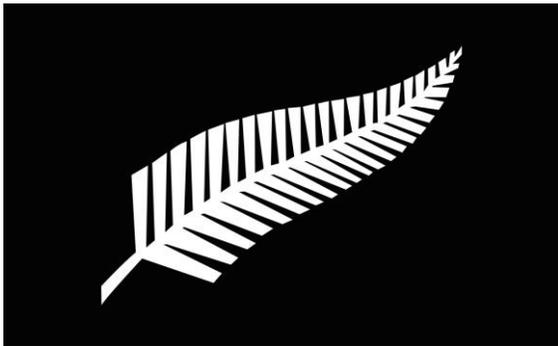


# Conscientious Objection in New Zealand



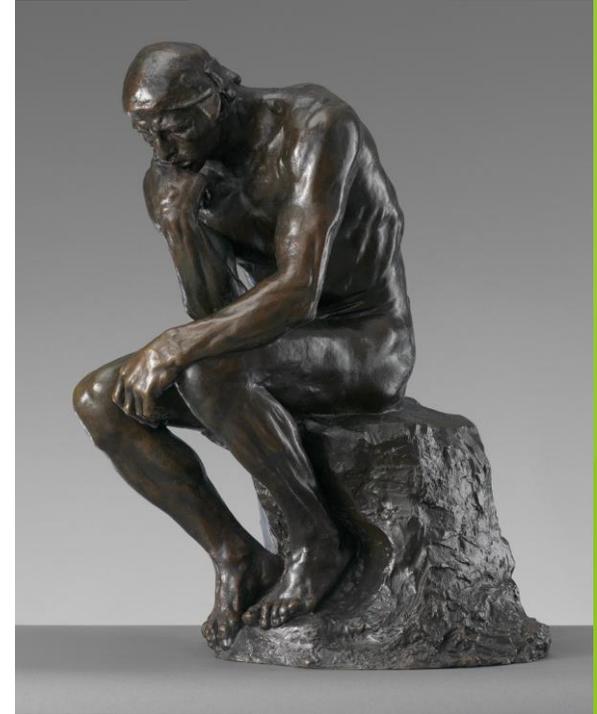
Dr Ronan Cleary

GP Registrar

September 2018

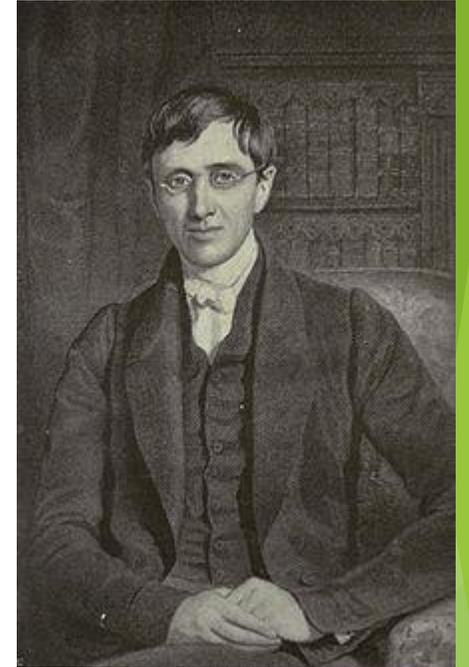
# What is Conscience

- ▶ Conscience is an attribute that allows a person to form a sense of right and wrong, and how one should behave when faced with a moral choice.
- ▶ It is a uniquely human faculty that is fundamental to our humanity.
- ▶ It has been described as an inbuilt 'satellite navigator'.
- ▶ A Classic description of conscience was written by John H Newman, Catholic convert and theologian:



# What is Conscience: John H Newman

- ▶ *“In the depths of his conscience, man detects a law he does not impose upon himself but which holds him to obedience. Always summoning him to love well and avoid evil, the voice of conscience, when necessary, speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is his very dignity, according to it he will be judged. Conscience is the most secret core and sanctuary of a man. There he is alone with God, where his voice echoes in his depths”.*



# New Zealand Conscientious Objectors

- ▶ <https://m.youtube.com/watch?v=G0aEU7KFobA>



- ▶ As I am discussing the New Zealand legislation with regards CO. Appropriate to show a clip of what NZ CO went through during WW1. It is unfortunate to think there could be modern parallels.

# Practice of Medicine and Conscience

- ▶ The practice of medicine assumes that a doctor acts in good conscience. Since the time of Hippocrates, in the 3<sup>rd</sup> Century BC, medicine has had core ethical values which mark it as a moral, and not merely, a technical activity.
- ▶ Conscience objection impinges on medicine in this regard; it is an appeal to ones conscience to refuse to perform acts that threaten a persons sense of moral integrity.
- ▶ It is the essence of freedom of thought and freedom of expression and by extension; freedom of speech and subsequently the very foundation of a free society...

# Legislative Position in NZ

- ▶ Reference to Conscientious Objection in New Zealand occurs in three specific Acts of Parliament:
- ▶ The statutes are:
- ▶ The Contraception Sterilisation and Abortion Act 1977.
- ▶ The New Zealand Bill of Rights Act 1990.
- ▶ The Health Practitioners Competence Assurance Act 2003.



# The Contraception Sterilisation and Abortion Act 1977

Contraception, Sterilisation, and Abortion Act 1977

46 Conscientious objection

(1) Notwithstanding anything in any other enactment, or any rule of law, or the terms of any oath or of any contract (whether of employment or otherwise), no medical practitioner, nurse, or other person shall be under any obligation—

- (a) to perform or assist in the performance of an abortion or any operation undertaken or to be undertaken for the purpose of rendering the patient sterile:
- (b) to fit or assist in the fitting, or supply or administer or assist in the supply or administering, of any contraceptive, or to offer or give any advice relating to contraception,—

if he objects to doing so on grounds of conscience.

(2) It shall be unlawful for any employer—

- (a) to deny to any employee or prospective employee any employment, accommodation, goods, service, right, title, privilege, or benefit merely because that employee or prospective employee objects on grounds of conscience to do any act referred to in subsection (1); or
- (b) to make the provision or grant to any employee or prospective employee of any employment, accommodation, goods, service, right, title, privilege, or benefit conditional upon that other person doing or agreeing to do any thing referred to in that subsection.

(3) Every person who suffers any loss by reason of any act or omission rendered unlawful by subsection (2) shall be entitled to recover damages from the person responsible for the act or omission.



# The New Zealand Bill of Rights Act 1990

## New Zealand Bill of Rights Act 1990

### 13 Freedom of thought, conscience, and religion

- Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

### 15 Manifestation of religion and belief

- Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.

# The Health Practitioners Competence Assurance Act 2003

## Health Practitioners Competence Assurance Act 2003

174 Duty of health practitioners in respect of reproductive health services

(1) This section applies whenever—

- (a) a person requests a health practitioner to provide a service (including, without limitation, advice) with respect to contraception, sterilisation, or other reproductive health services; and
- (b) the health practitioner objects on the ground of conscience to providing the service.

(2) When this section applies, the health practitioner must inform the person who requests the service that he or she can obtain the service from another health practitioner or from a family planning clinic.

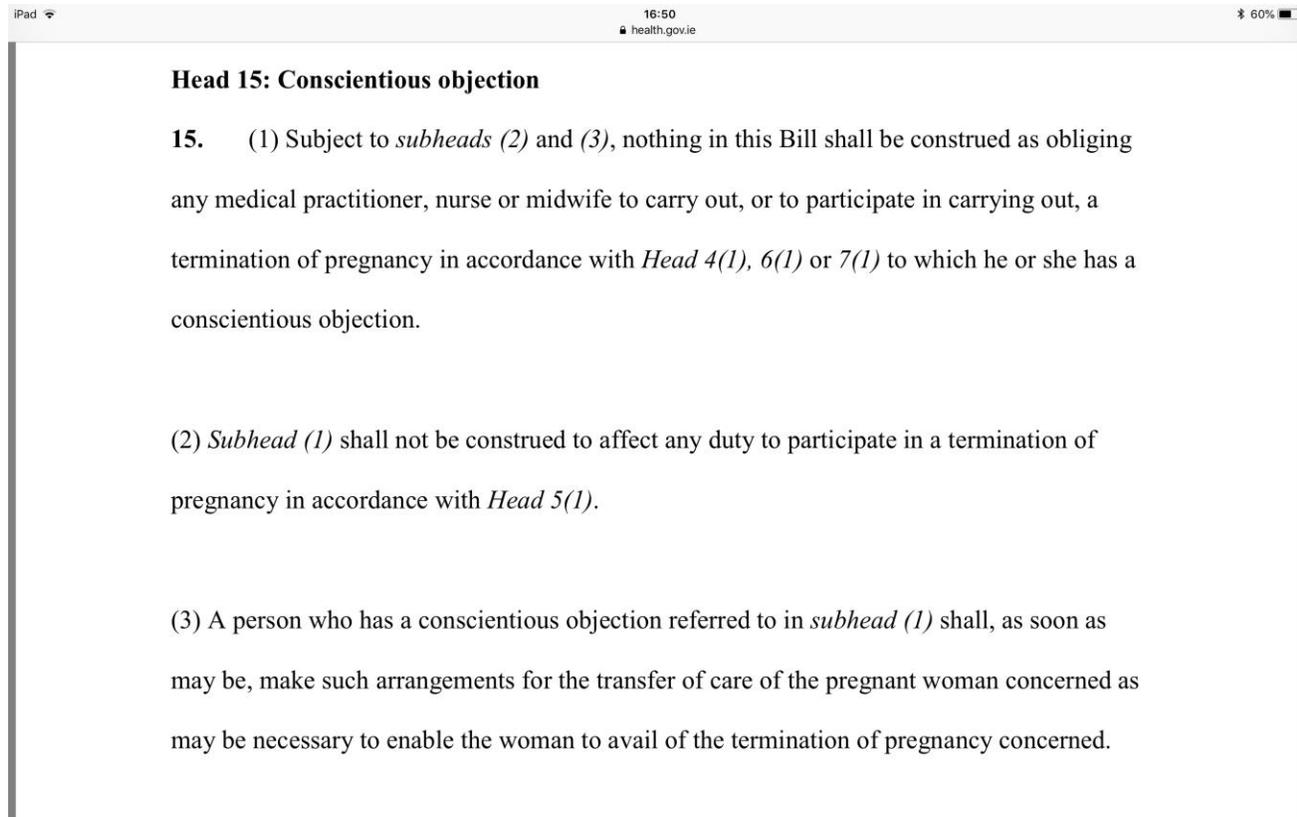
# Case of “Beliefs and Medical Practice” 2010

- ▶ In 2009 The New Zealand Medical Council requested submissions from medical professionals with regards “Beliefs and Medical Practice”.
- ▶ Many Pro-Life medical professionals seen this as attempt to undermine CO in health care and formed the New Zealand Health Professionals Alliance which was incorporated in 2009.
- ▶ The NZHPA lodged papers in the NZ High Court for a Judicial Review of the NZ Medical Councils draft paper “Beliefs and Medical Practice”.
- ▶ The Case was heard in Wellington in November 2010 and in December 2010 a decision was issued, which effectively upheld the right to CO.

# What does this mean effectively?

- ▶ It means that medical professionals or ‘other persons’ in NZ are covered in regards to their own Conscience when dealing with Abortion, to a greater extent than what the proposed legislation stipulates here.
- ▶ It also means, that it is illegal to discriminate against them with regards job applications, promotions etc.
- ▶ Our proposed legislation does not cover this.
- ▶ Here, under Section 15 of the regulation of Termination of Pregnancy Bill: it proposes that medical practitioners **SHALL** make such arrangements for the TRANSFER OF CARE of the pregnant women (and the baby) to avail of termination of pregnancy (and the babies life).
- ▶ Whereas, currently, in NZ, as per the above, although the Health Professional does have a responsibility to inform a patient that she can avail of abortion services elsewhere, there is no direct responsibility on the medical professional to TRANSFER THE CARE of the two patients in order to end the life of one of them.

# Regulation of Termination of Pregnancy Bill 2018: Conscientious Objection



# Does it matter?

- ▶ Yes. Freedom of Conscience, Freedom of Thought and Freedom to act according to ones own conscience is of paramount importance to a free society.
- ▶ “Real oppression subsists not merely in doing unjust things, but requiring others to participate in doing unjust things”.
- ▶ If CO is not enshrined in this legislation then there is the spectre that GPs who are pro-life could be targeted by pro-choice activists, presenting with unplanned pregnancies, seeking an abortion, hoping that the GP refuses to refer them, or Transfer their care; thereby having grounds to make a complaint to the Medical Council.



# Council of Europe's Parliamentary Assembly 2010

- ▶ Adopted a non-binding resolution: 1763, affirming the right of conscientious objection for medical professionals: The resolution states:
- ▶ “No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which would cause the death of a human foetus or embryo, for any reason”.
- ▶ It is non binding, but it does re-affirm the normative understanding of freedom of conscience.

# Obligation of Nurses/Midwives to Participate in Abortion

- ▶ The current legislation Section 15 appears also, unlike the NZ legislation, to require midwives and nurses to participate in abortion if ONE Doctor certifies, or decides, that there is an *emergency* as per Section 5 (1). There is no scope for CO in these circumstances.
- ▶ Further in the UK, as per Baroness Nuala O’Loan, “It has been thought that the UK provision protected doctors and nurses from participating whether directly or indirectly in managing, arranging, supervising or carrying out abortions. That all changed in 2014 when the Supreme Court (in the UK) decided that two senior midwives who conscientiously objected to having to delegate tasks to, supervise or support those directly involved in abortion, had NO protection under the law”.
- ▶ Consequently, following an amalgamation of two hospitals these two skilled and compassionate midwives were unable to continue to serve as midwives.

# Legal Perspective

- ▶ William Binchy, Professor of Law, Trinity remarked in his IT newspaper article 9.7.18 stated that:
- ▶ “Rather than force the participation of doctors with a conscientious objection, the government has the opportunity to fashion a scheme that does not require them to engage in the process. If the government refuses to do this, it is hard *not* to discern a wider *agenda* on its part...”
- ▶ Consequently, by “transferring the care” of a patient (and her unborn baby) for a Termination of that pregnancy, the Doctor, who is a CO, could see himself as complicit in the act (or paper trail, if a letter is required) in the ending of the life of one of his/her patients.
- ▶ This is not CO in its true sense.
- ▶ It all boils down to what one interprets as “Transfer of Care”.

# The NZ clause is not 100% true Conscientious Objection

- ▶ It is not, because it obliges the medical professional to inform a patient that the Termination of Pregnancy can be carried out elsewhere.
- ▶ However, it is a lot more robust than Section 15 of the proposed legislation here as it does not oblige Medical Professionals to “Transfer Care” of the patient.
- ▶ It also protects others, not just medical professionals and covers employments law rights.
- ▶ To secure a clause akin to the NZ clause does no harm to the Pro-Choice lobby; but to not secure such a concrete clause does every harm to those Doctors and healthcare professionals who are pro-life, not to mention other people who work in Healthcare such as Porters, Cleaners etc, who do not appear to be covered at all in the CO clause. How are the remains of the baby to be disposed of? By whom? Who cleans out the sluice rooms?

# Consequences of not securing a Robust CO

- ▶ Without the above, the right to freedom of speech and freedom of thought for the individual in society will be greatly diminished.
- ▶ This leads me back to what William Binchy said in his IT article 9.7.18
- ▶ “Hard not to discern a wider agenda on its (govt) part...”
- ▶ What motivation does the government and its subsidiaries have if it refuses to include a robust CO clause in the legislation in the day of the internet and iPhone, where a full list of Doctors and facilities that will carry out these procedures is fully available at the click of button.

# Why Not?

- ▶ "Growth is the only evidence of life. We can believe what we choose. We are answerable for what we choose to believe. Ten thousand difficulties do not make one doubt". John Henry Newman.



# References

- ▶ 1. <https://www.nzhpa.org/conscientious-objection-in-new-zealand-its-legal-status-and-significance/>
- ▶ 2. Article By Baroness Nuala O'Loan DBE MRIA 31.5.18
- ▶ 3. Irish Times Article by Prof William Binchy 9.7.18.
- ▶ 4. Maria Stein, Iona Institute