

newsletter

Recent law cases relevant to workplace health & safety - for "case & comment" in the future issues in this *newsletter* :

!Random drug testing of safety sensitive workers - *Imperial Oil Ltd. v CEP, Local 900*.¹

! *Canada Labour Code* & the right to refuse -- Entre : *Sa Majesté La Reine, du Chef du Canada; Demanderesse et Éric Vandal, Jacques St-Pierre, Joël Turbis, Philippe Gosselin; Défendeurs*.^{1 2}

! *Her Majesty the Queen v Jenkins*.³ This was a not workplace health & safety case, but it dealt with *Canadian Charter of Rights and Freedoms* issues — for a prosecution under the *Ontario Provincial Offences Act*,⁴ which governs procedure for *OH&S Act* prosecutions that allow *ex parte* trials even if imprisonment is possible.

AGM report - discussion topic:

Expert Advisory Panel on OH&S -- Clinic's presentation --

At the Annual General Meeting, 16 June, after the business part of the meeting, there was a presentation^{1 2} by Clinic staff about the Ontario Ministry of Labour's Expert Advisory Panel on

Occupational Health and Safety,³ followed by discussion. This was in preparation for the Clinic's submission that was to be made to the Panel.⁴



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"SUBMISSION TO ... ADVISORY PANEL ...," 30 June 2010.
<http://www.workers-safety.ca/remository?do=view&file=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06%7C2010+06+30+Submissions+to+MoL+Panel.doc>
<http://www.workers-safety.ca/>

AGM - report --

Clinic Board members

At the Clinic's Annual General Meeting, 16 June, members of the Board of Directors¹² were voted-in³

Michael Grossman, Toronto
Jason Achorn, Toronto
Tom Prue, Chapleau
Tony Avakian, Toronto

Board members may be contacted through the Clinic's phone number or e-mail. (Brief biographical data are to be presented in futures issues of this *newsletter*.) O

- for -

There are four Board vacancies.

One-year terms:

Sumaiya Sharmeen, Thornhill
John Field, Ajax
Shivaughan Doobay, Toronto
Carl Mohan, Toronto

The Clinic Executive committee - Chair, Vice-Chair, Secretary, Treasurer, member-at-large -- is to continue until decisions at the next Board meeting. And similarly for the other committees.⁴

Two-year terms:

Hilary Balmer, Uxbridge
Ivan Lancaric, Toronto
Victoria Padel, Toronto

report from
**Clinic's Annual General Meeting — 16 June 2010 -
annual report.**

<http://www.workers-safety.ca/annual-report-2010>

<http://www.workers->

[safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06+++AGM](http://www.workers-safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06+++AGM)

report from
**Clinic's Annual General Meeting — 16 June 2010 -
financial report.**

<http://www.workers->

[safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06+++AGM](http://www.workers-safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06+++AGM)

data from US OSHA ¹²³⁴

Suspended Scaffolding: Two-point (swing-stage)

<http://www.osha.gov/SLTC/etools/scaffolding/suspended/twopoint/twopoint.html>
<http://www.osha.gov/SLTC/etools/scaffolding/suspended/twopoint/fallprotection.html>
<http://www.osha.gov/SLTC/etools/scaffolding/index.html>

*"Tip: Almost all incidents that involve scaffold failure would not lead to fatality or serious injury if proper personal fall-arrest systems were in use. Hence, such incidents almost always involve two violations: One that causes the scaffold to fall, and the other when workers fail to use (or their employers fail to provide) appropriate safety harnesses, lanyards, lifelines, etc."*⁵

from *ONTARIO REGULATION 213/91 CONSTRUCTION PROJECTS*

- ...
- 141.(1) A worker who is on or is getting on or off a suspended platform, suspended scaffold or boatswain's chair shall wear a full body harness connected to a fall arrest system. O. Reg. 213/91, s. 141 (1).
- (2) Every lifeline used with a suspended platform, suspended scaffold or boatswain's chair,
- (a) shall be suspended independently from the platform, scaffold or boatswain's chair; and
 - (b) shall be securely attached to a fixed support so that the failure of the platform, scaffold or boatswain's chair or its supporting system will not cause the lifeline to fail. O. Reg. 213/91, s. 141 (2).
- (3) Despite clause (2) (a), the fall arrest system shall be securely fastened to the suspended platform or suspended scaffold if,
- (a) all or part of the platform or scaffold has more than one means of support or suspension; and
 - (b) the platform or scaffold is so designed, constructed and maintained that the failure of one means of support or suspension will not cause the collapse of all or part of the platform or scaffold. O. Reg. 213/91, s. 141 (3).
- ...

Day of Mourning

-- 28 April --

-- at Nathan Phillips Square --

Below is copied a press release from the Ontario Federation of Labour website about the workers' annual Day of Mourning.¹²³⁴⁵ An OFL main advocacy approach involves the application of the criminal law to workplace health and safety. Within our Clinic, there has been some discussion on this topic, with some opinion

somewhat at odds with the OFL's.⁶

...
Tuesday, April 27, 2010
**Toronto Day of Mourning
April 28: "Kill a worker, go to jail" - the only way to stop the carnage**

(TORONTO) -- Hundreds of workers, friends and families of those killed and injured

on the job will gather at 12 noon, Wednesday, April 28, at Nathan Phillips Square, Toronto, to commemorate the labour movement's most solemn occasion - the annual Day of Mourning, and to call for the vigorous use of the *Criminal Code* of Canada provision that enables prosecution of corporate executives, directors and managers who act

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wrongfully or negligently.

The pivotal role of Bill C-45, also known as the Westray Bill, in preventing deaths and injuries will be poignantly expressed with a sea of messages declaring: "Kill a worker, go to jail" as the most important solution to reductions in workplace fatalities and injuries.

"Twenty-six years ago, in Canada, we mourned the loss of fewer workers than we do today. Mothers, fathers, children, friends and neighbours have endured the worst tragedies imaginable as the relentless drive for profits has been allowed to take precedence over the health and safety of workers. We must not permit one more company to ignore its obligation," says OFL President Sid Ryan.

In the six years since Bill C-45 was passed it was unused in Ontario, yet more than 400 workers have been killed on the job and nearly two million injured. Its first use finally took place in Sault Ste Marie last month. There is

also an ongoing criminal investigation into the needless Christmas Eve tragedy in which four migrant workers plunged 13 stories to their deaths when their scaffolding broke apart. The fifth worker barely survived with extensive injuries. The Ontario Ministry of Labour had previously visited and inspected the site.

"Unless there is a significant price to pay, companies will not take ministry orders seriously and we will continue to lose loved ones," says Ryan.

In Ontario, in the first 2 months of 2010, there have been 86 deaths and 38,184 claims for work-related injuries and diseases reported to the Workplace Safety and Insurance Board; in 2009, there were 479 fatality claims and 253,761 injuries and disease claims

The number of people killed at work each year in Canada has risen for the past 15 years. This is in contrast to almost every Organization

for Economic Co-operation and Development country where the incidence of workplace fatalities is declining.

In 1991, the Parliament of Canada declared April 28 the National Day of Mourning. Every year since, unions, labour councils, families and community partners gather by the thousands to "mourn for the dead and fight for the living." What began through the efforts of Canada's labour movement is now observed in more than 100 countries.

Oksana Afanasenko, the widow of Aleksey Bloomberg who was killed last Dec. 24, will be a speaker at the Toronto event and sole survivor Dilshod Marupov will also be in attendance.

...

Representatives from our Clinic attended the Day of Mourning at Nathan Phillips Square. ○

OHCOW and CELA host Dr. Tushar Kant Joshi, prominent Indian anti-asbestos activist and occupational physician, during his week-long trip to Canada.

On 15 May, in Toronto, representatives from our Clinic attended a session sponsored by the Occupational Health Clinics for Ontario Workers¹² and the Canadian Environmental Law Association³⁴:

**INDIA AND CANADA:
A SHARED TRAGEDY**

**LEARNING FROM OUR
SHARED EXPERIENCE
WITH ASBESTOS:**

**...[a meeting with] DR.
TUSHAR KANT JOSHI,
INDIAN OCCUPATIONAL
PHYSICIAN AND ANTI-
ASBESTOS ACTIVIST**

From the OHCOW announcement:⁵

...
Canada and India share a
terrible experience with

asbestos. Thousands of Canadian workers have died from asbestos disease resulting from occupational exposures, which peaked in the 1970s. Other Canadians have also succumbed to asbestos disease - First Nations and other people exposed to asbestos-containing insulation, and family members of asbestos workers exposed to fibres brought home on work

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clothes. Due to the long delay between exposure and disease, the peak of death and illness is only arriving now. There is very little current use of asbestos in Canada, although much of it remains in locations across the country.

As the market for asbestos has declined here, Canadian asbestos producers have turned to the developing world for new markets. India is one of the largest. Tragically, Indian workers are re-living the Canadian experience – exposed to asbestos with little protection.

WE CANNOT ALLOW THIS TO CONTINUE! A strong

coalition of asbestos disease victims and families, labour unions, environmental activists, researchers, health professionals and community members has come together to call for an end to Canadian mining, export and use of asbestos; a just transition for the communities currently relying on this industry; full compensation for asbestos victims; and the tracking of asbestos exposure and disease.

Dr. Tushar Kant Joshi, a leading Indian physician and anti-asbestos activist,^[67] has come to Canada to testify first hand to the Indian experience. Come to meet Dr. Joshi and share your

experiences and ideas on how we best move forward in our common efforts to end this preventable pandemic of asbestos disease once and for all.

...

Concerns were expressed at the meeting about claims by the CHRYSOTILE Institute⁸ for safe use. That Institute lists the governments of Canada and Québec as its “financial partners.”⁹¹⁰

The meeting ended with a consensus for some its participants to meet again. ○

Canada, Québec, & CHRYSOTILE Institute

-- controlled and safe-use? --

-- Rotterdam Convention, ILO Convention 162, WHO Group of Experts --

-- Ontario & India --

M. Grossman

The article above reported on an OCHOW and CELA meeting at which Canadian chrysotile use in India was criticized. Mention was made at the end of the article about Canada, Québec, and the CHRYSOTILE Institute as “financial partners.”¹

Here is some opinion on these and related matters :

According to the CHRYSOTILE Institute,²³ chrysotile fibre, when used in high density products (such as cement), is inherently safer than other forms of asbestos^{4 5} (e.g., amosite and crocidolite);⁶ and only high-density products should be allowed.⁷ Controlled-use of chrysotile allows safe-use,⁸

which can be accomplished by following *Guidelines*⁹ such as the CHRYSOTILE Institute recommends; and by following its *Safe use manual*,¹⁰ and the *International Labour Organization Convention 162*.^{11 12}

The CHRYSOTILE Institute also notes that *chrysotile* has not been included under the

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Rotterdam Convention,¹³ and that permissible exposure limits have been considered by a World Health Organization Group of Experts.¹⁴

Although *asbestos* use is now very limited in Canada, and remaining workplace and public health concerns centre around careful removal, *chrysotile* mining retains its importance in the economy of Québec.¹⁵ That provincial government, along with the federal,^{16,17} promotes *chrysotile* export. The CHRYSOTILE Institute is a key player in this, and, as noted in the article above, lists these governments as its "financial partners."¹⁸

Asbestos is undoubtedly useful in construction and manufacturing. Its use is wide-spread in India.

So, if there can be controlled and safe-use of *chrysotile*, in high density products, what's all the fuss about?

What's wrong with *chrysotile* as a significant factor for India becoming one of the world's premier economies? And why not use it in Ontario too? If other hazards have controlled and safe-use there and here, such as electric current, why not *chrysotile*?

My response is that controlled and safe-use of *chrysotile* most likely won't happen. Considering Ontario first, and then comparison with India:

Ontario's *internal responsibility system*¹⁹ -- workers and their employers looking after health and safety -- gives too little protection; there should be far more government inspection.²⁰ Reliance on the *internal responsibility system* for *chrysotile* would be expected to worsen workers' health harm. This is because the presence of any form of *asbestos* may not be immediately obvious. And so too for public health harm.

For *chrysotile*, even a government-inspected regulatory regime would be problematic.

Microscopic *asbestos* fibres are particularly hard to monitor because visual inspection would not be sufficient. And even if properly encapsulated, at least visual inspection would be required, repeatedly, for beyond the lifetime of the building or the product (because encapsulation might break-down over the years). Also, both building and product labelling for *asbestos* should be required.

Adding these requirements to the necessities for both workplace and public health education, actual controlled and safe-use is too unlikely to be an adequate alternative to a simple ban (in favour of other products). Even with a ban, Ontario has enough difficulty dealing with historically placed *asbestos*.

Even though Ontario's economy may be in decline, and India's in ascendance, *chrysotile* use in India is still more problematic, although essential concepts and concerns are much the same in both countries. India's present use in construction and manufacture means an extensive present and future-historical *chrysotile* hazard. If I understand Dr. Joshi correctly,²¹ there is lax enforcement for wide-spread exposure to unskilled workers in India, who may disappear back to their rural regions after their construction and manufacture encounters.

But perhaps the major factor for extra concern about *chrysotile* in India is the massive numbers. Reference to thousands in Ontario become millions in India, so that arguably the numbers of the ill and dead become large even if the probability might be low.

In the previous issue of this newsletter,²² I opined about possible *mercury* exposure of workers in China from a manufacture no longer done in Ontario; the products now imported from there to here. I similarly argue that *chrysotile* use in India is essentially the business of that government and its citizens. But I add that, in a universal human sense, it is an issue for Canadians.²³ There is a residual moral connection between *asbestos*

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policies of Canada and India.
Canadians should want to not
be participants in the export of

avoidable illnesses and deaths
of others. ○ 24252627282930

**data from US OSHA
Asbestos**
<http://www.osha.gov/SLTC/asbestos/>

**data from US EPA
Asbestos**
<http://www.epa.gov/asbestos/>

"... the Government of Canada has promoted the safe and controlled use of chrysotile on the national and international scene since 1979.

Canada, through its support of the Chrysotile Institute makes efforts to promote the controlled use of chrysotile asbestos ..."

-- Hon. Christian Paradis, Minister of Natural Resources, CPC,
HANSARD, House of Commons, 26 April 2010.

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4465060&Language=E&Mode=1&Parl=40&Ses=3>

in the press -

M Readers may recall reference in this *newsletter*² to fatalities in West Virginia.³ More recently, in *The New York Times* : "Dealing With Dangers of Coal / Safety Practices Differ Sharply at 2 Appalachian Operators."⁴

M Also, in *The New York Times* : Letter to the Editor, "Beyond the Mining Tragedy: Safety for All Workers."

5 6 7 8 9 10 11 12 13 14

NYCOSH New York Committee for Occupational Safety and Health

<http://www.nycosh.org/index.html>

<http://www.nytimes.com/2010/04/20/opinion/l20miners.html?scp=1&sq=joel%20shufro&st=cse>

M Also, in *The New York Times* : "[Gulf of Mexico] Oil Rig Sinks, Raising Fears Of Major Spill."^{15 16} "... 11 workers still missing ..." ^{17 18}

M Also, in *The New York Times* : "Twin Explosions at a Siberian [coal] Mine Kill 12 and Trap Scores."¹⁹ "Rescuers Are Counted Among Dead As Toll Rises ..." ²⁰ "... death toll ... 32 ..., ... trapped ... hope ... fading for 58 others ... methane gas and floodwater ..." ²¹ "... Mine Rescue Halted on Fears of Explosion."²² "... Mine Director Charged With Safety Violations"²³ "...could be sentenced to up to seven years in prison." ²⁴

M Also, in *The New York Times* : "... In China ... Global Tech Supplier Grapples With a Spate of Worker Suicides ..." ^{25 26 27 28}

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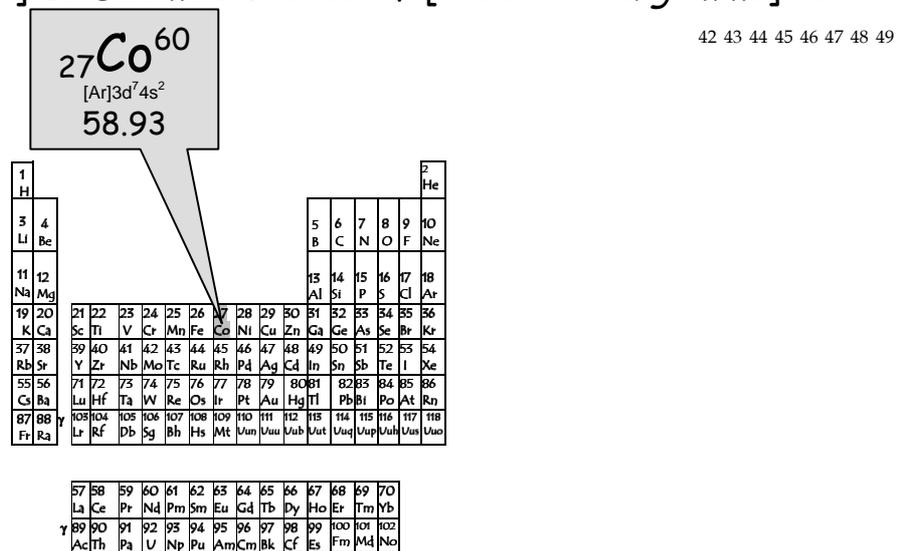
M Also, in *The New York Times* : "Deal for Ground Zero Workers." "... not having adequate respirators ..." "... deal ... \$712.5 million ... lawyers 25 percent ..." ²⁹

M Also, in *The New York Times* : "... [US] Federal Rules to Protect Lab Workers Fall Short ... Biotech ...,"^{30 31} Also: YouTube : <http://www.youtube.com/watch?v=sALSk2M9htg>
 "CCOSH Leader Steve Schrag Speaks For Injured Pfizer Biotech Worker Becky McClain."^{32 33 34 35}

M Also, in *The New York Times* : "Dispute Over Pesticide for California Strawberries Has Implications Beyond State / A science panel says a study of methyl iodide was inadequate."³⁶



M Also, in *The New York Times* : "Radiation in Imported Scrap Metal Raises Health Concerns in India / Experts see little protection against dangerous materials from overseas."⁴⁰ However: "Indian University [University of Delhi, chemistry department] Is Deemed Source of [cobalt-60 & gamma] Radiation Exposure."⁴¹



M Related to concerns about advanced economies sending their industrial/environmental issues elsewhere, readers may be interested in a 1997 & 1998 *Baltimore Sun* series about the **ship breaking** industry in India -- **and asbestos**.^{50 51 52}

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M Reported in *Chemical & Engineering News* : "[US] CSB SEEKS ADVICE ON SAFE [methyl isocyanate] SUBSTITUTES" " ... Chemical Safety & Hazard Investigation Board ... is seeking public input on the design of a congressionally mandated study on the use of methyl isocyanate (MIC) in chemical plants. ..." ⁵³

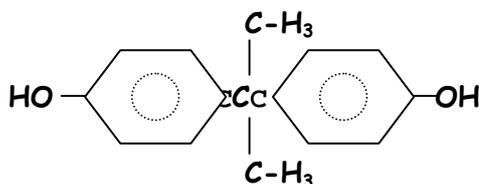
M Also in *C&EN* : "[US] OSHA TOUGHENS PENALTIES" "OSHA announced on April 22 the creation of a new 'severe violator enforcement program,' requiring more frequent and targeted inspections and higher fines for recalcitrant employers with a history of failing to comply with workplace safety laws. ..." ⁵⁴

M Also in *C&EN* : "FROM THE EDITOR / Chemicals And Cancer" "... a report ... is, in a word, a mess. ..." ^{55 56}

US National Cancer Institute

Annual Report for 2008-2009 / President's Cancer Panel / Reducing Environmental Cancer Risk / What We Can Do Now
http://deainfo.nci.nih.gov/advisory/pcp/pcp08-09rpt/PCP_Report_08-09_508.pdf

M In *The New Yorker* : "... PLASTIC PANIC / How worried should we be about everyday chemicals?" ^{57 58} "Bisphenol A, commonly known as BPA, may be among the world's most vilified chemicals. ..."



CAS⁵⁹ **80-05-7** 60616263 O

from the Ontario Ministry of Labour: ¹²³⁴⁵⁶

<http://www.labour.gov.on.ca/english/>

*Workplace Violence and Harassment: Understanding the Law /
Health and Safety Guidelines*

<http://www.labour.gov.on.ca/english/hs/pubs/wpvh/violence.php>

http://www.labour.gov.on.ca/english/hs/pdf/wpvh_gl.pdf

Protecting Workers From Workplace Violence and Workplace Harassment

http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php

Expert Advisory Panel on Occupational Health and Safety

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

DNA data collection and Canadian labour law

- a polemical comparison with US law -
- & a polemical appraisal of how science deficiently used in Canadian criminal law might extend to Canadian labour law -
- is the privacy of workers' blood relations - sisters, brothers, mothers, fathers, children - at risk? -

M. Grossman

Towards the end of his presidency, George W. Bush¹² signed into law H.R. 493 (110th): *An Act To prohibit discrimination on the basis of genetic information with respect to health insurance and employment*. Known by its short title, the *Genetic Information Nondiscrimination Act of 2008* was passed by large majorities in both the House of Representatives (420 Ayes, 3 Nays) and the Senate (95 Ayes, 0 Nays).³

I do not know about its enforcement and judicial fate, but the US *Act's* legislative text addresses issues apparently not well dealt with in Canadian labour law.⁴⁵

Although obvious genetically-carried disease has been historically known as a discriminatory factor, it is only within the last few years, with the great advances in biochemical and information

science, that genetics has become such a profound factor in law and administration.⁶⁷

This new prominence results from scientists' ability to determine detailed data from small and easily obtained bio-samples - such as pin-pricked blood or swabbed saliva. Or from personal-use items - obtained openly or surreptitiously.⁸⁹

It is no longer merely genetically-carried disease that is considered, but a large package of genetic characteristics. Perhaps the entire *genome*. And, the data can now be interpreted, arranged and transmitted with digital-electronic ease.

The "central dogma" of DNA and its relationship to genetic expression has been known for more than four decades.¹⁰

*Deoxyribonucleic acid*¹¹ in biological systems forms in

long polymer chains composed variously with *adenine*, *thymine*, *guanine* and *cytosine*,¹² attached to a backbone of linked *glucose*¹³ molecules. As a simplified description, A, T, G and C¹⁴ form a kind of alphabet for the *genetic code*. The various sequencings of A, T, G and C, thousands of units long, in *chromosomes*, serve as a kind of blueprint for cascades of interactions of these and other molecules, eventually resulting in controlling, building and maintaining life's structures and functions.

The entire DNA sequence in detail -- the total *genome* -- could, in theory, tell much, but not all, about the entity that contains it. Technology to reveal the total *genome* in detail is available, but other analytical chemical determinations that would not actually reveal that detail, are easier and cheaper to do, and these are used for DNA as an identifier. And,

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identification matches might be made with crime-scene-obtained DNA -- a boon for forensic law enforcement.

However, quite recently, the cost of knowing the entire

genome has been dropping to a personally affordable range,¹⁵¹⁶¹⁷¹⁸¹⁹²⁰ so that a retained bio-sample could soon easily be used to reveal much about a person -- well beyond merely as an identifier. This might allow

police to know their suspects, insurers their applicants, and employers their workers, better than ever before.

Thus personal *genomic* data now raise human rights issues. Medical coverage and employment might be denied, or allowed with discrimination. And privacy invaded. And worse, data of some blood relatives -- using familial DNA analysis -- could become known, because they would biologically share some data.²⁴²⁵ Issues related to familial DNA have been discussed in Canada.²⁶

...
Congress makes the following findings:
...

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of preemployment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)).^[21] Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

...
...²²

23

...
TITLE II--PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION
...

SEC. 202. EMPLOYER PRACTICES.

(a) **DISCRIMINATION BASED ON GENETIC INFORMATION.**—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.

(b) **ACQUISITION OF GENETIC INFORMATION.**—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee except—

...



The US Genetic Information Nondiscrimination Act appears to try to recognize and address genetic issues for insurance and in the workplace, although it does not directly deal with familial DNA.

Criminal law related to DNA can be found in the USA;²⁷ and it is famously related to both years-after exonerations,²⁸²⁹ and prosecutions,³⁰ including for familial DNA.

A recent New Jersey case has attracted some defence-oriented interest in attenuating DNA data retention.³¹³²³³³⁴ There is also some controversy about familial DNA criminal search use in Colorado and California.^{35 36}

Compared to the US Genetic Information Nondiscrimination Act, Canadian labour legislation

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is outstanding in its silence. It is not that Parliament is unaware of *geonomic* science. It was quite aware of at least some aspects when it enacted some criminal law provisions.

But, in my view, those criminal law provisions are so seriously deficient as to be a disheartening indicator for expecting that Parliament, and the Ontario Legislature, would address analogous issues in labour law.

Although this newsletter is concerned with labour law, it is relevant to examine here criminal law *geonomic* issues, in some detail, because data of convicts and their blood relatives are similar to those of innocent workers and their's. (I should also indicate that I practise as a criminal law defence lawyer.)

For more than a decade Canadian criminal law has provided for DNA profiles of convicts to go into a national data bank, and for bio-samples to be retained for future evaluation with future technology. The intention apparently remains for use as a personal identifier, but the setup would allow for eventual other use that the legislation does not prohibit. It is argued here that this is deficient in protecting the privacy of the convicts and their innocent blood relatives.

According to the *Criminal Code*³⁷³⁸ and the *DNA Identification Act 1998*³⁹ and *Regulations*,⁴⁰ a judge may order a bio-sample from a person convicted - for a "national DNA data bank"- for some offences, depending on concerns for that person's privacy and society's security needs.⁴¹ And the judge shall so order for some other offences.⁴²⁴³

The legislation uses the language: "DNA profiles derived from bodily substances."⁴⁴ It also speaks of "Forensic DNA analysis of stored bodily substances."^{45 46} Those stored bio-samples could be later used to generate new more revealing profiles as the technology advances.

Although the law allows for a concern about the convict's privacy, it fails to address important issues of actual protection, and is silent about others whose privacy might be invaded.

It may be speculated that Canadian legislators and their advisors either forgot to address issues of actual protection of the privacy of convicts, and the privacy of relatives, or were oblivious of the concepts. Although, at that time, technology actually used for Canadian convict DNA profiles might not have been of too much concern, the situation has changed. And the legislators knew that it

would change, because they allowed for storage of convicts' bio-samples to await future technology.⁴⁷

Storage of bio-samples for future technology should legitimately be of concern in "a free and democratic society."⁴⁸ That concern centres on what the state may some day be able to know, and attempt to do, regarding the genetic makeup of convicts and relatives. Data mining from already-retained bio-samples would also be of concern. These concerns extend to state agencies, and other states and agencies they deal with.

The criticisms here are directed towards the legislation rather than actual current administrative practices,⁴⁹⁵⁰⁵¹⁵² because once the bio-sample is in government possession, the administrative practices can be altered, and it is the legislation that governs.

Neither the *Criminal Code* nor the *DNA Identification Act 1998* and *Regulations* adequately address the concern about potential use of bio-samples. Not found in the legislation are adequate safeguards for convicts, and none for their relatives, that personal genetic data would not be misused. The concept of misuse here includes what might be lawful, but shouldn't be.

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Worse is possible. Not only is misuse a cause for fear, but there is also a cause for fear that the state, its agents and agencies would get the data wrong, or interpret it wrong.

And worse still, much of this could go on in secret, without the correctives of public scrutiny.

Important in this regard is Canada's legislative silence on privacy rules, quality assurance programs, scientific peer review, accreditation, built-in processes for correction of errors, external oversight, and public scrutiny.

The concern here is not the right of the state to try to enhance its security with DNA technology, and to try to catch criminals. Rather, it is that if the state does so, it proceeds in a sensible and knowledgeable way that takes into account proper control of the technology, and protects its citizens from misuse and fumbles.

The concerns here are about correct science being correctly used, and the genetic profiles - and therefore medical profiles - of convicts and their relatives remaining private. Especially

for the relatives. Thus, as a hypothetical example, a potential medical disorder of a convict's innocent daughter, revealed by-way-of *DNA Identification Act* s.10(2), is none of the business of criminal law enforcement personnel. The law should expressly address this kind of possibility.

Perhaps, here is a place for application of the *Canadian Charter of Rights and Freedoms*.⁵³⁵⁴ Although largely a lawyers' gaming tool rather than an actual declaration of rights, it still might be useful. Judicial intervention (*Charter* s.7) should be sought to prevent Parliament from placing citizens in jeopardy from such poorly drafted criminal legislation. The courts should not allow the application of DNA technology until the legislation is changed to include:

- privacy-assured use of DNA data, including in-future analyses of already-possessed bio-samples, for both convicts and their relatives;
- assured correct scientific processing and interpretation of the data.

These could be achieved by-way-of legislatively required:

- declared privacy rules;
- quality assurance programs,
- scientific peer review;
- accreditation;
- built-in processes for correction of errors;
- external oversight;
- public scrutiny (of organizational and operational processes, not of personal DNA data files).

Although it would be preferred that Parliament did these by statute, publicly debated, nearly all are doable by Cabinet-enacted regulation.

Canada's and Ontario's labour law silence on issues of *geonomic* science is disheartening. Better can - and should - be done.

It is appropriate for the law to use newly emerging science; but it should do so in an explained and transparently accountable way, with administrative safeguards. And the legislation should explicitly reflect this. O

"Eyes on LAO

Spotlight: Toronto Workers' Health & Safety Legal Clinic ..." ¹²³

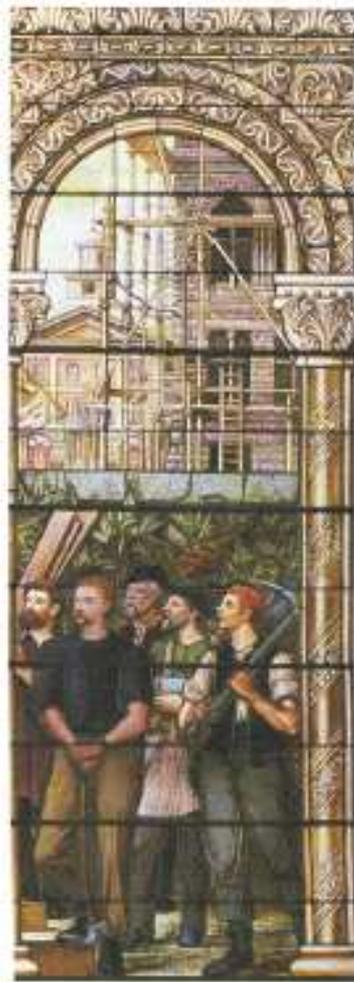
http://www.legalaid.on.ca/en/news/newsarchive/0912-07_spotlight-twslc.asp

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Included under "Legal Assistance" in the website of the Ontario Labour Relations Board: ⁴
<http://www.olrb.gov.on.ca/english/homepage.htm>

"...Workers may also consider contacting the Toronto Workers' Health & Safety Legal Clinic (416-971-8832 or www.workers-safety.ca) which provides free information, legal advice and representation to low income workers who face health and safety problems at work." ⁵⁶
<http://www.olrb.gov.on.ca/english/legalas.htm>

"Scaffolding with bindings, and workers with tools ... stained-glass window ... Old City Hall, Toronto ..." ⁷⁸⁹



TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

NOTES:

relevant law cases.

¹ random drug testing of safety-sensitive workers - *Imperial Oil Ltd. v CEP, Local 900*. *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/2009/may/2009ONCA0420.htm> http://www.cep.ca/index_e.html

¹ *Canada Labour Code & the right to refuse* Cour Fédérale Federal Court 2010 01 27 Dossier : T-505-09; Référence : 2010 Cf 87; Ottawa (Ontario), Le 27 Janvier 2010; En Présence De Monsieur Le Juge Beaudry

<http://decisions.fct-cf.gc.ca/fr/2010/2010cf87/2010cf87.html>
Entre : Sa Majesté La Reine, Du Chef Du Canada, Demanderesse et Éric Vandal, Jacques St-Pierre, Joël Turbis, Philippe Gosselin, Défendeurs

² Tu Thana Ha, "Guards win fight over refusing dangerous work / Ottawa won't appeal ruling saying guards could carry guns in escorting mobster," *The Globe and Mail*, 23 April 2010, page A4.

³ *Charter issues Her Majesty the Queen v Jenkins*, Ontario Court of Appeal, 99 *Ontario Reports* (3d), Part 8, 18 June 2010, Pages 561-573.

⁴ RSO 1990, c. P.33, s. 54(1)(a).
http://www.elaws.gov.on.ca/html/statutes/english/elaws_statutes_90p33_e.htm

AGM report--Advisory Panel on OH&S

² Expert Advisory Panel on Occupational Health and Safety
<http://www.labour.gov.on.ca/english/hs/eap/index.php>

³ --see in this *newsletter*, previous issue = April 2010, Vol. 18 No.2 page 2.

¹ (which replaced the anticipated presentation about suspended scaffolding - the speaker for which was unable to attend.)
²

TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

ANNUAL GENERAL MEETING
JUNE 16, 2010

Location: Metro Hall 55 John St. (southeast corner, King St. W. and John St.; west of University Ave., east of Spadina Ave.), Room 309, 3rd Floor

Time: 7:00 p.m.

Agenda:

1. Approval of minutes of the last AGM April 28, 2009
2. Presentation of the Annual Report
3. Treasurer's Report/Appointment of Auditors
4. Election of new Board members and thanks to previous
At this AGM, all Board positions would become vacant - then to be filled for one-year and two-year terms.
5. Other Business
6. Guest Speaker: John Donaldson
Discussion Topic: safe workplace procedure and engineering of urban highrise swingstage rigging

Refreshments - All Welcome - Please Post

³ --see in this *newsletter*, previous issue = April 2010, Vol. 18 No.2 page 10.

⁴ SUBMISSION TO ... ADVISORY PANEL ...," 30 June 2010. <http://www.workers-safety.ca/remository?do=view&file=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06%7C2010+06+30.+Submissions+to+MoL+Panel.doc>

AGM report -- Clinic Board members

¹--see: BOARD ORIENTATION MANUAL; CONSTITUTION AND BY-LAWS, ARTICLE THREE.

²<http://www.workers-safety.ca/>
<http://www.workers-safety.ca/remository?dir=publications+%3D+newsletter%2C+Workers%27+Guide%2C+FACT+SHEETS%2C+reports%2C+etc.%7B%7B%7B%7C2002+06++Board+Manual>

³ for previous: see in this *newsletter* June 2009 Vol. 17, No. 3, page 13.

⁴ -- see in this *newsletter* 2009 09 Vol.17, No.04, page 8. O

AGM annual report.

²documents referred to in *Annual Report 2010*, page 1, 1

<http://www.workers-safety.ca/remository?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2010+06++AGM>

(i) submission re Bill 168.
<http://www.workers-safety.ca/remository?do=view&file=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2009+11.%7C2009+11+20.+TWHS+LC+Bill+168+Submissions.doc>

(v) submission to the M of L in response to the Consultation Paper on Foreign and Resident Employment Recruitment.

(vi) submissions to the Chair of the WSIB on behalf of the Women of Inspiration.

AGM financial report.

¹ US OSHA. Occupational Safety & Health Administration, 200 Constitution Avenue, NW, Washington, DC 20210

²<http://www.osha.gov/SLTC/etools/scaffolding/suspended/twopoint/twopoint.html>
<http://www.osha.gov/SLTC/etools/scaffolding/suspended/twopoint/fallprotection.html>
<http://www.osha.gov/SLTC/etools/scaffolding/index.html>

³ CFR = US Code of Federal Regulations
<http://www.gpoaccess.gov/cfr/index.html>

⁴ 25 CFR 1926.451
[http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10752#1926.451\(g\)\(1\)](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10752#1926.451(g)(1))

⁵<http://www.osha.gov/SLTC/etools/scaffolding/suspended/twopoint/fallprotection.html>

¹ *ONTARIO REGULATION 213/91 CONSTRUCTION PROJECTS*, as amended; under the *Occupational Health and Safety Act*.

http://www.elaws.gov.on.ca/html/regs/english/elaws_regs_910213_e.htm#BK26

Day of Mourning -- 28 April. OFL

Ontario Federation of Labour, 15 Gervais Drive, Suite 202, Toronto. M3C 1Y8

<http://www.ofl.ca/>

TUESDAY, APRIL 27, 2010

SID RYAN, PRESIDENT ONTARIO FEDERATION OF LABOUR AND MARIE KELLY, SECRETARY-TREASURER APRIL 28

(TORONTO) -- Tomorrow, April 28 marks the labour movement's most solemn day, the National Day of Mourning with events taking place in cities and towns across the province and nationally.

OFL President Sid Ryan will be speaking at 12 noon, Nathan Phillips Square. Hundreds of workers, friends and families of those killed and injured on the job will gather with a sea of placards calling for immediate action: "Kill a worker, go to jail." Oksana Afanasenko, the widow of Aleksey Bloomberg who was killed last Dec. 24, will be a speaker at the Toronto event and sole survivor Dilshod Marupov will also be in attendance.

Secretary-Treasurer Marie Kelly will be attending the Stratford & District Labour Council ceremonies scheduled to begin at 10:30 a.m. at the Upper Queen's Park Band Shell, Queen's Park Drive.

See the OFL's full media release sent on Marketwire at 10:09 a.m. today.

For More Information: Patrick (Sid) Ryan, President
Lynn Simmons
OFL Communications...

http://ofl.ca/index.php/news/index_in/sid_ryan_president_ontario_federation_of_labour_and_marie_kelly_secretary_t/

Tuesday, April 27, 2010
Toronto Day of Mourning April 28: "Kill a worker, ..."

[quoted in full in the article]

... also be in attendance.

For More Information: Patrick (Sid) Ryan, President
Lynn Simmons
OFL Communications...

http://ofl.ca/index.php/news/index_in/toronto_day_of_mourning_april_28_kill_a_worker_go_to_jail_the_only_way_to_s/

⁶ "The Westray Bill : Down sides"
<http://www.workers-safety.ca/remository>
2006 03 27 (2005 04 28)

http://www.workers-safety.ca/remository?do=view&file=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2006%7C2006+03+27+Westray_Down+Sides+%28AGM+2005+04.doc

OHCOW hosts Dr. Tushar Kant Joshi

¹ <http://www.ohcow.on.ca/>
² OHCOW Occupational Health Clinics for Ontario Workers
970 Lawrence Ave. West, Suite 110, Toronto. M6A 3B6
416 449 0009 1 888 596 3800 fax 416 449 7772

<http://www.ohcow.on.ca/>
³ <http://www.cela.ca/>

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⁴<http://www.cela.ca/newsevents/public-forum/learning-our-shared-experience-asbestos>
⁵ 29 April 2010.

⁶ [Tushar Kant Joshi, Utpal B. Bhuva, Priyanka Katoch, "Asbestos Ban in India : Challenges Ahead," *Annals of the New York Academy of Sciences*, pages 292-308. Published Online: Oct 5 2006 12:00AM. DOI: 10.1196/annals.1371.072

<http://www3.interscience.wiley.com/journal/120175756/issue?CRETRY=1&SRETRY=0>

<http://www3.interscience.wiley.com/journal/122401764/group/home/home.html>

<http://www3.interscience.wiley.com/cgi-bin/home>]

⁷ [<http://www.ijoem.com/article.asp?issn=0019-5278;year=2008;volume=12;issue=1;page=42;epage=42;aulast=Joshi;type=0>

Indian Journal of Occupational and Environmental Medicine

<http://www.ijoem.com/>]

⁸ -- see opinion item below.

⁹ this term -- "financial partners" -- was not used at the meeting -- it is drawn from the CHRYSOTILE Institute's website.

¹⁰ -- see opinion item below. ○

¹ Canada, Québec, and CHRYSOTILE

Institute Institute... Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: d441267@yahoo.ca .

¹ -- see note below.

² <http://www.chrysotile.com/en/index.aspx>

³ Chrysotile Institute, 1200, McGill College, Suite 1640, Montreal, Quebec. H3B 4G7

⁴ <http://en.wikipedia.org/wiki/Asbestos>

⁵ <http://en.wikipedia.org/wiki/Chrysotile>

⁶ http://www.chrysotile.com/data/encart_an_final.pdf

⁷ <http://www.chrysotile.com/en/sfuse/guide.aspx>

⁸ <http://www.chrysotile.com/en/sfuse/guide.aspx>

⁹ *Guidelines for a regulation on the Safe and Responsible use of chrysotile asbestos*

<http://www.chrysotile.com/en/sfuse/guide.aspx>

¹⁰ The Chrysotile Institute & Quebec Asbestos Mining Association, *Safe Use of Chrysotile Asbestos: A Manual on Preventive and Control Measures*, September 1993, revised 1998.

<http://www.chrysotile.com/en/sfuse/manual.aspx>

¹¹ <http://www.chrysotile.com/en/chrysotile/regulation/default.aspx>

<http://www.oit.org/ilolex/english/convdisp1.htm>

¹² <http://www.chrysotile.com/en/sfuse/industry.aspx>

¹³ <http://www.chrysotile.com/en/news/hot/rotterdam.aspx>

¹⁴ <http://www.chrysotile.com/en/sfuse/>

¹⁵ CANADA, House of Commons Debates, NUMBER 066, 38th PARLIAMENT, 1st SESSION, OFFICIAL REPORT (HANSARD), 07 March 2005, VOLUME 140.

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?pub=hansard&mee=66&parl=38&ses=1&language=E&c=1#T1635>

[Translation] Chrysotile Industry

Mr. Marc Boulianne (Mégantic—L'Érable, BQ): Madam Speaker, the people of Thetford Mines and Asbestos have just received some important news. At the conference of Rotterdam Convention member states to be held in Geneva in September 2005, chrysotile fibre will not be included in the list of hazardous substances.

In making this decision, the international community is definitively dissociating chrysotile from other asbestos fibres. It acknowledges that

chrysotile can be extremely safe when encapsulated in cement, asphalt and plastic.

Finally, it recognizes the scientific value of the recent studies on bio-persistence demonstrating that many products used as substitutes for chrysotile show high levels of toxicity.

Today the chrysotile industry is enjoying new international credibility.

The Canadian government must take its cue from Quebec and implement a policy for promoting the safe use of chrysotile.

* * *

¹⁶ CANADA, House of Commons Debates, VOLUME 145, NUMBER 033, 3rd SESSION, 40th PARLIAMENT, OFFICIAL REPORT (HANSARD), 26 April 2010. <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4465060&Language=E&Mode=1&Parl=40&Ses=3>

PRIVATE MEMBERS' BUSINESS

...
Question No. 115--
Mr. Marc Garneau:

With regard to chrysotile asbestos: (a) what measures does the government take to ensure that countries to which Canada exports chrysotile asbestos understand the dangers associated with working with this carcinogenic product; (b) what measures, if any, does the government take to verify that countries to which chrysotile asbestos is exported are working in a safe manner with it; and (c) what are the procedures approved or recognized by the government for safely working with chrysotile asbestos?

Hon. Christian Paradis (Minister of Natural Resources, CPC):

Mr. Speaker, with regard to part a) and with regard to chrysotile asbestos, the Government of Canada has promoted the safe and controlled use of chrysotile on the national and international scene since 1979.

Canada, through its support of the Chrysotile Institute makes efforts to promote the controlled use of chrysotile asbestos by providing information on how to manage the risks associated with its use. The Chrysotile Institute promotes safety in the use of chrysotile asbestos internationally. The Chrysotile Institute's activities have strengthened the capacity of importing countries to implement controlled use and are leading to the adoption of policies and work practices similar to those applied in Canada. Countries are encouraged to implement measures in compliance with the International Labour Organization, ILO, Convention 162 on Safety in the use of Asbestos.

In addition, each bag of chrysotile asbestos carries standard warning labels and risk phrases in English and French. Similar labels are affixed to stretch-wrapped pallets prior to shipment. The containers holding the stretch-wrapped pallets during shipping carry two labels consistent with the Canadian Maritime Code and U.N. Code for chrysotile asbestos. In most cases, upon arrival in the importing country, the containers are taken from the dock directly to the factory which uses the chrysotile asbestos.

With regard to part b) Although the implementation of domestic measures ensuring the safety and health of workers in the workplace is the sovereign responsibility of importing countries, Canada is contributing to the promotion of the safe use of chrysotile asbestos. The Chrysotile Institute, a not-for-profit organization is mandated by the federal government and the government of Québec, as well as by industry and the unions representing chrysotile asbestos workers, to support the promotion of the controlled use of chrysotile asbestos nationally and internationally.

Since its founding in 1984 the Chrysotile Institute has provided technical and financial aid for the creation of a dozen national industry associations in as many countries. These associations distribute health and safety information to their members, organize training seminars, coordinate dust-monitoring activities with the International Chrysotile Association,

coordinate government-industry relations and monitor developments.

In 1986, the ILO unanimously approved Convention 162, "Safety in the Use of Asbestos". This Convention advocates the strict regulation of chrysotile. This convention, along with recommendations by the World Health Organization are still the international point of view favoring the controlled-use approach for chrysotile asbestos.

For further information concerning the Institutes activities please see the following website: <http://www.chrysotile.com/en/about.aspx>.

With regard to part c) Responsibilities for occupational health issues are shared with the provinces.

Canada Occupational Health and Safety Regulations, COHSR, Part X, Hazardous Substances, made under part II of the Canada Labour Code address the use and handling of hazardous substances in workplaces under federal jurisdiction. Under COHSR, all forms of asbestos are regulated via set exposure limits namely: 0.1 f/cc, fiber per cubic centimeter, for all forms of asbestos other than chrysotile, and 1 f/cc for airborne chrysotile asbestos. Please see the following website: <http://laws.justice.gc.ca/eng/SOR-86-304/page-5.html#anchorbo-ga-1-X>

In addition, the elimination and the reduction of the hazards are two preliminary preventive measures regulated by the COHSR, part XIX, Hazard Prevention Program. Please see the following website: <http://laws.justice.gc.ca/eng/SOR-86-304/page-10.html>

For projects involving the renovation or rehabilitation of federal real properties, the Department of Public Works and Government Services Canada, PWGSC, follows part II of the Canada Labour Code for all construction/renovation of Federal Buildings. In addition, PWGSC adheres to Departmental Policy #57 "Asbestos Management in Federal Projects and Buildings" which provides direction in how to manage Asbestos Containing Materials (ACM) within the context of construction / renovation of Federal buildings as well as the safe operation and maintenance of federal facilities.

Additional information about chrysotile asbestos can be found at the following Health Canada website: <http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/enviro/asbestos-amiant-eng.php#no>

¹⁷ Kathleen Ruff, "Quebec's asbestos consensus crumbles," 05 October 2009, *Toronto Star*. <http://www.thestar.com/article/704763>

¹⁸ http://www.chrysotile.com/data/newsletter/Anlglais_V8_No2.pdf

¹⁹ [http://www.worksmartontario.gov.on.ca/scripts/default.asp](http://www.labour.gov.on.ca/english/http://www.worksmartontario.gov.on.ca/scripts/default.asp)
<http://www.worksmartontario.gov.on.ca/scripts/default.asp?contentID=2-2-1&mccategory=health>

²⁰ in this *newsletter*, "The right to a government-inspected workplace -- not here in Ontario now, nor soon. -- a polemic --" 2007 07 Vol.15 No.3 page 4 & 2007 11 Vol. 15, No. 4 page 8.

²¹ -- see article above.

²² "Ontario's green ad in the USA and mercury hazard to workers in China," Vol.18, No.2, pages 4 & 5, April 2010.

²³ Relevant to this, the Canadian Centre for Occupational Health and Safety has apparently not joined this public debate as a major advocate -- see in this *newsletter*, "Canadian Centre for Occupational

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Health & Safety - Why was it created? -- What does it do now?-- " 2009 06 Vol.17, No.03, pages 9 & 10.

²⁴ see also: NYCOSH New York Committee for Occupational Safety and Health, "Asbestos ... Canada's Deadly Export ..." http://www.nycosh.org/workplace_hazards/Asbestos/asbestos.html

²⁵ -- see also in this newsletter:

- o April 2009, Vol.17, No.02, page 5, "in the press - '...to Trial ... on ... Asbestos Poisoning ...'"
- o February 2009, Vol.17, No.01, page 3, "in the press-'Canada's double standard'"

²⁶see also: Barry Castleman, "Canada's Deadly Export," *The Washington Post*, 19 November 2004; page A29. <http://www.washingtonpost.com/wp-dyn/articles/A61372-2004Nov18.html>

²⁷ **OSHA** US Department of Labor, Occupational Safety & Health Administration, 200 Constitution Avenue, NW, Washington, DC, 20210. <http://www.osha.gov/SLTC/asbestos/> <http://www.osha.gov/>

²⁸ **EPA** US Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460 <http://www.epa.gov/asbestos/> <http://www.epa.gov/>

²⁹ -- see note above for full text and reference to the quote of the federal Minister of Natural Resources.

³⁰ -- see also "The dangerous global asbestos trade," *The World*, 21 July 2010 <http://www.theworld.org/> <http://www.theworld.org/2010/07/21/white-asbestos-steve-bradshaw-bbc-icij/> O

in the press -

West Virginia Coal

² April 2010, Vol. 18 No.2, page 4.

³ US MSHA Mine Safety and Health Administration, 1100 Wilson Boulevard, 21st Floor, Arlington, Virginia, 22209-3939.

<http://www.msha.gov/>

⁴ Dan Barry, Ian Urbina, Clifford Krauss, "Dealing With Dangers of Coal / Safety Practices Differ Sharply at 2 Appalachian Operators," *The New York Times*, 23 April 2010, pages A1, A16, A17.

⁵ **NYCOSH** Joel Shufro, Executive Director, New York Committee for Occupational Safety and Health, Letter to the Editor, *The New York Times*, 20 April 2010, page A18, "Beyond the Mining Tragedy: Safety for All Workers."

⁶ <http://www.nytimes.com/2010/04/20/opinion/l20miners.html?scp=7&sq=New%20York%20Committee%20for%20Occupational%20Safety%20and%20Health&st=cse> <http://www.nytimes.com/>

⁷ <http://www.nytimes.com/2010/04/20/opinion/120miners.html?scp=1&sq=joel%20shufro&st=cse>

⁸ <http://www.nycosh.org/index.html>

⁹ "EDITORIAL Lessons From the Big Branch Tragedy Published: April 13, 2010" <http://www.nytimes.com/2010/04/14/opinion/14wed2.html?scp=1&sq=lessons%20from%20the%20big%20branch%20tragedy&st=cse>

¹⁰ **H.R.2067 Protecting America's Workers Act (Introduced in House)**

[http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.2067:](http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.2067)

¹¹NYCOSH New York Committee for Occupational Safety and Health, 116 John Street, Suite 604, New York, New York, 10038. 212 227 6440; fax 212 227 9854

¹² <http://www.nycosh.org/index.html>

¹³ -- see also: EDITORIAL, "Listen to the Miners," *The New York Times*, 07 June 2010, page A20.

<http://www.nytimes.com/2010/06/07/opinion/07mon2.html?ref=opinion>

<http://www.nytimes.com/pages/opinion/index.html>

¹⁴ -- see also: EDITORIAL, "That Noisy Coal Mine Alarm," *The New York Times*, 19 July 2010, page A18.

¹⁵ **Oil Rig** Campbell Robertson, Clifford Krauss, "Oil Rig Sinks, Raising Fears Of Major Spill," *The New York Times*, 23 April 2010, pages A1, A15.

¹⁶ Clifford Krauss, "Accidents Don't Slow Gulf of Mexico Drilling," *The New York Times*, 23 April 2010, page A15.

¹⁷ at page A1.

¹⁸ -- see also Ian Urbina, "Workers on Doomed Rig Voiced Concern on Safety / Feared Reprisals if They Reported Problems, Survey Taken by the Owner Shows," *The New York Times*, 22 July 2010, pages A1 & A16.

¹⁹ **Siberian Mine** Ellen Barry, "Twin Explosions at a Siberian Mine Kill 12 and Trap Scores," *The New York Times*, 10 May 2010, page A6.

²⁰ Ellen Barry, "Rescuers Are Counted Among Dead As Toll Rises in Russian Mine Blasts," *The New York Times*, 11 May 2010, page A4.

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²² Ellen Barry, "World Briefing / Russia: Mine Rescue Halted on Fears of Explosion," *The New York Times*, 14 May 2010, page A8.

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³⁰ ...[US] Federal Rules..Lab Workers... Andrew Pollack & Duff Wilson, "Perils in the Biotech Frontier / [US] Federal Rules to Protect Lab Workers Fall Short Of Industry Advances / Federal Safety Rules For Labs Fall Short Of Biotech Advances /

Fewer safeguards than a blue-collar plant," *The New York Times*, 28 May 2010, pages B1 & B6.

³¹ -- see also: Andrew Pollack & Duff Wilson, "A Higher Bar for Pathogens, But Adherence Is an Issue," *The New York Times*, 28 May 2010, pages B6.

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³³ <http://connecticosh.org/>

³⁴ <http://freepdfhosting.com/a135ccade5.pdf>

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³⁶ ... **methyl iodide** ... Malia Wollan, "Dispute Over Pesticide for California Strawberries Has Implications Beyond State / A science panel says a study of methyl iodide was inadequate," *The New York Times*, 20 June 2010, page 24.

³⁷ -- re CAS -- see in this newsletter - July 2008.

Vol.16, No.03, page 4\7.

³⁸ **iodomethane** CH₃-I 141.94 g/mol CAS 74-88-4

http://en.wikipedia.org/wiki/Methyl_iodide

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<http://www.epa.gov/opprd001/factsheets/>

<http://www.epa.gov/>

⁴⁰ **Scrap Metal** Jim Yardley, "Radiation in Imported Scrap Metal Raises Health Concerns in India / Experts see little protection against dangerous materials from overseas," *The New York Times*, 24 April 2010, page A4.

⁴¹Jim Yardley, "Indian University Is Deemed Source of Radiation Exposure," *The New York Times*, 29 April 2010. <http://www.nytimes.com/2010/04/30/world/asia/30india.html?scp=2&sq=jim%20yardley&st=cse>

⁴²



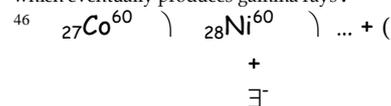
Co	=	Cobalt.
[Ar]3d ⁷ 4s ²	=	electron configuration.
⁶⁰	.	atomic mass
58.93	=	atomic mass (g/mol).
27	=	atomic number.

<http://www.nndc.bnl.gov/chart/reCenter.jsp?z=27&n=33> <http://acswebcontent.acs.org/games/pt.html#top>

⁴³ <http://www.nndc.bnl.gov/chart/>

⁴⁴ <http://en.wikipedia.org/wiki/Cobalt-60>

⁴⁵ a simplified representation of the decay scheme which eventually produces gamma rays :



⁴⁷ http://en.wikipedia.org/wiki/Decay_scheme

⁴⁸ $\bar{\nu} = \bar{\nu}^0 = \text{beta minus particle}$
= an electron.

http://en.wikipedia.org/wiki/Beta_decay

⁴⁹ $(= \gamma^0 = \text{gamma ray}$

= electromagnetic radiation.

http://en.wikipedia.org/wiki/Gamma_decay#Gamma_ray_production

50 shipbreaking ... asbestos

Gary Cohn & Will Englund, *Baltimore Sun*, "THE SHIPBREAKERS," [twelve articles] December 1997 & January 1998.

<http://www.pulitzer.org/works/1998->

Investigative-Reporting

⁵¹ http://en.wikipedia.org/wiki/Ship_breaking

⁵² <http://www.baltimoresun.com/>

⁵³ [US] CSB J... J..., "CSB SEEKS ADVICE ON SAFE SUBSTITUTES," *C&EN*, 03 May 2010, page 29 www.cen-online.org

⁵⁴ [US] OSHA J... J..., "OSHA TOUGHENS PENALTIES," *C&EN*, 03 May 2010, page 29 www.cen-online.org

⁵⁵ **Chemicals And Cancer**, Rudy M. Baum, "FROM THE EDITOR / Chemicals And Cancer," *C&EN*, Volume 88, Number 22, 31 May 2010, page 5 www.cen-online.org

⁵⁶ US DEPARTMENT OF HEALTH AND HUMAN SERVICES, National Institutes of Health, National Cancer Institute, Bethesda, Maryland, 20892-8322. *Annual Report for 2008-2009 / Reducing Environmental Cancer Risk, What We Can Do Now* http://deainfo.nci.nih.gov/advisory/pcp/pcp08-09rpt/PCP_Report_08-09_508.pdf <http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm> <http://www.cancer.gov/>

⁵⁷ **PLASTIC PANIC** Jerome Groopman, "MEDICAL DISPATCH / THE PLASTIC PANIC / How worried should we be about everyday chemicals?," *The New Yorker*, 31 May 2010. http://www.newyorker.com/reporting/2010/05/31/100531fa_fact_groopman http://www.newyorker.com/magazine/bios/jerome_groopman/search?contributorName=jerome%20groopman <http://www.newyorker.com/>

⁵⁸ —see also: Rudy M. Baum, "FROM THE EDITOR / Ganging Up On Chemicals," *C&EN*, Volume 88, Number 23, 07 June 2010, page 5. www.cen-online.org

⁵⁹ -- re CAS -- see in this *newsletter* - July 2008. Vol.16, No.03, page 4|7.

⁶⁰ 4,4'-dihydroxy-2,2-diphenylpropane

 CAS 80-05-7 C₁₅H₁₆O₂ 228.29 g/mol. http://en.wikipedia.org/wiki/Bisphenol_A

⁶¹ <http://www.epa.gov/iris/subst/0356.htm>

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm197739.htm>

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<http://www.canadagazette.gc.ca/archives/p1/2007/2007-05-12/html/notice-avis-eng.html>

<http://canadagazette.gc.ca/rp-pr/p1/2008/2008-10-18/html/index-eng.html>

⁶² http://www.ec.gc.ca/substances/ese/eng/challenge/batch2/batch2_80-05-7_rm.cfm

⁶³ Britt E. Erickson, "EPA Targets Bisphenol A / Regulation: Agency will examine levels of plastics chemical in water supply and effects on wildlife," *C&EN*, 5 April 2010, Volume 88, Number 14, page 8.

<http://pubs.acs.org/cen/news/88/114/8814news3.html> <http://pubs.acs.org/cen/> ○

¹ from Ontario M of L

<http://www.labour.gov.on.ca/english/>

² **Workplace Violence and Harassment:**

Understanding the Law / Health and Safety

Guidelines / [OH&S] ... Branch ... March 2010

<http://www.labour.gov.on.ca/english/hs/pubs/wpvh/violence.php>

http://www.labour.gov.on.ca/english/hs/pdf/wpvh_gl.pdf

³ **Protecting Workers From Workplace**

Violence and Workplace Harassment

http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php

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

⁵ **Clinic's submission re Bill 168.** <http://www.workers-safety.ca/remository?do=view&file=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2009+11+20.+TWHSLC+Bill+168+Submissions.doc>

⁶ **Expert Advisory Panel on Occupational Health and Safety**

<http://www.labour.gov.on.ca/english/hs/eap/index.ph> ○

DNA data collection ...

Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: d441267@yahoo.ca

¹ <http://www.govtrack.us/congress/person.xpd?id=412375>

² http://en.wikipedia.org/wiki/George_W._Bush

³ US Genetic Information Nondiscrimination Act

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

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h493enr.txt.pdf

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⁴ *Genetic Information and the Law: / Issues in the Insurance and Employment Settings / A Report / 4th Health Law Day held May 20, 2005; University of Toronto / Faculty of Law.*

<http://www.law.utoronto.ca/documents/Lemmens/Genetic%20Information%20and%20the%20Law.pdf>

⁵ *Privacy and Access to Genetic Research Data in the Biobanking Context / Report on workshop held at the Faculty of Law University of Toronto, Canada / March 13, 2009*

http://www.law.utoronto.ca/healthlaw/docs/PrivacyWorkshopReport09_Final.pdf

<http://www.law.utoronto.ca/healthlaw/>

⁶ (I consider much of the early 20th century advocacy of *eugenics* as often representing neither acceptable science nor public policy.)

⁷ <http://en.wikipedia.org/wiki/Eugenics>

⁸ "... Police then conducted around the clock surveillance of Mr. Franklin, following him as he walked or went on drives, and retrieved a plate and napkin he had thrown away after eating pizza, which provided the DNA match. ..."

⁹ Jennifer Steinhauer, "Arrest in 'Grim Sleeper' Killings Fans Debate on DNA Procedure / ... Using familial evidence to track serial killing suspect ... " *The New York Times*, 09 July 2010, pages A1 & A12.

¹⁰ see: James D. Watson, *Molecular Biology of the Gene, Second Edition*, W.A. Benjamin, Inc., New York City 10016, 1970; [ISBN] 8053-9603-9; page 330.

¹¹ Watson, *Second Edition*, pages 634 & 86.

¹² Watson, *Second Edition*, pages 86 & 89.

¹³ Watson, *Second Edition*, pages 86 & 91.

¹⁴ Watson, *Second Edition*, pages 629 & 633.

¹⁵ Nicholas Wade, "Technology Lowers Cost of Decoding a Genome to \$50,000 / A \$1,000 genome might be possible in two or three years ... " *The New York Times*, 11 August 2009, page D3.

¹⁶ "ILLUMINA OFFERS GENOME SERVICE," *CHEMICAL & ENGINEERING NEWS*, 20 July 2009, page 48; American Chemical Society, Washington, D.C. : "Illumina has launched a personal genome sequencing service for consumers at a price of \$48,000 ..."

¹⁷ [elia JH[enry JA[rnaud (Senior Editor)], "CLOSING IN ON PERSONAL GENOME SEQUENCING," *C&EN*, 17 August 2009, page 38; ACS, Washington, D.C.

¹⁸ see also: "Personalized Genomics: Hope or Hype." 2009 Michael Smith Memorial Nobel Forum, *CBC Ideas*, Thursday 24 September 2009. <http://www.cbc.ca/ideas/>

¹⁹ see also: Steven Greenhouse, "Law Seeks to Ban Misuse of Genetic Testing / Family histories of fatal diseases have been used against workers ... " *The New York Times*, 16 November 2009, page B5.

²⁰ see also: [a commercial full-page newspaper advertisement; cited here as an example of purported availability, not an endorsement], "NEW SCREENING TEST FOR CANCER / Get your DNA tested. / Genetic screening tests for over 100 diseases / Take control of your health at the DNA Testing Centres of Canada," *Toronto Star*, 07 February 2010, page A14. www.dnatestingcanada.com

²¹ [Norman-Bloodsaw v Lawrence Berkeley Laboratory (135 F.3d 1260, 1269 (9th Cir. 1998)). <http://archive.ca9.uscourts.gov/coa/newopinions.nsf/04485f8dcbdd4e1ea882569520074e698/6e1e72e03e75e6a88256e5a007188c0?OpenDocument&Highlight=2,Norman-Bloodsaw%20> <http://www.ca9.uscourts.gov/opinions/> <http://archive.ca9.uscourts.gov/>]

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...
An Act
To prohibit discrimination on the basis of genetic information with respect to health insurance and employment.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 2. FINDINGS.
Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These

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advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic "defects" such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to "correct" apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of preemployment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

²³ US Genetic Information Nondiscrimination Act <http://www.govtrack.us/congress/bill.xpd?bill=h110-493>

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h493enr.txt.pdf

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

²⁴ An interesting historical example of the use of DNA identification by bio-sample of a relative is in the probable identification of the remains of Czar Nicholas II and family. That identification was aided by comparison with DNA data of a grandnephew of the Czar's wife, Alexandra Feodorovna, Empress of Russia. The grandnephew: Prince Philip, the Duke of Edinburgh.

²⁵ A.A. and K.D., *THE ROMANOV'S / Together in Life and Death*, "page was created by A.A. and K.D., 3/23/99, for *History & Thought of Western Man, Rich East High School*." <http://www.richeast.org/htwm/ROMAN/ROMANOV.HTM> <http://www.richsouth.org/ClassroomLink/History%20of%20Thought.html> <http://www.richsouth.org/index.aspx>

²⁶ *Privacy and Access to Genetic Research Data in the Biobanking Context / Report on workshop held at the Faculty of Law University of Toronto, Canada / March 13, 2009*

http://www.law.utoronto.ca/healthlaw/docs/PrivacyWorkshopReport09_Final.pdf

<http://www.law.utoronto.ca/healthlaw/>

²⁷ <http://dna.gov/>

²⁸ <http://www.innocenceproject.org/about/> <http://www.innocenceproject.org/know/>

²⁹ <http://www.aclu.org/privacy/medical/15762prs20041222.html>

³⁰ -- see also: Michael Seringhaus, "To Stop Crime, Share Your Genes / The fair way to compile a national database is to get DNA from everyone ...," *The New York Times*, 15 March 2010, page A21.

³¹ <http://www.aclu-nj.org/downloads/AADNABrief.pdf>

³² <http://sentencing.nj.gov/downloads/pdf/articles/2007/Feb2007/opinion02.pdf>

³³ <http://www.acslaw.org/node/5338>

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³⁴ Tania Simoncelli & Sheldon Krimsky, "A New Era of DNA Collections: At What Cost to Civil Liberties?," August 2007; The American Constitution Society for Law and Policy, Washington, DC 20005.

http://www.acslaw.org/files/Microsoft%20Word%20-%20Simoncelli%20%20Krimsky%20-%20DNA%20Collection%20%20Civil%20Liberties%20-%20September%202007_0.pdf

³⁵ Jennifer Steinhauer, "Arrest in 'Grim Sleeper' Killings Fans Debate on DNA Procedure / ... Using familial evidence to track serial killing suspect ...," *The New York Times*, 09 July 2010, pages A1 & A12.

³⁶ -- see also "A Yellow Light to DNA Searches," EDITORIAL, *The New York Times*, 13 July 2010, page A22.

³⁷ Revised Statutes of Canada 1985, c. C-46; as amended. *Criminal Code - Forensic DNA Analysis - s 487.04 et seq.* <http://laws.justice.gc.ca/en/> <http://laws.justice.gc.ca/en/ShowTdm/cs/C-46/20090831/en> http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-gal_XV-gbs_487_04/20090831/en#anchorbo-gal_XV-gbs_487_04

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Definitions **487.04** In this section and in sections 487.05 to 487.0911,

"forensic DNA analysis"

(a) in relation to a bodily substance that is taken from a person in execution of a warrant under section 487.05, means forensic DNA analysis of the bodily substance

and the comparison of the results of that analysis with the results of the analysis of the DNA in the bodily substance referred to in paragraph 487.05(1)(b), and includes any incidental tests associated with that analysis, and

(b) in relation to a bodily substance that is provided voluntarily in the course of an investigation of a designated offence or is taken from a person under an order made under section 487.051 or an authorization granted under section 487.055 or 487.091, or to a bodily substance referred to in paragraph 487.05(1)(b), means forensic DNA analysis of the bodily substance;

Order — primary designated offences 487.051 (1) The court shall make an order in Form 5.03 authorizing the taking of the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis from a person who is convicted, discharged under section 730 or found guilty under the *Youth Criminal Justice Act* or the *Youth Offenders Act*, of an offence committed at any time, including before June 30, 2000, if that offence is a primary designated offence within the meaning of paragraph (a) of the definition "primary designated offence" in section 487.04 when the person is sentenced or discharged.

Order — primary designated offences (2) The court shall make such an order in Form 5.03 in relation to a person who is convicted, discharged under section 730 or found guilty under the *Youth Criminal Justice Act* or the *Youth Offenders Act*, of an offence committed at any time, including before June 30, 2000, if that offence is a primary designated offence within the meaning of any of paragraphs (a.1) to (d) of the definition "primary designated offence" in section 487.04 when the person is sentenced or discharged. However, the court is not required to make the order if it is satisfied that the person has established that the impact of such an order on their privacy and security of the person would be grossly disproportionate to the public interest in the protection of society and the proper administration of justice, to be achieved through the early detection, arrest and conviction of offenders.

Order — persons found not criminally responsible and secondary designated offences (3) The court may, on application by the prosecutor and if it is satisfied that it is in the best interests of the administration of justice to do so, make such an order in Form 5.04 in relation to

(a) a person who is found not criminally responsible on account of mental disorder for an offence committed at any time, including before June 30, 2000, if that offence is a designated offence when the finding is made; or

(b) a person who is convicted, discharged under section 730 or found guilty under the *Youth Criminal Justice Act* or the *Youth Offenders Act*, of an offence committed at any time, including before June 30, 2000, if that offence is a secondary designated offence when the person is sentenced or discharged.

In deciding whether to make the order, the court shall consider the person's criminal record, whether they were previously found not criminally responsible on account of mental disorder for a designated offence, the nature of the offence, the circumstances surrounding its commission and the impact such an order would have on the person's privacy and security of the person and shall give reasons for its decision.

³⁹ *DNA Identification Act 1998*, c. 37 s.3.

<http://laws.justice.gc.ca/en/D-3-8/FullText.html>

⁴⁰ *DNA Identification Regulations* P.C. 2000-1109 July 27, 2000

<http://laws.justice.gc.ca/en/d-3-8/sor-2000-300/95711.html>

⁴¹ generally in the category of "secondary designated offences" (s.487.04; 487.051 (3)) and some "primary designated offences" (s.487.04; 487.051 (2))

⁴² generally in the category of "primary designated offences" (s.487.04; 487.051 (1))

⁴³ -- see also Tim Naumetz, "Bid to expand DNA sampling sparks criticism," *Law Times*, 12 July 2010. <http://www.lawtimesnews.com/20100712/180/Headline-News/Bid-to-expand-DNA-sampling-sparks-criticism>

⁴⁴ *DNA Identification Act 1998*, s.5 (3) & (4).

⁴⁵ *DNA Identification Act 1998*, s.10(2).

⁴⁶ (The term "bio-sample" is used here.)

⁴⁷ *DNA Identification Act 1998*, s.10(2).

⁴⁸ to borrow a phrase -- *Charter* s.1 -- cited below.

⁴⁹ -- see: <http://www.rcmp-grc.ca/dnaac-adnc/index-eng.htm>

⁵⁰ http://www.nddb-bndg.org/main_e.htm

⁵¹ http://www.nddb-bndg.org/prj_secu_e.htm

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⁵² http://www.nddb-bndg.org/train/docs/Annual_2008-2009_e.pdf

⁵³ *Canadian Charter of Rights and Freedoms* C being Schedule B, Part I of the *Canada Act* 1982, including the *Constitution Act*, 1982 (1982 c. 11 (United Kingdom)), s. 1.

⁵⁴ <http://laws.justice.gc.ca/en/charter/>

¹ "Eyes on LAO

Spotlight: Toronto Workers' Health & Safety Legal Clinic

Posted on: Monday, December 21/09"

² http://www.legalaid.on.ca/en/news/newsarchive/0912-07_spotlight-twslc.asp

<http://www.legalaid.on.ca/en/default.asp>

³ **LAO Spotlight** <http://www.workers-safety.ca/remository?do=view&file=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2009+12%7C2009+12.+LAO+Spotlight.pdf>

⁴ **OLRB** Ontario Labour Relations Board,
505 University Avenue, 2nd Floor,
Toronto. M5G 2P1 416 326 7500
<http://www.olrb.gov.on.ca/english/homepage.htm>
<http://www.olrb.gov.on.ca/english/legalas.htm>

Legal Assistance

If you are a party to a proceeding before the Ontario Labour Relations Board, you may want to get a lawyer to advise you or represent you.

LAWYER REFERRAL SERVICE

When you call the LRS, it will provide you with the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options. You can access the service by calling: 1-800-268-8326 or 416-947-3330 (within the GTA)

For more information go to the Law Society of Upper Canada's website at www.lsuc.on.ca and follow the tabs to "For the Public" and "Lawyer Referral Service".

LEGAL AID

If you think that you cannot afford a lawyer, you may be able to qualify for legal aid. The purpose of legal aid is to make sure that people who do not have money to pay a lawyer still have access to the justice system.

To apply for legal aid, you must visit a Legal Aid Office and obtain a Legal Aid Certificate. The Certificate entitles you to hire the lawyer of your choice.

Legal Aid Offices are located throughout the province of Ontario. For the office nearest you, please call the [Ontario Legal Aid Plan](http://www.legalaid.on.ca), in Toronto at (416) 979-1446; from outside Greater Toronto at 1-800-668-8258.

COMMUNITY LEGAL CLINICS

For some legal problems, [Community legal clinics](http://www.legalaid.on.ca) may be able to help you. The clinics have lawyers and trained legal staff to advise or represent you. You do not need a Legal Aid Certificate to go to a clinic. Clinics do their own financial assessment to see if you qualify for their services. To locate the clinic nearest you, look in the Yellow Pages under "Lawyers/Legal Aid".

Workers may also consider contacting the Toronto Workers' Health & Safety Legal Clinic (416-971-8832 or www.workers-safety.ca) which provides free information, legal advice and representation to low income workers who face health and safety problems at work.

⁶ <http://www.olrb.gov.on.ca/english/legalas.htm>

⁷ **Old City Hall**, photo opposite title page in M. Grossman, *The Law of Occupational Health and Safety in Ontario, Second Edition*, Butterworths, Toronto and Vancouver, August 1994, ISBN 0-409-90414-7. Now out of print : "Scaffolding with bindings, and workers with tools; appearing as part of the stained-glass window (Robert McCausland Company, 1899) overlooking the main entrance area inside Old City Hall, Toronto. Photographed for this book by Eya Greenland, and published here with the permission of Metro Parks & Property."

⁸ http://www.toronto.ca/old_cityhall/old_cityhall_tour.htm

⁹ <http://www.eternalglass.com/site/>

for future issues:

- *Maquila*. www.maquilasolidarity.org
- US Chemical Safety & Hazard Investigation Board.
- Canadian federal OH&S inspections.
- more on Advisory Panel on OH&S.
- case & comment - see page 1 in this issue.
- Clinic hosts Chinese delegation - again.

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Suite 2000, Box 4
Toronto, Ontario, Canada.
M5G 1Z8
416 971 8832 fax 416 971 8834
<http://www.workers-safety.ca/>

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