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FORMERLY VRAN

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Friday, May 13, 2016   by email and Canada Post

To: Hon Eric Hoskins, MPP
Ministry of Health and Long-Term Care
10th Floor, Hepburn Block
80 Grosvenor Street
Toronto, Ontario M7A 2C4

Email: ehoskins.mpp@liberal.ola.org

Dear Minister of Health Hoskins,

It has come to our attention that recently issued **Orders for Suspension from Attendance at School** from the Medical Officer of Health at Hastings Prince Edward Public Health are in violation of Ontario's *Immunization of School Pupils Act* (ISPA) and the *Health Care Consent Act*. Further the Suspension Orders breach the *Canadian Charter of Rights and Freedoms*, Sections 2, 7 and 15 at a minimum. Such breaches of federal and provincial law are unacceptable.

We have attached for your consideration a copy of the letter we sent to the Board of Health for Hastings Prince Edward Region. This letter includes a scanned copy of the first page of the Order for Suspension where the Medical Health Officer omits his receipt of personal belief exemption affidavits as valid documents to rescind the Suspension Order. The letter contains all the details of why the Suspension Order constitutes an illegal action.

As the Ministry is the major funder of regional public health offices (75% in the case of Hastings Prince Edwards Public Health), your Ministry bears responsibility for the actions of these regional offices. Of particular note in this regard are certain court precedents. We note two here.

In *Blencoe vs. British Columbia* (Human Rights Commission), the BC Supreme Court found that actions of administrators of entities that are not technically "controlled" by government, but whose powers arise from government legislation are carrying out actions relegated to them by government and thus such actions fall under the Charter of Rights and Freedoms. In the case of the actions of regional health offices, they are empowered by provincial legislation, namely the Health Protection and Promotion Act. So your oversight responsibility is clear from both a funding and a legislative standpoint.

Also relevant are the judgments of Chief Justice Joseph Lamer of the Supreme Court of Canada (Nelles v. Ontario (1989), 60 D.L.R. (4th) 609 (S.C.C.) where the court found that a statutory enactment cannot stand in the way of a constitutional entitlement. Justice Lamer's reasoning was that Section 32(1)(b) of the Charter provides that the Charter applies to the legislature and government of each province. The remedy section of the Charter would be emasculated if the provincial government, as one of the very powers the Charter seeks to control, could declare itself immune. Thus, the *Immunization of School Pupils Act* cannot remove the Constitutional Rights of the Charter. This is of course why the personal belief exemptions are included in the ISPA. And why the Orders for Suspension as issued are illegal.

Considering the serious beach of law in the Orders for Suspension, it would behoove the Ministry to inquire whether all 36 of the Regional Health Districts in Ontario issued Orders for Suspension with the same language as those issued by Hasting Prince Edward Public Health.

We believe this is likely the case as both the Ministry and Ontario Public Health would want consistency in the wording of the issued Orders. If this proves to be case, then the egregious breaches of provincial and federal law must be remedied by re-issuing legal Orders for Suspension that would necessarily include the stated option of acceptance of personal belief exemption affidavits for the Orders to be rescinded.

We request that the Ministry respond to our concerns in writing and outline the actions taken to ascertain whether all 36 Regional Health Offices issued similar illegal Orders as well as the actions taken to remedy this situation.

Signed

Nelle Maxey Secretary Treasurer of Vaccine Choice Canada
On behalf of the Board of Directors

1 Attachment: Letter to the Hastings Prince Edward Board of Health