

# newsletter

## case & comment -

### SARS & class action -- *Williams v Ontario* \*

John Bartolomeo \*

Released on 07 May 2009 as a companion case to *Abarquez v. Ontario*,<sup>1</sup> which addressed whether the Provincial Government owes a private duty of care to nurses,<sup>23</sup> in *Williams v. Ontario*<sup>4</sup> the Ontario Court of Appeal addressed the potential private duty of care the Provincial Government owes to the plaintiff.

In this appeal, the Plaintiff sought to certify a class action on behalf of all persons who contracted the virus causing SARS in Toronto (or from a person in Toronto) during the period of 20 April to 31 July 2003 and for all family members of those persons. The Court of Appeal had to decide whether based on the facts pleaded, the Province owed a private law duty of care sufficient to claim negligence.

The Government took the position that the claim disclosed no cause of action in law. When addressing the

motion to strike, it is common for the Court to assume for the purposes of the motion that the allegations of facts are accepted; that it is plain and obvious that the plaintiff could not succeed; that the claim should not be struck because it is novel; and that the pleadings must be read generously in favour of the plaintiff.<sup>5</sup>

**In this case the Court of Appeal ruled** that the duty of care sought by the plaintiffs has not been previously recognised. In such cases a test for determining whether a duty of care exists is used. This test is referred to as the *Cooper-Anns*<sup>6</sup> test. The *Cooper-Anns* test examines how foreseeable a relationship is, what the proximity of the parties is, and whether there is a policy reason to impose a duty.

It is instructive to review the facts at this point. As a result of an outbreak of SARS in Toronto, on 26 March 2003 the Premier declared a

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## Clinic's Annual General Meeting

16 June 2010

see page 10.

provincial emergency. That same day the Minister of

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Health ordered hospitals to a "Code Orange" emergency plan. In late April 2003, the province relaxed the restrictions. The plaintiff alleged that the Province knew that if SARS wasn't completely eradicated, there was a strong possibility of a recurrence. In lifting the emergency too early a second outbreak occurred. The Plaintiff, a surgery patient, contracted SARS in May 2003. The plaintiff alleges that Government failed to properly manage the first outbreak, failed to issue proper directives to the hospitals and prematurely lifted the state of emergency.

The Government of Ontario accepted that the harm was foreseeable. The decision turned on whether there was a relationship of sufficient proximity. The Court of Appeal relied on an earlier decision in respect to the West Nile Virus outbreak.<sup>7</sup> In that case, the Court of Appeal held that the exercise of discretionary powers to take measures to protect the public from the spread of disease did not create a private law duty.

**The Court found** that a relationship of proximity in terms of a private law duty of care is created when standards are imposed. "The fact that the plaintiff

contracted SARS while she was in the hospital does not put her in a narrow class of individuals in a direct relationship with Ontario."<sup>8</sup> In essence, although the hospital directives are imposed by the province, that in and of itself did not create a relationship.

also, in last issue:<sup>9</sup> nurses & SARS -- *Abarquez v Ontario* <sup>10</sup>

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## Update on the Expert Advisory Panel on Occupational Health and Safety

John Bartolomeo \*

**Over the course of 2009**, 354<sup>1</sup> workers lost their lives due to work related conditions and accidents. Of that number 234<sup>2</sup> were for occupational disease claims. In letters to newspapers Clinic staff have written seeking more involvement of the Ministry of Labour to ensure workplace safety.

Tragedy struck Christmas Eve when four workers lost their lives in a tragic high rise accident.

Following calls across the health and safety system, the Minister of Labour announced a review

of the province's occupational health and safety system.<sup>3</sup> Since that announcement, the Ministry of Labour has announced the names of the six Panel members in addition to the Chair, Tony Dean.

**Although the Panel** has a wide mandate, the issue that will be examined include:

- Safety practices in a workplace and entry-level safety training
- Impact of the underground economy on health and safety practices

- Legislation and how it serves worker safety

The Panel has already met once and a report will hopefully be issued by Winter 2010. The Ministry website is already open to receiving opinions from the general public. The Clinic fully intends to participate in this process. Keep reading future articles for updates on the process. O

## Ontario & CSA-priced standards.

M. Grossman \*

In a previous issue of this *newsletter*<sup>1</sup> opinion was expressed about the legalities of Canadian Standards Association-priced documents being referenced into legislation.

But, in a subsequent issue, mention was made that the Prince Edward Island Workers Compensation Board had a pilot project with the CSA<sup>2</sup> for "view only" access to on-line-published standards.<sup>3</sup>

Now, Ontario has a similar arrangement : <sup>45</sup>

<http://www.labour.gov.on.ca/english/hs/pubs/csa/index.php>

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## in the press - \*

M In *The Globe and Mail* : "FOOD SAFETY / Ottawa hires meat inspectors for exports to U.S."<sup>2</sup> "Ottawa is scrambling to increase the number of inspectors in Canada's domestic meat plants, after having ratcheted up the supervision in the big plants that sell a part of their products to the United States. ..." "... 70 inspectors are currently being hired and trained. ..."

**Comment:**<sup>1</sup> Readers may recall a polemic in this *newsletter*<sup>23</sup> advocating a right to a government inspected workplace, and for a larger and more active labour inspectorate. That was in the context of protecting workers; meat inspection is for public health protection - distinctly different. But this news item illustrates that many new inspectors can be hired, quickly, if the Canadian federal government sees a pressing need.

That need was to satisfy US federal government requirements, so that Canadian meat would be allowed across the border for sale. The new hirings are intended to protect Canadian businesses, rather than public health. But, in any event, the hirings are happening. Arguably, then, more labour inspectors are not hired because the Canadian federal government does not see a need.

Meat inspection for public health has interesting historical origins, interrelated with labour issues. Upton Sinclair's 1906 novel, *The*

*Jungle*,<sup>4</sup> was about meat processing in Chicago. Appalling labour conditions were described. But it was the filthy conditions for the meat, to be eaten by Americans, that led to public outrage, and President Theodore Roosevelt, and Congress, to take action, although Upton Sinclair still criticized.<sup>5</sup> Modern US meat inspection policy derives from that time, and even now is effectively imposed on Canadian government decision-making - arguably also to benefit the Canadian public.

## TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

M In *CHEMICAL & ENGINEERING NEWS*, American Chemical Society, Washington, DC :  
"CHEMICAL REGULATION Europe may tighten control of trichloroethylene [TCE], seven other chemicals [= boric acid, anhydrous disodium tetraborate, tetraboron disodium heptaoxide hydrate, sodium chromate, potassium chromate, ammonium dichromate, potassium dichromate]." <sup>1</sup>

M Also in *C&EN* : "[US] TSCA INVENTORY AVAILABLE FOR FREE" "EPA is now providing the public with free access to the Toxic Substances Control Act inventory of chemicals in commerce. ..." <sup>2</sup>

[www.epa.gov/oppt/newchemicals/pubs/inventory.htm](http://www.epa.gov/oppt/newchemicals/pubs/inventory.htm)

This inventory used to have significance under Ontario Regulation 852, *INVENTORY OF AGENTS OR COMBINATIONS OF AGENTS FOR THE PURPOSE OF SECTION 34 OF THE [OH&S] ACT*,<sup>34</sup> but s.34 has been repealed, such repeal to come into effect on proclamation.<sup>56</sup>

M Also in *C&EN* : "MORE FINES FOR UCLA / LAB SAFETY: California agency again faults university for lack of training, lax safety practices." <sup>7</sup>

M Readers may recall reference in this *newsletter* to workplace **personal protective equipment**<sup>8</sup> in photo-ops for the Prime Minister – eyewear<sup>9</sup> and flotation device.<sup>10</sup> Now, Ontario's Premier has appeared photo-opped in *The Globe and Mail*,<sup>11121314</sup> in a chemistry lab, not only without protective eyewear, but also with an unsecured tie, and an ungloved hand on the lab bench near an uncovered chemical container (while the chemist next to him appears attired in all these ways). In this photo situation, Mr. McGuinty would be a *worker* within the meaning of the *Ontario Occupational Health & Safety Act*, and the person in charge of the lab would be a *supervisor*; Carleton University, Ottawa would be an *employer*. (It should be noted however, that Mr. McGuinty has appeared photo-opped elsewhere with protective eyewear.)<sup>15</sup>

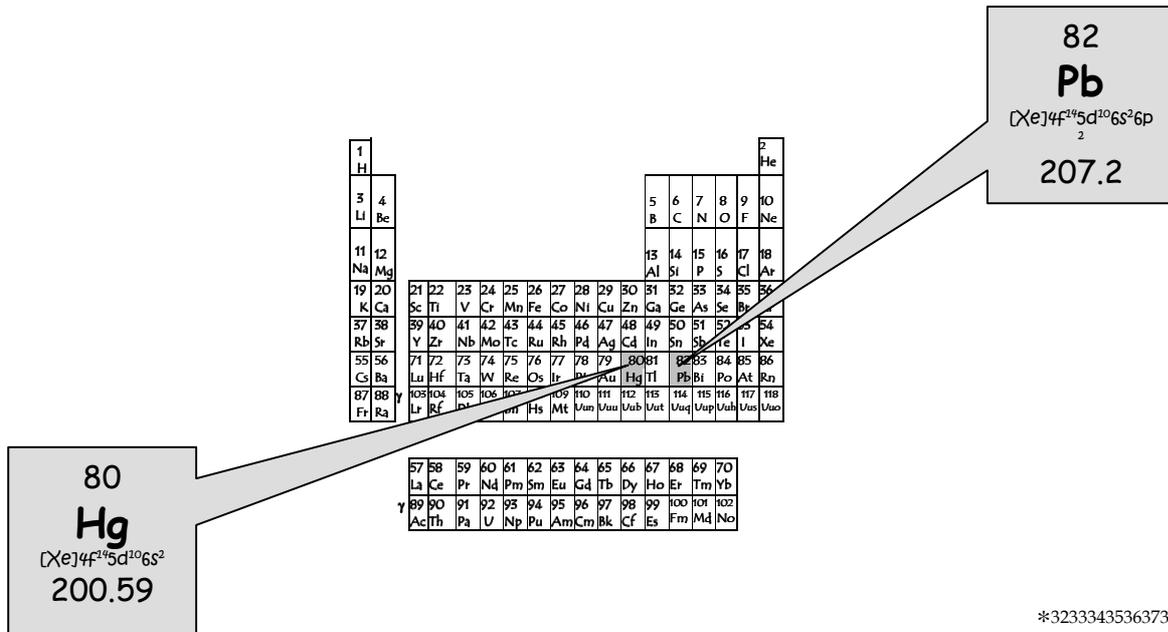
M Readers may recall reference in this *newsletter*<sup>1617</sup> to professional sport – US football – as hazardous work<sup>18192021</sup> More recently, in *The New York Times* : "... Dementia ... / ... N.F.L. Players Test a [California] Worker Safety Law." <sup>22</sup>

M Also, in *The New York Times* : "... Blast at West Virginia Coal Mine Leaves 7 ... Dead ... 19 ... Missing." <sup>23</sup> [eventually 29 miners killed, 2 injured.]<sup>24 2526 272829</sup>

M Also, in *The New York Times* : "With Hope Dwindling, 115 Miners Are Saved / Flooded China [Coal] Mine Still Traps 38 Others." <sup>30</sup>

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M Also, in *The New York Times* : "[US EPA] Rule on Lead Safety Set to Take Effect / Construction workers will have to contain work areas and do thorough cleanups." <sup>31</sup> O



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## Ontario's green ad in the USA and mercury hazard to workers in China.

M. Grossman \*

As a **Community Legal Clinic** for workers' health & safety, with funding originating from the Ontario government, it is not our place to comment on that government's "green business," "environment-focused" investment seeking in full-page advertisements in *The New York Times*<sup>1</sup> and *The New Yorker*.<sup>2</sup>

But those ads do present a curious workplace health irony in their artwork. I do not raise issue here with the small amount of mercury that would be contained in the fluorescent lamp shown – perhaps as an idea-symbolizing light bulb.



3456

The really serious hazard would be to workers at the place of manufacture. Nor do I raise issue here with the fact that the lamp would be manufactured in China rather than Ontario.<sup>7</sup>

**Here is the irony: Were Hg-containing lamps** still manufactured in Ontario, workers would be protected by serious Hg-specific law. Although that law has its

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defects and its lax enforcement, it still exists as law – complete with worker right-to-know, right-to-refuse, and right to independent trade union representation. But better than that law, Ontario workers are now protected from Hg because those jobs

are now in China. The workplace toxicology is now someone else's problem.

**Someone else's problem?**  
Surely workplace toxicology in China is the business of the government there and its citizens. But, is there not still a residual moral

connection for policy here, in a universal human sense, if a poisoning hazard here is blindly transferred to there?

And if American investors are invited here, should they not also share the moral concern? O

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### Ontario's victim surcharge & injured workers.

M. Grossman \*

**The question** of the possible of the use of the "victim surcharge" by workers has been raised within our Clinic.<sup>1</sup> Government assistance to victims of crime has been a high profile public issue in Ontario.<sup>2</sup> Here are some data I have found:

**Those fined** (except for parking) under the Ontario *Provincial Offences Act*, s.60.1(4) are surcharged; the money goes into the "Victims' Justice Fund Account."<sup>3</sup> There is similarly a surcharge under *Criminal Code*, s.727.9, but with judicial discretion.

**VJF grants** are made to "... community-based agencies across Ontario to provide services and resources that empower victims of crime to rebuild their lives. Over \$3.1 million is being made available through the Community Grants Program in 2005-2006 to

support 71 agencies and fund the most promising local projects. ..."<sup>4</sup>

For example, in the "Toronto Region":<sup>5</sup>

2-Spirited People of the 1<sup>st</sup> Nations to receive \$50,000.

Working Women Community Centre to receive \$50,000.

Central Neighbourhood House to receive \$48,769.

Thornccliffe Neighbourhood Office to receive \$59,077.

Vision Africana 2000 Cultural Groupe to receive \$49,950.

Ontario Association of Interval & Transitional Houses to receive \$50,000.

FCJ Hamilton House Refugee Project to receive \$11,500.

Le Cercle de l'Excellence Interculturelle et Professionnelle de l'Ontario to receive \$25,700.

Africans in Partnership Against AIDS to receive \$49,220.

INTERCEDE for the Rights of Domestic Workers, Caregivers and Newcomers to receive \$50,000.

Eritrean Canadian Community Centre in Toronto to receive \$41,112.

Canadian Mothercraft Society, Toronto, to receive \$53,992.

**Compensation to individual** "... victims of violent crimes committed in ... Ontario"<sup>6</sup> is within the discretion of the *Criminal Injuries Compensation Board*,<sup>7</sup> an independent agency of the Ministry of the Attorney General. The CICB operates under the *Compensation for Victims of Crime Act*.<sup>8</sup>

CICB money is from Ontario's Consolidated Revenue Fund and goes directly to the victims, but with some assistance to CICB from VJF money.<sup>9 10</sup>

It would appear, at least theoretically, that a worker victim of crime at a

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workplace would be able to apply to the CICB to top-up WSIB benefits. I do not know if the CICB has a policy on this, or if it has a history of such cases. I also have no estimate of the number of such cases that there would be.

The *Provincial Offences* surcharge to assist victims of crime would appear to involve some irony. In a well-established system that distinguishes *Provincial Offences* from *Criminal Code* offences, why should non-criminals be selectively taxed to pay for the results of crime? "Crime" comes from

the federally enacted *Criminal Code*.<sup>11</sup> Constitutionally, the provinces do not have criminal-law-making authority. And, why should some convicted criminals be taxed for the crimes of some others? Also, why do CICB and VJF monies have different sources? ○

### an example of police-handling of seized heroin

-- evidence brought into court -- not-so-safely? --

-- failure of hazard communication to workers -- \*

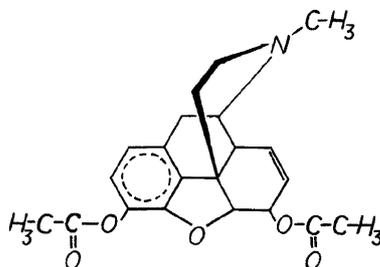
M. Grossman \*\*

Every now and then a workplace health issue appears to arise collaterally out of a criminal law case for which I appear as defence counsel. This happened recently at Ontario Superior Court.

As I opined to the presiding Justice, this workplace health issue had no bearing on the law or evidence of the case. But it was important in its own right.<sup>1</sup>

The accused were charged with importation of a criminally-proscribed opioid, and conspiracy to import it. Canada's criminal law practice is more or less blind to, if not ignorant of, chemical and physical properties (even if in reality it might make some difference).

The substance of interest here - **heroin**.



CAS 561-27-3 <sup>234567</sup>

The **-hydrochloride** form would also be of interest - with ionization at the bridge nitrogen, and an associated chloride ion:

H

C N<sup>+</sup> C C C H<sub>3</sub>

Cl<sup>-</sup>

CAS 1502-95-0 <sup>8</sup>

Following-up on a secret tip, police and customs authorities, at the airport, found that 20 wooden cricket bats,



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shipped from India, by way of Russia, were hollowed-out and contained much heroin.

The bats, their non-cricket contents still inside, were processed by the RCMP and the Toronto police. Recognizing hazard, at least in a general sort of way, when the bats would be

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opened with a power saw, they were taken to an RCMP facility where there was some ventilation. (There was no mention of environmental notice to civic authorities or the neighbours of potential heroin fallout.)

The video recording of the sawing (entered as trial evidence) seemed to me to show less than fully satisfactory engineering controls for health precautions. And it should be noted that personal protective equipment is generally not preferred to replace engineering controls. The ventilation (equipment not shown in the video) seemed to have been over a workplace area, so that the sawing did not seem to occur in a sealed-off booth or cabinet.

Thus, from the video, there would appear to be the prospect of heroin dust. There would be an immediate inhalation concern; and depending on the housekeeping, subsequent inhalation concerns. And either way, the settled dust on workers clothing raises the prospect of it being carried home, where there might be child exposure - by touching and hand-to-mouth ingestion.

**Sawn-open bats** were brought to court as exhibits. The

heroin had been removed, but there was no statement of a thorough cleaning, so that some dust might have remained. The bats were contained in transparent polymer bags that appeared poorly sealed or haphazardly closed. Crown and defence counsel (but not me) removed and handled the bats.

**Although I indicated** to the court that the actual hazards might not be too great, I expressed concern that workers at the courthouse --

- should be informed that there was a potentially hazardous substance; and
- be provided with a MATERIAL SAFETY DATA SHEET<sup>13</sup> or MSDS-type document.<sup>14151617</sup>

The workers would primarily be the after-court room cleaners, and the court staff handling the exhibits. The potential hazard concerns would be dust inhalation and child protection.

As indicated above, the actual hazard magnitude would not be the main workplace issue here. It is a workers' right-to-know issue - to be informed of a potential hazard, and be given data -- that is paramount.

**Workers' right-to-know** translates into employers' hazard communication duty, in both policy and law. In Canada that law has the *Workplace Hazardous Materials Information System*<sup>18192021222324</sup> as its centre piece - both federally and provincially. Even if aspects of WHMIS might not exactly apply at law in this courtroom matter, the concepts should be adhered to as a matter of routine policy.

However, at least some aspects of the *Canada Occupational Health and Safety Regulations*<sup>2526</sup> would appear to apply exactly:

...  
PART X  
HAZARDOUS SUBSTANCES

...  
*Records of Hazardous Substances*

**10.3** Every employer shall keep and maintain a record of all hazardous substances that, in the work place, are used, produced, handled, or stored for use in the work place, and may either keep and maintain such a record in the work place or keep and maintain a centralized record in respect of several work places, in one work place.

...  
*Warning of Hazardous Substances*

**10.13** Where a hazardous substance is stored, handled or used in a work place, warnings shall be given in appropriate places at access points warning every person granted access to the work place of the presence of the hazardous substance and of any precautions to be taken to prevent or reduce any hazard of injury to health.

## TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

Thus, an MSDS or MSDS-type document would be a fundamental right for workers in the courthouse. An important right, both in concept and at law. Here -- a workers' right not realized -- an employers' duty not fulfilled.

**Puzzlement was expressed** in the courtroom about what is an MSDS. Such a sad commentary on the legacy of WHMIS into the 21<sup>st</sup> century. And, sadder still because WHMIS training is an employer responsibility, and the courtroom was loaded with both federal and

provincial government employees.

There would appear here to be a government failure in hazard communication, in concept if not at law. Perhaps even in want of Agood Government."<sup>27</sup> This is on the watches of both the federal and provincial Ministers of Justice, and Ministers of Labour.

I would also suggest that it would be within the jurisdiction of the presiding Justice, and the court registrar, to not allow

physical evidence into the courthouse unless and until its hazard potential would be properly assessed, and if necessary, adequately contained, and with MSDS-type documentation. Additionally, this would be a relevant agenda item for the joint health & safety committee. O

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**from our Clinic's *Letters Patent*, 06 February 1989 :** \*

... The objects for which the corporation is incorporated are: ...

... To provide workers with scientific information and legal advice and representation with regard to the health effects of their employment and their rights at law to healthful and safe working conditions.

...

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**from the *internet* :** \*

### LifeQuilt

Laurie Swim, *Young Workers Memorial Quilt*, 2001.

Laurie Swim, *Breaking Ground -- The Hogs Hollow Disaster, 1960*, 2002.

<http://www.youngworkerquilt.ca/index.htm>

<http://www.youngworkerquilt.ca/lifequiltartist.htm>

## TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

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TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

### ANNUAL GENERAL MEETING - 16 June 2010. \*

at **Metro Hall**, 7pm., **55 John Street** (southeast corner, King St. W. & John St.; west of University Ave.; east of Spadina Ave), **room 314, 3<sup>rd</sup> Floor**.

- Ⓢ Last AGM minutes.
- © Annual Report.
- ™ Financial Report; appointment of auditor.
- Σ Election of new Board members & thanks to previous. At this AGM, all Board positions<sup>1</sup> would become vacant - then to be filled for one-year and two-year terms.
- ( other business.
- | discussion topic: safe workplace procedure and engineering of urban highrise swingstage rigging.

**Refreshments -- All welcome -- Please Post.**

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**"Toronto Workers' Health and Safety Legal Clinic Community Service Partner  
Workshop Satisfaction Survey June/July 2009" \*123**

<http://www.workers-safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2009+09>

Mine Disaster - Springhill, Nova Scotia, 21 February 1891.\*



SCENE OF EXPLOSION.

**NOTES:**

\* case & comment - SARS & class action -- *Williams v Ontario* Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: bartolj@lao.on.ca .

*Williams v The Attorney General of Canada et al.*, Ontario Court of Appeal, 95 ONTARIO REPORTS (3d) Part 6, 07 Aug. 2009, pages 401-414.  
[http://www.ontariocourts.on.ca/decisions\\_index/2009.htm](http://www.ontariocourts.on.ca/decisions_index/2009.htm)  
<http://www.ontariocourts.on.ca/decisions/2009/may/2009ONCA0378.pdf>

<http://www.ontariocourts.on.ca/decisions/2009/may/2009ONCA0374.pdf>

<sup>2</sup> See our last issue for an insightful case comment.

<sup>3</sup> case & comment - nurses & SARS -- *Abarquez v Ontario* Abarquez et al. v Her Majesty the Queen in Right of Ontario, Ontario Court of Appeal, 95 ONTARIO REPORTS (3d) Part 6, 07 Aug. 2009, pages 414-430.

[http://www.ontariocourts.on.ca/decisions\\_index/2009.htm](http://www.ontariocourts.on.ca/decisions_index/2009.htm)  
<http://www.ontariocourts.on.ca/decisions/2009/may/2009ONCA0374.pdf>

<sup>4</sup> <http://www.ontariocourts.on.ca/decisions/2009/may/2009ONCA0378.pdf>

<sup>5</sup> *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

<sup>6</sup> This is in reference two cases *Cooper v. Hobart*, [2001] 3 S.C.R. 537 (the *Cooper* half) and *Anns v.*

*Merton London Borough Council*, [1977] 2 All E.R. 492 (the *Anns* half).

<sup>7</sup> *Eliopoulos (Litigation Trustee of ) v. Ontario (Minister of Health and Long-Term Care)* (2005), 76 O.R. (3d) 36.

<sup>8</sup> *Williams v. Ontario*, 2009 ONCA 378 at para. 30. (CanLII)

<sup>9</sup> Vol. 18, No.1, March 2010.

<sup>10</sup> case & comment - nurses & SARS -- *Abarquez v Ontario* Abarquez et al. v Her Majesty the Queen in Right of Ontario, Ontario Court of Appeal, 95 ONTARIO REPORTS (3d) Part 6, 07 Aug. 2009, pages 414-430.

[http://www.ontariocourts.on.ca/decisions\\_index/2009.htm](http://www.ontariocourts.on.ca/decisions_index/2009.htm)  
<http://www.ontariocourts.on.ca/decisions/2009/may/2009ONCA0374.pdf>

# TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

## \* Update on the Expert Advisory Panel on OH&S

Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: bartolj@lao.on.ca

<sup>1</sup> This number only reflects claims allowed by the WSIB. The total number for all reported fatalities is 479.

<sup>2</sup> This number only reflects claims allowed by the WSIB. The total number for all reported occupational disease claims is 334.

<sup>3</sup> <http://www.news.ontario.ca/mol/en/2010/01/review-of-workplace-safety-system-in-ontario.html>

\* **Ontario & CSA.** Opinions expressed here are the writer's, and are not necessarily of the Clinic. The writer may be contacted: d441267@yahoo.ca

<sup>1</sup> "referenced standards as subsidiary legislation," Vol.17, No.3, pages 10-12, at page 12.

<sup>2</sup> [www.csa.ca](http://www.csa.ca)

<sup>3</sup> "PEI & CSA on-line-published standards," Sept. 2009, Vol. 17, No.4, page 6.

<sup>4</sup> <http://www.labour.gov.on.ca/english/hs/pubs/csa/index.php>

<sup>5</sup>

### View CSA Standards Cited in OHSA Regulations

Content last reviewed: June 2009

Many regulations made under Ontario's Occupational Health and Safety Act require compliance with standards published by the Canadian Standards Association (CSA). These standards define requirements for reducing the risk of workplace injuries.

Ontario—together with the other provinces and territories of Canada—is working with CSA to make it easier for employers and workers to comply with occupational health and safety requirements. Thanks to a pilot project funded in part by the Government of Ontario, you can now read the relevant CSA standards before you buy.

Registration to view the standards is required; however, you are under no obligation to purchase anything.

CSA standards cited in Ontario's occupational health and safety regulations are available online for many sectors, including industry, health care, mining, manufacturing, agriculture and construction.

... View CSA Standards

The Canadian Standards Association is a not-for-profit membership-based association serving business, industry, government and consumers in Canada and the global marketplace.

...

## \* in the press -

<sup>2</sup>...meat inspectors... Daniel LeBlanc, Ottawa, *The Globe and Mail*, "FOOD SAFETY / Ottawa hires meat inspectors for exports to U.S.," 18 March 2010, pages A5.

<sup>1</sup>This **Comment** by M. Grossman – opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: d441267@yahoo.ca

<sup>2</sup> "The right to a government-inspected workplace," July 2007, Vol.15 No.3 pages 4-6.

<sup>3</sup> "... additional comment," Vol. 15, No. 4, Nov. 2007.

<sup>4</sup> Upton Sinclair, *The Jungle*, Doubleday, Jabber & Company, 1906.

<sup>5</sup> [http://en.wikipedia.org/wiki/The\\_Jungle](http://en.wikipedia.org/wiki/The_Jungle)

## <sup>1</sup> CHEMICAL REGULATION Europe ...

Cheryl Hogue, *C&EN*, "CHEMICAL REGULATION Europe may tighten control of trichloroethylene, seven other chemicals," 15 March 2010, page 11. [WWW.CEN-ONLINE.ORG](http://WWW.CEN-ONLINE.ORG)

## <sup>2</sup> ... [US] TSCA INVENTORY ... *C&EN*, 22

March 2010, page 34. [WWW.CEN-ONLINE.ORG](http://WWW.CEN-ONLINE.ORG)

<sup>3</sup>

Occupational Health and Safety Act

R.R.O. 1990, REGULATION 852

INVENTORY OF AGENTS OR COMBINATIONS OF AGENTS FOR THE PURPOSE OF SECTION 34 OF THE ACT

Consolidation Period: From August 28, 1992 to the e-Laws currency date.

Last amendment: O.Reg. 517/92.

This is the English version of a bilingual regulation.

1. The Ministry of Labour hereby adopts, as an inventory of agents or combinations of agents that are not new biological or chemical agents or combinations of such agents for the purpose of section 34 of the Act, the Chemical Substances Initial Inventory including the User Guides and Indices and Trademarks and Product Names reported in conjunction therewith of May, 1979, together with the Cumulative Supplement to the Initial Inventory of June, 1980, published by the Administrator of the Environmental Protection Agency of the United States of America under The Toxic Substances Control Act (P.L. 94-469). R.R.O. 1990, Reg. 852, s.1.

2. Inquiries concerning Inventory and Cumulative Supplement may be addressed to:

Inventory of Agents,  
Occupational Health and Safety Branch,  
Ministry of Labour,  
400 University Avenue,  
Toronto, Ontario, M7A 1T7  
R.R.O. 1990, Reg. 852, s. 2; O. Reg. 517/92, s. 1.

<sup>4</sup> [http://www.e-](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900852_e.htm)

[laws.gov.on.ca/html/regs/english/elaws\\_regs\\_900852\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900852_e.htm)

<sup>5</sup>

### New biological or chemical agents

34. (1) Except for purposes of research and development, no person shall,

- manufacture;
- distribute; or
- supply,

for commercial or industrial use in a workplace any new biological or chemical agent unless the person first submits to a Director notice in writing of the person's intention to manufacture, distribute or supply such new agent and the notice shall include the ingredients of such new agent and their common or generic name or names and the composition and properties thereof.

### Report on assessment

(2) Where in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent referred to in subsection (1) may endanger the health or safety of the workers in a workplace, the Director

shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent intended to be manufactured, distributed or supplied and the manner of use including the matters referred to in subclauses 54 (1) (o) (i) to (vii).

### Interpretation

(3) For the purpose of this section, a biological or chemical agent is not considered to be new if, before a person manufactures, distributes or supplies the agent, it was used in a workplace other than the person's workplace or it is included in an inventory compiled or adopted by the Minister. R.S.O. 1990, c. O.1, s. 34.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 34 is repealed by the Statutes of Ontario, 2001, chapter 9, Schedule I, subsection 3 (6). See: 2001, c. 9, Sched. I, ss. 3 (6), 5 (2).**

<sup>6</sup> [http://www.e-](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm)

[laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90o01\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm)

## <sup>7</sup> ...FINES FOR UCLA / LAB SAFETY ...

Jyllian Kemsley, *C&EN*, "MORE FINES FOR UCLA / LAB SAFETY: California agency again faults university for lack of training, lax safety practices," 22 March 2010, page 9. [WWW.CEN-ONLINE.ORG](http://WWW.CEN-ONLINE.ORG)

## <sup>8</sup> personal protective equipment

<sup>9</sup> April 2009, Vol.17 No.02, page 5.

<sup>10</sup> March 2010, Vol.18 No.01, page 2.

<sup>11</sup> Adam Radwanski, "Appearances can be deceiving in Ontario's generic drug strategy / Savings-touting Liberals yet to determine how to replace money pharmacies stand to lose," *The Globe and Mail*, Toronto, 27 March 2010, page A7.

<sup>12</sup> [photo:] Fred Chartrand / The Canadian Press.

<sup>13</sup> [http://labs.daylife.com/journalist/adam\\_radwanski](http://labs.daylife.com/journalist/adam_radwanski)

<sup>14</sup>

[http://www.theglobeandmail.com/news/national/appearances-deceiving-in-ontarios-generic-drug-strategy/article1514240/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+TheGlobeAndMail-National+%28TheGlobe+and+Mail+-National+News%29](http://www.theglobeandmail.com/news/national/appearances-deceiving-in-ontarios-generic-drug-strategy/article1514240/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+TheGlobeAndMail-National+%28TheGlobe+and+Mail+-National+News%29)

<sup>15</sup> <http://www.ontario.ca/en/residents/index.htm>

<http://www.premier.gov.on.ca/home/index.php?Lang=En>

<http://www.premier.gov.on.ca/gallery/gallery.php?Lang=EN>

## <sup>16</sup> Worker Safety Case...NFL Players ...

<sup>17</sup> March 2010, Vol. 18 No.1, page 2

<sup>18</sup> "Your brain on football ..." [cover flap] *The New Yorker*, 19 October 2009.

<sup>19</sup> Malcolm Gladwell, "ANNALS OF MEDICINE / OFFENSIVE PLAY / ..." *The New Yorker*, 19 October 2009, pages 50-59.

<sup>20</sup> See also: Alan Schwarz, Washington, DC, "N.F.L. Scolded ... / ... Before House [of Representatives] Panel Over Handling of Players' Brain Injuries," *The New York Times*, 29 October 2009, pages A1 & A18.

<sup>21</sup> See also: Deborah Blum, "Will Science Take the Field? / For 80 years, the N.F.L. ignored concussion data ..." *The New York Times*, OP-ED, 05 February 2010, page A21.

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<sup>22</sup> Alan Schwarz, "Worker Safety Case on Dementia Tests N.F.L. / Injured N.F.L. Players Test a [California] Worker Safety Law," *The New York Times*, 06 April 2010, pages A1 & A19.

<sup>23</sup> **West Virginia Coal** Ian Urbina, "At Least 7 Die In Explosion At Coal Mine / Blast at West Virginia Coal Mine Leaves 7 Men Dead and 19 Others Missing" *The New York Times*, 06 April 2010, pages A1 & A16.

<sup>24</sup> Ian Urbina, "A Governor Orders Coal Mines Inspected," *The New York Times*, 15 April 2010, page A16.

<sup>25</sup> Sheryl Gay Stolberg, "Reviewing Mine Safety, Obama Faults Company and the White House," *The New York Times*, 16 April 2010, page A14.

<sup>26</sup> <http://www.msha.gov/>  
<sup>27</sup> <http://www.msha.gov/PerformanceCoal/PerformanceCoal.asp>  
<sup>28</sup> <http://www.whitehouse.gov/the-press-office/remarks-president-mine-safety>  
<sup>29</sup> [http://en.wikipedia.org/wiki/Mine\\_Safety\\_and\\_Health\\_Administration](http://en.wikipedia.org/wiki/Mine_Safety_and_Health_Administration)  
<sup>30</sup> [http://en.wikipedia.org/wiki/Massey\\_Energy](http://en.wikipedia.org/wiki/Massey_Energy)  
<sup>31</sup> <http://www.masseyenergyco.com/>  
<sup>32</sup> <http://www.masseyenergyco.com/upperBigBranch/families.shtml>

<sup>30</sup> **China Mine** Sharon LaFraniere, "With Hope Dwindling, 115 Miners Are Saved / Flooded China [Coal] Mine Still Traps 38 Others," *The New York Times*, 06 April 2010, page A4.

<sup>31</sup> **Pb Safety** Mireya Navarro, "Rule on Lead Safety Set to Take Effect / Construction workers will have to contain work areas and do thorough cleanups," *The New York Times*, 09 April 2010, page A15.

\*<sup>32</sup> **Pb & Hg** -- see in this newsletter:

§ "Energy efficient lights help Canada go green & save the environment --- but what about the toxic mercury in them," July 2007 Vol.15 No.03 page 1, *et seq.* Also: corrections February 2009 Vol. 17 No.1 page 12.

§ "Recalled lead-containing painted toys -- what about the workers?" November 2007 Vol.15 No.04 page 9, *et seq.*

§ "Lead & Ontario workers & their children?" July 2008 Vol.16 No.03 page 8.

§ "Sunrise Propane" September 2008 Vol.16 No.04 page 3.

§ June 2009 Vol. 17 No.3 page 4.

§ September 2009 Vol. 17 No. 4 page 5.

<sup>33</sup> -- see also:

• 2009 / TLVs® and BEIs® / Based on the Documentation of the Threshold Limit Values for Chemical Substances and Physical Agents & Biological Exposure Indices; ACGIH®; Signature Publications; ISBN: 978-1-882417-95-7; © 2009; 256 pages.

<sup>34</sup> • American Conference of Governmental Industrial Hygienists, 1330 Kemper Meadow Drive, Cincinnati, Ohio, 45240-4148; 513 742 2020.

<sup>35</sup> -- at page 37 - "ADOPTED VALUES": "...Lead [7439-92-1] and inorganic compounds, as Pb ... [time-weighted average =TWA [see page 255] =] ... 0.05 mg/m<sup>3</sup> ..."

<sup>36</sup> 82 = atomic number.

**Pb** = lead.

[Xe]4f<sup>14</sup>5d<sup>10</sup>6s<sup>2</sup>6p<sup>2</sup> = electron configuration.  
207.2 = atomic mass (g/mol).

<sup>37</sup> **Hg** = mercury.

<sup>38</sup> • American Chemical Society - Periodic Table <http://acswebcontent.acs.org/games/pt.html>

<sup>39</sup> § Adria Vasil, "ecoholic / ... We have old lead paint peeling off our window frames. What's the safest way to remove it?" *NOW*, Toronto, 6 -12 August 2009, page 21.

<sup>40</sup> § Christopher Bodeen, Beijing, Associated Press, "Parents clash with police over lead poisoning of children [in China]," *The Globe and Mail*, Toronto, 18 August 2009, page A10. Also reported as Beijing, AP "Lead Poisoning Of Children In China Leads to Disturbance," *The New York Times*, 18 August 2009, Page A7.

<sup>41</sup> § Jim Haner, *Sun Staff*, "Studies suggest link between lead, violence / Experiment on rats indicates exposure hinders brain growth; Analysis tracks lead, crime," *Baltimore Sun*, 09 May 2000. <http://www.baltimoresun.com/>  
<http://www.baltimoresun.com/news/maryland/bal-telead09may09,0,5552406,full.story>

<sup>42</sup> § Mary Ann Wilson, Michael V. Johnston, Gary W. Goldstein, and Mary E. Blue; "Neonatal lead exposure impairs development of rodent barrel field cortex," *Proceedings of the National Academy of Sciences of the United States of America*, PNAS 2000 97:5540-5545. <http://www.pnas.org/>  
<http://www.pnas.org/content/97/10/5540.full?si-d=8abfee69-c7f1-4c79-9a40-39c94c64d031>  
<http://www.pnas.org/content/97/10/5540.abstrac?t%3D=8abfee69-c7f1-4c79-9a40-39c94c64d031> o

\* **green ad & Hg.** Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: [d441267@yahoo.ca](mailto:d441267@yahoo.ca)

<sup>1</sup> *The New York Times* 19 November 2010, page 8, National Edition.

<sup>2</sup> *The New Yorker*, 15 & 22 February 2010, page 75.

<sup>3</sup> The art from the Ontario ads is not shown here; instead internet-available clip art is shown.

<sup>4</sup> The online royalty free public domain clip art <http://www.clker.com/>

<sup>5</sup> "Compact Fluorescent Light Bulb clip art"

<sup>6</sup> <http://www.clker.com/clipart-10816.html>

<sup>7</sup> -- see in this newsletter, "Energy efficient lights help Canada go green & save the environment -- but what about the toxic mercury in them," July 2007, Vol.15, No.3, pages 1 & 4. o

\* **Ontario's victim surcharge & injured workers.** Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: [d441267@yahoo.ca](mailto:d441267@yahoo.ca)

<sup>1</sup> agenda item for 27 January.

<sup>2</sup> see, for example: The Honourable R. Roy McMurtry, O. Ont., Q.C., *REPORT ON FINANCIAL ASSISTANCE FOR VICTIMS OF VIOLENT CRIME IN ONTARIO*, May 2008

[http://www.attorneygeneral.jus.gov.on.ca/english/laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_95v06\\_e.htm](http://www.attorneygeneral.jus.gov.on.ca/english/laws.gov.on.ca/html/statutes/english/elaws_statutes_95v06_e.htm)

<sup>3</sup> *Victims' Bill of Rights, 1995*, SO 1995, CHAPTER 6, s.5. [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_95v06\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_95v06_e.htm)

<sup>4</sup> "VICTIMS' JUSTICE FUND GRANTS TO HELP VICTIMS OF CRIME" -- Background -- release date = 21 October 2005. <http://www.attorneygeneral.jus.gov.on.ca/english/news/2005/20051021-commty-grants-bg.asp>

<sup>5</sup> *ibid.*

<sup>6</sup> <http://www.cicb.gov.on.ca/en/about.htm>

<sup>7</sup> <http://www.cicb.gov.on.ca/en/index.htm>

<sup>8</sup> <http://www.cicb.gov.on.ca/en/legrep.htm>

<sup>9</sup> *CICB, 33rd ANNUAL REPORT*, 01 April 2006 to 31 March 2007, page 8.

<http://www.cicb.gov.on.ca/en/legrep.htm>

<sup>10</sup> <http://www.cicb.gov.on.ca/en/reports.htm>

<sup>11</sup> -- and several other related items of federal legislation. o

\* **...evidence ... into court -- not-so-safely?...**

\* \* Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: [d441267@yahoo.ca](mailto:d441267@yahoo.ca)

<sup>1</sup> (The report and commentary here is on the basis that no issue of fact or law raised in this newsletter item has any bearing on the issues of fact or law considered for judgment at the Superior Court trial, which has concluded; nor would they have any bearing of issues of fact or law on appeal.)

<sup>2</sup>  heroin CAS 561-27-3  
C<sub>21</sub>H<sub>23</sub>NO<sub>5</sub> 369.4 g/mol.

<sup>3</sup> -- see in this newsletter: "... What are CAS Numbers ...," Vol.16, No.2, July 2008, pages 4 & 7.

<sup>4</sup> Daniel M. Perrine, *The Chemistry of Mind-Altering Drugs / History, Pharmacology, and Cultural Context*, American Chemical Society, Washington, DC, 1996; ISBN 0-8412-3253-9; page 63, *et seq.* -- at page 63 **2-29**

<sup>5</sup> <http://en.wikipedia.org/wiki/Diamorphine>

<sup>6</sup> <http://www.emcdda.europa.eu/publications/drug-profiles/heroin#chemistry>

<sup>7</sup> Perrine, Chapter 2.

<sup>8</sup>  heroin-hydrochloride CAS 1502-95-0  
C<sub>21</sub>H<sub>23</sub>NO<sub>5</sub>·HCl 405.87g/mol.

<sup>9</sup> An actual bat of the case is not pictured here; instead internet-available clip art is shown.

<sup>10</sup> The online royalty free public domain clip art <http://www.clker.com/>

<sup>11</sup> "Clker.com - Cricket Bat clip art- public domain royalty free clip art"

<sup>12</sup> <http://www.clker.com/clipart-4548.html>

<sup>13</sup> -- see notes below - **WHMIS** --

<sup>14</sup> <http://www.drugbank.ca/drugs/DB01452>

<sup>15</sup> US CFR, Title 21 Parts 329.1, 1308.11 (1987).

<sup>16</sup> <http://hazard.com/msds/f2/cbh/cbhbw.html>

<sup>17</sup> <http://www.lookchem.com/HEROIN/#Safety>

<sup>18</sup> -- **WHMIS** -- see in this newsletter: "... on reading an MSDS," Vol.17, No.01, February 2009, pages 7 & 12.

<sup>19</sup> <http://www.workers-safety.ca/newletter-recent/59-newsletter-2009-02>

<sup>20</sup> in Canada: *Workplace Hazardous Materials Information System* :

<sup>21</sup> WHMIS is explained in our Clinic's *A Worker's Guide: A Worker's Guide / The Occupational Health & Safety Act*, "... produced jointly by the Toronto Workers' Health & Safety Legal Clinic and Skills for Change ... 1995. Revised April 2007. Funding provided by Legal Aid Ontario and the Department of Justice."

<sup>22</sup> *Worker's Guide* ... page 3, *et seq.*

<sup>23</sup> [http://www.ccohs.ca/oshanswers/legisl/intro\\_whmis.html](http://www.ccohs.ca/oshanswers/legisl/intro_whmis.html)

<sup>24</sup> in the USA: *Hazard Communication Standard* -- US Department of Labor, Occupational Safety & Health Administration

<http://www.osha.gov/SLTC/hazardcommunications/index.html>

<sup>25</sup> (SOR/86-304)

<http://laws.justice.gc.ca/eng/SOR-86-304/page-5.html#anchorbo-ga.LX>

<sup>26</sup> Under the *Canada Labour Code*.

<sup>27</sup> *The Constitution Act, 1867* (originally called *The British North America Act, 1867*; [United Kingdom] 30 & 31 Victoria, c. 3.), s. 91.

<http://laws.justice.gc.ca/en/const/index.html>

<http://www.solon.org/Constitutions/Canada/English/>

[http://www.solon.org/Constitutions/Canada/English/ca\\_1867.html](http://www.solon.org/Constitutions/Canada/English/ca_1867.html)

# TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

\* **Letters Patent**  
791034, 06 February 1989.

\* **From the internet -- LifeQuilt**  
<http://www.youngworkerquilt.ca/index.htm>  
<http://www.youngworkerquilt.ca/lifequiltartist.htm>

\* **AGM** -- see in this *newsletter* June 2009 Vol. 17 No. 3 page 13.

\* **Satisfaction Survey**... see in this *newsletter*, Vol.18, No.1, March 2010, page 4 -- "Clinic outreach ..."  
see in this *newsletter*, Vol. 17, No.4, September 2009, pages 5 & 6 -- "Board planning day."  
<http://www.workers-safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2009+09>

\* **Springhill -- 1891**. Illustration from: *STORY of The Springhill Disaster ... THE GREAT COAL MINING EXPLOSION ... Nova Scotia, February 21st, 1891 ...*, R.A.H. Morrow, 59 Garden Street, St. John, New Brunswick, 1891; illustrations by C.H. Flewelling, Engraver, St. John, New Brunswick; "SCENE OF EXPLOSION," page 29.



## for future issues:

- *Maquila*. [www.maquilasolidarity.org](http://www.maquilasolidarity.org)
- case & comment - random drug testing of safety-sensitive workers - *Imperial Oil Ltd. v CEP, Local 900\**
- US Genetic Information Nondiscrimination Act\*\*
- US Chemical Safety & Hazard Investigation Board
- Canadian federal OH&S inspections.
- AGM discussion - notes.
- more on Advisory Panel on OH&S.

\* *Imperial Oil Ltd. v Communications, Energy & Paperworkers Union of Canada, Local 900*, Ontario Court of Appeal, 96 ONTARIO REPORTS (3d) Part 9, 06 November 2009, pages 668-688.  
[http://www.ontariocourts.on.ca/decisions\\_index/2009.htm](http://www.ontariocourts.on.ca/decisions_index/2009.htm)  
<http://www.ontariocourts.on.ca/decisions/2009/may/2009ONCA0420.htm>  
[http://www.cep.ca/index\\_e.html](http://www.cep.ca/index_e.html)

\*\* <http://www.govtrack.us/congress/bill.xpd?bill=h110-493>

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Errors and misstatements happen, although we try to be careful and strive for accuracy. We would try to correct as soon as possible. Please let us know if you see any needed corrections or explanations.

**Clinic's Annual General Meeting**  
16 June 2010  
see page 10.