The Law & Birth
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Who is a Parent? Not a Simple Question!

If anything could be said about the law, it is slow to change. Our social structure continues to evolve at a faster pace than the law, which is creating difficulties in society and the courts. We are seeing impacts on individuals and couples who are having children in non-traditional ways as the definition of what constitutes a parent from a legal perspective is loaded with confusion. Developments in technology and social relationships, and at times, a combination of the two, have resulted in legal uncertainty. This has led to a much-needed reanalysis of legal parenthood.

Should we be relying on traditional legal assumptions that parenthood only comes into effect at birth? Does parenthood need to be confined to people who are married or in a relationship with the birth mother? Can there be more than two parents in a family?

Legal parentage is assigned at birth by statute, and this legislation also determines who can be listed on the actual birth certificate. Each province and territory has a Vital Statistics Act which governs the registrations. Once information has been recorded on a birth certificate, it is very difficult to change. Although this might have been satisfactory decades ago, many non-biological parents are finding themselves concerned with the invisibility of their status when it is not recognized legally.

While traditional models of parentage remain relatively consistent, changes in family structures are starting to challenge what most consider to be simple: the mother is the person that gave birth to the child, and the father is whoever was in a conjugal relationship with the mother at the time of the birth. However, with the rise of Assisted Reproduction Technologies, the simplicity of defining who is the mother or the father has become increasingly complicated.
There are many legal options that allow participation as a parent in a family. One of these mechanisms is that a person can stand *in loco parentis* to a child. This means that a person can have parent-like obligations and responsibilities to the child, but it is not the same legal status that biological parents have. The difference is that the *in loco parentis* relationship can be broken, which might threaten the best interests of the child by potentially creating an unstable family circumstance.

When determining parentage, the courts typically look to what is in the best interests of the child. Although this has remained at the heart of the debate, other issues come into play. For instance, the intention of the parent plays a significant part in a court’s decision. As parenting roles continue to evolve, and as the social norms around conception advance, whether someone can contract in or out of parentage in advance of the creation of a family has become a hot topic worthy of close examination.

Naturally, this raises some important questions: Should we be relying on traditional legal assumptions that parenthood only comes into effect at birth? Does parenthood need to be confined to people who are married or in a relationship with the birth mother? Can there be more than two parents in a family? There have been some recent cases whereby the courts have attempted to answer some of these demanding questions, and most of these address situations that involve Assisted Reproduction Technologies.

In Ontario, the Court of Appeal delivered a judgment that allowed for three parents. (*A.A. v. B.B.*, 2007 ONCA 2 (CanLII)) This case involved a female same-sex couple who chose to have a child with a close male friend. The three of them determined who would carry the child, and also agreed that the biological father could play a role in the child’s life. Once the child was born, the female partner who didn’t carry the child applied to be deemed a legal parent, and in this case, a mother. Both the biological mother and father consented to this application. While the trial judge did not grant the application, Judge Rosenberg of the Court of Appeal did. He based his decision in the best interests of the child, and he determined that there is a gap in the legislation that does not accommodate social and medical developments. It is the one and only Canadian case that has allowed more than two parents.

A recent case in Saskatchewan (*WJQM v. AMA* 2011 SKQB 317 (CanLII)) determined that it is possible to have a biological mother removed from the birth certificate and replaced by a non-biological mother. In this circumstance, the gestational carrier (biological mother) was implanted with anonymous ovum and sperm from the petitioner (non-biological mother). It was declared that the gestational carrier was not the mother of the child, and a declaration of “non-parentage” was granted. In the *Vital Statistics Act* of Saskatchewan, a father is defined as, “the person who acknowledges himself to be the biological father of the child,” and the mother is defined as, “the woman from whom the child is delivered.” Because the carrier of the child.

In the recent case of *D.W.H. v. D.J.R.*, the Alberta Court of Appeal addressed parentage within the context of assisted reproductive technologies, and granted parentage to a non-biological parent, along with the biological mother and the biological father.
In the recent case of *D.W.H. v. D.J.R.*, the Alberta Court of Appeal addressed parentage within the context of assisted reproductive technologies, and granted parentage to a non-biological parent, along with the biological mother and the biological father. The general rule in Alberta regarding parentage is that parents are defined as the birth mother and the biological father, unless there has been an adoption or methods of assisted reproductive technology have been used. In this case, two men in a same-sex relationship used the sperm from one man to conceive a child with a female friend. The majority of the judges on the appeal determined that the Ontario case of *A.A. v. B.B.* established that parentage can be granted where there is a legislative gap that “prevents recognition of the parent in question.” In the Alberta case the Court of Appeal agreed with the chambers judge that the provincial *Family Law Act* contained a legislative gap that did not allow the intended non-biological father in the same-sex relationship to claim parentage. The majority of the Court of Appeal upheld the Chambers judge’s decision that all three parties were parents, and in addition, declared both fathers to be guardians of the child. Both the chambers judge and the Court of Appeal judges reached their decisions within the context of what was in the best interests of the child.

The law is still struggling to determine legal parentage at birth, as the complexities of each case makes it difficult to create consistent guidelines.

Recently, the *Uniform Child Status Act*, a paper that was created as a joint project between the Uniform Law Conference of Canada and the Federal/Provincial/Territorial Coordinating Committee of Senior Official on Family Justice was presented as a modern replacement that included basic rules in determining parentage for all children, whether conceived with or without Assisted Reproduction Technology. These include posthumous conception, surrogacy and additional parents.

This paper’s recommendations suggest that in the case of presumption of parentage, conjugal relationships take precedent, unless proven otherwise on the balance of probabilities (Section 4). In the case of children born of Assisted Reproductive Technology, the *Uniform Child Status Act* would focus on intention as the primary qualifier for parentage over conjugal relationships or genetic connections (Section 5). The overall goal is to provide stability to children, in spite of their origins. At this time, the paper stands as a recommendation to the provinces to adopt its proposals.

Recent cases show that the legal definition of a parent is changing. A regulatory document could be useful to all of the provinces in order to promote consistency and predictability for families and children within our societal mosaic. While the law still contains many shortcomings in how it addresses parentage within the ever-changing social intricacies, the cases discussed in this article indicate that courts are demonstrating a willingness to adapt.
No Right to “Know One’s Past”: The BCCA in Pratten v British Columbia (Attorney General)

In a decision released on November 27, 2012, the British Columbia Court of Appeal (BCCA) in *Pratten v British Columbia*, 2012 BCCA 480, reversed the British Columbia Supreme Court’s (BCSC) decision that provisions of the provincial Adoption Act are unconstitutional as a result of their failure to take into account the rights of people conceived using sperm from an anonymous donor (“donor offspring”).

The challenge was brought by Olivia Pratten, who was conceived in 1982 using sperm from an anonymous donor. As per the rules of the College of Physicians and Surgeons of B.C., which allows records to be destroyed six years after the last entry, all records relating to the insemination procedure by which Ms. Pratten was conceived were destroyed.

Ms. Pratten argued that the Adoption Act, which contains mechanisms enabling adoptees to find their birth parents, violates section 15 of the Charter because it benefits only adoptees and not donor offspring. Additionally, Ms. Pratten claimed that the Legislature’s failure to enact legislation to allow donor offspring to access biological information violates a “free-standing” positive right to “know one’s past”, as guaranteed by section 7 of the Charter.

Ms. Pratten argued that the Adoption Act, which contains mechanisms enabling adoptees to find their birth parents, violates section 15 of the Charter because it benefits only adoptees and not donor offspring.

At trial, the BCSC found that various provisions of the Adoption Act and the Adoption Regulation violated s. 15 and declared them invalid. This declaration of invalidity was suspended for 15 months. The trial judge also granted a permanent injunction against the destruction of records containing information about the identity of sperm donors. Ms. Pratten’s s. 7 claim was dismissed. More detail about the BCSC decision can be found here.

The BC Attorney General appealed the s. 15 decision and Ms. Pratten cross-appealed the s. 7 decision.
The trial judge made some important findings of fact in her decision (found at paragraph 111) which were not challenged on appeal. Among them include the fact that donor offspring feel that their health can and may be seriously compromised by lack of information about their donor. Based on expert medical evidence, the trial judge found that these fears are justified.

…donor offspring feel that their health can and may be seriously compromised by lack of information about their donor.

Additionally, she found that donor offspring can face delayed medical treatment because of their inability to give complete family histories and that these stresses can cause them sadness, frustration, depression and anxiety. The trial judge stated that donor offspring experience similar struggles and a sense of incompleteness as adoptees, but that they do not have the same institutions and support in the form of legislation that adoptees have.

In the BCCA decision, Justice Frankel begins by analyzing the history of adoption legislation before moving on to the Charter arguments. Notably, he highlights that prior to 1996 the court-ordered adoption process was kept confidential. Legislative changes in 1996 were effected to respond to “changing social conditions” in order to “provide for open adoptions and granted adoptees…qualified access to their adoption order and registration of birth” (para 33).

The Section 15 Argument: Applying s. 15(2)

The BCSC found that the Legislature’s failure to address the needs of donor offspring in the Adoption Act discriminated against them on the basis of the “manner of their conception” and that this distinction could not be saved by s. 1.

The BCSC found that the Legislature’s failure to address the needs of donor offspring in the Adoption Act discriminated against them on the basis of the “manner of their conception” and that this distinction could not be saved by s. 1. The Attorney General argued that the Adoption Act was a valid affirmative action program under s. 15(2) of the Charter. The trial judge did not accept this argument; however, the BCCA agreed that the impugned provisions of the Adoption Act were valid under s. 15(2).

In the landmark s. 15(2) decision in R v Kapp, 2008 SCC 41, the SCC set out that in order to save a legislative scheme under s. 15(2), the state must show that the program has an ameliorative or remedial purpose that targets a disadvantaged group identified by an enumerated or analogous ground. This step is undertaken before analyzing the impugned law under s. 15(1); therefore, it is analyzed before considering whether the law is in fact discriminatory.

As the Attorney General conceded that “manner of conception” was a protected analogous ground, the BCCA then moved on to determine whether the provisions of the Adoption Act are saved by s. 15(2). Based on Kapp, Justice Frankel finds that the impugned provisions do qualify as an ameliorative program, as “[t]he purpose of the impugned provisions is to remedy the disadvantages created by the state-sanctioned dissociation of adoptees from their biological parents”. In addition, it is found that adoptees are “a group which has historically, if not currently, been subject to negative social characterization”.

…the BCCA states that it is an accepted finding of fact that the negative effects of not knowing their biological history are the same for adoptees as for donor offspring.
While I can see how the provisions of the Adoption Act can fit squarely under s. 15(2), this decision highlights some of the struggles courts have been facing surrounding s. 15 jurisprudence. Earlier in the decision the BCCA states that it is an accepted finding of fact that the negative effects of not knowing their biological history are the same for adoptees as for donor offspring. It is therefore difficult to argue that the legislation is invalid when it is conferring benefits on a similarly disadvantaged group. While the courts have somewhat moved away from a formal comparator group analysis in s. 15 cases, most claimants must still either pit themselves against another disadvantaged group or find themselves being compared to the advantaged norm.

The Section 7 Argument: Applying The Usual Timidity

Given the issues that often arise in s. 15 cases, an argument that s. 7 of the Charter encompasses a free-standing right to know one’s biological origins and, further, imposes a positive duty on the state to enact legislation that gives effect to that right, is a matter in which Ms. Pratten could have received the legislative recognition she desired without taking away rights for a similarly disadvantaged group such as adoptees.

Ms. Pratten’s argument that s. 7 includes a positive right to “know one’s past” is based on Justice Arbour’s dissenting reasons in R v Gosselin, 2002 SCC 84, which championed the idea that s. 7 includes positive rights. However, Justice Frankel does not accept this argument, noting that “[t]he positive rights theory advocated by Ms. Pratten necessitates a departure from established s. 7 jurisprudence”, which has not yet recognized a positive right to life, liberty and security of the person.

Ms. Pratten argued that this would be an appropriate case for the courts to recognize positive rights under s. 7 because the duty on the state would be “minimal” and would involve a small amount of expenditure on the part of the government. In dismissing this argument, Justice Frankel states that the right to know one’s past would have far-reaching implications which would extend far beyond adoptees or donor offspring. He also does not accept the argument that this right is so fundamental that it rises to the level of constitutionally protected status.

Justice Frankel does the same thing that was done by the majority in Gosselin in that he states that s. 7 could be capable of guaranteeing positive rights, but declines to recognize those rights. As Justice Arbour succinctly put it:

“The first two decades of Charter litigation testify to a certain timidity – both on the part of litigants and the courts – to tackle head on the claims emerging from the right to be free from want.”

This timidity has resulted in jurisprudence that hints at positive rights but never actually recognizes what a positive s. 7 right might look like. The “right to be free from want” could clearly be extremely broad – want from what? And how would the state recognize this right, especially in the age of austerity? These questions are again left for another decision, by another court, at another time.

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Legal and Ethical Support for Newborn Safe Havens

In May 2010, Providence Health Care in Vancouver announced the opening of the first newborn safe haven in Canada at St. Paul’s Hospital. Four months later, Providence confirmed a healthy baby was dropped off at the hospital, setting off a further round of national and international media attention. And now this year, following Providence’s lead and with their consultative support, Covenant Health implemented two newborn safe havens at the Misericordia and Grey Nuns Community Hospitals in Edmonton. Known as Angel Cradles, the safe havens provide a means for parents who are unable or unwilling to care for their newborns to safely and anonymously leave their baby in a hospital bassinet, accessed via a secure, electronically monitored door discreetly located external to the Emergency Departments. Prompted by clinical experience, and a desire to provide an additional option when real or perceived barriers prevent parents at risk from accessing existing social supports, the Angel Cradles are a practical resource to mitigate tragic outcomes as a result of unsafe abandonment.

Known as Angel Cradles, the safe havens provide a means for parents who are unable or unwilling to care for their newborns, to safely and anonymously leave their baby in a hospital bassinet, accessed via a secure, electronically monitored door discreetly located external to the Emergency Departments.
Realizing this goal took a great deal of imagination and persistence, including extensive collaboration with provincial authorities and other internal and external stakeholders. First, from a legal perspective, since neither British Columbia nor Alberta have safe haven legislation (there is currently no safe haven legislation anywhere in Canada) it was important the Angel Cradle program work in concert with existing legislative requirements. Through detailed planning and candid dialogue we were able to confirm that, if a parent was either unable or unwilling to discharge their legal obligations in providing for the necessities of life, they could intentionally leave the baby at the hospital anonymously, with the caveat that no evidence of abuse or harm to the child was found upon physical examination. However, we were informed that no blanket claims of legal protection from prosecution could be asserted. The Angel Cradles had to promote safe abandonment. Any evidence of harm is automatically reportable to authorities, as we would report clinical findings of abuse involving children at any time. We respect that the Crown must exercise its discretion to determine if it is in the public interest to investigate, lay charges and pursue prosecution if subsequent clinical evidence reveals the child has been harmed, even if left anonymously in the Angel Cradle. Thus, we have been consistent in all our public messaging that we are under no obligation to report or connect child with parent, even if the birth mother presents to our hospitals hours or days after delivery for treatment, provided that the newborn is left safely.

We respect that the Crown must exercise its discretion to determine if it is in the public interest to investigate, lay charges and pursue prosecution if subsequent clinical evidence reveals the child has been harmed, even if left anonymously in the Angel Cradle.

In addition to criminal legislative considerations, we had to ensure that the Angel Cradle program was aligned with other existing legislative frameworks, including various Acts that serve to promote the well being of children and families. Provincial mandates to support families and healthy parenting, open adoption practices, the rights of fathers, and other measures that protect the interests and rights of vulnerable persons must also be respected. In no way is the Angel Cradle intended to work at cross purposes in fulfilling these various legislative obligations. Our organizations proudly support the wide range of social programs and services available to help parents at risk, and we work closely on a daily basis in connecting people presenting to our hospitals with these exceptional community resources. What we do maintain, however, is that the Angel Cradle program provides an additional resource to augment the existing safety net.

The World Health Organization has critiqued that newborn safe havens, or baby boxes as they are more commonly known in Europe, contravene the rights of children in knowing their parental history and medical background. This is not a view shared by the authors.

The World Health Organization has critiqued that newborn safe havens, or baby boxes as they are more commonly known in Europe, contravene the rights of children in knowing their parental history and medical background. This is not a view we share. In fact, we have publicly confirmed our unequivocal support for the rights of children to know their history, but emphasize that such rights are moot if the baby dies as a result of unsafe abandonment. We argue that the child’s first claim is the right to life, upon which the other rights are contingent. What we hope is, that by providing an additional option, a child may at least have a chance to exercise his or her rights in knowing their parental history at some future date, recognizing that even if a baby is safely abandoned, there is nothing that precludes that parent from coming forward later to claim their child. Our concern is that, in a moment of desperation, for example if the birth mother is labouring alone in an unsafe environment, a potentially drastic choice may be made that could have unalterable tragic consequences for the child. We certainly support the ideal that a parent can avail themselves of professional support which could lead to parent and child being reconnected later, and options such as Angel Cradle may help bridge that gap.
It is worth noting that during our respective consultation processes we were continuously advised by our clinicians and social workers, who have been personally involved in cases of unsafe abandonment, that the anonymity component of the safe havens is essential to the program's success. Clinically, there is still so much we do not understand about why people abandon their babies, but we do know it continues to occur in modern society despite the array of social services available. Nor do we fully understand the barriers that keep people at risk from reaching out for support, including the documented clinical phenomenon of hidden pregnancies. For some parents, the denial of pregnancy may be so strong that secretly hiding evidence of the baby's presence is perhaps what makes the anonymity feature of the Angel Cradle’s an accessible option. Clinically, there is still so much we do not understand about why people abandon their babies, but we do know it continues to occur in modern society despite the array of social services available. It would seem that the originators of “foundling wheels” in the late 12th century Europe, convents of Catholic nuns, understood in a very pragmatic way that anonymity worked in reducing incidents of infanticide. The foundling wheel concept, on which our modern Angel Cradles are similarly based, allowed for a baby to be discreetly placed in a cylinder outside a wall of convent and then rotated so the child was moved inside. Once the child was safe the parent would ring a bell to announce the child’s presence before leaving without ever being seen. The medieval community appeared to understand the pressures some families experienced in having too many children and their inability to care for them, and the conflicted emotions triggered by contemplating or actually leaving one’s baby, even if done so safely. Allowing a person to do so discreetly was as much an expression of compassion and support for distraught and conflicted parents as it was a practical step to ensure the baby’s safety.

Along with these legal, social and practical considerations, perhaps the greatest hurdle we continue to face is an ethical and moral one. We assert that Angel Cradles are not meant to condone a throwaway society in which a child that is no longer wanted can be casually discarded, as was the experience of a live newborn abandoned outside a side door of St. Paul’s Hospital. Without a doubt, abandonment, safely or otherwise, is undesirable. We argue instead from a harm reduction perspective that safe abandonment is the lesser of two harms. Better a child be left safely than abandoned in a back alley, public washroom, or garbage bin. There seems to be growing support for this ethical argument, as we reflect on the shift in public interest and tone of media coverage since Providence Health Care’s announcement four years ago, compared to the coverage that has ensued up to the recent news stories around Covenant Health’s cradles. Without a doubt, abandonment, safely or otherwise, is undesirable. We argue instead from a harm reduction perspective that safe abandonment is the lesser of two harms. This shift is significant. As with any innovative solutions, there is always some resistance expected. The World Health Organization has been the most vocal but there are others who genuinely question if they may do more harm than good. We take such concerns seriously and emphasize that no one wants to see a child harmed, or accept it is ok for a pregnant woman to carry or labour alone without any support. Where the disagreement lies is in the approach. In the vast majority of cases the existing safety net successfully meets the needs of both baby and mother and must be promoted, as we authors do. But given that unsafe abandonment still occurs, and the revival of baby boxes in Europe, Asia and now Canada has resulted in safely receiving babies who otherwise may have been discarded elsewhere, we believe morally every plausible and creative option should be seriously considered to reduce the chances of anyone falling through the cracks. Even if one baby is saved it is worth it.

Despite the legal, practical and social questions raised by Angel Cradle, it seems to have captured the moral imagination of the community as a creative and visible social justice strategy. Despite the legal, practical and social questions raised by Angel Cradle, it seems to have captured the moral imagination of the community as a creative and visible social justice strategy. As with the foundling wheel predecessors, the Angel Cradle is intended to meet the needs of both baby and parent, who are arguably equally vulnerable. Along with its practical applications, in many ways the Angel Cradle functions as a symbol for anyone in society who is vulnerable and in need of support. Perhaps the power of this symbolic gesture accounts for the surge of public interest in this work despite, thankfully, the few babies who would ever need to be placed in it.
Midwifery in Canada

Midwifery is a health care profession distinct from nursing. Midwives specialize in providing primary care to women during pregnancy, labour, birth and postpartum in relation to low risk prenatal, intrapartum and postnatal care. They promote the natural birthing process of normal vaginal deliveries without drugs or surgical interventions, and are trained to handle low risk normal births as well as breech births and twin births. They are trained to provide physical examinations, screening and diagnostic tests, and to assess the normal progress of pregnancy and birth, including detecting complications and making assessments of risks in mother and child, at which point they would refer the women to physicians.

History

Although midwifery had been practiced throughout history, some with formal training and some without, it was rejected as folk medicine in Canada and the United States in the early 20th century in favour of modern advancements in the medical profession. Consequently, midwifery was either replaced by medical doctors (obstetricians) or regulated.

In Britain, midwifery legislation was implemented in England and Wales in 1902, Scotland in 1916 and Northern Ireland in 1918. In 1925, the United States adopted a nurse-midwifery model from Britain, which was a combination of nurse and midwife, requiring training in both; although primary care for childbearing women continued to be provided by nurse-midwives, family nurse practitioners and physicians.

In 1976, the World Health Organization agreed with the International Council of Nurses and the International Confederation of Midwives that midwifery should be recognized as an autonomous discipline.

Midwifery in Canada
Starting in the 1990s, midwifery began to be legally recognized as a profession in certain Canadian provinces and territories by the introduction of provincial or territorial legislation to regulate midwifery.

In Canada, midwifery falls under provincial and territorial jurisdiction, and has only been recognized in relatively recent times. Starting in the 1990s, midwifery began to be legally recognized as a profession in certain Canadian provinces and territories by the introduction of provincial or territorial legislation to regulate midwifery. In 1994, Ontario and Alberta were the first provinces to implement legislation to regulate midwifery. In Canada, the midwifery model promotes normal birth, women as the primary decision maker (by providing women with information so they can make informed decisions about the birthing process), and continuity of care (from pregnancy to postpartum).

**Alberta**

In Alberta, midwifery was legally recognized and regulated by the *Midwifery Regulation*, Alta. Reg. 328/1994, which was implemented under the *Health Disciplines Act*, R.S.A. 2000, c. H-2, as a result of the 1989 application by the Alberta Association of Midwives for designation under the Act. The Act mandated that a health discipline association establish a governing body to, *inter alia*, manage its affairs and govern the registered members of the health discipline in accordance with the Act, regulations and bylaws in a manner that serves and protects the public interest; and establish examinations for the purposes of registration and renewal of registration, standards of conduct and competencies for registered members, standards for continued competency, and develop and maintain standards of professional ethics for registered members. Midwives have been required to register with the Alberta Midwifery Disciplinary Committee to practice in Alberta since July 1988. The *College of Midwives of Alberta* is the provincial regulatory body.

The *Regulation*, *inter alia*, details the criteria for registration of midwives; specifies standards of conduct of registered midwives; and provides for the establishment of a practice review committee and a conduct and competency committee. It specifies the permitted activities and scope of midwifery in Alberta, which includes, *inter alia*:

- providing counseling and education respecting childbearing;
- carrying out assessments to confirm and monitor pregnancies and determine pregnancies at risk;
- identifying conditions necessitating consultation or referral to a physician or other health professional;
- caring for a woman and monitoring the fetus during labour;
- conducting spontaneous vaginal births and taking emergency measures where necessary;
- caring for the newborn in immediate postpartum and of the mother in the postpartum period;
- performing, ordering and interpreting screening and diagnostic tests in accordance with Schedule 1 of the *Regulation*; and
- prescribing and administering drugs in accordance with Schedule 2 of the *Regulation*.

The *Regulation* expressly limits the scope of the practice of midwifery as the primary health care provider to “normal” pregnancies, and mandates that midwives shall consult with physicians in accordance with the guidelines of the governing board if medical complications exist or arise during the course of midwifery care that may require management by a physician.

The mother’s birth options are at hospital, home or birthing center. Although midwifery is regulated and funded in Alberta, there is a fee for service.

**Ontario and British Columbia**
In Ontario and British Columbia, the birthing options are at hospital or home, and midwifery is regulated and funded, and there is no fee for service.

In 1986, the Ontario government announced it would establish midwifery as a regulated part of the health profession. This was the consequence of a jury recommendation regarding the practice of midwifery that arose from a court case involving the death of a baby delivered by midwives. Ontario was the first province to regulate midwifery in Canada, through the following provincial legislation: \textit{Regulated Health Professions Act, 1991; Midwifery Act, 1991, S.O. 1991, c. 31; General, O. Reg. 240/94; Registration, O. Reg. 168/11; Designated Drugs, O. Reg. 884/93; and Professional Misconduct, O. Reg. 388/09}. Since the regulation was implemented in January 1994, in order to practice in Ontario, midwives are required to be registered with the \textit{College of Midwives of Ontario} and must abide by its bylaws, with the exemption in the \textit{Acts} for aboriginal midwives and healers (to use the title of aboriginal healer and to provide their traditional midwifery services to aboriginal persons or members of aboriginal communities). The College’s vision statement of June 2001 stated that midwifery care in Ontario was defined by ongoing support for community-based midwives working in partnership with childbearing women and expressed a commitment to the accessibility of midwifery as a viable option for childbearing.

Following the charging in 1981 of a midwife of practicing medicine without a licence in British Columbia, and the 1993 International Confederation of Midwives Congress in Vancouver, the British Columbia government announced that it would legalize midwifery. British Columbia implemented legislation in 1998 requiring registration of midwives in British Columbia, with an exemption for aboriginal midwives who were practicing in aboriginal communities prior to the legislation coming into force. The \textit{College of Midwives of British Columbia} is the regulatory authority overseeing midwives in that province.

In Ontario and British Columbia, the birthing options are at hospital or home, and midwifery is regulated and funded, and there is no fee for service.

\textbf{Other Canadian Provinces and Territories}

Midwifery is now regulated in all provinces and territories except for Prince Edward Island and Yukon where it is unregulated and unfunded, the only birth option with midwives would be at home, and mothers would pay for services of midwives.

Although New Brunswick proclaimed its \textit{Midwifery Act} on August 12, 2010, and passed a general regulation, no midwives registered to practice and so in 2013, the province disbanded its midwifery licensing body to save money.

In Newfoundland and Labrador, midwifery is governed by the \textit{Health Professions Act}, which was assented to on June 24, 2010; however, there are no licensed and practicing midwives in that province.

Although New Brunswick proclaimed its Midwifery Act on August 12, 2010, and passed a general regulation, no midwives registered to practice and so in 2013, the province disbanded its midwifery licensing body to save money.
The implementation of midwifery regulation in each of: Quebec (1999), Manitoba (1997), the Northwest Territories (2003), Saskatchewan (1999), Nova Scotia (2006), and Nunavut (2008), mandated that midwives register with the regulatory bodies in these provinces or territories, as created by their respective legislation, in order to practice there. Each province or territory implemented its own set of legislation to regulate midwifery within its own jurisdiction; and each established its own regulatory body (college or board) under their respective legislation. Essentially, a midwife must register with the regulatory college or board in the province and territory that s/he will practice, and abide by the specific legislation and bylaws of the college or board, which sets out the scope of the practice of midwifery in that jurisdiction. Midwives are required to obtain professional liability insurance through the Healthcare Insurance Reciprocal of Canada (HIROC).

**Canadian National Organizations**

The Canadian Association of Midwives (CAM) is the national organization of midwives whose mission is to provide leadership and advocacy for the profession of midwives. It advocates that midwifery should be an essential part of primary maternity care in all provinces and territories; and works to improve women’s access to midwifery.

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The Canadian Midwifery Regulators Consortium is a network of all of provincial and territorial midwifery regulatory bodies. Its mandate is to facilitate mobility across the provinces and territories; to advocate for access to a high standard of midwifery and to provide a forum for discussion of mutual concerns. The Consortium created a website for internationally educated midwives to access information in relation to registration in the provinces and territories. There are two bridging education programs for internationally trained midwives: the Multi-Jurisdictional Midwifery Bridging Project to assist qualified midwives educated outside of Canada to meet the requirements for registering and practising in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and the Northwest Territories; and the International Midwifery Pre-Registration Program which is a part-time nine-month bridging program for experienced international midwives, who have practiced in the last five years, are fluent in English, and who wish to practise in Ontario.

**Midwifery Education in Canada**

In 1993, the first midwifery training program was offered in Canada. Currently, there are seven midwifery education programs offered, all being four-year baccalaureate level programs. Two are offered in Western Canada (at the University of British Columbia in Vancouver and at Mount Royal University in Calgary, Alberta); three are offered in Ontario (at McMaster University in Hamilton, Laurentian University in Sudbury, and Ryerson University in Toronto); one is offered in Quebec (Université du Québec à Trois-Rivières); and one program offers an aboriginal midwifery baccalaureate (University College of the North in The Pas, Manitoba). These programs are direct entry, meaning there is no nursing or other prior training required for entry.
When a child comes into a family (through birth or adoption) and where the caregivers are employed (e.g., working for pay), there will need to be some kind of arrangement for leave from the employment in order to care for the child. Most families require that at least some portion of the leave is paid so that they can afford to stay home and raise their children. The need for accommodation for parenting requirements by employers continues as the child or children get older.

The law is quite clear about employment leave and parenting. Across Canada, every jurisdiction has employment or labour standards that deal with parental leave. Alberta’s Employment Standards Code provides that employees who have worked with the same employer for at least seven consecutive months and are pregnant, are entitled to take unpaid maternity leave (from near the end of pregnancy to immediately after the birth of the child) of up to 17 weeks. Altogether, birth mothers can take up to 52 weeks of leave with their job protected (15 weeks of maternity leave and 37 weeks of parental leave).

Fathers and/or adoptive parents (mothers or fathers) are eligible for up to 37 weeks of unpaid job-protected parental leave. Parental leave can be taken by one parent or shared between two parents, but the total combined leave cannot exceed 37 weeks. To be eligible for maternity and/or parental leave, employees must have been employed for 52 consecutive weeks with their employer. Human rights legislation prevents employers from arbitrarily terminating a pregnant employee who has less than 52-consecutive-week employment, because this would be a form of gender discrimination prohibited under the Alberta Human Rights Act (See: “Employment Standards: Rights and Responsibilities at Work: Maternity Leave and Parental Leave” March 2011) While the Employment Standards Code does not provide for salary during the leave period, some employers may provide for payment under agreements or other benefits packages.

…the most recent advancements with respect to leave and benefits involve recognition of both parents’ entitlement to leave and benefits, plus the lengthening of leave and benefit periods for adoptive parents.
The federal law that deals with benefits during maternity/parental leave is the Employment Insurance Act. To qualify for Employment Insurance (EI) benefits, there are a number of requirements: individuals must have paid Employment Insurance (EI) premiums, have their normal weekly earnings reduced by more than 40% and have accumulated at least 600 hours of insurable employment during the qualifying period—or, if you are a self-employed fisher, you have earned enough money during the employment qualifying period (i.e., $3,760 from fishing during the 31-week qualifying period immediately before the start of the benefit period). The qualifying period is the shorter of the 52-week period immediately before the start date of your EI period, or the period since the start of a previous EI benefit period, if that benefit period started during the last 52 weeks. EI maternity benefits are only available to the biological mother who is unable to work because she is pregnant or has recently given birth. EI parental benefits are payable only to the biological or adoptive parents while they are caring for their newborn or newly adopted child. To receive parental benefits, parents must sign a statement declaring the newborn’s date of birth, or the child’s date of placement for the purposes of the adoption, and the name and address of the adoption authority. There are special rules for applying for EI benefits if you are self-employed. (See: “Employment Insurance Maternity and Parental Benefits” January 2012.)

Thus, the most recent advancements with respect to leave and benefits involve recognition of both parents’ entitlement to leave and benefits, plus the lengthening of leave and benefit periods for adoptive parents. Also, it is no longer permissible under human rights law to discriminate against pregnant women.

Human rights law has recently added the ground of “family status” in several jurisdictions. Thus, in employment settings, discrimination on the basis of family status is not permitted. Recent case law indicates that there are issues surrounding what discrimination on the basis of “family status” actually entails. These issues illustrate a tension that has developed in the law of discrimination about whether it is a law or entity that is discriminating or whether it is “just the way our society operates and the choices people make” that have the effect of discriminating against a person. The Seeley case (Canadian National Railway v Denise Seeley and Canadian Human Rights Commission, 2013 FC 117 (Seeley, Fed Ct)) demonstrates these developments. For a detailed description of the Seeley case, please see an earlier LawNow article: “New Developments in the Area of Discrimination on the Basis of Family Status” (2013) 37 (6). In the Seeley decision, the most significant finding of the CHRT is its interpretation of “family status”.

The Seeley case was ultimately decided by the Federal Court of Canada. The CNR argued that this case really dealt with the question of whether balancing family life and employment duties will be transferred from the home to the workplace and that the CHRT had been mistaken when it equated family status with a parent’s choice as to how to define and meet his or her childcare obligations. The Federal Court dismissed CNR’s appeal.

Human rights law has recently added the ground of “family status” in several jurisdictions. Thus, in employment settings, discrimination on the basis of family status is not permitted.

Justice Mandamin of the Federal Court noted that the Canadian Human Rights Act does not define “family status”. He noted that in order to have proper regard to “family” one must consider children and the relationship between parents and children. Parents are obligated to care for their children and if Parliament had intended to exclude childcare obligations from “family status” it would have done so clearly. This interpretation of “family status” as including childcare obligations is within the scope of the ordinary meaning of the words. Thus, he ruled that the CHRT’s interpretation of the meaning of “family status” was reasonable.

In determining whether there was a prima facie case of discrimination based on family status, Justice Mandamin said that the following questions needed to be answered:
a. does the employee have a substantial obligation to provide childcare for the child or children; in this regard, is the parent the sole or primary care giver, is the obligation substantial and one that goes beyond personal choice;

b. are there realistic alternatives available for the employee to provide for childcare: has the employee had the opportunity to explore and has explored available options; and is there a workplace arrangement, process, or collective agreement available to the employee that may accommodate an employee's childcare obligations and workplace obligations;

c. does the employer conduct, practice or rule put the employee in the difficult position of choosing between her (or his) childcare duties or the workplace obligations?

Clearly, contextual factors in individual cases of discrimination are significant. Justice Mandamin found the following factors to be relevant to his finding that there was discrimination on the basis of family status:

- Ms. Seeley is the primary caregiver for two children of tender age;
- her husband works full time and is the breadwinner;
- she had considered whether childcare was available in nearby Hinton, AB;
- CNR never provided necessary information for exploring whether childcare options were available or feasible in Vancouver; and
- a realistic assessment of her circumstances discloses she would have significant difficulty in fulfilling her childcare obligations in responding to an indefinite recall assignment.

Thus, Ms. Seeley's specific parental childcare obligations and CNR's response to her request for an extension to address possible options all resulted in *prima facie* discrimination on the basis of family status.

In addition, Justice Mandamin found that:

- CNR never considered the question of accommodation under the collective agreement before firing Ms. Seeley;
- the CHRT's finding that CNR had not adequately responded to Seeley's request for accommodation was reasonable, and finally;
- the CHRT's award of damages was also reasonable.

Ms. Seeley's specific parental childcare obligations and CNR's response to her request for an extension to address possible options all resulted in prima facie discrimination on the basis of family status.

It appears, then, that childcare responsibilities are clearly part of “family status” and that this ground of discrimination should be given equal footing with the other grounds. The tribunal will consider the steps that the employee took to minimize the obligations that were imposed on his or her family responsibilities. The tribunal will also consider the individual circumstances of the complainant, the nature of the conflicting responsibilities and the barriers that are in place. The employer's duty to accommodate will be tempered by the three factors that the tribunal will consider, which in turn seeks to balance the responsibility for childcare issues between the employer and the employee.

Although families are an essential part of our communities in Canada, the law and policies surrounding the birth or adoption of a child and the subsequent family responsibilities of caregivers is quite complex and continuously developing to adjust to the changing realities in families.
The Night Before Christmas, Legally Speaking

Whereas, on or about the night prior to Christmas, there did occur at a certain improved piece of real property (hereinafter “the House”) a general lack of stirring by all creatures therein, including, but not limited to a mouse.

A variety of foot apparel, e.g. stocking, socks, etc., had been affixed by and around the chimney in said House in the hope and/or belief that St. Nick a/k/a/ St. Nicholas a/k/a/ Santa Claus (hereinafter “Claus”) would arrive at sometime thereafter.

The minor residents, i.e. the children, of the aforementioned House were located in their individual beds and were engaged in nocturnal hallucinations, i.e. dreams, wherein vision of confectionery treats, including, but not limited to, candies, nuts and/or sugar plums, did dance, cavort and otherwise appear in said dreams.

Whereupon the party of the first part (sometimes hereinafter referred to as “I”), being the joint-owner in fee simple of the House with the parts of the second part (hereinafter “Mamma”), and said Mamma had retired for a sustained period of sleep. (At such time, the parties were clad in various forms of headgear, e.g. kerchief and cap.)

Suddenly, and without prior notice or warning, there did occur upon the unimproved real property adjacent and appurtenant to said House, i.e. the lawn, a certain disruption of unknown nature, cause and/or circumstance.

The party of the first part did immediately rush to a window in the House to investigate the cause of said disturbance. At that time, the party of the first part did observe, with some degree of wonder and/or disbelief, a miniature sleigh (hereinafter “the Vehicle”) being pulled and/or drawn very rapidly through the air by approximately eight (8) reindeer.

The driver of the Vehicle appeared to be and in fact was, the previously referenced Claus. Said Claus was providing specific direction, instruction and guidance to the approximately eight (8) reindeer and specifically identified the animal co-conspirators by name: Dasher, Dancer, Prancer, Vixen, Comet, Cupid, Donner and Blitzen (hereinafter “the Deer”). (Upon information and belief, it is further asserted that an additional co-conspirator named “Rudolph” may have been involved.)

The party of the first part witnessed Claus, the Vehicle and the Deer intentionally and willfully trespass upon the roofs of several residences located adjacent to and in the vicinity of the House, and noted that the Vehicle was heavily laden with packages, toys and other items of unknown origin or nature. Suddenly, without prior invitation or permission, either express or implied, the Vehicle arrived at the House, and Claus entered said House via the chimney.
Said Claus was clad in a red fur suit, which was partially covered with residue from the chimney, and he carried a large sack containing a portion of the aforementioned packages, toys, and other unknown items. He was smoking what appeared to be tobacco in a small pipe in blatant violation of local ordinances and health regulations.

Claus did not speak, but immediately began to fill the stockings of the minor children, which hung adjacent to the chimney, with toys and other small gifts. (Said items did not, however, constitute "gifts" to said minors pursuant to the applicable provisions of the Canadian Tax Code.)

Upon completion of such task, Claus touched the side of his nose and flew, rose and/or ascended up the chimney of the House to the roof where the Vehicle and Deer waited and/or served as "lookouts." Claus immediately departed for an unknown destination.

However, prior to the departure of the Vehicle, Deer and Claus from said House, the party of the first part did hear Claus state and/or exclaim: “Merry Christmas to all and to all a good night!”

Or words to that effect.

Respectfully Submitted,

The Grinch LLB
Can We Help You With Christmas?

For many of us, this time of year is a time for personal reflection, and pondering what the next year will bring. The theme of “The Law and Christmas” brings to mind the debate around the appropriateness of Christmas in the public sphere within a multicultural society – a debate that we mostly hear coming from the U.S. news commentators, sometimes referred to as the “War on Christmas”. But this year, with Quebec’s proposed Charter of Values, this debate about religion in the public sphere becomes more prominent here in Canada, as well. Any legal debate that considers competing values and protected rights will necessarily raise Charter issues, and understanding the ongoing debate will be helped by a thorough understanding of the approach our courts have taken in deciding these issues.

This article published shortly after the Charter of Values was released asked nine legal experts to comment on whether Quebec’s proposal was constitutional and demonstrates that there is much to debate on this topic. For those who would like to know more about the Charter of Canadian Rights and Freedoms, there are several excellent resources. This Guide, published by the Ministry of Canadian Heritage explains each section, and provides examples of what these values and rights look like in our society. There is also a Charter decision digest, which provides a crucial foundation to understanding future Charter decisions. It is available on CanLII and provides excellent summaries of case law developing and interpreting each section of the Charter. Also, at the heart of this debate is the question of what secularism means and what a secular society looks like. This guide explains French secularism or “Laïcité”, and includes some additional reading recommendations at the end. This debate asks us all to reflect on both our personal values, and on what we want Canadian society to look like in the future.

Finally, for a little lighter reading, check out the Bodleian Law Library’s series of posts on the Twelve (Legal) Days of Christmas, a classic, and another take on the ‘Twas the Night Before Christmas theme from a family lawyer.

For members of the Alberta Bar, the New Year also brings the requirement to file a new Continuing Professional Development Plan. If you have any specific CPD goals in mind, let us know what they are, and we will work with you to customize a training session for you which you could consider including as a learning activity for the new year. For those of you who are in the Edmonton or Calgary area, this would be a great time to try our Book-a-Librarian service, up to an hour, one-on-one, with a professional librarian, to cover any topic of your choice.

If you are not a Member of the Bar, or you are not able to come into our Calgary or Edmonton locations, send us an email through our ‘Ask a Law Librarian’ service letting us know what you need. Depending on the area of law you are interested in, we can suggest resources from our collection, or we may be able to point you to some excellent online resources, as well. For instance, there are authoritative Canadian blogs on privacy law; immigration law; and law in the workplace. Take a look at the Clawbies (Canadian Law Blog Awards) website for a comprehensive list of law blogs, as well as opinions on the best of the bunch.

Whatever this season may bring for you, all of us at Alberta Law Libraries wish you happiness and health for you and yours!
Human Rights Implications of New Provincial Impaired Driving Laws

Like many other Canadians, I am not terribly sympathetic towards people who drive while impaired, through alcohol, drugs (prescribed or illegal), while texting, or experiencing extreme fatigue. We have a set of laws under the federal Criminal Code of Canada, RSC 1985 c C-46, that address impaired driving. These include: operating a motor vehicle while impaired (section 253); driving while blood alcohol is over the legal limit (.08) (section 253(1)(b)); and failing to provide a breath sample (section 254(5)), among others.

The provinces also have a role in regulating impaired driving. The Constitution Act, 1867, provides that the provinces have jurisdiction over the administration of criminal justice. With respect to driving offences, provinces have the authority to suspend or revoke driver’s licences. Early constitutional cases dealt with situations where there was an apparent conflict between prohibitions under the criminal law and provincial suspensions.

In addition to the division of powers concerns about provincial impaired driving laws, since 1982, the Canadian Charter of Rights and Freedoms (“Charter”) has applied to all laws, whether provincial or federal. While licence suspensions have been in place for a long time, some provinces have decided to try to address their impaired driving issues with new and stricter provincial laws. For example, after learning that Prince Edward Island had more impaired driving incidents per capita than any other Atlantic province, officials recently proposed requiring convicted impaired drivers to use specially marked licence plates.

British Columbia and Alberta have introduced new measures that have attracted court challenges. In 2010, British Columbia enacted stricter impaired driving laws that provided for automatic 90-day licence suspensions of drivers who recorded over .08 on a roadside screening device, and a shorter suspension of 3, 7 or 30 days if the driver registered a “warn” on the device (between .05 and .08). In addition to the automatic suspension of 90 days from driving, drivers who registered over .08 were required to pay penalties and enroll in a responsible driver program, together with using an ignition interlock device for one year. Taken together, the cost of these penalties to the driver could amount to over $4,000.

In Sivia v British Columbia (Superintendent of Motor Vehicles) (2011), BCSC 1639 (CanLII) (“Sivia”), a number of drivers challenged the new provincial suspension provisions. They argued in this case that that the new regime is essentially criminal law and thus should be passed only by the federal government. They argued that the new legislation created an “offence” that violated the presumption of innocence and also relied on an unreasonable power of search and seizure.

The drivers argued against the new provincial impaired driving law because:
(a) in the case of drivers who are allegedly over .08 and first time offenders where there is no bodily injury or property damage, the new regime substitutes for the criminal law process, but does not provide protections that are available under the criminal process;

(b) the new regime imposes severe financial penalties that were not imposed under the previous system;

(c) the breath sample taken at the roadside is no longer simply for screening purposes to support the officer's reasonable belief that a breath sample is needed; it is now the evidence upon which the driving prohibition is based;

(d) there is no longer a meaningful review process in place to challenge the prohibition based on the screening device, and the reviewer has almost no jurisdiction to review the automatic roadside prohibition; and

(e) the new regime differs from automatic suspension programs across Canada, particularly those in Alberta (2011) and Ontario where the suspension follows a failed test by an approved instrument at the police station, not by a roadside screening device.

The drivers argued that the new impaired driving law is outside the jurisdiction of the province as it is criminal law. The British Columbia Supreme Court (“BCSC”) held that while it is close to criminal law, it is legislation that relates to the licensing of drivers and the enhancement of traffic safety, and thus it is validly enacted provincial legislation.

The BCSC (Justice Sigurdson) held that the new regime did not offend Charter section 11(d) (“anyone charged with an offence has the right to be presumed innocent”) because it is not an offence and it does not impose true penal consequences.

Next, the BCSC held that although the new regime offended Charter section 10(b) (right to counsel at the roadside screening stage) it is saved by Charter section 1 as being a limit which is demonstrably justified in a free and democratic society.

Insofar as the regime operates with respect to motorists who blow between .05 and .08, Justice Sigurdson found that the regime did not infringe the Charter section 8 (“right to protection from unreasonable search and seizure”). However, when the motorist receives a 90-day suspension on the basis of blowing over .08 on a roadside screening device, and is unable to challenge the suspension and associated costs in a meaningful way, this infringes Charter section 8 and is not saved by Charter section 1.

In May 2012, the B.C. government amended its impaired driving law to allow people to challenge the roadside screening test and to appeal the immediate roadside prohibition.

In a further decision Justice Sigurdson suspended the declaration of invalidity until June 2012, in order to give the Province time to amend the law. In May 2012, the B.C. government amended its impaired driving law to allow people to challenge the roadside screening test and to appeal the immediate roadside prohibition. Police are required to inform drivers of their right to challenge the first roadside screening test by requesting a second test on a different machine. Accused drivers can also appeal and seek reviews through the office of the Superintendent of Motor Vehicles.

Alberta has followed a similar, although not identical, course. The Traffic Safety Act, RSA 2000 c T-6, was amended so that as of July 1, 2012, Alberta drivers with a blood alcohol content of over .08 will face an immediate, indefinite licence suspension, which will remain in effect at least until the criminal trial is complete. Repeat offenders will receive prolonged licence suspensions. A person who is found guilty of impaired driving (criminally) must also install a device in his/her car that tests the driver’s breath and prevents the car from starting if it detects the presence of alcohol. Drivers accused of impaired driving can appeal these penalties to the Alberta Transport Safety Board before the criminal trial. However, their licence will remain suspended during any appeal process.
A second set of provisions took effect on September 1, 2012. These apply to those whose roadside tests read between .05 and .08. These drivers will now receive a three-day licence suspension and a three-day vehicle seizure for the first offence, a 15-day suspension and a seven-day vehicle seizure for the second offence, plus a mandatory remedial course, and a 30-day suspension and seven-day vehicle seizure for third and subsequent offences, plus a mandatory review by the Alberta Transportation Safety Board (“ATSB”) and a remedial course. A roadside suspension can be appealed through the ATSB if it is issued for more than three days. Second, third and subsequent vehicle seizures can also be appealed.

Currently, there are Alberta drivers who are arguing that these provisions are unconstitutional in that the new provisions presume guilt and violate their rights by suspending their licences indefinitely. They assert that while other provinces do have similar laws, these all specify a fixed period of time for the licence suspension. The indefinite licence suspension means that more people will plead guilty right away so that they can get their licence back sooner. Also, drivers are receiving an immediate licence suspension before they have been found guilty. Transportation Minister Ric McIvor believes that Alberta’s law will not have the same problems as in British Columbia because two of the concerns with the B.C. law are addressed in Alberta; the lack of an appeal process and the inability to request a second roadside test. However, these safeguards will not necessarily stop the challenges.

At the bottom of this discussion is whether the legislative regime, which may force us to give up some of our Charter rights, is worth it. When the government provides direct and fair proof that it is saving lives, we may decide that the potentially significant violation of our liberties is justifiable. To date, I believe the evidence provided by the government is premature and incomplete, and thus we cannot draw that conclusion.
Judging Guidance

It is trite law that guidance about registered charities issued by the Canada Revenue Agency (CRA), through its Charities Directorate, does not have the force of legislation or regulations. Courts can reject or ignore it when determining the permissibility or impermissibility of an organization’s conduct and the consequences flowing from that conduct.

The Income Tax Act (ITA) relies heavily on the common law to establish the scope and parameters of what qualifies an entity as eligible for registration as a charity. As well, very few Regulations with respect to ITA provisions governing registered charities have been issued. That, in practice, leaves material released by the CRA as a primary source of information after the legislation itself.

Even so, court decisions are frequently rendered without any discussion whatsoever of the CRA’s published position. Canadian judges, when they do consider the guidance, are apt to comment on it only in passing. They rarely directly address the particulars asserted in a specific document and their accuracy or legal validity. This means that one is often left to assume or infer whether the CRA's statement of the law is correct or complete.

The Charity Commission for England and Wales, as a statutory regulatory body operating in a jurisdiction where authority over charities is not split between two levels of government, as it is in Canada and Australia, starts with much greater rule-making powers than the CRA. In addition, the British Parliament saw fit to create a mechanism in its charity legislation for regulatory interpretations issued by the Commission to be judicially tested.

Under the legislation, a court (in the English system called a Tribunal in this context) can consider issues relating to the legal treatment of charities, as reflected in the Commission guidance, by way of a reference from the Attorney-General. Although there are procedures in some Canadian courts for consideration of reference or stated cases, including matters with respect to the federal Income Tax Act, there is no special provision for the consideration of charity matters as there is in England.

Even so, court decisions are frequently rendered without any discussion whatsoever of the CRA's published position. Canadian judges, when they do consider the guidance, are apt to comment on it only in passing.

In part, the English system was put in place to address the legal impact of legislative measures contained in the 2006 Charities Act. These potentially affected the meaning of charity – including the statutory recognition of certain non-traditional purposes and provisions with respect to the public benefit requirement associated with status as a charity. While, at the federal level, Canada has never moved to set out the meaning of charity in statute, among the key issues arising here are how current or new ITA provisions governing registered charity should – or can – be reconciled with the meaning of charity as developed through the common law.

There are two prominent recent examples of questions about the Charity Commission’s interpretation of the law put to the Upper Tribunal in the U.K., resulting in the Commission amending its guidance to conform with the court’s findings.
In *Independent Schools Council v Charity Commission for England and Wales and others* [2011] UKUT 421 (TCC) a reference was put concerning the impact of fee-paying on whether an entity established for an education purpose satisfied the public benefit requirement essential to qualifying as a charity, and related questions. The Tribunal found that charity trustees had a duty to make provision for the poor benefiting from a charity's work in a way that is more than minimal or token. It rejected use of an objective ‘reasonableness’ test, the apparent benchmark in the Commission guidance, in relation to the adequacy of provisions made for the poor by such a charity. It ruled that it was for the charity trustees, acting reasonably, to determine the appropriate provisions to ensure access by those not able to meet fees.

Although the case concerned educational charities specifically, the ruling was seen as having wider implications for charities that charged fees for their programs or services. The ruling stated that parts of the Charity Commission guidance were in error or “obscure” and confused the public benefit requirement associated with being a charity with the duty of a charity’s trustees to operate their charity for public benefit. The Tribunal ordered some of the guidance to be withdrawn.

In *Charity Commission for England and Wales and Others v Her Majesty's Attorney General* (FTC/84/2011) the key issue was the impact of the 2006 *Charities Act* on the public benefit requirement applicable to organizations whose purpose was the relief and/or prevention of poverty. This issue arose because, prior to enactment of the legislation, a significant exception existed for organizations mandated to relieve poverty. This was commonly known as the ‘poor relations cases’ an exception to the general rules of a charity having to benefit a broad section of the community and that beneficiaries not have blood or contractual ties to the settlor of the charity.

Although the Tribunal affirmed that the legislation had not significantly changed the law, the detailed analysis in its judgment served to assuage the Commission and public's doubts about the state of the law, which had prompted the Attorney General to bring the reference case. It also clarified a number of minor legal points.

The lack of an adequate mechanism to address charity law questions here, in a way similar to the reference questions put in England, has resulted in gaps and uncertainty about the law of charities in Canada.

The lack of an adequate mechanism to address charity law questions here, in a way similar to the reference questions put in England, has resulted in gaps and uncertainty about the law of charities in Canada. This has undoubtedly meant that opportunities for organizations to gain charitable status to help them in doing their work or to engage to the fullest extent possible in initiatives or activities permitted to charities have not been realized.

Short of major charity law reform in Canada, facilitating – on the English model – more extensive consideration by the courts of the state of the law and the CRA's representations of what the law is could be highly beneficial to both voluntary sector organizations and the regulator itself. And the resulting clarity would surely benefit Canadian society.
Sacco and Vanzetti: The Never-ending Wrong

I've got no time to tell this tale
the dicks and bulls are on my trail
But I'll remember these two good men
That died to show me how to live

-Woody Guthrie, Two Good Men, from Ballads of Sacco and Vanzetti

I have long been fascinated by the American case that was undoubtedly the cause celebre of the early twentieth century: the trial and conviction of Sacco and Vanzetti for murder, followed by their executions in 1927. While the judiciary and the state apparatus in Massachusetts no doubt hoped that the death penalty would bring finality and a quelling of the roar of discontent, the reality was rather different. Marches and protests continued, with violent scuffles in Boston and major protests in capitals around the globe. Further, a steady stream of articles, books and dramas for stage and screen have been penned throughout the twentieth century.

One of the most helpful accounts of the trial is that of crusading attorney William Kunstler, in Politics on Trial: Five Famous Trials of the Twentieth Century. The editors of this volume introduce Kunstler’s account with a quote from Richard Nixon, who had been asked to account for his remarkable political success. “Fear” answered Nixon, “I use fear, and they don’t teach you that in Boy Scouts.”

Nicola Sacco and Bartolomeo Vanzetti were, respectively, a shoe-maker and fish-monger, who were vocal about the oppression that the working class were experiencing as part of the “Red Scare” that engulfed the nation after World War I.

A proper consideration of the 1921 trials for robbery and first degree murder is to see them as part of a deliberate desire to punish “the usual suspects” – in this case, recent Italian immigrants and known members of the Galleani anarchist group that was creating turmoil in the State in a time of deep divisions and labour unrest in America. Nicola Sacco and Bartolomeo Vanzetti were, respectively, a shoe-maker and fish-monger, who were vocal about the oppression that the working class were experiencing as part of the “Red Scare” that engulfed the nation after World War I. They had no criminal records when they were apprehended after fleeing an auto repair shop that may have housed the second getaway car used in a robbery. The arresting officer found a .38 caliber revolver on Vanzetti along with some shotgun shells. Sacco had denied having a weapon but later at the station was found to have an automatic .32 Colt revolver in his belt together with cartridges.
While the case that unfolded thereafter remains to this very day something of a “murder mystery” – as Alan Dershowitz describes it – it continues to resonate as a watershed moment in American political and legal history. We cannot know with absolute certainty that the pair were innocent of the murder of two payroll guards. But there can be no doubt that they were not given anything resembling a fair trial. Many of the key actors – police officers, Judge Thayer, the prosecutor, and at least certain of the jurors – were seriously prejudiced against the accused because of their status as recent immigrants and members of an anarchist circle. Many would say that, in the vindictive atmosphere of the era, Sacco and Vanzetti were doomed from the moment the trial commenced. What is more, despite evidence of grave irregularities and biased rulings on evidence by the judge, and notwithstanding the gathering and production of new and important evidence casting doubt on the prosecution’s most incriminating evidence, all appeals were denied and no new trial was ever ordered.

The trial transcript and various statements made outside of court make it readily apparent that Judge Thayer displayed a high degree of disdain and even contempt for the accused. At his club and elsewhere he spoke, for instance, of his fervent desire to “get those anarchist bastards.”

After the verdict, which many observers condemned as unjust and based on a faulty trial process, and a growing revulsion at the verdict from protesters around the world, Governor Fuller of Massachusetts appointed an independent commission to advise him on whether the trial was so unfair as to warrant some form of leniency. But the Chair, President Abbott Lowell of Harvard University, was widely seen as an anti-Italian bigot and was a known racist. He had, for instance, introduced racial and religious quotas at Harvard. The Commission’s Report did not carefully weigh new evidence or assess alleged misconduct in any depth and was viewed as a whitewash. Following its release, Governor Fuller swiftly declared that there was no reason to commute the death sentences.

As the date of execution grew closer, many supporters of the condemned men, including the Defence Committee consisting of a number of prominent writers and intellectuals, desperately sought a reprieve and a commutation of sentence. Two Supreme Court justices were approached by lawyers, who pleaded for a last minute stay. Ironically, one of the members of the body that represented the last lifeline for the men, Justice Brandeis, a very liberal jurist, declined to act due to a conflict of interest. His wife and a family friend were passionate members of the Defence Committee for the convicted men and had provided funds for legal fees.

An unintentionally piercing comment on the whole tawdry affair was expressed in the death certificates themselves, which read: “Cause of death: judicial homicide.”

Finally, on Aug 22, 1927, the barbaric act known as capital punishment was inflicted on the two hapless men. An unintentionally piercing comment on the whole tawdry affair was expressed in the death certificates themselves, which read: “Cause of death: judicial homicide.” Their case and the cause of greater rights for the working class continued to resound throughout the century. Upton Sinclair wrote a two-volume documentary novel, *Boston*, shortly after the executions. Maxwell Anderson wrote a highly regarded play, *Winterset*. An outstanding Italian film, *Sacco E Vanzetti*, was made in 1971 and went on to win an award at Cannes.

It is also most significant that the state Judicial Council, just four months after the men went to the electric chair, cited their case as strong evidence of “serious defects in our methods of administering justice.” Its proposals led to significant reform.

In 1977, Massachusetts’ Governor Michael Dukakis established a panel to review the case. After it reported to him, he issued an official proclamation declaring that the “atmosphere of their trial and appeal was permeated by prejudice and hostility towards unorthodox political views” and criticizing the conduct of many of the officials involved.
Also 1977, Katherine Anne Porter, one of America’s great modernist writers, penned the memoir, *The Never-ending Wrong*. It recounted the last, feverish days during which she and fellow writers and activists did what they could to protest the impending executions. Porter had served on the Defence Committee and got herself arrested for her troubles, being marched through the streets of Boston with fellow protesters to the Joy Street Police Station. After a last vigil and a sort of wake for the heroes of working class resistance, Porter recalled the horror she felt upon waking up to a world where such injustice was done:

“For I woke when we struck the searing hot light of the August morning as if I had come out of a nightmare, horrified at my own thoughts and feeling as if I had got some incurable wound to my very humanity – as indeed I had.’
What should you do if you get an eviction notice?

There are a lot of different notices that a landlord can serve on a tenant. The notices that we receive the most questions about are the eviction notices. We’re going to talk about eviction notices that are given where there is fault being alleged by the landlord. In other words, the landlord is saying that the tenant has done something wrong, so now the landlord wants the tenant to move out. In some provinces, landlords can serve eviction notices that provide a date when the tenant must move out. Other provinces don’t allow individual landlords to evict tenants. In those provinces, landlords must serve a notice of hearing instead. Then both the landlord and the tenant go to the hearing and a 3rd party (such as a judge or tribunal) decides if the tenant should move or not.

If you’ve been served with an eviction notice, what should you do?

Read and understand the notice

Evictions are different in each province, and there are often different kinds of evictions in the same province. This means that it can be confusing to know what kind of notice you’ve actually been served with. Make sure you read the notice carefully. Is it a warning notice? Are there any steps that you need to take right away? What’s the reason the landlord wants you to move out? If you read the notice and don’t know what to do next, then you should call someone to help you. There is a list of organizations that can help you at the end of this article.

Pay attention to timelines

Is there something that you have to do before a certain date? If you want to fight an eviction, you may have to respond in writing to the landlord or tribunal. You need to know how many days you have to respond. If you think that you need someone to help you with the paperwork, then you should start contacting organizations right away. If you wait and do not contact someone for help until the day before you are supposed to move or attend a hearing, there probably won’t be enough time for them to actually help you.

Eviction notices will usually include a date that you have to move out by, or a date to attend a hearing. If you don’t take any steps to deal with the eviction before that date, then your landlord might be able to take additional steps against you. For example, if you are supposed to move out by a certain day, but don’t, then you can be ordered to pay more money to the landlord to cover the rent cost for the period of time that you overstayed. Your landlord might also be able to get an immediate possession order. This means that you would have to move out immediately, and the locks can be changed.

Find out what the law says

The reality is, until you know what the law says about evictions, you don’t know where you stand. You need to find out exactly what the eviction procedure is in your province and the reasons why a landlord can evict a tenant.
Sometimes landlords make mistakes and give notices for things that they are not actually allowed to evict someone for. Sometimes a landlord serves the notice improperly. Sometimes tenants have not done anything wrong. Sometimes a tenant has done something wrong, but eviction is too harsh a response. The reality is, until you know what the law says about evictions, you don’t know where you stand. You need to find out exactly what the eviction procedure is in your province and the reasons why a landlord can evict a tenant. Once you know what the law says, you’ll be able to decide what you want to do next. If the landlord hasn’t followed the law, then you can raise that as part of your defence against the eviction.

We’ve developed an eviction chart for Alberta below. You can see all of the things that must be included, by law, in a 14-day eviction notice. If the landlord didn’t follow the law as he or she should have, the chart explains some options that the tenant has for next steps.

Click here for larger size.

Click here for a printable PDF version.
Your landlord has not followed the procedure set out in the Residential Tenancies Act (RTA).

What can you do?

- Write a letter to your landlord (called a notice of objection).
  If you are not going to move, then you should include the reasons why you are not moving (including specifics if your landlord hasn’t followed the RTA). You should serve the letter on your landlord.
- You may want to give your landlord a copy of the RTA, so that your landlord can see their obligations too. You can print sections of the law online from the Alberta Queen’s Printer website at www.qp.alberta.ca.
- If your landlord does not want to end your tenancy, then they can
  - serve you with another 14-day notice, or
  - make an application against you.
  You should receive notice of the application, and be given a chance to provide your own evidence.
- It is illegal for your landlord to change the locks. Your landlord can be fined, and you can make an application against your landlord for expenses you incur because of the lock out. You should contact Service Alberta for more information at 1-877-427-4498.

Is the notice in writing?

- No.
  - Is the address for the rental property stated on the notice?
    - No. Is the notice signed by the landlord or the landlord’s agent?
      - No. Is the notice included in the notice?
        - No. Is the reason for the termination allowed by the Residential Tenancies Act?
          - No. Is the reason for the termination provided in the notice?
            - No. Is the amount of rent that is due included in the notice?
              - No. You’re being evicted because...

If the landlord provides you with enough notice:

- The landlord must give you
  - 3 days to move. This is called the tenancy.
  - You can live in the property for as long as you do not break the tenancy.
  - You can’t live in the property if you break the tenancy.
  - You must live in the property until the landlord tells you.
  - You must live in the property for as long as you do not break the tenancy.
  - You can’t live in the property if you break the tenancy.
  - You must live in the property until the landlord tells you.

Did the landlord provide you with enough notice?

- No.
  - Was the notice properly served?
    - No. Was the notice properly served?
      - No. Was the notice properly served?
        - No. Was the notice properly served?
          - No. Was the notice properly served?
            - No. Was the notice properly served?
              - No. Was the notice properly served?
                - No. Was the notice properly served?
                  - No. Was the notice properly served?
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                                                  - No. Was the notice properly served?
                                                    - No. Was the notice properly served?
                                                      - No. Was the notice properly served?
                                                        - No. Was the notice properly served?
                                                          - No. Was the notice properly served?
                                                            - No. Was the notice properly served?
                                                              - No. Was the notice properly served?
                                                                - No. Was the notice properly served?
                                                                  - No. Was the notice properly served?
                                                                    - No. Was the notice properly served?
Where can you go for landlord and tenant law help?

- **BC**
  - Residential Tenancies Branch
    - www.rto.gov.bc.ca
  - TRAC Tenant Resource and Advisory Centre
    - www.tenants.bc.ca

- **AB**
  - Service Alberta
    - www.servicealberta.ca/Landlords_Tenants.cfm
  - Centre for Public Legal Education Alberta
    - www.cplea.ca

- **SK**
  - Office of Residential Tenancies (Rentalsman)
    - www.justice.gov.sk.ca/Information-for-Landlords-and-Tenants
  - Public Legal Education Association of Saskatchewan
    - www.plea.org

- **MB**
  - Residential Tenancies Branch
    - www.gov.mb.ca/csa/rtb/
  - Community Legal Education Association (Manitoba)
    - www.communitylegal.mb.ca/resources/

- **ON**
  - Landlord and Tenant Board
    - www.lb.gov.on.ca
  - Your Legal Rights
    - www.yourlegaleights.on.ca

- **QC**
  - Régie du logement (rental board)
    - www.rdl.gouv.qc.ca
  - Educaloi
    - www.educaloii.qc.ca

- **NL**
  - Service NL
    - www.service.nl.gov.nl.ca
  - Public Legal Information Association of NL
    - www.publiclegalinfo.com

- **YT**
  - Consumer Services
    - www.community.gov.yk.ca/consumer/landtact.html

- **NT**
  - Rental Office
    - www.justice.gov.nt.ca/RentalOffice/index.shtml

- **NU**
  - Residential Tenancy Office
    - rentaloffice@gov.nu.ca

- **NB**
  - Service New Brunswick (Office of the Rentalsman)
    - www.nb.ca/rent/default.asp
  - Public Legal Education and Information Service of New Brunswick
    - www.legal-info-legale.nb.ca

- **PE**
  - Office of the Director of Residential Rental Property
    - www.irac.pe.ca/rental/
  - Community Legal Information Association of PEI
    - www.clapei.ca

- **NS**
  - Access Nova Scotia
    - www.gov.ns.ca/snsmr/access/land/residential-tenancies.asp
  - Legal Information Society of Nova Scotia
    - www.legalinfo.org

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Public Legal Education on the Small Screen

Canadians watch a lot of online videos. In fact, we’re second only to the U.K. in online videos views with the average Canadian taking in an impressive 291 videos a month. According to StatsCan nearly 80 per cent of Canadians aged 18-64 watch videos online.

Education – including public legal education – is one of the many areas benefiting from the growing popularity of online video. Through websites such as Coursera and the Khan Academy, anyone with a broadband Internet connection can access high quality education material for free. Education – including public legal education – is one of the many areas benefiting from the growing popularity of online video. (For a passionate discussion of the power of video-based education take a look at the Khan Academy TedTalk.) And although they’re taking a smaller-scale approach, public legal education organizations across Canada are also making excellent use of video to deliver their services.

“When developing our family law website we decided to include a video option for several reasons. The literacy rates in New Brunswick are extremely low. Being a rural province, facilitating access to information is always a challenge,” says Deborah Doherty, Executive Director of Public Legal Education and Information Service of New Brunswick (PLEIS-NB). PLEIS-NB sees videos “as one way to help address the needs of individuals who are auditory/visual learners whether because of low literacy in English or French, or by preference.”

Doherty says that PLEIS-NB knows its target audience, and works with other agencies and organizations to put strategies in place to reach these audiences. For example, the videos are used to assist in a monthly workshops series for self-representing family law litigants, which are delivered pro bono by local lawyers in many (often rural) locations.

In addition to their short family law-oriented videos, PLEIS-NB has also produced a number of longer videos hosted on Vimeo, which “educate and inform various segments of the population about particular law information topics,” including “youth in conflict with the law, youth victims of crime, abused women, and individuals who volunteer or sit on the board of charitable organizations.”

The Centre for Public Legal Education Alberta (CPLEA) has also created videos for a range of audiences; its recent The Case of the Vacation Vegetables is aimed at kids, while other videos cover topics ranging from the Youth Criminal Justice Act to tips for landlords and tenants.

The ease and low cost of sharing online videos is another benefit. As the CPLEA points out, “videos are embeddable and shareable on social networks and can help spread our message and increase awareness of our organization and mission.”

Both PLEIS-NB and CPLEA emphasize that videos are part of an integrated education effort, with additional print and in-person presentation materials playing an important role in providing context for the video-based information. CPLEA says that their videos are usually “paired with a print (or PDF) resource,” and are often incorporated into presentations, with positive results. “When the landlord/tenant videos have been shown at presentations, there is a good response,” with “some intermediaries ask[ing] if they can show their clients the videos.”
The ease and low cost of sharing online videos is another benefit. As the CPLEA points out, “videos are embeddable and shareable on social networks and can help spread our message and increase awareness of our organization and mission.” The CPLEA hosts their videos on YouTube, which add another level of connectivity since the online platform “suggests related videos allow[ing] users to find [the CPLEA's] material serendipitously.”

Of course, online video is not without its drawbacks, especially for many Canadians living in rural areas. In New Brunswick, Doherty says that Wifi connections are limited, and that during their monthly family law presentations, “the videos can be choppy because of bandwidth issues, but that is the reality of living in a rural community.”

Overall, both public legal education organizations have been very pleased with the results of their foray into online video. The CPLEA has even recently invested in Final Cut Pro in order to improve the quality of their finished products and plans to release more videos in the future. And although Doherty isn't sure when PLEIS-NB will produce more videos, which can be quite resource intensive, the feedback from their current offerings has been positive.

“Court staff and members of the legal community have often told us that they refer clients to the Family Law or PLEIS-NB websites,” Doherty says. “Some specifically mention that they point out that there are videos available since this is one way to direct individuals to information without having to assess their reading levels.”

This article was originally published July 31, 2013 on the Legal Aid Ontario Blog and is reprinted with permission.
Occupational Health and Safety 3: Ticket Offences at Work

Introduction

Most Canadians are familiar with "tickets" for minor offences. If we have personal experience at all with the legal system, it is most likely through receiving the occasional ticket for parking, seat belts, rolling through a stop sign, speeding or some other traffic offence. There are several other regulatory subjects that are enforced by provincial (or municipal) offences and tickets. These include gaming and liquor, fish and wildlife, all forms of licensing, taxes, insurance, trespass, provincial parks, animals and pets, residential tenancies, tobacco, and littering.

These are not criminal offences, so we do not get a criminal record if convicted. Rather, these are regulatory offences that encourage compliance with regulatory legislation to advance order and security, integrity and fairness, health and safety, protection of vulnerable populations, and other social policy objectives.

Compliance with occupational health and safety (OHS) legislation is essential for safe and healthy workplaces. On January 1, 2014 the list of ticketable domains will grow to include OHS regulations at Alberta work sites.

This article will describe the new workplace ticket system. A future article will explain the new administrative penalty compliance tool.

The Need for More Ongoing Pre-Incident Compliance Tools

An OHS officer who appeared at a worksite in Alberta up to now had limited options when observing a violation of the OHS Act, Code or regulations. The officer could only issue an immediate verbal Compliance Order, a written Compliance Order, a Stop Use (e.g. of a machine or tool) Order, or a Stop Work Order (e.g. of an operation or worksite).

Generally, these could be appealed, which might take a very long time. Even if the appeals eventually upheld an order, the employee or employer occasionally would still ignore it. Getting and maintaining the workplace in compliance remained a problem. The department was also finding that something more was needed to reach and reform habitual re-offenders.

There is always the enforcement tool of prosecution through the courts, but because it is very expensive, slow, punitive and cumbersome, it is left for incidents which result in deaths and serious injuries on the job. Hence, the need for more enforcement tools to achieve and sustain compliance before serious incidents occur.

Observable On-the-Spot Violations
The Alberta government has identified high priority OHS categories where most of the serious workplace dangers lurk. These include:

- personal protective equipment;
- fall protection;
- fire and explosion prevention;
- equipment safety;
- cranes, hoists and rigging;
- stairways and ladders;
- biological hazards; and
- falling objects

The government searched the OHS Code (adopted under section 1 of the Occupational Health and Safety Code 2009 Order (AR 87/2009)) to identify simple, observable and clearly prescriptive violations that could be converted into ticketable offences. It came up with 66 of them, to be charged against both employers and workers. (A chart detailing these 66 violations will be posted on the LawNow website on December 1, 2013)

Tickets will impose an immediate $100 to $500 “stipulated penalty.” Worker tickets range from $100-$200, while employer fines range from $300-$500. In many cases, both the employer and worker can be ticketed for essentially the same offence. If a ticket is issued only to a worker, the officer will give a Contact Report to the employer.

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GST is not added to ticket amounts, but a 15% victim surcharge is added to each ticket which helps to fund workplace accident victim services. The date for the first court appearance is set at least 21 days in the future. The court location will be the closest one in the same municipality.

Similar to other tickets, the OHS officers must be physically present at the workplace to observe the Code violation. Under the recent reforms, workers on site are required to identify themselves to OHS officers on request and employers have a similar duty to identify their workers to OHS officers on request. (Occupational Health and Safety Act, RSA 2000, c O-2, as amended, sections 4.1(1) and 4.1(2) respectively)

In order to issue these tickets, OHS officers will become peace officers. They will carry two pieces of identification: OHS Officer Identification and Peace Officer Identification. The OHS violation tickets will be written on the same template form as Alberta traffic tickets (see example). As with all law enforcement, there is discretion on the part of the officer whether or not to issue the ticket.

The ticket penalty amount can be voluntarily paid or challenged as any other ticket through the provincial court system. (All provincial ticketing in Alberta is regulated by the Provincial Offences Procedures Act, RSA 2000, c P-34) A ‘not guilty’ plea sends the ticket to trial. The OHS officer will attend court to give evidence for the prosecution. Non-payment of the ticket and a failure to appear to plead (or to defend after a ‘not guilty’ plea has been entered and trial date is set) will result in a warrant for arrest being issued against the worker. Whenever that worker later comes into contact with any police officer, that arrest warrant will be executed and the worker may have to apply to be released on bail. Corporate employers cannot be arrested and no warrant will be issued for them. They may, however, be tried in absentia.
While these tickets are *not* criminal in nature, third parties might be able to obtain a record or abstract of an employer’s or worker’s convictions for such tickets. This record of ticket convictions may have implications for the employer’s safety record and tendering on future jobs. Workers with records of tickets may find it difficult to later get work in safety-sensitive roles. Since the employer is inherently responsible for safety at the work site, and safety violations affect other third parties, a worker’s ticket convictions for these offences may also amount to cause for employment-related discipline.

**Conclusion**

These new ticketable offences were originally recommended for use in the Alberta construction industry. Eventually the department developed a more comprehensive approach to cover other industries. Ticketing is not planned to be used as a cash cow. It is expected to be revenue neutral for the Government of Alberta. It is only one more tool for enforcement.