

Protecting the Rights and Confidential Health Information of Transgender Individuals

June 23, 2015 – In 1968, the Phillip Morris Company introduced Virginia Slims, a brand of cigarette's marketed to young, professional women. The brand's famous slogan, "You've come a long way, baby" was a nod to the professional, economic and social advances women back then appeared to be making due, in no small part, to the feminist movement of the day. Looking back at that point in time from our current vantage point however, it would be entirely understandable if today's woman raised a sceptical eyebrow and responded to Phillip Morris with a dubious, Ya think? Yes we have come a long way but we still have a long way to go.

This month, as Toronto plays host to one of the largest [Pride celebrations](#) in the world, it's worth reflecting on the long way Canada's LGBT community appears to have come in terms of advancing their legal rights. It has been 10 years, for example, since Canada passed a law legalizing same-sex marriage. More recently, Bill C-279, the Gender Identity Bill which is currently before the Senate, would, if passed, legally recognize and protect the human rights of transgender Canadians. Still, despite how far we've come, we are far from where we need to be. One particularly disconcerting yet little-known example concerns the confidential health information of transgender individuals.

It is safe to assume that no one enters into the transition process lightly. From seeking an initial diagnosis to going through hormone treatment to undertaking sexual reassignment surgery, the journey is long and arduous and, in accordance with our Canadian health care system, marked by numerous and stringent checks and balances along the way. In Ontario, for instance, an individual [must](#), among other things:



- be a legal adult over the age of 18
- have received a diagnosis of Gender Dysphoria
- ensure mental health and/or substance abuse issues are under control
- complete a year of medically supervised hormone therapy
- complete a Gender Role Experience, a documented record of living in the role of their new identity within the community.

Physicians who specialize in the medical aspects of gender transition are likewise held to a high degree of accountability. For example, they must be highly knowledgeable about and skilled in both gynaecology and endocrinology. Physicians who possess these skills and are also willing to take on transgender patients are in short supply.

Given the thoughtful consideration, regulation and medical expertise that precedes and accompanies gender reassignment, it's reasonable to believe that once a legally competent adult has done their due diligence and embarks on the transition process, they are making the right decision and should be allowed to proceed unimpeded. Unfortunately however, it is common for other "stakeholders", be they parents, siblings, spouses, or others, to become upset, raise objections and demonstrate their opposition in the form of a complaint to the College of Physicians and Surgeons of Ontario (CPSO) against the physician, charging him or her with incompetence and not practicing in accordance with professional standards. When this occurs, it triggers a series of events that compromise the rights of the physician, his patient and, unbelievably, the rights of other, unrelated transgender patients.

Once a complaint has been lodged against a doctor, he or she is legally required to provide treatment details, along with a complete copy of the medical records, of the patient in question. Because it is a third party (the parents, siblings, spouse, etc.) complaining rather than the patient him- or herself, the patient's consent must be obtained before the physician responds to the complaint. The College, in turn, passes the physician's detailed response, along with the patient's detailed confidential health information, on to the complainant. Given that there are few, if

any, transgender adults who wish to have their confidential health information released and shared with someone who is trying to stop them from reaching their goal, rarely, if ever, give their consent. It is precisely at this point that things go from bad to worse and endanger the rights of other trans people.

According to the Health Professions Procedural Code under the [Regulated Health Professions Act](#), when a patient in this situation refuses to give permission for their confidential medical records to be released, the College has the legal right to obtain through the backdoor what it cannot obtain through the front by commencing “an investigation” into the overall standard of care of the physician in this particular area of practice. The College utilizes the legislative power it possesses and proceeds to obtain the confidential health information of not only the patient at the centre of the complaint, but that of other, similar patients being treated in the practice. Incredibly, this entails obtaining, without consent, confidential health information for at least 25 other patients. Should the doctor refuse to provide this information, he or she will be charged. Put another way, a physician has little to no choice other than to allow the confidential information of 25 or more transgender bystanders to be handed over to the College so that those files can be combed through for evidence against that doctor. In an epic example of damned if you do and damned if you don’t, the rights of transgender people and the physicians who are trying to help them are being trampled. When a legally competent adult says, “no”, it should mean “no” and complaints to a doctor’s licensing body by third-party busy bodies should never be used as grounds to commence an investigation into a physician’s overall practice of medicine in order to enable the refusal of the patient to be overridden.

The College, for their part, is simply following the legal rules as it interprets them in this particular circumstance. Unfortunately, in this circumstance, [the law is an ass](#); the application of it needs to be clarified and the law needs to be changed.



While it is worth celebrating, this June and always, the strides that have been made by the LGBT community, none of us should forget that the battle is not over yet and nor will it be until issues like this are brought to the fore and addressed with sound legislation. Only then can we truly say, “You’ve come a long way, baby”.