

MAY 1976

HUMAN RIGHTS BOARDS OF INQUIRY

The following has been abridged from a decision filed in May 1976 under the Human Rights Code of British Columbia.

DISCRIMINATION AGAINST IMMIGRANT DOCTORS

A complaint by the Human Rights Commission of British Columbia against the College of Physicians & Surgeons of British Columbia.

The members of this Board of Inquiry were appointed by the Minister of Labour to inquire into a complaint by the Human Rights Commission of British Columbia alleging that in May 1975 the College of Physicians and Surgeons of British Columbia adopted a policy that is discriminatory toward non-Canadian doctors seeking membership in the College.

In order to practise medicine in British Columbia, non-Canadian doctors must be enrolled on one or other of the limited, temporary or permanent registers maintained by the College, pursuant to provisions of the Medical Act (R.S.B.C. 1960, c. 239).

At this point it would be helpful to consider the respective positions under these regulations of two hypothetical applicants for registration by the College, each of whom meets all of the educational and character requirements of the regulations but has not completed the licentiate examinations of the Medical Council of Canada. "A" is a Canadian citizen; "B" is a landed immigrant. Although neither is entitled to full registration, "A" can become so upon completion of the licentiate examinations, whereas "B" cannot.

Under the practice of the College prior to May 1975, both "A" and "B" would have been admitted to the temporary register; and, with few exceptions, each would have been required to practise in an area of the province that is "under-doctored".

Broadly speaking, the under-doctored areas of the province are geographically defined by a line running eastwards from Prince Rupert to the Alberta border and northwards from Ashcroft to the Yukon border. There are, within this broad area, pockets in which there is an adequate supply of medical services and, outside it, pockets that may fairly be regarded as under-doctored. Upon completion of their licentiate examinations, both "A" and "B" would be free to practise medicine in any area of the province, regardless of the state of the

medical services in that area. Lacking the requirement of citizenship, however, "B" would have to remain on the temporary register.

For reasons that are not immediately relevant, the Council of the College, in May 1975, adopted the policy challenged by the Human Rights Commission. The effect of that policy is that applicant "B", upon completion of the licentiate examinations, not only remains on the temporary register until attaining Canadian citizenship, but also remains subject to the restriction that his right to practise is confined to a specific under-doctored area of the province.

In March 1976, this policy was modified slightly in anticipation of contemplated changes in the citizenship and immigration laws, whereby geographical restrictions upon the right to practise would cease upon attainment of Canadian citizenship, or after three year's residence in the province, whichever came first.

It is thus clear that a non-Canadian doctor wishing to practise in British Columbia, notwithstanding an identity of educational qualifications and general competence and integrity, is treated differently from a Canadian doctor in two respects: (1) the Canadian can become a fully registered member of the College whereas the non-Canadian cannot; and (2) the Canadian can exercise a free choice as to where in British Columbia he or she may practise, whereas the non-Canadian cannot.

The complaint of the Human Rights Commission was that the policy of the College of Physicians and Surgeons of British Columbia discriminates against non-Canadian doctors in respect to their occupational qualifications and their membership in an occupational association, and does so without reasonable cause.

Although the Commission considers the policy of the College constitutes discrimination without reasonable cause, it does not regard it as being discrimination in respect of place of origin. The policy of the College, as understood by the Commission, is that a doctor who was born outside Canada, of non-Canadian parents, and who came to this country as a babe in arms, who has lived here all his life and has been educated here although never taking out Canadian citizenship, is as much subject to the policy as is any other person not having Canadian citizenship. Similarly, a Canadian citizen

who has been educated in medicine in Canada, but who then leaves and acquires citizenship in some other country, is subject to the policy should he or she wish to return to Canada.

As a practical matter, application of College policy to these and similar cases may be rare, but the fact that it does, in principle, apply to them, indicated to the Board of Inquiry that the discrimination is based upon citizenship, and not place of origin. It was also clear to the Board that not all discrimination on the grounds of citizenship is prohibited under the Code.

The Board's concern was therefore with Section 9 of the Code and it reached the conclusion that the effect of the policy of the College is, without a doubt, to discriminate without reasonable cause against non-Canadian doctors in respect of their qualifications, in respect of their occupation, and in respect of their qualifications for membership in the College.

The Board concluded that the additional registration requirement of a geographic restriction upon the right to practise, based only upon citizenship, is unrelated to bona fide qualifications for the practice of medicine. This fact, the Board decided, was not mitigated by the knowledge that the College was acting in the interests of the public and that it had been administering its policy with tact and sensitivity. The Board maintained that a policy that is, as a matter of law, unreasonable remains unreasonable even if reasonably applied.

The Board accordingly instructed the College of Physicians and Surgeons of British Columbia to cease acting upon the policy that it make available to any doctors discriminated against, by reason of the policy, the rights, opportunities and privileges that they had been denied. The latter order requires the College to remove any geographical restrictions that have been imposed on any non-Canadian doctors and to advise these doctors of their right to practice in any area of the province they choose.

Leon Getz, Chairman

C. Paul Daniels

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