

Pro-life activist taking 'once-in-a-century' case to Supreme Court of Canada

Pro-life activist Mary Wagner is launching a constitutional challenge of Canada's criminal code in her crusade to gain legal recognition of the humanity of the unborn.

Wagner's lawyer Charles Lugosi hopes to take to Canada's highest court a case that addresses one of the biggest questions of our time: "Does Parliament have unlimited authority to define by law who is and who is not a human being?"

At the root of the case is Section 223 of the Criminal Code of Canada, which defines a human being as someone who has "completely proceeded, in a living state, from the body of its mother."

That definition, Lugosi said, is not only outdated but rendered obsolete by scientific knowledge. "The only reason it's still on the books is it's very convenient, because it is used to make abortion legal."

For Wagner, the court challenge is an opportunity to contest a law that has been sanctioned by Canada's establishment ranging from the medical community to the courts. "We have this law that said everything is okay, and people have carried on with that assumption that it's OK," she said.

As Lugosi filed leave to appeal what he calls a "once-in a century question" to the Supreme Court, the constitutional challenge actually dates back to 2012, when Wagner was arrested for entering an abortion clinic in Toronto to speak to women about alternatives to terminating their pregnancies.

Wagner was charged with mischief and spent nearly two years behind bars. When she was released in 2014, she and Lugosi appealed the case to the Ontario Superior Court, arguing that Section 223 is unconstitutional.

"The moment a child is born alive, everyone recognizes the baby as a human being," said Lugosi. "But it's a pure fiction to pretend that one second before that baby is born it is not a human being. It defies logic, common sense, biology. The law should live in the world of truth, not in the world of fiction."

The Ontario Superior Court dismissed the appeal, and in September the Ontario Court of Appeal also rejected Lugosi's bid for appeal. He had until Nov. 13 of this year to file leave to appeal to the nation's top court.

If the case moves forward, Lugosi suspects attorneys general from Canadian

provinces and activist groups from both sides of the abortion debate will want to be involved. He anticipates some abortion advocates will try to dismiss the challenge as an attempt to dig up the old debate about "personhood."

"Many times, the Supreme Court of Canada has said that unborn children are not persons under law and have no legal rights," he said. "We are not contesting that. We are not challenging those decisions. We don't need to. Personhood is bestowed at the time of birth. But being a human being is entirely different."

He noted previous examples in history when the law considered personhood and humanity separately. During slavery in the U.S., slaves were not considered persons but were still afforded some legal protections as human beings, said Lugosi.

"You can remove personhood from a human being, I suppose, but on the other hand they are still human beings. To pretend an unborn child is not a human being is a fantasy, just like the emperor's new clothes."

Wagner has been a voice for unborn humans for nearly 20 years and has spent more than five years out of the last ten years in jail for trying to encourage women bound for abortion appointments to reconsider ending the lives of their unborn children.

"In a sense I feel like it's a duty, since I've been given the means – the charges against me, and I'm in the court already – to speak up for them," she said.

Ultimately, however, Wagner believes what happens in the courts is secondary.

"(American Catholic activist) Dorothy Day said the law helps us to be good," she said. "What do court decisions, what does the law really do? They can shape us, they can help us to be good, but it's the human heart that ultimately I want to change."

For that reason, Wagner recognizes any change in the law from a successful constitutional challenge would have serious ripple effects on Canada, as well as implications for Canada's pro-life community.

"What would happen if the law were to suddenly change?" she asks. "I think if people don't see that Christians and the pro-life community are there to say we want to help people begin the path of healing and reconciliation – if we are not able to meet that need – it could be a point of hardening."