

# Protection of Conscience in an Earthquake Zone

Sean Murphy (Administrator, Protection of Conscience Project)  
Presentation to the Catholic Women's League Archdiocesan Convention  
Vancouver, British Columbia, Canada  
8 May, 2002

## Introduction

Thank you for extending the invitation to speak at your Archdiocesan convention. My wife is a member of the League, and I am told by the husband of a long-standing CWL member, a man of great experience and wisdom in such things, that this makes me a member of the CWL auxiliary.

Now, I am not here today in my capacity as a member of the CWL auxiliary, but to introduce you to the Protection of Conscience Project, and, more important, to the problem that brought it into existence.

## Problem

Let's begin with the problem. Imagine following situations:

- You are an operating room nurse. You are repeatedly refused a job because you don't want to assist in abortions.<sup>1</sup>
- You are a physician with strong moral objections to extramarital sex. You refuse to provide Viagra or birth control pills to single patients. You are charged for professional misconduct, and may lose your licence to practice medicine.<sup>2</sup>
- You are a probationary welfare worker. You are fired because you refused to authorize payment for an illegal abortion.<sup>3</sup>
- You are a student nurse, and your preceptor has strongly indicated that your refusal to

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<sup>1</sup> Sean Murphy, "Nurse Denied Employment, Forced to Resign: A Two Tiered System of Civil Rights - British Columbia, Canada (1977-1984)" (28 September, 2020), *Protection of Conscience Project* (website), online:  
<<https://www.consciencelaws.org/repression/repression003.aspx>>.

<sup>2</sup> Cheryl Canning, "Doctor's faith under scrutiny:Barrie physician won't offer the pill, could lose his licence", *The Barrie Examiner* (21 February, 2002) [*Canning*], online:  
<<https://www.consciencelaws.org/repression/repression017-001.aspx>>.

<sup>3</sup> Sean Murphy, "'Insubordination': Worker fired for refusing payment for illegal abortion" (1 October, 2020), Protection of Conscience Project (website), online:  
<<https://www.consciencelaws.org/repression/repression010.aspx>>.

dispense the potentially abortifacient 'morning after pill' may result in a failing grade.<sup>4</sup>

- You are a pharmacist. A woman who *knows* that you will not dispense contraceptives for moral reasons *deliberately* approaches you and *demand*s to be given birth control pills. You refuse. Your employer suspends you, and the woman lodges a complaint of professional misconduct. A year later, you still aren't working.<sup>5</sup>
- You are a health care professional who doesn't want to be involved in activity that contradicts your moral or religious convictions. Colleagues and newspaper columnists tell you to find another job. A University of Toronto professor says that people like you are "scum."<sup>6</sup>

These are actual incidents, involving real people.

This is tolerance, Canadian style. This is what brought the Protection of Conscience Project into existence in December, 1999.

## **The Project**

The Project is just that - a project. It is not a society or organization, but a non-profit, non-denominational initiative that is the work of a project team and advisory board.

The team consists of an administrator, who maintains the website and manages day-to-day operations, and a human rights specialist. I am the Project Administrator. The human rights specialist is Michael Markwick, of West Vancouver, former executive assistant to the Chief Commissioner of the Ontario Human Rights Commission, and past President of the British Columbia Chapter of the Catholic Civil Rights League (Canada).

The Project advisory board includes seven advisors from different disciplines and from different faith traditions:

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<sup>4</sup> Private communications between the Administrator and student nurse (2001).

<sup>5</sup> Private communications between the Administrator and pharmacist. Case still not resolved.

<sup>6</sup> *Canning*, *supra* note 2 at Dr. James Robert Brown.

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- Janet Ajzenstat, B.A., M.A., Ph.D; Associate Professor, Department of Political Science, McMaster University, Hamilton, Ontario, Canada
- Dr. Shahid Athar, M.D., F.A.C.E.; Clinical Associate Professor of Internal Medicine and Endocrinology, Indiana School of Medicine, Indianapolis, Indiana, U.S.A. Dr. Athar is currently the elected vice-president of the Islamic Medical Association of North America and the Chair of its Medical Ethics Committee.
- J. Budziszewski, Ph.D; Associate Professor, Departments of Government and Political Philosophy, University of Texas (Austin), U.S.A.
- Dr. John Fleming, B.A., Th.L. (Hons), Ph.D.; Director, Southern Cross Bioethics Institute, Adelaide, Australia
- Henk Jochemsen, PhD; Director, Prof.dr. G.A. Lindeboom Institute, Amsterdam, Netherlands
- David Novak, A.B., M.H.L., Ph.d.; Professor of the Study of Religion at the University of Toronto, and also Professor of Philosophy, with appointments in University College, the Faculty of Law, the Joint Centre for Bioethics, and the Institute of Medical Science. University of Toronto, Ontario, Canada.
- Lynn D. Wardle, J.D.; Professor of Law, J. Reuben Clark Law School, Brigham Young University, Salt Lake City, Utah, U.S.A.

## General Policy

The general policy of the Project is that the people best placed to deal with a problem are those who are most directly involved. Thus, the Project does not direct or manage protection of conscience initiatives. It is not "Conscience Central Control". Instead, it provides information, offers suggestions, encourages co-operation and facilitates communication. In addition, on specific issues, other activities are undertaken that are intended to encourage respect for freedom of conscience in health care. To date, these activities have included:

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### Letters:

- editors of newspapers and professional journals<sup>7</sup>
- regulatory authorities
- politicians

### Submissions:

All Party Oireachtais Committee on the Constitution (Ireland)<sup>8</sup>

- BC Civil Liberties Association<sup>9</sup>
- Minister of Health (re: *Assisted Human Reproduction Act*)<sup>10</sup>
- Alberta legislative committee currently reviewing the province's *Freedom of Information Act*<sup>11</sup>

### Papers:

- Freedom of Conscience and the Needs of the Patient (OB-GYN conference, Banff,

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<sup>7</sup> For example, Sean Murphy, "Project letter to the Edmonton Sun", (25 April, 2000) *Protection of Conscience Project* (website), online: <<https://news.consciencelaws.org/?p=795>>.

<sup>8</sup> . Protection of Conscience Project, "Submission to the All-Party Oireachtas Committee on the Constitution (Ireland)" (19 June, 2000), *Protection of Conscience Project* (website), online:<<https://www.consciencelaws.org/publications/submissions/submissions-001-001.aspx>>.

<sup>9</sup> . Protection of Conscience Project, "Submission to the Executive Council of the British Columbia Civil Liberties Association" (19 September, 2000), *Protection of Conscience Project*, (website) online:<<https://www.consciencelaws.org/publications/submissions/submissions-002.aspx>>.

<sup>10</sup> Protection of Conscience Project, "Submission to the Minister of Health (Canada) re: *Assisted Human Reproduction Act*" (10 December, 2001) *Protection of Conscience Project* (website), online: <<https://www.consciencelaws.org/publications/submissions/submissions-004.aspx>>.

<sup>11</sup> Protection of Conscience Project, Submission to the Select Special Freedom of Information and Protection of Privacy Act Review Committee (Alberta) (11 April, 2002), *Protection of Conscience Project* (website), online:<<https://www.consciencelaws.org/publications/submissions/submissions-005.aspx>> .

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Alta.)<sup>12</sup>

### Reports:

- 2000-01: *Access to Abortion Services Act*<sup>13</sup>
- 2001-01: Conduct of the Ethics Committee, College of Pharmacists of BC<sup>14</sup>

### Other:

- Media interviews
- *Ad hoc* meetings

### Website

The Project website (<http://www.consciencelaws.org>) includes a variety of material that is intended to assist conscientious objectors and people working for freedom of conscience in health care. Among other things, on the website you will find:

- examples of discrimination and coercion, like the cases I mentioned at the beginning
- the texts of existing protection of conscience laws from different countries
- background information on law and ethics
- news releases and commentaries
- a model protection of conscience law
- pamphlets on specific topics
- victim survey for conscientious objectors who have been subjected to coercive or

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<sup>12</sup> Sean Murphy, "Freedom of Conscience and the Needs of the Patient" (Paper presented at the Obstetrics and Gynaecology Conference New Developments - New Boundaries, Banff, Alberta, 9-12 November, 2001) (unpublished), *Protection of Conscience Project* (website), online: <<https://www.consciencelaws.org/publications/presentations/presentations-001-needs.aspx>>.

<sup>13</sup> Protection of Conscience Project, "Report 2000-01 Re: Access to Abortion Services Act (British Columbia): Implications for conscientious objectors" (27 October, 2000), *Protection of Conscience Project* (website), online: <<https://www.consciencelaws.org/publications/reports/report-2000-01.aspx>>.

<sup>14</sup> Protection of Conscience Project, "Report 2001-01 Re: College of Pharmacists of British Columbia - Conduct of the Ethics Advisory Committee" (26 March, 2001), *Protection of Conscience Project* (website), online: <<https://www.consciencelaws.org/publications/reports/report-2001-01-001.aspx>> .

discriminatory practices

Statistics on visitors to the website indicate a continuing interest in the subject. The number of user sessions per month has climbed from about 1,500 in July, 2001 to over 3,100 in April, 2002. On average, there were over 100 user sessions per day in April, with an average visit time of a little over 11 minutes.

The Home Page and site Map are posted in English, French and Spanish; translation of these pages into Italian has begun, courtesy a CWL member. Links on other pages provide access to a web translation service. The intention is to provide 'protection of conscience' with a minimum Internet presence in other languages, in the hope that this will encourage similar projects in the non-English speaking world.

### Project Focus

The Project's focus is fairly specific. In the first place, we concentrate on health care and bioethics, even though there are grave reasons for concern about freedom of conscience and religion in other fields as well. This policy follows a realistic appraisal of limitations on resources and time, and reflects a prudential judgement about how the Project can be most effective.

The Project does not engage in debate on the morality of controversial procedures. Articulation of the reasons behind conscientious objection often requires discussion of moral decision making, but this is always done *only* for the purpose of illuminating an objector's position. The goal is *not* to prove that the objector is correct, but to demonstrate that the objector's position cannot be dismissed as unreasonable. Definitive arguments against abortion, euthanasia, or other controversial procedures are left to pro-life advocates.

The reason for avoiding pro-life argument is that many so-called 'pro-choice' people dismiss conscience advocates as 'closet pro-lifers' whose *real* aim is to deny access to abortion. These specious claims about a 'hidden agenda' are a smear tactic that imputes dishonest motives to conscientious objectors. Mixing pro-life arguments with freedom of conscience advocacy lends credence to this, and makes it easier for opponents to avoid embarrassing questions, like, "Why do you call yourself 'pro-choice' if you deny freedom of choice to those who don't agree with you?"

Not all pro-lifers are comfortable with this approach. Some, for whom I have great respect, disagree with it. I think that this is quite natural, and I don't consider it a problem.

## **Scope of concern**

I have frequently mentioned conscientious objection to abortion. The legalization of abortion was, in fact, what triggered the passage of the earliest protection of conscience laws. Abortion remains a significant cause of concern because it is both morally controversial and widely practised.<sup>15</sup>

Nonetheless, it would be a serious mistake to associate the need for protection of conscience legislation only with abortion. Consider the problems posed by assisted suicide and euthanasia.

You are aware that Oregon legalized assisted suicide in 1997. Although often called by the acronym "PAS"- physician assisted suicide - one hospice administrator has noted that it is usually nurses who are on the 'front lines'.<sup>16</sup> In fact, an article in a professional medical journal in the United States suggested that it would be better for nurses to take the lead in assisted suicide, because helping patients to kill themselves violates a physician's 'professional integrity'.<sup>17</sup> One wonders what opinion the authors have of nurses.

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<sup>15</sup> A conference in Rome organized by Matercare International in June, 2001, heard from obstetricians and gynaecologists from around the world who face discrimination because they are morally opposed to abortion. For example, RL Walley, "Question of Conscience" (Paper delivered at The Future of Obstetrics and Gynaecology: The Fundamental Right To Practice and be Trained According to Conscience: An International Meeting of Catholic Obstetricians and Gynaecologists - Rome, June 2001) (unpublished), online: <<https://www.consciencelaws.org/repression/repression027.aspx>>.

<sup>16</sup> Carrie Farella, "Assisted Suicide: What Role for Nurses?", *Nursing Spectrum Magazine* (15 May, 2000) [Farella], online: <<https://www.consciencelaws.org/background/procedures/assist003.aspx>>.

<sup>17</sup> Kathy Faber-Langendoen & Jason H.T. Karlawish, "Should assisted suicide be only physician assisted?" (2000) 132:6 *Annals Intern Med* 482-487, online: <<https://www.acpjournals.org/doi/10.7326/0003-4819-132-6-200003210-00010>> (Abstract: ". . . Assisted suicide requires physician involvement, but physicians' limited competence in performing the full range of tasks, the competencies of other professions, and the possibility that other professions could expand their authority in this area suggest that *physician*-assisted suicide is a far too narrow construct of the task. The willingness of other professionals—including nurses, social workers, and clergy—to participate and even take the lead in assisting suicides is critical to meet society's interest that assisted suicide should be humane, effective, and confined to appropriate cases. . .").

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What is particularly interesting is the result of a survey of nursing teams employed by an Oregon hospice. While most of the nurses strongly supported the notion that patients should be able to choose physician assisted suicide, most did not want to participate in it.<sup>18</sup> What does the future hold for them?

For one answer, we might look to the Netherlands, where euthanasia has been practised for years, though officially legalized only this year.

Dr. Peter Hildering of the Dutch Physicians Guild has received reports of discrimination against physicians who won't participate in euthanasia. The extent of the problem depends upon the specialty; nursing home physicians and general practitioners who won't participate in euthanasia report difficulties in finding practices. Medical students who admit that they would refuse to assist with euthanasia are unwelcome in some places. Dr. Hildering tells two stories to illustrate the situation:

A general practitioner I know of says he doesn't want to work with doctors who don't perform euthanasia. He worries that the patients of the [conscientious objector] doctor will all come to him for euthanasia-and he's not happy with that. One of the groups in a rural area had a visit by the inspector for health because one of the doctors wouldn't perform euthanasia in that group. And he put it to that group of doctors that they had to look for a way for their patients to get euthanasia because he felt it was a normal medical practice to offer.<sup>19</sup>

That, in Holland.

You may not be aware that Belgium has begun the process of legalizing euthanasia, and that the Belgian Free University is already making plans to instruct medical students in euthanasia techniques. You may not be aware that an assisted suicide bill was just narrowly defeated in Hawaii. But you surely are familiar with the continuing lobby for the legalization of assisted suicide and euthanasia in North America. I suggest that it would be most unrealistic to believe that this will not continue, or to think that what is happening in the Netherlands cannot happen here.

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<sup>18</sup> Farella, *supra* note 9.

<sup>19</sup> Jonathan Imbody, "A national battle over healthcare ethics threatens to put any conscience-guided Doctor in the Lions' Den", *Today's Christian Doctor* (Fall, 2001), online: <<https://www.consciencelaws.org/background/procedures/abortion013.aspx>>.



On the contrary: the personal integrity of health care workers who want to practise in conformity with their conscientious convictions is already seriously at risk. I have cited some particular cases, but these are like sudden fractures that occur here or there along fault lines in the earth's crust. To be caught by an ethical earthquake triggered by one's conscientious convictions can be both frightening and damaging, but such quakes are *actually* caused by enormous pressures that continue to build, slowly and quietly, deep in the foundations of our society. The wealthy western world has become a vast moral earthquake zone, and the controversies shaking it concern far more than abortion, assisted suicide and euthanasia.

- Artificial reproductive technologies are a constant source of moral controversy, not the least because human embryos produced artificially become raw material for various kinds of research.<sup>20</sup>
- Eugenics, practised by means of pre-natal screening and pre-implantation genetic diagnosis, is a daily reality,<sup>21</sup> encouraged by 'wrongful birth' and 'wrongful life' suits.<sup>22</sup>
- Trafficking in human organs and fetal tissue has become a world-wide problem.<sup>23</sup>

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<sup>20</sup> A Canadian Ministry of Health spokesman described embryo 'adoption' as "just the donation of reproductive material". Marnie Ko, "Would You Like Fries with that Embryo? It's Not Adoption, Just 'Material'", *Alberta Report Newsmagazine* (31 May, 1999), online: <<https://www.consciencelaws.org/background/procedures/art001.aspx>>.

<sup>21</sup> Richard Lynn, emeritus professor of psychology at the University of Ulster, asserts that eugenics is being practised in the form of pre-implantation genetic diagnosis, and that there is nothing wrong with the notion that the "genetic quality of the population" can be improved by eugenic practices. Richard Lynn, *Eugenics: A Reassessment* (Westport, Connecticut: Praeger Publishers, 2001) at 252 & viii para 5.

<sup>22</sup> Mathhew A. Rarey, "Doctor sued for birth of Down Syndrome child", *The Washington Times* (4 August, 1999), online: <<https://www.consciencelaws.org/background/procedures/eugenics001.aspx>>.

<sup>23</sup> Doctors are suggesting that governments should pay living donors who offer kidneys for transplantation. The kidneys would become part of a pool that could be screened and offered to recipients. The proposed scheme would continue to prohibit the purchase of organs by individuals. It is being suggested as a way of dealing with black market trade in human organs. Jeremy Laurance, "Surgeons call for legalised trade in body parts: Boom in illicit transplants

- Some prominent ethicists have suggested that animals used in research could be replaced by infants, the mentally retarded and comatose patients.<sup>24</sup>

Protection of conscience concerns in the 1960's *were* largely related to abortion. We've come a long way since then.

### What does the future hold?

These developments suggest that conflicts of conscience experienced by health care workers are likely to become increasingly frequent as time goes on, at least among those who are principled moralists or religious believers. Specific legislation exists in some countries - notably in most of the American states - that provides some protection for such people. However, in most cases, existing laws are inadequate, for a number of reasons. And no protection of conscience laws exist in Canada.

Canadian politicians are generally uninterested in the problem. This may have something to do with our political traditions, which include rigid party discipline, enforced by 'whips' and the threat of reprisal. Government members who vote against their party for reasons of conscience may be deprived of influential positions, excluded from nomination in the next election, and see their constituents denied government money and programmes for the rest of their terms. Similar sanctions can be applied to members of opposition parties. Note that "free votes" or "conscience votes" in parliament and provincial legislatures are so unusual that they make headlines. A political environment in which freedom of conscience is treated as a rare privilege is not well suited to the development of protection of conscience legislation.

One generally meets with one of two responses from politicians at the provincial or federal level.

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from Third World forces medical community to confront an age-old taboo", *Independent Digital UK* (9 April, 2002), online:

<[https://web.archive.org/web/20020424083309/http://news.independent.co.uk/world/science\\_medical/story.jsp?story=282987](https://web.archive.org/web/20020424083309/http://news.independent.co.uk/world/science_medical/story.jsp?story=282987)>.

<sup>24</sup> Peter Singer, *The Animal Liberation Movement* (Nottingham, England: Old Hammond Press, 1987) at 8; Jill Neimark, "Living and Dying with Peter Singer," *Psychology Today*, (January-February, 1999) at 58. Both quoted in Wesley J Smith, *Culture of Death: The Assault on Medical Ethics in America* (San Francisco CA: 2000) at 210-211.

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The first is that adequate protection is already available under existing human rights law.<sup>25</sup> If this is true - I suggest that it is not - it is available only to people who have the good health and emotional stamina to endure months or even years of litigation, and who can pay thousands upon thousands of dollars in legal costs, perhaps after having been deprived of their income by suspension or dismissal.

For example, it took five years for eight nurses to grind through the human rights process in Ontario to reach the point at which a hearing was to *begin* - five years before their case was even to be *heard*. The hospital settled at the last moment, but the economic and emotional toll on the nurses was significant. All had lost their full-time employment at the hospital, one had died, and others had suffered stress-related illness.<sup>26</sup>

A second response from politicians is that workers should seek protection of conscience provisions in their collective agreements.<sup>27</sup> Well, many workers are not covered by collective agreements. But there is a more important point. What is the 'market value' to be put on freedom of conscience and religion when it is thrown onto the bargaining table? Should it be bartered for thirty dollars a week? Shall we trade it for an extra week's vacation pay? That workers should be forced to bargain for freedoms that are supposed to be their birthright ought to be repugnant to the citizens of a free country, and politicians who suggest it should be ashamed of themselves.

## Summary

I have reviewed the problems that led to the formation of the Protection of Conscience Project, introduced you to the Project and outlined the scope of its concern, and touched upon the political situation in Canada.

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<sup>25</sup> Letter from Stan Woloshyn, Minister of Community Development (Alberta), to Peggy Anderson (4 December, 2000).

<sup>26</sup> Sue Careless, "Nurses Triumphant! Human Rights Case Ends in Settlement", The Interim (May, 1999), online: <<https://www.consciencelaws.org/repression/repression007.aspx>>.

<sup>27</sup> Letter from Paul Ramsey, Minister for Health and Minister Responsible for Seniors (B.C.) to Sean Murphy (28 July, 1995); Letter from John Jansen, Ministry of Health (B.C.) to Kathleen M. Toth (26 April, 1991).

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### **What can the CWL do?**

The suggestions I have are all intended for parish consorts of the CWL rather than the diocesan, provincial or national levels of the League.

Speaking as the Administrator of the Protection of Conscience Project, with respect to protection of conscience in health care:

- Translate the Home Page and Map into Portuguese, Dutch, German or other languages
- Make sure that health care workers in your parishes know that they have your support.
- Sponsor an essay competition among high school students on the theme of freedom of conscience in a secular society.
- If you become aware of a conscientious objector who needs financial support to cover legal costs, undertake fundraising to assist, and encourage other groups to do the same.

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### **Note Re: Update/Revision**

A comment in the written text of the presentation was subsequently deleted because the report it cited was found to have misrepresented what had taken place. See Lloyd Grove, "The PETA people squirm", *The Washington Post* (13 January, 2000), online:  
<<https://www.washingtonpost.com/wp-srv/pmextra/jan00/13/grove.htm>>.