INCOME SECURITY ADVOCACY CENTRE
Centre d'action pour la sécurité du revenu

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College of Physicians and Surgeons of Ontario
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Attention: Policy Department

RE: Physicians and the Ontario Human Rights Code Policy Review

Please find as follows the comments of the Income Security Advocacy Centre (ISAC) on the College's human rights policy. ISAC is a specialty legal clinic funded by Legal Aid Ontario to advance the rights, interests and systemic concerns of low-income Ontarians with respect to income security programs. ISAC carries out its systemic advocacy and law reform mandate through test case litigation, policy advocacy, community development and public education.

ISAC's comments address human rights issues related to poverty absent from the College's policy and suggest improvements to the policy regarding discrimination free provision of medical services.

Context: Discrimination, poverty, health and disability

The College's human rights policy is heavily focused on the refusal of patient care as a potential violation of human rights. Undoubtedly the refusal to treat based on religious or other beliefs is a serious issue. However, physicians must also consider human rights in the way that they provide services to their patients.

The College's human rights policy must be based on an understanding of the links between discrimination, poverty, and health. Discrimination can cause poverty. In turn, poverty can increase the risk of discrimination.

People who experience discrimination and who are protected by the *Human Rights Code* are over-represented in poverty. They include people with disabilities, women, racialized people, indigenous people and new immigrants, who are disadvantaged and marginalized in Canadian society. Their social inequality caused by discrimination contributes to their economic inequality which in turn makes them more vulnerable to discrimination.[1]

[1] Dennis Raphael, *Poverty and Policy in Canada: Implications for Health and Quality of Life*. Toronto: Canadian Scholars Press Inc., 2007, Chapter 3, "Who is Poor in Canada?"; Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century*. Toronto: Canadian Scholars Press Inc., 2006.

The College's human rights policy must also recognize that discrimination may be experienced in complex ways: multiple *Code* protected grounds may intersect to produce a unique experience of discrimination.

While human rights laws and theory may be unfamiliar to many doctors, they are familiar with a concept that may help them to understand the relationship between discrimination, poverty and medicine: the social determinants of health. Disability, gender, race, and income and income distribution (poverty) have been shown to have strong effects on the health of Canadians.[2] One commentator described poverty as the number one determinant of health. Poverty accounts for 24% of person years of life lost in Canada.[3]

A substantive equality approach to discrimination

Achieving substantive equality, as opposed to formal equality, is the foundation of non-discrimination under the *Code*.[4] The Ontario Human Rights Commission describes substantive equality as

> … understanding and meeting the needs of disadvantaged persons or groups using historical, legal and social contexts. It takes into account discriminatory barriers in their many forms, not all of which are obvious or intended. [5]

Substantive equality therefore requires more than just affording everyone the same treatment. Because a person's disadvantage and the barriers they face must be considered, different or "special" treatment may be needed to achieve substantive equality.

Treating everyone the same without taking into account barriers or disadvantages, may result in indirect discrimination if such treatment would have a discriminatory effect on *Code* protected persons, which is not experienced by others. [6]

Non-discriminatory provision of medical services

A commitment to substantive equality in the practice of medicine means taking the health risks associated with poverty seriously. There are two ways in which medical practice that respects human rights should be taking poverty into account.

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[2] Juha Mikkonen and Dennis Raphael**,** *Social Determinants of Health: The Canadian Facts***.** Toronto: York University School of Health Policy and Management, 2002.
[3] Nicholas Neufield, "Increasing Equity Through Medicine: An Interview with Dr. Gary Bloch", *University of Toronto Medical Journal*, Volume 86, Number 2, March 2009; Wilkins R., Berthelot J-M, Ng E. Trends in mortality by neighbourhood income in urban Canada from 1971 to 1996. Health Reports (Statistics Canada). 2002: 13(Supplement): 10.
[4] *Ontario (Disability Support Program) v Tranchemontagne*, 2010 ONCA 593
[5] Ontario Human Rights Commission, *Your guide to special programs and the Human Rights Code*, March 2010, updated December 2013, at p.5
[6] Section 11, *Ontario Human Rights Code*

First, physicians must ensure that the way that they practice medicine removes barriers for low income people to access health care. People living with low incomes face barriers to receiving high quality primary care such as lack of access to transportation, lack of a valid health insurance card, as well as difficulty making and keeping appointments. Billing structures can also contribute to the under-servicing of low-income people by discouraging long appointments or by making it more profitable to serve healthier patients who require less care. Unfortunately, we are also aware of issues such as stereotyping and unwelcoming attitudes towards poor patients by family physicians based on factors such as ethnic background, immigration status, and gender. Such discriminatory attitudes are a violation of the *Human Rights Code* and are also well-documented barriers to care.[7]

As a result, physicians should remove barriers that make it more difficult for low income people to access their services. For example, many people living in poverty must obtain medical reports in order to access income supports and programs. Charging exorbitant fees for such reports can make it difficult for patients to access supports that can assist them to meet their most basic needs and thus undermine patient health. Physicians may consider barriers created by their location and hours of service.

The second way in which physicians can respect human rights principles is by treating poverty as an intervention that requires intervention like other major health risks. Physicians should screen for poverty, factor poverty into clinical decision-making like other risk factors and intervene to help patients living in poverty.[8]

Physicians serve as gatekeepers to access many income support programs, such as the Ontario Disability Support Program, CPP Disability, Disability Tax Credit, Special Diet Allowance, Workplace Safety and Insurance benefits. Doctors should have some familiarity with these forms and advise patients of these options where appropriate. Unfortunately, ISAC frequently hears stories about doctors refusing to complete the necessary forms or completing them improperly. The College's human rights policy should encourage physicians to recognize that they play an important role in accessing social benefits that can improve the health of low-income patients and they have a responsibility to competently complete such forms as part of a human rights practice.

Conducting a medical practice in this way could also be seen as satisfying the physician's duty to accommodate the needs of a patient because of disability to the point of undue hardship. The College's policy should stress that the obligation to accommodate disability is an onerous one: the threshold of hardship is high and a physician is required to establish "undue" hardship, not just hardship.

Submitted by: Jackie Esmonde and Marie Chen, Staff Lawyers

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[7] Bloch et al., "Barriers to primary care responsiveness to poverty as a risk factor for health" *BMC Family Practice* 2011, 12:62.

[8] Bloch, "Poverty: A clinical tool for primary care in Ontario". *Ontario College of Family Physicians.* 2013 (Accessed August 5 2014 at: http://ocfp.on.ca/docs/default-source/cme/poverty-and-medicine-march-2013.pdf?sfvrsn=0).