Draft Discussion Paper:
Working Conditions for Bioethics in Canada
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An Ad Hoc Working Group on Employment Standards for Bioethics
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Preamble:

At the 1999 Annual Meeting of the Canadian Bioethics Society, a motion was put forward to establish a Working Group to look at the issues of employment and working conditions for ethicists practicing in a non-tenured environment. A complete treatment of working conditions for ethicists would require a discussion of the role related obligations and the consequent conditions necessary to permit the ethicist to meet those obligations. In a seminal work on this topic, Freedman (1994) described several characteristics of the clinical ethicist and examined working conditions related to communication, to uncertainty of task and authority, and to individual moral integrity. It is with the third topic that this ad hoc working group has chosen to begin.

This discussion paper concerns situations or circumstances where an ethics consultant in a Health Care Organisation (HCO) encounters serious wrong-doing, significant ethical disagreement, perhaps with an employer, real or potential moral compromise, questions of conscientious objection and/or a felt need to withdraw from a particular situation for moral reasons. The goal of this discussion paper is to illuminate the cause for special concern in such situations, and to promote the thoughtful resolution of such situations.

Discussion:

This document is primarily concerned with the employment of those persons hired by health care organisations explicitly for the purpose of providing the range of services normally provided by those who go by the title of “ethicist,” “bioethicist” or “ethics consultant” (these terms will be used interchangeably in this document). To the extent, however, that other employees serve these same functions, these guidelines will apply to them, too. The Working Group recognizes that all employees of an organisation have at least some ethical responsibility for the ethical character of that organisation, and face some of the same issues that inspired this work.

“Ethicists,” “bioethicists,” and “ethics consultants” are people who, within a range of kinds of health care organisations, provide education and other kinds of support to facilitate appropriate ethical decision-making and behaviour within the organisation, and by the organisation as a whole. While job descriptions vary, typical activities include education, case consultation, and policy development and review. (See Baylis, 1994.)

All employees have ethical responsibilities, including responsibilities related to the overall moral character and behaviour of the organization that employs them. Those hired specifically to function as ethicists have, by definition, special responsibilities in this regard. It should be recognized, of course, that, as Freedman has observed, "...there is no canonical description of the purposes of a health care ethics consultant.…" However, almost without exception, ethicists have role-related duties and obligations that, minimally, by title or perhaps due to the expectations of others, suggests a higher standard with respect to knowledge, skills, abilities and ethical conduct.

Ethicists, like other employees, have a *prima facie* obligation to serve the interests and mission of the HCO. For reasons related to public accountability, the CEO and other senior managers of an HCO are charged with the responsibility to interpret and the mission and needs of the organisation, and to set appropriate policies. It is probably fair to say that there is a general obligation for employees to be respectful of the needs and goals of the organisation that employs them, as interpreted by management. *But there are limits to this obligation.* There is a broad body of literature suggesting that there are good reasons to limit the extent to which employees must defer to the judgment of senior management. There are good ethical arguments, and broad public support, for the idea that organisational employees ought to exercise their own judgment and follow their own conscience, even when doing so requires action that is at odds with the goals or actions of organisational managers. Ideally, managers of HCOs should cultivate and encourage an open and honest exchange of ideas and views, such that employees, including ethicists, will not feel that they face dilemmas regarding whether to defer to a decision taken by management, on one hand, or follow their own conscience, on the other.

It is instructive to note that many organisational employees perform jobs that call for them to voice concerns about conduct. They can be considered organizational troubleshooters. These include, among others, quality control officers, health and safety inspectors, internal auditors, regular supervisors and union representatives. Such employees have a duty to voice moral concerns as part of their ordinary job descriptions, and organisations should make it an expectation that these employees in particular would speak up as a matter of quality-management (See Bird, 1996, p. 243-244).

What goes for such employees must be even more true of those hired as ethicists. The role of the ethicist includes the unique obligation of speaking explicitly to moral concerns. She or he will often bear direct responsibility for speaking to concerns regarding the moral character and behaviour of the organisation. Such being the case, the ethicist will often be required to offer critiques of organisational behaviour and norms, and to speak uncomfortable truths.

The SHHV-SBC Task Force on Standards for Bioethics Consultation has this to say about the potential for conflict, here:

> There is a potential conflict of interest if the ethics consultant is employed by or his/her job is dependent on the good will of a health care institution. Giving advice or otherwise acting against what the institution feels is in its own financial, public relations, or other

> interest may pose potential harm to the personal interests of the ethics consultant. This issue should be addressed proactively with the health care institution by any individual or group that plans to offer ethics consultation in that institution.

In an ideal world (or even in an ideal organisation), the role of the ethicist would be to offer guidance and critique in advance, before crisis occurs. The real world, however, and the organisations that inhabit it, are often far from ideal.

The special role of the ethicist – including in particular the role of commenting on the ethical conduct of the organisation as a whole – points to the need for particular conditions of employment. As noted above, the role of the ethicist will be determined in part by contract. However, we argue that the special role of ethicists – and the concomitant need for special protections – should be assumed, and that any deviations from these assumptions ought to be specified explicitly in the employment contract. The protections required in order to function adequately in the manner normally required of ethicists should be assumed to be part of the ethicist's terms of employment, rather than thought of as special conditions that must be argued for and negotiated.

A number of specific mechanisms might be utilized in order to prevent problems before they occur. To begin with, the ethicist's place in the organisational structure or hierarchy should be clearly specified. In particular, it should be clear (both to the ethicist and to others in the organisation) to whom the ethicist a) reports, and b) is accountable (i.e., to whom she or he must explain her actions). (For example, an ethicist might report to the Hospital Board, but be accountable to the CEO). Other examples of useful mechanisms might include agreed-upon standards for performance evaluation, and opportunities for peer review.

If employment conditions are poor, employer organisations will force down the quality of candidates applying for these crucially important jobs. If HCOs are to make real their espoused commitment to the ethical provision of health care, and if the services of professional ethicists are seen to be central to this goal, then HCOs will see it as in their interest to ensure that ethicists work under conditions that are conducive to carrying out the consultative, educational, and critical work so central to the achievement of this commitment.

References:

Francoise Baylis, ed., The Health Care Ethics Consultant, Totawa, New Jersey: Humana Press, 1994,

Frederick Bruce Bird, “The Muted Conscience: Moral Silence and the Practice of Ethics in Business,” Quorum Books, Westport, Connecticut, 1996.

Benjamin Freedman, "From Avocation to Vocation: Working Conditions for Clinical Bioethicists," in Francoise Baylis, ed., The Health Care Ethics Consultant, Totawa, New Jersey: Humana Press, 1994, pp 109-132.