

Invasion of Privacy and Abuse of Power by Ontario Doctors' Regulator

“Respect for individual privacy is an essential component of what it means to be “free”. As a corollary, the infringement of this right undeniably impinges upon an individual's “liberty” in our free and democratic society.”¹

The right to be secure from government intrusion on individual privacy is a hallmark of a free and democratic society. This right is under threat in Canada and few Canadians know about it.

Decades ago, Canada’s Supreme Court recognized the great value of privacy in our society as an “essential aspect of a free and democratic society.”² “Privacy, including informational privacy, is grounded in a person’s physical and moral autonomy, and is essential for the well being of the individual.”³ There can be nothing more private than the intimate information we share with our doctor about our bodies and our thoughts.

We disclose deeply personal information about ourselves to them so they can help us. As patients, we **only** confide this information to our doctors because we know it will be kept private, and we trust our doctor to do so. Our private information is recorded in our patient chart by our doctor for **our** benefit. We trust the information divulged to our doctor is safe in his or her hands. We also know that this information remains private unless we ask for it be disclosed, again for **our** benefit. But the disclosure of our private medical information requires our permission. It is necessary to provide written or verbal consent to send information from our file to a specialist, for example. Or, if we have a complaint against our doctor, we must provide written consent for the agency that is responsible for regulating a doctor’s conduct to pursue it.

So, what does it mean for our “free” society when a government agency, such as the regulatory body responsible for doctors, the College of Physicians and Surgeons of Ontario (CPSO), demands all our personal information and health information in our Medical Records **without** our knowledge or permission? It means we no longer live in a free and democratic society, and the government body has unlimited power to go into our personal records and invade our privacy by intimidating our doctors under threat of suspension, and revocation of their licence to practice medicine.

Using the declaration of a pandemic as an excuse, the CPSO has started a new and unprecedented attack on Canadian citizens and their privacy. Targeting Ontario doctors who provide patients with information about exemptions, or treatment and prevention of illness related to mask mandates or COVID19 shots, the CPSO begins its own investigation - **without the patients’ knowledge or consent** - even though there is NO patient complaint. In a

¹ R. v. O’Connor, 1995 CanLII 51 (SCC), [1995] 4 SCR 411, <<https://canlii.ca/t/1frdh>>.

² Hunter v Southam 1984 2 SCR 145 at page 160

³ R. v. Dymnt 1988 2 SCR 417 at page 427

paternalistic and patronizing move, the CPSO claims the doctor is “harming” and “injuring” her own patients, and demands the release of all patient records for “investigation.” The investigation is not to protect any patient, otherwise there would be a patient complaint and there would be some form of patient harm or injury. There is none!

The investigation, initiated by the CPSO Registrar, is rubber stamped by an internal committee in the CPSO called the ICRC, claiming patients have been harmed or injured, and the doctor is engaging in misconduct or incompetence – all without a patient or doctor complaint! The CPSO then orders an army of investigators to seize all patient records. This is not an investigation. It is a fishing expedition against the doctor, a blatant abuse of power, and an invasion of a patient’s right to privacy without lawful justification. Moreover, the CPSO bans the doctor from de-personalizing data from the records to protect information that has nothing to do with COVID or her own clinical notes. This includes the patient’s name and personal details that are not relevant whatsoever to investigate alleged misconduct or incompetence of the doctor.

The CPSO has no business accessing and probing personal data of Canadians. Why are de-personalized records not acceptable to the CPSO??

Some Ontario doctors have been forced to hand over their patients’ records, breaching their privacy. A few, very brave doctors have defended the rights and requests of their patients that their privacy be respected. One of those doctors is Dr. Kustka. In a hotly contested legal battle, the CPSO has rejected Dr. Kustka’s request to protect the privacy of her patients’ personal information by redacting information that has nothing to do with COVID or an investigation into allegations regarding her medical practice. Instead, they have threatened to suspend her medical licence. As her patients, we are concerned about the abuse of power, and the lack of CPSO transparency and accountability. In November 2022, we filed a case against the CPSO, and asked the Court to review the lawfulness and constitutionality of the CPSO demand as an infringement of our right to privacy, and the right against *unreasonable* search and seizure. Instead of trying to get our consent, or giving us an opportunity to be heard, the CPSO brought a motion to quash (remove) Patients, saying they have no “interest” in their own medical records, and no legal rights, including the right to be heard in Court!! Astonishingly, the CPSO also claims that the doctor must abide by the demand, even if it is unlawful and unconstitutional, because the *Charter* does not apply! The CPSO should not be above the law.

Learn more about our case and our family doctor’s case here: <https://privacyisyourright.ca/>.

Almost 25 years ago, the Supreme Court of Canada warned that without privacy, we will lose our freedom.⁴ One of the 8 predictions for the World in 2030 by the WEF is that we will have no

⁴ R. v. O’Connor 1995 4 SCR 411 at para 113

Privacy!⁵ Unless we defend our right to privacy, beginning with our own information held by our own doctors, our privacy will disappear much earlier than 2030. It will vanish within this year!

Please join the Patients on **March 30, 2023 at 10:00 A.M.** as they argue the right to be heard in Court regarding the invasion of their privacy, and the unlawful seizure of their *own* information.

Court location: Divisional Court - Osgoode Hall

130 Queen Street West, Toronto, ON M5H 2N5

Court room: TBA

⁵ <https://twitter.com/wef/status/813869325635424256?lang=en>