s. 1](#) of the *Charter* must be considered.

Freedom of expression includes more than the right to express beliefs and opinions. It protects both speakers and listeners (*Edmonton Journal v. Alberta (Attorney General)*, [\[1989\] 2 S.C.R. 1326](#)). "Expression" may include all phases of the communication, from maker or originator through supplier, distributor, retailer, renter or exhibitor to receiver, whether listener or viewer (*Dagenais v. Canadian Broadcasting Corp.*, [\[1994\] 3 S.C.R. 835](#); *Irwin Toy Ltd.*, *supra*; *Rocket v. Royal College of Dental Surgeons of Ontario*, [\[1990\] 2 S.C.R. 232](#); *R. v. Videoflicks* (1984), 14 D.L.R. (4th) 10).³

Public Health Units

The current provincial government came to power with a promise to consolidate public health units and to terminate several medical officers of health. The conservative government flat out accused the MHOs of fearmongering to maintain their high salaried positions. According to a survey done by Dental Advocates, voters are reported to have taken issue with MHOS referring to themselves as "top doctors."

³ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/628/index.do>

According to the Infection Prevention and Control Disclosure Protocol if an IPAC lapse is identified in a dental office, the name and the location of the practice plus the specific nature of the lapse will be posted on the public health unit's website. (12) If the practitioner does not implement recommended corrective actions within an agreed upon timeframe, a medical officer of health or a public health inspector under the Health Protection and Promotion Act has the right to issue a section 13 order effectively closing the practice until the public health authorities are satisfied that their recommended corrective actions have been enacted. (13) In addition, their interpretation of the IPAC lapse and the risk it imposes, allows public health officials to notify patients of this risk and the advisability of being tested for HIV, HBV and HCV. Identifying an alleged professional misconduct on a public website, the ability to close down an established practice for an indefinite period, and the capability of requesting patients undergo emotionally and physically taxing tests, are powers which have the potential of destroying well deserved and highly esteemed professional reputations. Therefore, it is absolutely essential that the public health units wielding such authority do so with the utmost appropriate knowledge, training and integrity. Is this the case?⁴

J. P. v C. Q.-T. L., 2020 CanLII 34723 (ON HPARB)

In this decision, a dentist complained to the College of physicians about the conduct of the medical officer of health. Specifically, he complained that the MHO disseminated false and inaccurate information to the public when he published medical statements, which led to irreparable damage to the dentist's reputation and practice. The dentist also complained that the information provided to the patients of his practice by public health contained misleading information about HEP-C and H.I.V. The dentist complainant retained an expert who gave

⁴ Dr John Hardie article

evidence that the information provided by the MHO to the public was misleading and designed for an ulterior purpose which was to create a HEP-C database and not as a legitimate response to a concern about patient safety.

The Committee met on July 17, 2018, prior to receiving a response to the Applicant's complaint from the Respondent. On that date, the Committee formed the preliminary view that it would not investigate or take any action in response to the Applicant's complaint on the basis that:

- The behaviour complained of does not relate to the practice of medicine. It is about actions of public officials carried out in the course of their duties.
- The Committee is not the appropriate forum to undertake the Review requested.
- There is no reasonable prospect of the Committee taking any action.

In December 2019, the Supreme Court released its decision in *Minister of Citizenship and Immigration v. Vavilov*, [2019 S.C.C. 65](#), in which the Court provided further guidance to decision-makers regarding the interpretation of the term "reasonableness".

Following *Vavilov*, in determining the reasonableness of the Committee's decision, the Board considers the outcome of the Committee's decision in light of the underlying rationale for the decision to ensure that the decision is transparent intelligible justified. In considering whether a decision is reasonable, the Board is concerned with both the outcome of the decision and the reasoning process that led to that outcome. It considers whether the Committee based its decision on a chain of analysis that is coherent and rational and is justified concerning the relevant facts and the laws applicable to the decision-making process.

While cognizant that this Review was held prior to December 2019, the Board notes that in *Vavilov*, the Court did not overturn earlier Supreme Court jurisprudence on "reasonableness." In *Dunsmuir v. New Brunswick*, the Court had already established that "reasonableness is concerned mainly with the existence of justification, transparency and intelligibility within the decision-making process⁵. Notably, in this case, a critical focus of the parties' submissions was whether the reasons for the Committee's decision met that standard.

For example, at the Review, counsel for the Applicant submitted that the Committee's reasons failed to meet the test of intelligibility, transparency, and justification. He referred the Board to the Ontario Court of Appeal decision in *Elgin (Re)*, in which the Court noted at paragraph 23: "Decision-makers must give reasons for their decisions that display the qualities of accountability, intelligibility, adequacy and transparency, and that are responsive to the life issues." [2]

The Applicant's counsel also referred the Board to its decision in File #9007, in which the panel cited the Ontario Court of Appeal decision in *Clifford v. Ontario Municipal Employees Retirement System*. [3] The HPARB panel noted:

...that reasons would be sufficient where read in the context of the particular case, the reasons explain why the Tribunal gave the answers it did to the questions posed. [4]

The two decisions discussed above establish that a medical health officer can complain to the regulator about a dentist and not only will it be investigated, moreover, its likely the panel will support the MHO. Whereas in the case where the dentist complained against the MHO, the panel

⁵ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2408/index.do>

dismissed it without investigation as being frivolous. One would assume that only a member of the public can make a complaint to the RCDSO. A MHO is not a member of the public. The decision also widens the jurisdiction of the panel by allowing government actors such as MHOs to make personal complaints against dentists and the dentists have no reciprocal right to do so. There is a new covid variant, and public health's response continues to evolve. Dentists' family members will take a position for or against public health. Family members will comment in social media about public health and its "top doctors"-

Will more dentists be found guilty of misconduct for the posts of their spouses? It did not matter that Mr. Curnew did not work at the practices in any capacity; the panel still held Dr. Kilislian responsible for his anti-sexist activism. Spouses who work together may be more likely to be held responsible by the complaints committee, particularly if one spouse is more anti-mask or anti-vaxxer.

Key Takeaways

While the ICRC may dispose of the complaint without taking any action, it may issue a verbal or written caution or require the dentist to complete a remedial education program. These outcomes are serious as they are published on the College's public register. When this complaint discussed above is published on the college register, will the public agree with the panel that

1. Curnew was wrong for aggressively asserting his disdain for a public official's sexist views.
2. Dr. Rita Kilislian is responsible for the speech and social media of Curnew.
3. A course in communications will protect the public
4. Female dentists need to take a course to learn how best to protest sexism.



About the Author Andy Curnew MBA ICD is a social media influencer who uses social media for social change. He is Instagram verified and has over 150,000 followers. Andy is married to endodontist Dr. Rita Kilislian, and together they share a daughter named Alexa. Curnew is executive director for redemption advocates Canada. Two decades ago, he was wrongly convicted and served many years in maximum security prison as a wrongly convicted person. He currently lives in Toronto's Bridle Path; he obtained his MBA from Ivey business school and his ICD designation from Rotman School of Business. He is currently enrolled and nearly completed a LLM degree at Osgoode York University