



Ethically Speaking...

Newsletter of the Canadian Catholic Bioethics Institute
at Assumption University

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Ethically Speaking...

provides news and information from the Canadian Catholic Bioethics Institute at Assumption University.



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When is a Child not a Person?

Many Canadians would consider this a strange question and indeed it does seem ridiculous. One only need look at 4D ultrasound images that show fetal movement in real time, and clearly, we see a child in development. So, when is a child not a person? In Canada it's when the law says it is not.

Section 223(1) of the Criminal code of Canada entitled "When a child becomes a human being" states:

A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state from the body of its mother whether or not

- (a) it has breathed
- (b) it has independent circulation
- (c) the navel string is severed.

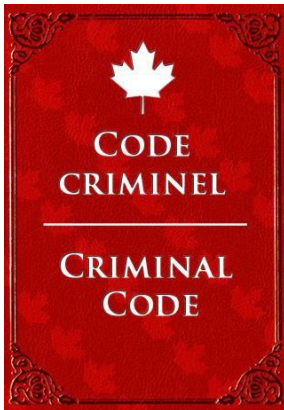
223(2) A person commits homicide when he causes injury to a child before or during its birth as a result of which the child dies after becoming a human being.



Despite the advances in medicine, technology and science, our legal system holds fast to the position that a child in the womb is not a person. Legally then, a child in utero has no rights as a person and thus no protection under the law until it has completely proceeded from the body of the mother. An unborn child is a legal non-entity, and so therefore cannot be the object of a court's protection. Surprisingly, most Canadians are unaware of this lack of recognition of a child's humanity until the moment of complete birth, and many are under the misconception that the fetus, at least in later stages of development, has some rights.

The Law

There are two well established legal principles when discussing fetal status, i) the law views the mother and fetus as one legal entity until the live birth of her child; ii) the fetus has no rights unless and until it is "born alive". The "Born Alive" Rule is a rule of medical jurisprudence produced by the limitations on medical knowledge available to the common law from the 16th through 19th centuries.



The Canadian Criminal Code is unequivocal in its definition of a person as coming into existence only when the child has fully proceeded from the body of its mother in a living state. Therefore, two months, two weeks, two seconds before birth, the preborn child

is considered a non-person and receives no protection under criminal law. However, rights can be vested in the *potential* that is the unborn, but the rights materialize only upon birth. If it is ultimately born alive, then certain areas of the law permit the child to claim rights for events that occurred during gestation.

The confusion around when a fetus becomes a "person" rests on how the disciplines of law and science define 'human' and 'personhood'. As the Supreme Court stated, "The task of properly classifying a fetus in law and in science are different pursuits."

From a medical/biological perspective, a fetus is human in that it is composed of human

tissue and human DNA. But "personhood" is a socially and legally constructed concept and therefore differs from a biological perspective of what being human entails. Socially and legally, a fetus is not a person because it lives inside of a woman's body and is totally dependent on her (and no-one else) for its survival. It is not seen as possessing key aspects of personhood, such as the ability to experience human emotions, interact with others, or exercise constitutional rights. Personhood is only bestowed upon birth. Those who argue against fetal rights then making an erroneous assumption that deciding who the law recognizes as a person is merely a philosophical exercise completely divorced from biological reality informed by medical science.

Protecting the fetus is a reflection of society's high regard for human life in general. The fetus can therefore be seen as a symbol of the most vulnerable of human lives and the amount of protection given to the fetus is symbolic of the treatment which other vulnerable groups can be accorded.

"Don't give up.
I believe in you all.
A person's a person
no matter how small."

Dr. Seuss

Church Teaching

The Church acknowledges that while ensoulment has been debated historically, human reason can and should recognize respect for human life as the most fundamental of all goods, and the condition of their realization. It sees modern science as confirming that human life begins with fertilization, though allowing that science can never definitively settle what is properly a philosophical question. Still, "it is objectively a grave sin to dare to risk murder" if there is doubt as to whether the fetus is fully a human person.

The Catholic Church considers each fetus to have the status of a full human person, thus, they are all considered to have full human rights, including the right to life. In its official magisterium, the Church, asserts that human life must be given equal protection at all stages from fertilization through adulthood (Rahner 1972).

The Church also teaches that the inalienable right to life of every innocent human being is a constitutive element of a civil society and its legislation. In other words, it is beholden upon society to legally protect the life of the unborn. That Canadian law does not consider fetuses to be persons, directly contradicts the moral teachings of the Church.

In the words of John Paul II "As long as I live, I have the right to live, the right to life means the right to be born and then continue to live until ones natural end."

References and Resources

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Word on the Street....

CCBI-A was invited by St. Francis Xavier & St. Peter's Church in Tilbury Ontario to speak on medical assistance in dying (MAiD) and the conscience rights of healthcare providers. Despite the bad weather, a group of 35 very enthusiastic parishioners and guests attended the session. Fr. Christopher Bourdeau provided CCBI-A with feedback about the session:

"We had the good fortune to host Ms. Maria Giannotti from the Canadian Catholic Bioethics Institute. As our Bishop, Ronald Peter Fabbro has asked each parish to be informed and support the Conscience Rights of Health Care providers, we knew that this would be a good opportunity to have some "basic foundational" information provided for our people so that they would be equipped to navigate through "the noise" of politics and spin on these issues.

Maria presented in a thoughtful and animated fashion which clearly showed to all her own personal "zeal" for these issues and respect for the human person and human life. There were many questions which showed

that a clear connection was being made between the presenter and the "audience". I would not hesitate, in fact I am in the works of having Maria return to help us look at "End of Life Issues" and helping our Catholic population ensure that their wishes are being respected. I willingly endorse Maria and the CCBI-A's work and would urge my brother priests to consider having her present at their parishes.

We thank Fr. Chris, Bourdeau, the CWL and those who participated, for their warm welcome and gracious hospitality. We look forward to returning soon!

If you are interested in having the CCBI-A present for your group or at an event please contact Cecile Bertrand at 519-973-7033 Ext. 0 or email us at ccbi-a@assumptionu.ca

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