CANADIAN INSTITUTE FOR THE ADMINISTRATION OF JUSTICE

A NATIONAL SEMINAR ON PROFESSIONAL LIABILITY

OCTOBER 29 - NOVEMBER 1, 1986

HYATT REGENCY HOTEL

VANCOUVER, BRITISH COLUMBIA

DEBATE BETWEEN: H.A.D. OLIVER, QC, LAWYER, VANCOUVER AND
JOHN O'BRIEN-BELL, PRESIDENT
BRITISH COLUMBIA MEDICAL ASSOCIATION

ON THE MOTION:

IS THE PRESENT EXPOSURE TO PROFESSIONAL LIABILITY IN HEALTH CARE CASES CONTRARY TO GOOD MEDICAL CARE?

THIS DEBATE IS NOT JUST ABOUT MALPRACTICE OR NEGLIGENCE, IT IS ABOUT THE MUCH WIDER FIELD OF PROFESSIONAL LIABILITY. DOCTORS SUPPORT WITHOUT QUESTION THAT THE VICTIMS OF THOSE FEW OF US GUILTY OF MALPRACTICE OR NEGLIGENCE BE FULLY COMPENSATED. WE HAVE NO ARGUMENT WITH THAT. HOPEFULLY, FEW OF US CAN BE GUILTY OF MALPRACTICE AND I RECOGNIZE ALL OF US AT SOME TIME IN OUR PROFESSIONAL LIVES MIGHT, ON SOME UNGUARDED OCCASION, BE NEGLIGENT. WITH THE DEVELOPMENT OF "INFORMED CONSENT", LIABILITY, HOWEVER, IS MUCH WIDER FOR NOW IT EMBRACES THE PHYSICIAN'S RESPONSIBILITY FOR THE OUTCOME OF THE SERVICE PROVIDED AND AS SUCH IT IS THE COMPETENT PHYSICIAN WHO IS NOW ALSO AT RISK.

1983 WAS AN HISTORIC YEAR FOR CANADA'S DOCTORS. THE STORM CLOUDS OF LITIGATION HAD BEEN GATHERING FOR SOME YEARS. 1983 WAS THE YEAR THAT CANADA'S PHYSICIANS AWOKE TO FIND THAT THE CANADIAN MEDICAL PROTECTIVE ASSOCIATION, THE DOCTORS INSURANCE COMPANY, WISHED TO MOVE FROM THE TRADITIONAL PREMIUM BY MUTUAL EXPERIENCE TO PREMIUM BY EXPERIENCE OF A PARTICULAR MEDICAL DISCIPLINE. THE FLOOD TIDE OF LIABILITY HAD ARRIVED.

BETWEEN 1981 AND 1983 THE NUMBER OF SUITS AGAINST DOCTORS COVERED BY CMPA ROSE FROM 500 TO 600 AND BY 1985 HAD RISEN TO 905. THE AWARDS AND SETTLEMENTS AGAINST MEMBERS IN THAT PERIOD HAD RISEN FROM 5.3 MILLION TO 14.1 MILLION DOLLARS. WITH KNOWLEDGE OF THE CLAIMS AND POTENTIAL CLAIMS IN THE PIPELINE THE CMPA FORESAW IN 1983 THEIR INABILITY TO COVER WITHOUT MOVING TO AN EXPERIENCE RATED PREMIUM STRUCTURE. SO FROM 1984, DEPENDING ON RISK, DOCTORS WERE DIVIDED INTO SEVEN GROUPS AND THE PREMIUM FOR THE HIGHEST RISK GROUP MOVED FROM $500.00 TO $1950.00 IN 1984, TO $2950.00 IN 1985, TO $4950.00 IN 1986 AND ON TO $8200.00 IN 1987. AS ONTARIO'S SUPREME COURT JUSTICE, RICHARD HOLLAND, HAS SAID:

"MALPRACTICE LITIGATION IS TRULY A GROWTH INDUSTRY."

TODAY, THOUGH NOT AT THE SAME POINT, CANADIAN PHYSICIANS ARE ON THE SAME STEEP GRAPH AS THEIR AMERICAN COLLEAGUES, WHO MAY PAY OVER $100,000.00 PER ANNUM FOR MALPRACTICE INSURANCE. IN 1986 A SOUTH EASTERN FLORIDA ORTHOPEDIC SURGEON PAID AN ANNUAL PREMIUM OF $167,000.00.

WHAT THEN HAS BROUGHT THESE CHANGES TO CANADA? AS DR. JAMES TODD, CHAIRMAN OF THE AMERICAN MEDICAL ASSOCIATION'S LIABILITY COMMITTEE, POINTS OUT: MALPRACTICE IS NOT DUE TO A DETERIORATION IN THE QUALITY OF HEALTH CARE PROVIDED FOR THE PUBLIC. IT IS IRONIC THAT IT HAS BECOME ASSOCIATED WITH AN INCREASE IN THE QUALITY OF CARE SO THAT THE PUBLIC NOW EXPECTS THE PERFECT OUTCOME. AS DR. TODD SAYS:

> "LAWSUITS ARE A PUBLIC'S VENGEANCE FOR IT NOW WANTS A RISK FREE SOCIETY."

TILL 1980, AS IN BRITAIN, THE STANDARD OF PROFESSIONAL DISCLOSURE PERMITTED A MEASURE OF DISCRETION AND PROFESSIONAL JUDGMENT BUT WAS DIFFICULT TO DEFINE IN CANADIAN LAW. IN EFFECT, PROFESSIONAL DISCLOSURE WAS A COMPARISON WITH WHAT ANOTHER DOCTOR WOULD HAVE DONE IN SIMILAR CIRCUMSTANCES.

IN 1980 THE SUPREME COURT OF CANADA OPTED TO GO THE AMERICAN ROUTE OF INFORMED CONSENT. HENCEFORTH CANADIAN DOCTORS MUST FULLY DISCLOSE TO THEIR PATIENTS THE NATURE OF THE PROPOSED OPERATION: ITS GRAVITY AND ANY MATERIAL RISKS OR SPECIAL OR UNUSUAL RISKS ASSOCIATED WITH THE PROPOSED PROCEDURE. IMPOSSIBLE TO FULLY COMPLY WITH THIS WAS THE DAGGER IN THE BACK OF DOCTORS THAT FORMER BRITISH LORD CHIEF JUSTICE, LORD DENNING, HAD FORECAST THAT IT WOULD BE IF ACCEPTED INTO ENGLISH LAW:

IN HATCHER V. BLACK AND TUCKWELL, LORD DENNING TOLD THE JURY:

"IN A HOSPITAL, WHEN A PERSON WHO IS ILL GOES IN FOR TREATMENT, THERE IS ALWAYS SOME RISK, NO MATTER WHAT CARE IS USED. EVERY SURGICAL OPERATION INVOLVES RISKS. IT WOULD BE WRONG, INDEED BAD LAW, TO SAY THAT SIMPLY BECAUSE MISADVENTURE OR MISHAP OCCURRED, THE HOSPITAL AND THE DOCTORS ARE THEREBY LIABLE. IT WOULD BE DISASTEROUS TO THE COMMUNITY IF IT WERE SO. IT WOULD MEAN THAT A DOCTOR EXAMINING A PATIENT OR A SURGEON OPERATING, INSTEAD OF GETTING ON WITH HIS WORK, WOULD BE FOREVER LOOKING OVER HIS SHOULDER TO SEE IF SOMEBODY WAS COMING UP WITH A DAGGER: AN ACTION FOR NEGLIGENCE AGAINST A DOCTOR IS FOR HIM LIKE UNTO A DAGGER."

IN A HOUSE OF LORDS JUDGMENT, LORD SCARMAN, COMMENTING ON THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF EXPERTS SAID:

"IN THE REALM OF DIAGNOSIS AND TREATMENT, NEGLIGENCE IS NOT ESTABLISHED BY PREFERRING ONE RESPECTABLE BODY OF PROFESSIONAL OPINION TO ANOTHER. FAILURE TO EXERCISE THE ORDINARY SKILL OF A DOCTOR (IN THE APPROPRIATE SPECIALTY, IF HE BE A SPECIALIST) IS NECESSARY."

AWARDS IN EXCESS OF ONE MILLION DOLLARS ARE NOW COMMON IN SPITE OF THE LIMITATION OF PAIN AND SUFFERING TO AN INDEXED $100,000.00 IN 1978 - NOW $185,000.00. TO OVERCOME THIS LIMITATION THE COURTS AWARD GREATER AND GREATER FUNDS TO COMPENSATE ALL FUTURE LOSSES, INCLUDING INCOME AND EXPENSES.

TODAY IT IS NOT ONLY THE NEGLIGENT AND THOSE GUILTY OF MALPRACTICE WHO HIT THE HEADLINES. **WITH THE DEVELOPMENT OF LIABILITY AS A BASIS FOR COMPENSATION THE COMPETENT PHYSICIAN IS NOW AT RISK.** IN FACT IT IS THE COMPETENT PHYSICIAN WHO IS MORE LIKELY TO BE THE OBJECT OF MEDIA SCRUTINY FOR THE CASES OF GROSS NEGLIGENCE TEND TO BE SETTLED OUT OF COURT.

THE IMPACT ON THE DEFENDING PHYSICIAN IS PULVERIZING. ONE'S PROFESSIONAL REPUTATION IS THE DOCTORS MOST CHERISHED ASSET. LORD DENNING DESCRIBED IT THUS:

> "HIS PROFESSIONAL REPUTATION IS AS DEAR TO HIM AS HIS BODY, PERHAPS MORE SO, AND AN ACTION FOR NEGLIGENCE CAN WOUND HIS REPUTATION AS SEVERELY AS A DAGGER CAN WOUND HIS BODY. YOU MUST NOT THEREFORE FIND HIM NEGLIGENT SIMPLY BECAUSE SOMETHING HAPPENED TO GO WRONG: YOU SHOULD ONLY FIND HIM GUILTY OF NEGLIGENCE WHEN HE FALLS SHORT OF THE STANDARD OF A REASONABLY SKILLFUL MEDICAL MAN."

THIS IS HOW ONE BRITISH COLUMBIA PHYSICIAN DESCRIBED THE IMPACT OF BEING SUED:

> "THE PART WHICH WAS VERY HARD TO TAKE, IS THAT I FELT VERY BADLY ABOUT MYSELF AND MY FITNESS TO ACT AS A PHYSICIAN. I LOST FAITH IN MY JUDGMENT. I BECAME ANXIOUS AND UNSURE IN MY DEALINGS WITH PATIENTS, MISTRUSTING WHAT THEY WERE SAYING TO ME, LOSING MY DISCRIMINATION WHEN EXAMINING THEM, OVERUTILIZING INVESTIGATIONS, AND BEING HESITANT IN ARRIVING AT A WORKING DIAGNOSIS.
>
> I WAS HIT BY DEPRESSION, I WAS INSOMNIAC AND WHEN I FELL ASLEEP, I WOULD OFTEN WAKEN IN THE EARLY MORNING. EVERY DAY WAS A DRAG. I WAS APPREHENSIVE ABOUT THE FUTURE. I SUFFERED SPELLS OF IMPOTENCE. I WAS EASILY DISTRACTABLE."

TODAY, DOCTORS REALIZE THAT THERE BUT FOR THE LUCK OF THE DRAW GO I AND ADJUST ACCORDINGLY.

IS THIS, YOU THE JURY MUST ASK YOURSELVES, CONDUCIVE TO GOOD MEDICAL CARE?

RECENTLY, MR. JUSTICE HORACE KREVER OF THE ONTARIO SUPREME COURT, SPEAKING TO STUDENTS AT THE UNIVERSITY OF MANITOBA REGRETTED THE FACT THAT FAULT HAD TO BE INTRODUCED INTO THE TORT SYSTEM, AND COMMENTED AS FOLLOWS: IN ORDER THAT TOTALLY INNOCENT PLAINTIFFS WHO SUFFER CATASTROPHIC INJURIES BE COMPENSATED BY WEALTHY INSURERS OF EQUALLY BLAMELESS DEFENDENTS, JUDGES WILL TEND TO FIND FAULT WHEN NONE EXISTS.

MR. JUSTICE KREVER THEN CONTINUED:

> "I KNOW PERFECTLY WELL THAT IF I FIND FAULT, EVEN THOUGH THE EVIDENCE INTELLECTUALLY APPLIED DOESN'T ENABLE ME TO FIND FAULT, THE COURT OF APPEAL WILL NOT INTERFERE WITH MY FINDING OF FAULT BECAUSE IT IS A FINDING OF FACT MADE BY THE TRIOR OF THE FACT WHO SAW THE WITNESSES SO I CAN GET AWAY WITH IT. I AM THEREFORE ABLE TO FIND SO AND SO WAS NEGLIGENT. I DON'T LIKE TO BE IN A POSITION WHERE I HAVE TO BE INTELLECTUALLY DISHONEST. I TOOK AN OATH TO APPLY THE LAW. I THINK THERE IS A TEMPTATION FOR ME TO BECOME INTELLECTUALLY DISHONEST TO GET THE RESULTS NECESSARY. I DON'T THINK THAT THAT IS WHAT OUR LAW IS ALL ABOUT", CONCLUDED MR. JUSTICE KREVER.

MR. JUSTICE KREVER'S COMMENTS HAVE NOTHING TO DO WITH INTELLECTUAL HONESTY: THEY HAVE HOWEVER EVERYTHING TO DO WITH JUDICIAL INTEGRITY AND ETHICS.

IF JUDGES IGNORE THE EVIDENCE IN FRONT OF THE COURT AND BEND TO OUTSIDE PRESSURES OR OUTSIDE AGENDAE THEN THE VERY FRAMEWORK OF OUR FREE SOCIETY IS IN JEOPARDY: FOR THE ESSENCE OF A FREE SOCIETY IS SURELY THE INTEGRITY OF ITS JUDICIARY. WHAT MR. KREVER HAS DESCRIBED IS THE ANTITHESIS OF JUDICIAL INTEGRITY. DOCTORS ARE ENTITLED TO EQUAL JUSTICE UNDER THE LAW.

THIS THEN IS THE MEDIUM IN WHICH TODAY'S DOCTORS PRACTICE. IN FRONT OF THEM KREVER'S "INTELLECTUAL DISHONESTY"; BEHIND THEM THE DENNING DAGGER.

IS THIS, YOU THE JURY MUST ASK YOURSELVES, A MEDIUM THAT IS CONDUCIVE TO THE DEVELOPMENT OF GOOD PATIENT CARE OR DOES IT IMPLANT TENSIONS THAT UNDERMINE THE FOUNDATION ON WHICH THE DOCTOR-PATIENT RELATIONSHIP IS BUILT?

DOES THIS PERMIT, YOU THE JURY MUST ASK YOURSELVES, THE BALANCED EXERCISE OF CLINICAL JUDGMENT OR DOES IT IMPART ON THE DOCTOR THE NECESSITY FOR THE PRACTICE OF DEFENSIVE MEDICINE?

FORMER ALBERTA HOSPITAL MINISTER, DAVE RUSSELL, HAS SAID:

> "WE HAVE REASON TO BELIEVE THAT THERE IS A LOT OF DEFENSIVE MEDICINE BEING PRACTICED TODAY. DOCTORS MAY BE ORDERING UNNECESSARY TESTS TO PROTECT THEMSELVES AGAINST THE POSSIBILITY OF FUTURE MALPRACTICE."

RECENTLY A WOMAN WALKED INTO THE OFFICE OF HER LOS ANGELES DOCTOR AND SAID:

> "DOCTOR, I DON'T WANT YOU TO TAKE THIS PERSONALLY BUT I'M GOING TO SUE YOU, YOU SEE IT'S THE ONLY CHANCE I'LL EVER HAVE TO MAKE BIG BUCKS."

THAT YOU CHUCKLE AT THIS STORY UNDERLINES THE INCOMPATIBILITY OF A LEGAL SUIT WITH THE DOCTOR/PATIENT RELATIONSHIP.

TODAY IN CANADA, AN ORTHOPEDIC SURGEON HAS A ONE IN FIVE CHANCE OF BEING SUED. ONE SUCH BRITISH COLUMBIA ORTHOPEDIC SURGEON OPERATED ON AN "ANTERIOR COMPARTMENT SYNDROME" FOLLOWING THE PINNING AND PLATING OF A NON-UNION OF THE FIBULA DONE FOUR YEARS PREVIOUSLY BY ANOTHER ORTHOPEDIC SURGEON. HE FOUND HIMSELF 60% RESPONSIBLE FOR A $495,000.00 OUT OF COURT SETTLEMENT. THERE WAS VERY LITTLE PERMANENT DISABILITY, MINIMAL COSMETIC DEFICIT AND GOOD BONE UNION; IN OTHER WORDS, A SUCCESSFUL OPERATION. WHY THEN THE AWARD? THE ANAESTHETIC HAD BEEN POSTPONED FOR FIVE HOURS BECAUSE THE PATIENT HAD RECENTLY EATEN AND THE PATIENT'S LAWYER MAINTAINED THAT THE PATIENT WAS ANALGESIC DEPENDENT TO A POINT THAT AFFECTED HIS ABILITY TO EARN AS A RESULT OF THE DELAY. THE CASE WAS SETTLED OUT OF COURT, BECAUSE COUNSEL ADVISED THE DOCTOR THAT THE JUDGE WOULD AUTOMATICALLY FIND HIM 100% LIABLE. THE DOCTOR RECEIVED NO REPLY TO HIS QUESTIONS SUBSEQUENTLY "WHAT IF I HAD OPERATED IMMEDIATELY AND THE PATIENT HAD VOMITED INTO HIS LUNGS?".

THE CASE CHANGED THE SURGEON'S WHOLE PATTERN OF PRACTICE SO THAT "IF I GET THE REMOTEST SUSPICION, AFTER EXPLAINING THE PROPOSED OPERATION TO THE PATIENT, THAT HE OR SHE IS OVERLY CONCERNED, I DISCHARGE THEM AND SUGGEST THEY SEE ANOTHER DOCTOR. I WON'T OPERATE ON THEM. LIFE IS TOO SHORT TO GO THROUGH THAT SORT OF TRAUMA AGAIN."

THIS EXPERIENCE CONVINCED AN ORTHOPEDIC SURGEON TO CHANGE HIS PATTERN OF PRACTICE AND AVOID THOSE PROCEDURES MOST LIKELY TO LEAD TO LITIGATION. BUT IT IS NOT NECESSARY TO EXPERIENCE THAT

TRAUMA TO CHANGE ONE'S PATTERN OF PRACTICE. THE INCREASING NUMBER OF SUITS IN RESPECT OF OBSTETRIC CARE HAS LED TO AN EXIT FROM THE CASE ROOM OF MANY FAMILY PRACTITIONERS.

THE MULTI-MILLION DOLLAR SETTLEMENTS HAVE HAD THEIR TOLL - THE RECORD AT PRESENT STANDS AT $3.2 MILLION. THE TENSION OF THE CASE ROOM, WHERE SUDDEN COMPLICATIONS CAN PRODUCE LIFE THREATENING SITUATIONS FOR THE FETUS AND PERHAPS EVEN THE MOTHER, CAN BE DIFFICULT ENOUGH WITHOUT THE SHADOW OF LORD DENNING'S DAGGER ACROSS THE BIRTH CANAL. TODAY DOCTORS HAVE BECOME LIABLE FOR BIRTH TRAUMA EVEN WHEN NO MALPRACTICE OR NEGLIGENCE EXISTS. SO IN CANADA TODAY, FAMILY PHYSICIANS ARE FOLLOWING THE LEAD OF MANY AMERICAN OBSTETRICIANS AND TURNING THEIR BACKS ON NORMAL OBSTETRICS.

IS IT IN THE BEST INTERESTS OF PATIENT CARE, YOU THE JURY MUST ASK YOURSELVES, THAT SPECIALISTS TURN THEIR BACKS ON THEIR EXPERTISE IN FEAR OF UNFAIR LITIGATION?

IS IT IN THE BEST INTERESTS OF FAMILY PRACTICE, YOU THE JURY MUST ASK YOURSELVES, THAT FAMILY PHYSICIANS TURN THEIR BACKS ON OBSTETRIC PRACTICE?

HOW THEN DOES THIS MOVE TO DEFENSIVE MEDICINE AFFECT THE PROVISION OF MEDICAL CARE? WITH THE COURTS FINDING BLAMELESS DEFENDENTS TO BE LIABLE BECAUSE OF THE DEEP POCKET OF THEIR WEALTHY INSURERS, DOCTORS ARE MOVING AWAY FROM RELYING ON CLINICAL JUDGMENT TOWARDS A DETERMINATION THAT THEY MUST NOT BE WRONG. TO ACHIEVE THIS LAUDABLE STATE PATIENTS MAY BE

INVESTIGATED IN A MANNER THAT IS NEITHER CLINICALLY NOR COST EFFECTIVE.

IT IS ESTIMATED THAT ONLY ONE SKULL X-RAY IN A HUNDRED IS OF CLINICAL SIGNIFICANCE; YET IT IS A UNIVERSALLY HELD LEGAL MAXIM THAT IT IS AN ESSENTIAL INVESTIGATION OF HEAD INJURY. RASH INDEED IS THE DOCTOR WHO ARRIVES IN COURT NOT HAVING ORDERED ONE. TODAY IT IS ALMOST ROUTINE TO X-RAY THE INJURED ANKLE, RARE INDEED DOES IT IMPROVE CLINICAL JUDGMENT.

IS IT, YOU THE JURY MUST ASK YOURSELVES, GOOD MEDICAL CARE TO USE X-RADIATION TO PREVENT THE PATIENT BECOMING THE PLAINTIFF?

TODAY'S DOCTORS USE A MYRIAD OF LABORATORY AND OTHER TESTS TO ASSURE WITH CERTAINTY THE DIAGNOSIS. AND WHILE ONE CAN ARGUE THAT ALL MUST BE DONE TO BE CERTAIN, IT IS WHEN ONE CROSSES THE LINE FROM CLINICAL NECESSITY TO LEGAL CERTAINTY THAT:

YOU THE JURY HAVE TO ASK WHETHER THIS IS IN THE BEST INTERESTS OF GOOD MEDICAL CARE.

FROM TIME TO TIME A PARTICULAR JUDGMENT WILL HAVE A DRAMATIC IMPACT ON THE PRACTICE OF MEDICINE. A 1.2 MILLION DOLLAR AWARD AGAINST A FAMILY PHYSICIAN, WHOSE FAILURE TO DIAGNOSE TWINS BECAUSE HE FORGOT TO ORDER ULTRASOUND, IS A CLASSIC EXAMPLE. PRIOR TO THIS CASE ULTRASOUND WAS A USEFUL, BUT NOT A ROUTINE INVESTIGATION, IN PREGNANCY. THIS CASE CHANGED ALL THAT. IN THE PAST THREE YEARS ULTRASOUND HAS MOVED TOWARDS BEING A ROUTINE IN PREGNANCY.

IS IT OF CONSEQUENCE, YOU THE JURY MUST ASK YOURSELVES, THAT INVESTIGATIONS ARE GENERATED FROM THE BENCH?

WHAT ARE THE COSTS OF DEFENSIVE MEDICINE IN THE ECONOMICS OF HEALTH CARE? THERE ARE NO CANADIAN IMPRESSIONS, LET ALONE CANADIAN STUDIES, ON WHAT THIS COST MIGHT BE: HOWEVER IN A 1983 SURVEY BY THE AMERICAN MEDICAL ASSOCIATION IT WAS SHOWN THAT 41% OF THE DOCTORS POLLED ADMITTED ORDERING ADDITIONAL DIAGNOSTIC TESTS, AND 27% ADMITTED ADMINISTERING ADDITIONAL TREATMENT TO PROTECT THEMSELVES FROM THE POSSIBILITY OF LEGAL SUIT. I THINK THE FORMER FIGURE LOW AND THE LATTER HIGH WHEN TRANSLATED TO CANADIAN DOCTORS. WHAT THE DOLLAR COSTS ARE NO ONE KNOWS BUT THEY MUST BE IN THE TENS OF MILLIONS OF DOLLARS AND CONTRIBUTE, AS PROFESSOR BAUDOUIN SUGGESTED A FEW MINUTES AGO, TO THE SOARING RISE OF HEALTH CARE COSTS. AS GOVERNMENT FUNDS DOCTORS' INCOMES, REMEMBER THAT THE GOVERNMENT IN EFFECT PAYS FOR THE TOTAL COST OF MEDICAL LITIGATION, BECAUSE EVERY PENNY PAID TO CMPA COMES FROM FEES NEGOTIATED WITH THE GOVERNMENT.

GIVEN THE DIFFICULTIES IN FUNDING HEALTH CARE,

DOES IT NOT, YOU THE JURY MUST ASK YOURSELVES, UNDERMINE GOOD MEDICAL CARE TO DIVERT THESE MONIES TO MEDICAL LITIGATION AND DEFENSIVE MEDICINE?

IS IT IN THE BEST INTEREST OF MEDICAL CARE THAT DOCTORS BE PULVERIZED AND PARALYZED BY LIABILITY. LORD DENNING UNDERLINED THAT AN ACTION FOR NEGLIGENCE CAN WOUND A DOCTOR'S BODY AS SEVERELY AS CAN A DAGGER.

AS DOCTORS START TO LEAVE THE AREAS OF HIGH RISK, YOU THE JURY MUST ASK YOURSELVES, WHERE IT WILL LEAD?

A RECENT ARTICLE IN "CANADIAN DOCTOR" REPORTED THAT DOCTORS, WHO WERE SUED IN CHICAGO BETWEEN 1977 AND 1981, SUFFERED MORE THAN MONETARY DAMAGE. ONE-THIRD WERE SUFFICIENTLY DEPRESSED TO CONSIDER EARLY RETIREMENT: 19% ADMITTED LOSS OF NERVE IN CLINICAL SITUATIONS AND 42%, LIKE OUR BRITISH COLUMBIA ORTHOPEDIC SURGEON, SAID THEY SUBSEQUENTLY AVOIDED HIGH RISK CASES. CANADIANS CAN SELDOM IGNORE THE EXPERIENCE OF THEIR AMERICAN NEIGHBOURS NOR THE FRIGHTENING MALPRACTICE SCENARIO THE US PRESENTS.

IS IT IN THE BEST INTERESTS OF MEDICAL CARE, YOU THE JURY MUST ASK YOURSELVES, THAT THE THREAT OF MALPRACTICE LIABILITY HAS A VERY SIGNIFICANT PSYCHOLOGICAL IMPACT ON DOCTORS IN GENERAL AND ON MEDICAL PRACTICE AS A WHOLE AS PROFESSOR BAUDOUIN SUGGESTS?

IN CONCLUSION, LET ME SUGGEST TO YOU THAT FEASTING ON MEDICAL LITIGATION IS INJURIOUS TO YOUR HEALTH.

JOHN O'BRIEN-BELL, PRESIDENT
BRITISH COLUMBIA MEDICAL ASSOCIATION