

region or a small town, should we allow these views to control the access to health care of a whole community? Why should an individual doctor's personal beliefs trump the legal definition of "person" and of "human being," violate the constitutionally entrenched rights of women to sexual and reproductive autonomy, and violate international human rights?

In the face of the demonstrated resistance of individual doctors to offering adequate abortion services in most institutions and regions across Canada, the medical profession has a collective responsibility to ensure access to this procedure.

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[The authors respond:]

Jaro Kotalik and Janet Epp Buckingham are mistaken in claiming errors and misrepresentations in our descriptions¹ of *Morgentaler*,² the CMA Code of Ethics³ and the CMA Policy on Induced Abortion.⁴

They allege that, because the Court recognized a state interest in the fetus, we were wrong to say that the Court recognized a right to continue or terminate a pregnancy. As is clear from the quotation from the *Morgentaler* decision (see Kotalik's letter), this interest is taken into account in the section 1 analysis, but only after legislation has

been found to violate Charter rights. Our claim regarding women's rights is in fact reinforced by the quotation.

Epp Buckingham is correct that abortion legislation was introduced after the *Morgentaler* decision, but that legislation failed to pass. Should the government eventually pass new legislation, it will be measured against women's section 2, 7 and 15 rights. If such legislation violates any of those rights, the government would bear the burden of defending that violation. It is impossible to speculate whether such a defence would succeed. What is clear is that the legislation would have to be measured first against women's Charter rights.

Paragraph 12 of the CMA Code of Ethics³ does require that a physician "inform your patient when your personal values would influence the recommendation or practice of any medical procedure..." The prohibition of "discrimination on the basis of sex, marital status and medical condition" is found in paragraph 17. Each of the Code's obligations informs the others and is informed by CMA policies, including the Policy on Induced Abortion.⁴ That policy states, "A physician whose moral or religious beliefs prevent him or her from recommending or performing an abortion should inform the patient of this so that she may consult another physician." No physician is under an obligation to recommend or to perform an abortion, but all physicians are under an obligation to refer. The Policy on Induced Abortion

is clear: "The patient should be provided with the option of full and immediate counselling services in the event of unwanted pregnancy;" "early diagnosis of pregnancy and determination of appropriate management should be encouraged;" and "[t]here should be no delay in the provision of abortion services." These statements recognize the need for timely referral. A physician who does not participate in abortion does not violate CMA policy. A physician who sets up barriers to prevent women from accessing abortion elsewhere does violate CMA policy. The Policy on Induced Abortion allows conscientious objection by a physician who need not "recommend" or "perform" or "assist at" an abortion. It does not allow a right of conscientious objection in relation to referrals.

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