



## 20 Lawless Years of Abortion: Can't We Do Better?

### Inside this issue:

|  |   |
|--|---|
| 20 Lawless Years of Abortion (CPL Press Release)                         | 1 |
| Physicians reflect on 20 years of unrestricted abortion                  | 1 |
| Highlights from the Morgentaler Symposium                                | 2 |
| 2007 Medical Students Forum (in words and pictures)                      | 4 |
| Stripping the “A-words” of their taboo (a medical student’s perspective) | 6 |
| Physicians’ Freedom of Conscience Under Attack in the CMAJ               | 8 |

### Statement by Canadian Physicians for Life’s President, Dr. Will Johnston, on the 20th Anniversary of the 1988 Supreme Court *Morgentaler* decision striking down Canada’s abortion law:

(OTTAWA, January 28, 2008) - Since the Supreme Court’s *Morgentaler* decision in 1988, Canada remains the only civilized country in the world with no legal restraint on abortion.

Abortion advocates in and out of the medical profession continue to falsely claim a consensus on this open practice, yet polls repeatedly show that 2/3 of Canadians want some legal protection for the unborn child, and the *Morgentaler* justices themselves stated the state’s interest in this goal.

As physicians, we see how our justice system lags behind science:

- there is no medical indication for abortion;
- there is no biological difference between a

“wanted” and an “unwanted” child in the womb;

- a fetus born prematurely at 24 weeks becomes a “baby” with the full protection of Canadian law, while a fetus 4 months older, still in the womb at full term, has no legal rights at all;
- genocide against female babies in the womb, with ultrasound and abortion as the weapons, are a reality in certain cultures in Canada, yet cannot be questioned (unless hypocritically) by an uncompromising pro-choice ideology.

Abortion is not only fatal for the unborn

*(Continued on page 3...20th anniversary)*

### Physicians reflect on 20 years of unrestricted abortion in Canada

(Dr. Robert Hauptman)

From the beginning of my career I was appalled with the incongruent stand of many of my colleagues when it came to the abortion issue. At one side of the spectrum they would diligently fight to preserve life and to honor their oath to alleviate pain and suffering. However in the other breath, they would defend the taking of the most innocent and helpless patients

in their practices.

It is without question a moral, scientific and ethical fact that human life begins at conception. It is a closed mind that cannot fail to see this with our growing science including 3-D ultrasound technologies and studies on human embryology. Even the maturing minds of my two teenage boys are perplexed on how adults cannot see the obvious when it comes to abortion.

As physicians we should be committed to the education of our patients and the support of healthy lifestyles. We should be offering a compassionate and sensitive ear to a patient with an unwanted pregnancy and not offering them a quick and

often misguided option. I am convinced as physicians we do more harm than good by offering women abortions. We compound their problems when we take an innocent life rather than alleviate them.

I pray for more pro-life physicians in our country willing to put all their patients best interests first. We need to recognize that abortions solve no one’s health problems including the mother’s. Abortions are a quick fix that have no place in our profession.

Dr. Robert Hauptman  
Chairperson Salvus Family Medical Clinic  
Chief Department of Family Practice Sturgeon Hospital, St. Albert, Alberta.

*(Continued on page 3...physicians comment)*

**Vital Signs** is published by Canadian Physicians for Life, a registered charitable organization.

*Canadian Physicians for Life holds that reverence for every human life lies at the root of all medical tradition. Through the ages, this tradition has been expressed in the Oath of Hippocrates. It was rephrased in modern times in the Declaration of Geneva, which says in part, "I will maintain the utmost respect for human life, from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity." We affirm this declaration.*

**President:**  
Will Johnston, MD

**Vice President:**  
Robert Pankratz, MD

**Editorial Board:**  
Paul Adams, MD  
Shauna Burkholder, MD  
Don Curry, MD  
Delores Doherty, MD  
Rene Leiva, MD  
Paul Ranalli, MD  
Larry Reynolds, MD

*Letters and submissions for publication are welcome. Membership is by donation. Donations are tax deductible.*

**Direct all correspondence to:**

**Barbara McAdorey**  
Administrator  
Canadian Physicians for Life  
PO Box 1289  
Ottawa ON K0A 2Z0

Ph/Fax: 613-728-LIFE(5433)  
Email: info@physiciansforlife.ca

[www.physiciansforlife.ca](http://www.physiciansforlife.ca)

## Highlights from the Morgentaler Symposium



The University of Toronto's Faculty of Law and the National Abortion Federation co-sponsored a Symposium on January 25, 2008 to commemorate the 20th Anniversary of the Supreme Court decision striking down Canada's abortion law. **Andrea Mrozek** reports.

Henry Morgentaler is a frail old man, who walks with some difficulty and needs help on stairs. He sat at the front of a lecture hall at the University of Toronto's prestigious law school—some 200 students, doctors, activists and lay people in the audience. The average age of those attending was young, probably about late 20s, though there were also a fair number of grey heads in the crowd. Vicki Saporta, president and CEO of the National Abortion Federation (NAF) opened the event, with the dean of the University of Toronto's law school, Mayo Moran, looking on from the podium. Saporta lauded the efforts of Morgentaler (and gave him a hug) but remained concerned about further anti-choice action and limits on access.

And access became the most common thread of discussion for many of the speakers: Abortion should be "available, accessible and acceptable." (Joanna Erdman's phrase, she's from the law faculty at U of T.) After Saporta, Colleen Flood, Canada Research Chair in Health Law and Policy, introduced Morgentaler with a joke: "He's seen more courtrooms than the average litigator." And a standing ovation later, the man himself rose to speak. Morgentaler's voice was weak; the words predictable. He is proud of his efforts. "I believe the world is a kinder, gentler place because women have the right to make choices," he said, and also referred to the decrease in the crime rate, thanks to abortion. His work, he said, "marks a milestone in the emancipation of women." After he was done, another standing ovation.

The morning was devoted largely to issues of access. Lorraine Weinrib, faculty of law at the University of Toronto, mused about why doctors are protected from performing or referring for abortions. "How did it come to be about protection for doctors, not women," she asked. She also described how the Supreme Court of Canada at the time of the Morgentaler decision held judges who were

against opening up access to abortion. It took 18 months to make the decision, and, she said, "it might have gone the other way." She also spoke about how the Morgentaler decision was the first time that she heard the sentiment expressed publicly that "women have lives, women have jobs, women have aspirations that are more important than an unwanted pregnancy."

Shelley Gavigan of Osgoode Hall Law School grappled with the issue of abortion in a new way. She acknowledged at the end of her talk that perhaps pro-choicers would be wise to acknowledge the "dominant ideology" of the unborn child. "If you must acknowledge the discourse of the unborn child," she said, "if we must reinsert the vernacular of the unborn into the discourse, [then the] pregnant woman and the unborn child speak with one voice and that voice is hers."

Some internal tensions appeared evident even in this ardently pro-abortion crowd. Dawn Fowler of the NAF emphasized how few late term abortions happen in Canada, and that no provider in Canada will do late-term abortions for social reasons. But one particularly enthusiastic pro-abortion participant in the audience from Holland stood up to ask this: "Sometimes women need abortions after 24 weeks, even for social reasons, and so why doesn't Canada offer this?" Fowler replied that this lack of access is physician driven, with a tone implying she wished she did not have to answer that question at all.

Garson Romalis also spoke on the topic of why he is an abortion provider. He described the ordeal of being shot once, and stabbed, and how that changed his life dramatically, and in a sense, pushed him to become solely an abortion provider because he could no longer physically do the more difficult work, like child birth. He spoke of his own work as saving women's lives, of how unique his specialty is because women are so completely grateful. "It is only my work where women say not only 'thank you,' but also 'thank you for what you do.'"

Most interesting were some of the offline discussions: A very young woman from Canadians for Choice explained how, in spite of good access to clinics in the Toronto area, many women still self-abort. "You can find out how on the internet," she said. Her concern? That there is still stigma attached to abortion, so women won't come in to the clinic.

*(Continued on page 3...Morgentaler Symposium)*

(Morgentaler symposium...Cont'd from page 2)

I was not able to stay and listen to the last session, which included Heather Mallick, CBC journalist and Carolyn Bennett, Member of Parliament. But simply seeing Mallick up close reminded me that even vitriolic authors can be fun and personable—Mallick made a joke in the sunny windowed lunchroom that she would stand in one of the rays and get a tan. It reminded me of a quote from Margaret Thatcher: “It pays to know the enemy - not least because at some time you may have the opportunity to turn him into a friend.”

I remain convinced that most young women—not perhaps those attending this conference, but from the greater public—might be more open to a pro-life message than we currently dare to hope. The empty rhetoric, the neutrality of the discussion, the failure to acknowledge deep and lasting pain for women the result of abortion—it all makes me more convinced of this than I ever have been before. ♦

Andrea Mrozek is Manager of Research and Communications at the Institute of Marriage and Family Canada and co-founder of [www.ProWomanProLife.org](http://www.ProWomanProLife.org).

(20th anniversary...cont'd from page 1)

child, but dangerous for the pregnant woman who makes this choice. The only true choice is an informed choice, yet we question the validity of a woman's informed consent for abortion when its advocates deny or attempt to cover up the true complication rate.

An independent Ontario study<sup>1</sup> revealed that in the first 3 months after abortion, a woman falls victim to:

- a **4-times** rate of hospitalization for **infection**
- a **5-times** rate of hospitalization for another **surgical procedure**
- a **5-times** rate of hospitalization for **psychiatric care**, in a health care system when only the most dire psychological cases can get a hospital bed.

The world literature is replete with the reported increased risk of infertility, breast cancer, and subsequent premature delivery and its associated higher rate of cerebral palsy after an earlier abortion.

Abortion advocates are frustrated by the dearth of new young physicians required to perform abortions. They are organizing radical new plans to indoctrinate

medical school curricula with their agenda, and defy any alternate voice. Most sinister of all, they cry out to punish doctors of conscience who resist plans to force them to be part of the abortion referral network.

They cannot accept the real reason why most doctors do not go into abortion: very few young, intelligent and caring medical students go into the wonderful field of medicine to kill.

Has it all gone too far?

We see another pressing social need that rarely commands much media attention: the long, heartbreaking lineup of couples who want to adopt a newborn baby. When the adoption option is considered, there need be no such thing as an “unwanted” child, and therefore no need for abortion. That is a society we'd like to see, and care for.

Can Canada do better? Twenty years after Morgentaler, we think so. ♦

1. Ostbye T, Wenghofer EF, Woodward CA, Gold G, Craighead J. “Health services utilization after induced abortions in Ontario: A comparison between community clinics and hospitals.” *American Journal of Medical Quality* 2001 May;6(3):99-106. See Table 3, p. 103, and p. 105.

few abortions.

Dr. Ney is a psychiatrist in Victoria, BC., and clinical professor of family practice at UBC.

(Dr. Richard Poole)

The interview with Dr. Morgentaler in the January 15 issue of the *National Review of Medicine* revealed quite clearly Dr. Morgentaler's belief that abortion has resulted in a drop in crime. Firstly, this is dubious and more importantly how can we condone the extermination of innumerable fetuses on the presumption that if their parenting is imperfect the offspring is destined for a life of crime? A eugenic concept no doubt grist for the mill for the Nazi machine which Morgentaler thankfully survived. Ironic indeed. I would now challenge the *Review* to interview a proponent of the opposing forces to abortion (say Will Johnston of Canadian Physicians for Life) to at least give a balanced view on this matter, if only to show readers that we are not a nation entirely committed to the glorification of fetal death.

Dr. Poole is a GP in Alexandria, Ont. ♦

(physicians comment...cont'd from page 1)  
(Dr. Philip Ney)

In 1969 I helped collect some of the one million+ signatures of Canadians opposing abortion that the government ignored. In 1972 I appeared before a government committee on abortion chaired by John Turner to present my data and rationale to show that abortion was not good for women. It was ignored. I ran for Parliament twice, as an independent, primarily to see if some sense could be introduced in containing the rapidly increasing number of abortions, but I made little impact. In 1989 I provided evidence to friendly MPs struggling to draft a passable law limiting abortion, which though well intentioned and relatively mild, never became law. I have appeared as expert witness on abortion related cases in five countries. Though we won a few, the government usually appointed new judges who nullified any pro-life decisions.

So what have I concluded from this? The legislative and legal route is not very effective. However, the present Canada Health Act and the mandate of evidence

based medicine give us all we need to stop or at least slow the current practice of abortion. By our example, in conversations, in research, at scientific and hospital meetings and as expert witnesses for the plaintiff when the post-abortion women sue for damages, we can have a huge impact. While science is the most important determinant of what is good for patients, I wish my pro-life colleagues would grasp the opportunity and stop brow and breast beating as if hope is all but lost.

We must continually insist that the burden of proof lies with any and all to show: abortion is a woman's right, the preborn is not a person, abortions are without adverse effects, there is benefit for women and that members of her family do not suffer. We can be very thankful there is sufficient evidence to convince fellow physicians and judges that doing almost all abortions is very bad medicine. Let us get back to the basics and take the initiative. If we insisted that the practice of abortion was subject to all the constraints applied by licensing and funding agencies to other aspects of medical practice, there would be

# 2007 Medical Students Forum

## Thank You!

Canadian Physicians for Life is exceedingly grateful for the financial support of our donors, without whose generosity we would not have been able to sponsor 57 medical students, residents, and law students to attend this important event, held in conjunction with the International Symposium on Euthanasia and Assisted Suicide.



*"I wanted to thank you once again for putting on such an amazing event. I really appreciated it and the speakers that were there were terrific. The part I liked most about the conference was the working supper – the free question period definitely addressed some of my major questions/concerns. ....I found that the atmosphere was very inviting. It is very rare to have physicians take so much time out of their schedule to speak to students on an individual basis."*

*(University of Alberta medical student, class of 2011)*

**Dr. Paul Ranalli**, Lecturer in Neurology at the University of Toronto, presented current anatomical and physiological evidence that the fetus is capable of feeling pain by at least 20 weeks gestation, likely more intensely than a newborn, raising further concerns about the inhumanity of late abortions.



Family physician **Dr. Deborah Zeni** highlighted some of the deVeber Institute's latest research on the risks for women that are associated with abortions, and about the consequences of uninformed consent.

**Dr. Stephen Genuis**, Associate Clinical Professor, Department of Obstetrics and Gynecology, University of Alberta, discussed recent medical information regarding the science of sexuality in order to assist individuals in making prudent clinical and ethical decisions. In a second presentation he explored recent scientific and medical information on hormonal contraception and family planning.



*"It was so refreshing to meet pro-lifers who are reasonable, compassionate, and scientifically-oriented people."*

*(University of Alberta medical student, Class of 2010)*

*"I think the biggest thing I got out of the conference was a real sense of confidence in being able to support or defend a pro-life position. I'm familiar with moral/religious reasons for the pro-life view, but most (that is, pretty much all!) of the scientific medical information was new to me. I was very, very impressed that the speakers presented their cases from this scientific/medical perspective, because it allows me to use these facts when I discuss the issues with others."*

(Dalhousie University medical student, Class of 2011)



Family physician and President of Canadian Physicians for Life, **Dr. Will Johnston**, was Master of Ceremonies.



Family physician and Vice-President of CPL, **Dr. Rob Pankratz**, was our photographer for the event. All photos in this spread are courtesy of Dr. Pankratz unless otherwise noted.



**Dr. Larry Reynolds**, former head of Family Medicine at University of Manitoba, delivered a poignant narrative based on a pro-life feminist view that sees abortion as one of the many ways cultures seek to reshape women's bodies, as demanding that women and physicians be willing to sacrifice their intrinsic taboos against killing.



Photo: Courtesy of Boris Hofman

Speaking on Euthanasia and Assisted Suicide at the Euthanasia Symposium, **Dr. Margaret Somerville**, founding director of the McGill Centre for Medicine, Ethics and Law, stressed the need for a new ethical framework that would allow secular and religious people to share their common ethical concerns.



Lawyer **Ruth Ross**, executive director of the Christian Legal Fellowship, traced the history of abortion law in Canada and gave an overview of Canadian legal cases that impact upon freedom of religion and conscience.



Photo: Courtesy of Boris Hofman

*"I personally had a GREAT time at the conference. I was coming from a place where I had strong values and beliefs about the sanctity of life but I wasn't so sure how else to back it up other than with religious and moral conviction. So I was very pleasantly surprised with the depth of scientific research presented by almost all the speakers. I feel honoured to have been able to learn from all the speakers as they were all very intelligent, rational, and so unswervingly steadfast in what they believed - something that I can aspire to!"*

(McMaster University medical student, Class of 2009)

### Stripping the “A-words” of their taboo

by Thomas Bouchard



Abortion and abstinence are so taboo in our medical jargon that even mentioning the words out loud in class invites nervous looks from classmates. Since these topics are not emphasized in our medical education, if they are mentioned at all, we were grateful that these were the bookends of the 2007 Medical Students Forum in Toronto, hosted by the Canadian Physicians for Life. Especially useful was the evidence-based approach that the presenters took to the issues, with lengthy bibliographies that we could refer to when defending a pro-life position. We were so inspired by the physician-mentors at the forum that a group of us from the University of Calgary decided to debrief the rest of our class with the evidence, letting loose the A-words.

We divided our debriefing session into four topics that were presented at the conference: informed consent for abortion, fetal pain, the right not to refer, and addressing healthy sexual choices. We sent out an email inviting classmates to this session, and heard that many of the most vocal pro-choice advocates in

our class would be there. Despite our nervousness, we maintained a very collegial discussion and were able to put a positive light on the pro-life perspective.

Our discussion with the students on informed consent (presented by Dr. Deborah Zeni at the conference) was the most challenging. One pro-choice student commented that as pro-life doctors, we would not be in a position to “inform” a woman seeking an abortion because of our bias. We explained that no matter what side of the issue we’re on, we should insist on adequate informed consent, rather than seeing abortion as an “easy solution” to an unintended pregnancy where serious consequences are left out of the picture.

The topic of fetal pain (presented by Dr. Paul Ranalli) was well-received by pro-choice students, who felt it was reasonable to give anesthetics to the fetus during an abortion due to the pain the fetus feels during the procedure. A few students followed the logic through, remarking that if abortion advocates recognized fetal pain, it might be one step closer to recognizing the life of the fetus, which they don’t want to do. Another vocal pro-choice advocate mentioned that the issue of fetal pain “humanized” the fetus. Although this topic doesn’t solve the problem of abortion, it was very helpful in giving students food for thought on the status of the fetus. The right not to refer for abortions

(clarified by Dr. Will Johnston and lawyer, Ruth Ross at the conference) was not well known by the students, and most agreed that because this is not a referred service, there is no need for a physician to refer. However, the discussion quickly turned into one of access to abortion services, and the pro-choice advocates insisted that while a doctor need not refer, he or she must not stand in the way of a woman accessing an abortion.

We finished our discussion by highlighting the need for a healthy approach to sexual choices (which was described by Dr. Stephen Genuis), explaining that if we ended abortions entirely we would not solve other significant social issues, notably teen pregnancy. We mentioned the Uganda ABC program (Abstinence, Be Faithful, Condom use in discordant partners), which was of interest to the students, but some argued that the study had a political bias and current trends in Uganda are not reflective of the ABC program’s success. Our rebuttal was simply that the message of abstinence and faithfulness are not bandaid-solutions, but are proven, population-based methods to reduce STDs and unintended pregnancies.

There was so much interest in our debriefing session that we held a second one the next day. The students appreciated the evidence-based approach, which can be useful in a clinical setting, rather than a moral or faith-based approach to the arguments where common ground is not always found. This approach was also helpful for us as facilitators of the discussion – our critics could wrestle with the literature rather than with us. In fact, students on both sides of the fence wanted more discussions like this, where students could speak about controversial life issues without the arguments becoming emotional attacks. Our discussion empowered pro-life students to stand up for life and stand behind the evidence in the literature, and challenged pro-choice students to admit the reasonableness of a

*(Continued on page 7...the “A” words)*

#### DVD: “Women’s Health at Risk: Abortion and Informed Consent”

Every year, 100 000 Canadian women have an abortion. Do they know the risks? Have they given an Informed Consent?

The de Veber Institute presents a new DVD of Dr. Deborah Zeni speaking on:

- Common **medical and psychological risks** associated with abortion
- How this affects the **women in your community**
- What this means for **health care professionals**

Dr. Deborah Zeni speaks from **experience**: as a family physician she frequently encounters post-abortive women in her practice. She speaks from **research**: as a contributor to “*Women’s Health After Abortion; The Medical and Psychological Evidence*” she knows the latest studies worldwide. She speaks from **the heart**: as a teacher and mentor she speaks widely to students and community groups.

**Contact the de Veber Institute to order your copy today!**

Cost: \$20 + shipping.

Call 416-256-0555 or email [bioethics@deveber.org](mailto:bioethics@deveber.org).

(the "A" words...cont'd from page 6)

pro-life position.

We left our discussions encouraged, confident that we have Canadian physicians and other professionals helping us to form reasonable, evidence-based arguments in support of life. We are indebted to the physician-mentors at the conference who are preparing us, the physicians of the next generation, to carry the torch for the unborn. Moreover, my fellow students and I would not have been able to attend this conference with-

out the generous contribution of donors who sponsored us to go. We are very grateful for this gift! As we start our journey in the medical profession, it is good to know that we have your support as we defend life in the public square. ♦

*Thomas Bouchard is a medical student at the University of Calgary, Class of 2010, and one of 57 students/residents sponsored by Canadian Physicians for Life to attend the 2007 Medical Students Forum in Toronto.*



*"Defending life hits close to home: This picture is an ultrasound picture of our baby at 18-weeks, due March 2008. Many of our classmates have been moved by the video of our baby moving and sucking its thumb."*

(Thomas Bouchard)

(CMAJ commentary...cont'd from page 8)

come a living, breathing person. This distinguishes abortions from other surgical procedures, raises ethical and moral considerations not at issue in other clinical contexts and results in potential psychological complications quite different from those present in most other operations. For these reasons, different considerations as to informed consent apply to abortions than to, for instance, appendectomies or hysterectomies.<sup>11</sup>

True informed consent for abortion, then, would require a discussion of the abortion procedure, disclosure of the potential physical and psychological health risks of abortion, information regarding fetal development, and the various alternatives to abortion. Such a "high standard of disclosure" respects the Supreme Court's rejection of the "paternalistic approach to determining how much information should be given to patients" and the Court's emphasis on "the patient's right to know."<sup>12</sup>

Abortion remains a troubling and divisive issue below the surface of Canadian society. Notwithstanding the ideological interpretation of the law offered by Ms. Rodgers and Ms. Downie, no constitutional right to abortion has been recognized in Canada, and Canadian physicians are under no obligation to refer for this procedure. Physicians *are* obliged to give women all information necessary to make an informed decision about her pregnancy. The next generation of Canadian doctors and lawyers is

better served by being made aware of the historical and factual basis of a reasoned conscientious objection to the abortion process. ♦

*Canadian Physicians for Life  
June 2007*

#### References:

1. "The 'A' word: How did abortion, that most contentious of issues, become one that is simply not discussed publicly," by Anne Marie Owens, National Post, May 5, 2007.
2. Dr. Blackmer's letter is posted online at: <http://www.cmaj.ca/cgi/eletters/176/4/494>
3. *R. v. Edwards Books and Art Ltd*, [1986] 2 S.C.R. 713
4. "Crimes Against the Foetus," Law Reform Commission of Canada, 1989, p. 47.
5. Ibid. p. 47.

6. Ibid. p. 56.

7. Ibid. p. 57.

8. From the Introduction in the book, *Codes of Ethics: Ethics, Codes, Standards and Guidelines for Professionals working in a Health Care Setting in Canada*, by Jocelyn Downie and Françoise Baylis, published by Toronto's Hospital for Sick Children, 1992.

9. "Various questions on the Morgentaler decision of the Supreme Court of Canada," Parliamentary Information and Research Service, Library of Parliament, February 27, 2007.

10. "Abortion: Constitutional and Legal Developments," Mollie Dunsmuir, Law and Government Division, Depository Services Program, Reviewed August 18, 1998; <http://dsp.psd.communication.gc.ca/Collection-R/LoPBdP/CIR/8910-e.htm#E.%20The%20Charter>

11. "Crimes Against the Foetus," p. 55.

12. Reference to *Reibl v. Hughes* [1980] in *Arndt v. Smith* [1997]

## Canadian Catholic Bioethics Institute Conference Notice

*The Vocation of the Catholic Physician: Integrating the Practical, the Bioethical and the Spiritual*

**A National Conference for Catholic Doctors**

**April 25 - 27, 2008**

**University of St. Michael's College  
Toronto, Ontario**

Archbishop Thomas Collins and the Archdiocese of Toronto are hosting this national conference intended to contribute to the ongoing bioethical and spiritual formation of Catholic physicians and health care providers. Organized by the Canadian Catholic Bioethics Institute, the conference will be held on campus at the University of St. Michael's College, Toronto. Simultaneous translation into French will be available.

International speakers and workshop leaders will examine key bioethical issues that doctors encounter in their practice.

**Information is available at:**

[www.ccbi-utoronto.ca](http://www.ccbi-utoronto.ca),  
or contact the Institute  
by email, [bioethics.usmc@utoronto.ca](mailto:bioethics.usmc@utoronto.ca),  
or telephone, (416) 926 - 2335.

## Commentary

# Physicians' Freedom of Conscience under Attack in the CMAJ

The following Commentary was submitted to the CMAJ by **Canadian Physicians for Life** on June 1, 2007 in response to misleading claims published by the Journal in a guest editorial about CMA's abortion policy. This Commentary was peer-reviewed by the CMAJ and then rejected on July 27, 2007.

A recent report in a major Canadian newspaper has described the “free-flowing discussion” about abortion which has taken place in the CMAJ—ever since the publication on July 4, 2006 of law professors Sanda Rodgers’ and Jocelyn Downie’s guest editorial “Abortion: Ensuring Access”—as “surprising,” given that debate about abortion is “virtually unimaginable” in this country.<sup>1</sup>

Surprising?

To begin with, Ms. Rodgers and Ms. Downie claimed that “Health care professionals who...fail to provide appropriate [abortion] referrals...are committing malpractice and risk lawsuits and

disciplinary proceedings.” It is not at all surprising that such a factually inaccurate and ideologically biased statement written by two lawyers in a prestigious medical journal would generate swift and “vociferous” response, so much so, that the CMAJ was compelled to publish a clarification of CMA’s abortion referral policy by CMA’s director of ethics, Dr. Jeff Blackmer, who confirmed in an online letter to the CMAJ that the authors of the guest editorial had “misrepresented” CMA policy. “The policy does not state, as the authors claim, that ‘all physicians are under an obligation to refer,’”<sup>2</sup> Dr. Blackmer wrote.

The CMA policy respects the Canadian Charter of Rights and Freedoms which recognizes the right to freedom of conscience and religion, the purpose of which, as stated by the Supreme Court, “is to ensure that society does not interfere with profoundly personal beliefs that govern one’s perception of oneself, humankind, nature, and in some cases, a higher or different order of being. **These beliefs, in turn, govern one’s conduct and practice.**” [Emphasis added].<sup>3</sup>

This right to conscientious objection was affirmed by the Law Reform Commission of Canada in its 1989 report, “Crimes Against the Foetus.” The Commission considered the criminal law’s role in balancing the interests of the pregnant mother with that of the fetus, which it described as “deserving of protection” and whose destruction “seriously contravenes the fundamental value of life so as to be harmful to society.”<sup>4</sup> In those cases where the Commission’s proposed law would permit abortions (i.e., “those affecting the life, health and safety of the mother”<sup>5</sup>) the law “does not impose liability on doctors, nurses or other health care workers refusing or omitting, on account of moral or religious beliefs, to perform such abortions.”<sup>6</sup> The proposed law required an objecting physician to refer the woman to another physician only “when a woman’s life is endangered.”<sup>7</sup> Sanda Rodgers was one of eight Consultants in this study.

In fact, in her CMAJ “Guest Editorial” Jocelyn Downie contradicts what

she herself wrote in 1992: “An individual’s conscience must always inform his or her actions even in the presence of a professional code, standards, or guidelines.”<sup>8</sup>

While we are thankful for Dr. Blackmer’s clarification of CMA policy and CMAJ’s decision to publish it, his comments fail to address two other serious problems with Ms. Rodgers’ and Ms. Downie’s claims about the law with respect to abortion.

The Supreme Court in the 1988 Morgentaler decision did **not** recognize, as the guest editorialists claim, “that a woman’s right to continue or terminate a pregnancy is protected by the Canadian Charter of Rights and Freedoms.” As the Library of Parliament notes, “The court was not asked whether or not the Charter recognizes a constitutional right to abortion and therefore has not rendered an opinion on this specific question.”<sup>9</sup>

Justice Bertha Wilson was the only one of seven Justices who believed a woman’s right to abortion (in the early stages of pregnancy only) is protected by the Charter right to liberty. This was **not** the majority view. The Supreme Court struck down the abortion law because, essentially, it found that uneven nationwide access to the hospital therapeutic abortion committee mechanism violated a woman’s right to security of the person in “limiting, by criminal law, her effective and timely access to medical services when her life or health was endangered.”<sup>10</sup> All seven Justices agreed that protection of the fetus was a valid governmental objective and left it up to Parliament to create a new law.

Finally, the authors of the tendentious guest editorial refer to “unsolicited anti-abortion counselling.” As with any medical intervention, a physician is expected to provide a patient seeking information about abortion with sufficient advice for her to be able to make an informed decision. But abortion is so unlike other medical interventions that even the Law Reform Commission felt compelled to observe:

Like it or not, abortion destroys a being with the full potential to be-

*(Continued on page 7...CMAJ commentary)*

## Charter expert says no constitutional right to abortion in Canada

“Daphne Gilbert, who teaches Common Law at the University of Ottawa and specializes in Charter rights, says the Morgentaler case didn’t go as far as the 1973 U.S. Supreme Court decision in the Roe v. Wade case, which granted the constitutional right to abortion and subsequently changed laws in 46 states.

‘The Morgentaler decision didn’t say a woman has a constitutional right to abortion, it didn’t go that far...pro-choice is not a legal question, it is a social/cultural issue,’ says Gilbert.”

*(Excerpted from “Anti-abortionists call for inclusive abortion debate,” by Sharda Vaidyanath, Epoch Times Parliament Hill Reporter, Jan. 30, 2008)*