



## TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

but identical in intent. Interestingly, the Government of today has stepped away from recognizing any obligation to be generous towards the Veterans of Canada by excluding the Social Contract from the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*, the so-called New Veterans Charter. An example of this so-called Social Contract, s. 4 of the *VRAB Act* states:

The provisions of this Act and any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to the end that the recognized obligation of the people and the Government of Canada to those who have served their country so well and to their Dependants may be fulfilled.

b. Benefit of the Doubt. The Benefit of the Doubt (BOD) standard, a concept that describes the burden of proof that Veterans' applications must satisfy, is found in both the *Pensions Act* and the *VRAB Act*, as well the *War Veterans Allowance Act*, *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*. The wording is all but identical in the four pieces of legislation, describing the consideration, weighing and admissibility of evidence. Specifically, s. 39 of the *VRAB Act* states:

In all proceedings under this Act, the Board shall

(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;

(b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and

(c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.

4. Intent. VAC's and VRAB's interpretation of Benefit of the Doubt violates the intent of the so-called Social Contract. Moreover, their interpretations also clearly violate the intent of the Benefit of the Doubt as it is discussed in the Woods Committee Report of 1968, a seminal document in the consideration of what constitutes the fair treatment of Veterans today. Chapter 8 of the Woods Committee Report goes to great length to discuss the Benefit of the Doubt. Indeed, it was the recommendations of that report that led directly to the wording of BOD as it is presented in the legislation today. The following considerations are articulated in that Report:

a. The original intent of this concept was to relieve the pensioner or applicant of the requirement to adduce conclusive proof. This was to ensure proper consideration in cases where documentary evidence was limited or not available. The policy in regard to rules of evidence should therefore be "generous".

b. When the evidence is considered and all reasonable inferences are made in favour of pensioners or applicants, there could very well be instances when applications will be allowed even though the preponderance of evidence is against them. This is a very important consideration, and one that is very difficult for members of the legal profession to accept.

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c. *Proceedings are by way of enquiry and not trial, and hence there are not "two sides".* It is wholly inappropriate to equate BOD to "beyond a reasonable doubt", burden of proof in criminal courts, or the "balance of probabilities" applied in civil courts.

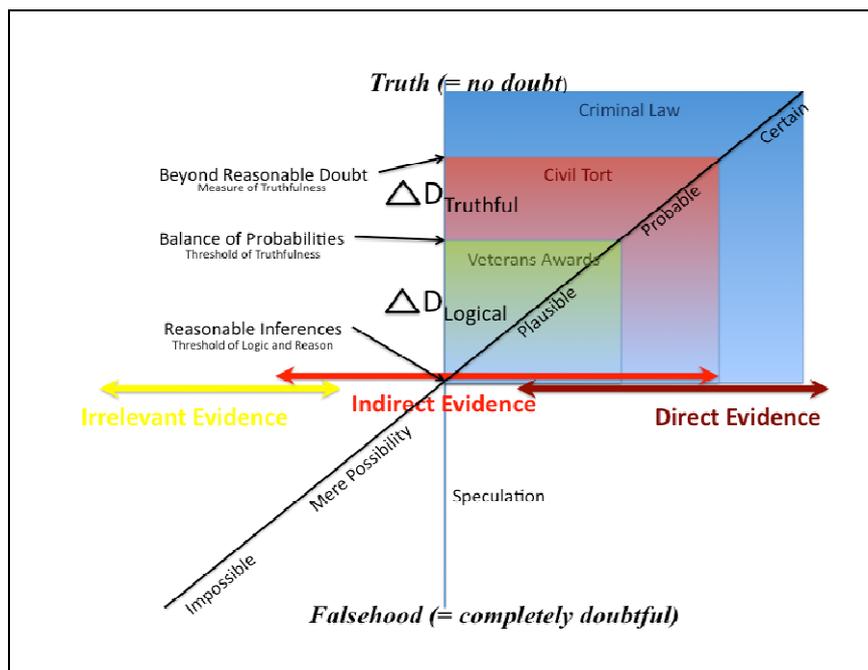
d. The weight of evidence should not be discounted because it has been arrived at by inference from secondary or indirect evidence.

e. The question of credibility should seldom arise, particularly with medical evidence given in a professional context.

5. Reasonable Inference. By definition, a reasonable inference is a measure of sound reason and logic, it is not a measure of truthfulness. In other words, *a reasonable inference is a logical conclusion that may not necessarily be true!*

6. Doubt. Examples of sources of doubt include:

- a. Contradictory evidence.
- b. Evidence leading to an alternative conclusion.
- c. Missing evidence.
- d. Evidence deemed not credible or unbelievable.



1. Beyond Reasonable Doubt is the measure of truthfulness in Criminal Law that is as close to certainty as can be reasonably expected.
2. Balance of Probability is a lesser standard of truthfulness in Civil Tort that suggests a claim is "probably true".
3. Benefit of the Doubt is a measure of the logic that suggests the claim of a Veterans claim is plausible, or reasonable to believe.

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### 7. Application

a. Interpreting the Benefit of the Doubt as the Balance of Probabilities is anything but liberal and goes against the very provisions of the so-called Social Contract. From the Woods Committee Report it is reasonable to infer that if errors are to be made in the adjudication of applications, they should be in favour of generosity towards Veterans or applicants rather than risk denying a worthy Veteran of entitlements.

b. In making *every reasonable inference* in favour of a Veteran or applicant, the evidence should suggest to the adjudicator that it is *reasonable to believe* that a disability is related to military service. The link does not have to be proven conclusively; it merely must be demonstrated that, to a reasonable person, *the claim of a link is plausible*.

c. In resolving *any doubt* in favour of the applicant or appellant, the letter and spirit of the Woods Committee Report clearly provides that:

(1) only contradictory evidence should be considered admissible. In the context of the Woods Committee, when contradictory evidence merely gives rise to doubt, the "benefit of said doubt" must be given to the Veteran or applicant.

(2) contradictory evidence in the context of the Woods Committee is evidence that directly invalidates or negates a piece of evidence presented in support of a Veteran or applicant. The possibility of alternatives to such evidence merely gives rise to doubt, it does not constitute contradictory evidence.

(4) there should rarely be doubt as to the credibility of evidence, especially medical evidence given in a professional context. This notwithstanding, questionable credibility gives rise to doubt, *which must be resolved in favour of an applicant or Veteran*. When such doubt is not resolved in favour of a Veteran or applicant, a clear explanation must be rendered.

(3) every effort should be made to make reasonable inferences from secondary or indirect evidence based on the circumstances of a claim to compensate for missing evidence. The doubt associated with such inferential evidence should also be resolved in favour of an applicant or Veterans, which gives such evidence full weight.

8. Example. A Veteran makes an application for a disability award for degenerative disk disease that is claimed to be a direct result of a vehicle accident that occurred *in an operational theatre*.

a. Supporting Evidence. Evidence in support of the Veterans claim includes:

(1) X-rays indicating severer deterioration of several disks in lumbar area of the Veteran's spine;

(2) A letter from the Veteran's orthopaedic surgeon offering a supporting diagnosis and a professional opinion that an automobile accident could cause the type of disability the Veteran is suffering from;

(3) Unsolicited photographs of a destroyed automobile with a letter from a colleague in the theatre of operations describing in how the Veteran and passengers were lucky to have survived the crash;

(4) A letter from another colleague who met the Veteran in the operational theatre around the time of the accident and noted that the Veteran was suffering from extreme back pain.

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- b. Other Evidence. The Veteran's military personnel and medical files from the military contain reports throughout the Veteran's career related to back pain, including:
- (1) While serving, the Veteran reported injuring his back during unit sports;
  - (2) While serving in the Airborne Regiment the member complained of a very stiff back after a parachute deployment and two week training exercise;
  - (3) After being thrown from an armoured vehicle during a exercise training, the Veteran underwent physiotherapy for a stiff back;
  - (4) During a route march with rucksacks the Veteran was struck by a vehicle and required pain killers for back pain;
  - (5) On one occasion, the Veteran had to be excused from ceremonial parade duty due to back pain;
  - (6) Following a period unarmed combat training the Veterans reported having a sore back.
- c. Contradictory Evidence. Although there is plenty of evidence indicating alternative causes or contributing factors, there is no evidence that directly contradicts or invalidates the evidence listed in paragraph 8a.
- d. Consideration
- (1) Based on the evidence provided at paragraph 8a it is *reasonable to believe* that the Veteran incurred severe trauma to the spine from the accident in an operational theatre that led to the degenerative disk disease.
  - (2) Although the extensive evidence indicates that there is *considerable reason to doubt* that the vehicle accident in the theatre of operations alone was the cause of the Veterans disability, in accordance with sub-paragraph (c) of the legislation this doubt is to be resolved in favour of the Veteran.
- e. Decision. In accordance with the provisions of the Benefit of the Doubt legislation, the adjudicator must find in favour of the Veterans claim. This example describes how the Woods Committee Report reasoned that under the benefit of the doubt favourable ruling despite a even though the preponderance of evidence is against the claim.

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case & comment —

### *Attorney General Ontario v Fraser - Supreme Court of Canada.*

John Bartolomeo

In a previous issue of the *newsletter*,<sup>1</sup> we reported on *Fraser v. AG Ontario*<sup>234567</sup> which was a win at the Ontario Court of Appeal for farm workers by finding that the *Agricultural Employee Protection Act, 2002*<sup>8</sup> was unconstitutional. Since then the Supreme Court of Canada heard the

appeal of that decision. The Supreme Court overturned the decision<sup>9</sup>.

The majority of the Court found that s. 2(d) of the *Charter* protects workers' right to associate. If a law were to interfere with that right, the law would be unconstitutional. The

decision refers to the process of collective bargaining. It has to be done in good faith. Workers' rights are infringed when it is impossible to participate in the process. That does not guarantee the nature of the collective bargaining process

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solely that there is some kind of process.

According to the decision of the majority, the provisions of the Act have not been properly tested. While there have been attempts to negotiate by the workers, "the union has not made a significant attempt to make it work."<sup>10</sup> It was noted that there is a Tribunal

established by the Act to hear complaints.

As a result of the decision, the Act stands. Farm workers do not have the same type of collective rights as do workers in other sectors. The Supreme Court found that while collective rights are protected in the *Charter* it does not necessarily mean the same type of rights like other

workers. According to the Supreme Court, farm workers are not having their rights impeded. They have the power negotiate and have a labour tribunal to make complaints.

This decision is a blow to farm workers. The system established in 2002 stands, to the detriment of these workers. O

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case & comment —

### ***Ontario Ministry of Labour v United Independent Operators Ltd.***

John Bartolomeo

According to the Court of Appeal's decision,<sup>1</sup> this is the first time the Court had to consider whether independent operators are to be counted when considering if an employer must establish a health and safety committee.<sup>2</sup> The answer is a qualified yes.

The decision turned on the interpretation of s. 9(2)(a) of the *Occupational Health and Safety Act*<sup>3</sup>. That section reads, "A joint health and safety committee is required, at a workplace at which twenty or more workers are regularly employed." The Court found that the decision under appeal interpreted the words,

"regularly employed" too narrowly. As noted elsewhere in this issue, occupational health and safety laws are to be interpreted generously as the law is intended to guarantee a minimum level of protection.

As the words, "regularly employed" are not defined in the *Occupational Health and Safety Act*, the Court considered the definition of each word. The Court found that there was a difference between "worked" and "employed". Even as independent operators, these individuals were regularly employed by United Independent Operators. The Court found that if the

legislation implied "regularly worked" as suggested by the appellant, it would be too narrow a reading of the law.

Although the appeal by the Ministry was allowed, a new trial was not ordered. The employer was complying with the Ministry. This does not mean all independent operators are counted in determining whether a joint health and safety committee is required. The Court noted that no decision looked at whether the drivers were regularly employed "at [the] workplace". That question will remain unanswered. O

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case & comment —

### ***Ontario Ministry of Labour v Sheehan's Truck Centre Inc.***

John Bartolomeo

"Working men and women are a very vulnerable class of persons, especially when heavy equipment is

involved. The Ontario Legislature recognized the need to protect them and the courts must not lightly

interfere with this objective."<sup>1</sup>

Despite not having the required "Class A" licence,

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an employee of Sheehan's Truck Centre Inc.<sup>2</sup> was moving a truck. No trailer was attached but the truck did not have a rear window. He was assisted by another employee. The "signaller" told the driver that he was going to go behind the truck to move some gravel out of the way. The driver nodded. In fact, the driver did not hear what was said and the other employee suffered serious injuries when the truck drove over him.

The employer was charged for failing to ensure that the measures in s. 56 of the *Industrial Establishments Regulation*<sup>3</sup> were fulfilled contrary to s. 25(1)(c) of the *Occupational Health and Safety Act*.<sup>4</sup> The trial judge acquitted the employer. The Crown appealed and the decision was overturned.

The section in the Regulation was under the heading "Material Handling". While the trial judge agreed that the section's requirement for a signaller was breached, it did not apply. The truck

was not being used for material handling, it was just being moved from one part of the lot to another. The trial judge decided that since the truck wasn't engaged in material handling, the regulation did not apply.

The Ministry of Labour's appeal relied on ss. 64 and 70 of the *Legislation Act, 2006*.<sup>5</sup> Legislation is to be interpreted as remedial and is to be given fair, large, and liberal interpretation to best ensure that legislation meets its objective. The *Occupational Health and Safety Act* is remedial public welfare legislation that is intended to protect workers. It would be wrong to narrow the legislation that would interfere with a broad, protective, interpretation. In support of the position the Crown cited one case, *Ontario (Ministry of Labour) v. Hamilton City*.<sup>6</sup>

Sheehan argued that the trial judge had the correct interpretation. The Regulation was speaking specifically to the situation where there was a material

handling element. As there was no trailer attached and the truck was only being moved within the lot, the Regulation did not apply. In addition, the Regulation did not define any type of "vehicle" so the Regulation was overbroad. In the alternative, if there was a breach of the regulation, Sheehan raised a constitutional challenge claiming that the Regulation is grossly disproportionate.

The judge sided with the Ministry of Labour. Citing the legislative goal of the occupational health and safety act and that public welfare legislation should be interpreted broadly, it would be wrong to rely on a narrow reading of the Regulation. While it wasn't actually handling materials, that was the purpose of the truck. Therefore, the regulation applied.

Leave to appeal to the Court of Appeal was granted.<sup>7</sup> ○

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case & comment —

### ***Blue Mountain Resorts v. Ontario (The Ministry of Labour and the Ontario Labour Relations Board).***

John Bartolomeo

The accidental death of a guest at a resort has consequences on employees as well. In a decision of the Divisional Court, the Court found that even the death of

a guest must be reported to the Ministry of Labour under occupational health and safety legislation.<sup>12</sup>

Section 51(1) of the *Occupational Health and Safety Act*<sup>3</sup> requires an employer to report to the inspector, health and safety committee and trade union

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a death or critical injury. It also requires written report addressed to the Director within forty-eight hours.<sup>4</sup> The workplace employer was of the view that since the deceased was not a worker, the section did not apply.

In this case before the Divisional Court the employer was seeking judicial review of an Ontario Labour Relations Board decision<sup>5</sup> that found the death was covered by the health and safety legislation. The Court found that the definition of a person included non-workers. There was no challenge to

the use of that word by the appellant.

The challenge was to the definition of "workplace". In this case, Blue Mountain is a very large resort; there are many areas that are used by guests and not workers. It was argued that "workplace" should only include places where workers are working at the time. Skiing could sometimes be hazardous. However workers would not be the ones skiing. That approach was rejected by the Court.

That approach was rejected because it does not take into

consider the connection between the event and the harm caused. Just because an employee was not present does not mean that the cause of the death could not have happened to an employee. However, that does not mean that all 750 acres of resort property are a workplace. Taken narrowly, the drowning took place in the swimming pool where workers are located. That was sufficient to meet the definition of workplace.

Leave to appeal has been sought by Blue Mountain.O

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### Articling student -- 2011-12: Moira Daly.

Linda Vannucci

Last year we reported<sup>12</sup> that the Law Foundation of Ontario granted funding to the Clinic in partnership with the Centre For Spanish Speaking Peoples,<sup>3</sup> and Industrial Accident Victims Group Of Ontario.<sup>4</sup> The 3 year term funding allows the three clinics to share an articling student with a specific mandate to assist local Spanish speaking clients as well as migrant farmworkers referred by

Justicia for Migrant Farmworkers.<sup>56</sup>

Last year's student, Shane Martinez, finished his articles in late May 2011 and became a private bar lawyer focussing on criminal defense and human rights.

Soon thereafter, the new articling student, Moira Daly, began her work at CSSP. Moira practiced law in New York State prior to

moving here and doing workers compensation cases in the Spanish speaking community in Toronto .

Upon completion of her term at CSSP, Moira will be moving on to IAVGO and will be working at Toronto Workers' Health and Safety Legal Clinic in the new year.

Welcome Moira! O

***Apples, confined space & carbon dioxide ?***

Last year there were two migrant farm worker fatalities at Owen Sound. There have been news<sup>1</sup> and reports of advocate organizations,<sup>2345</sup> but Ontario government public reports do not appear to be readily available.

It may be speculated that there was *confined space*<sup>678910</sup> CO<sub>2</sub> asphyxiation, with a well-known tragic scenario,<sup>1112</sup> with workers without adequate monitors, engineering controls, protective equipment, training or safety plans. It may be further speculated that the CO<sub>2</sub> was from the fermentation of apples to make cider,<sup>131415</sup> and the *confined space* was where the cider was being made. The endnotes here are intended as a brief, albeit incomplete, bibliography.



CAS<sup>16</sup> 124-38-9 <sup>17 18</sup>

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**Clinic's ANNUAL GENERAL MEETING**

07 September 2011 <sup>12345</sup>

**annual report.**

<http://www.workers-safety.ca/annual-report/2011>

**financial report.**

<http://www.workers-safety.ca/publications?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2011+06++AGM>

**ANNUAL GENERAL MEETING 07 September 2011**

**by-law amendment.<sup>6</sup>**

quorum for Board meetings.

The AGM endorsed the Special Resolution of the Board of Directors amending Article 3.01 of the General By-Law<sup>7</sup> - to now be:

3.01 NUMBER OF DIRECTORS AND QUORUM

The affairs of the Clinic shall be managed by its board of directors. Until changed in accordance with the Act, the number of directors shall be 15 of whom 6 shall constitute a quorum<sup>8]</sup> for the transaction of business. One third of the members of the board shall be representative of the clients of the clinic. Notwithstanding vacancies the remaining directors may act if constituting a quorum.

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AGM -

### Clinic Board members

At the Clinic's Annual General Meeting, 07 September 2011, members of the Board of Directors<sup>12</sup> were voted-in<sup>34</sup>

As of 07 September, the Board is, in staggered two-year terms:

**-- ending in one year:**

Hilary Balmer  
Ivan Lancaric  
Victoria Padel  
Michael Grossman

Jason Achorn  
Tony Avakian  
[vacant position]

**-- ending in two years:**

Sumaiya Sharmeen  
John Field  
Diana Dongak-Lee  
Fiona Lui  
Selvathy Kumar  
Georgina Clinton  
[vacant position]  
[vacant position]

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.<sup>5</sup>

Board members may be contacted through the Clinic's phone number or e-mail. 0

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### Clinic's ANNUAL GENERAL MEETING veterans issues discussion.<sup>1</sup>— 15 June & 07 September 2011

Prompted by news reports<sup>2</sup> about Pat Stogran's resignation as Veterans Ombudsman, and his continuing advocacy,<sup>345</sup> our Clinic sought to examine its own role. We started with contact with Col. Stogran. We continued by having as our AGM discussion topic: **"On the Clinic's advice/representation to Canadian Forces personnel and veterans regarding health and safety and compensation issues"**. We did this because injured veterans are obviously workers, many of whom would satisfy LEGAL AID ONTARIO financial criteria.

Although there would be significant differences in risk-taking and organization, armed forces personnel, and the veterans they become, are workers with OH&S and compensations concerns too. For this there is some US precedent.<sup>678</sup>

Thus our Clinic's expertise and experience should be applicable and adaptable. For example, process at WSIB and WSIAT would have some analogy at the federal Veterans Review and Appeal Board.<sup>9 10 11 12 13</sup>

## TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

### veterans issues.<sup>1</sup>

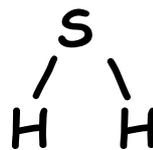
On 11 August Clinic personnel met with Col. Stogran :

- Brief review of our Clinic's rôles to assist workers at work (OH&S), and injured workers (WSIB).
- And other Clinics in the LAO system.
- LAO and our criteria would include Canadian Forces personnel and veterans, as workers, who could be served by our Clinic, without legal fees to them, if they would be of Ontario and meet LAO's financial criteria, *etc.*
- Our experience, so far, has not included Forces personnel or veterans. The reason for this meeting was to explore this.
- The veterans benefits process has similarities to WSIB, and veterans can have legal assistance from the Bureau of Pension Advocates,<sup>2</sup> at the lower decision levels and at the Veterans Review and Appeal Board in Charlottetown; but BPA does not advocate at judicial review, which would be in Federal Court.
- If our Clinic joins the fray, where? At Federal Court? Or following veterans' applications from application start to wherever it leads? Our Board of Directors is to ponder this.
- It was noted that the Veterans Review and Appeal Board does not publish decisions,<sup>34</sup> and is apparently reluctant to do so, in contrast to most every other administrative tribunal. The closest analogy would be WISIAT's anonymized reports. Thus there is no Veterans Review and Appeal Board case law for veterans' advocates to argue from.
- A starting project for our Clinic and Col. Stogran could be to assemble Veterans Review and Appeal Board case reports from veterans, with their permission, anonymize those reports, and publish on our website.

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### in the press -

M In *The Globe and Mail*: "Worker killed in Alberta sour gas leak near Fox Creek"<sup>6 7 8 9</sup> hydrogen sulphide



CAS<sup>10</sup> 7783-06-4 11 12 13

M Also in *The Globe and Mail*: "450 troops sought help for mental health in 10 months"<sup>14</sup>

M Also in *The Globe and Mail*: "FOOTBALL / Diagnosis rekindles concussion fears / Research confirms Duerson's suspicions that he had developed trauma-induced disease."<sup>15 16</sup>

## TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

M Also in *The Globe and Mail*: "Digging in: The politics of asbestos mining / Harper and Charest governments and local Bloc MP provide political cover for reopening of the Jeffrey Mine."<sup>17</sup>

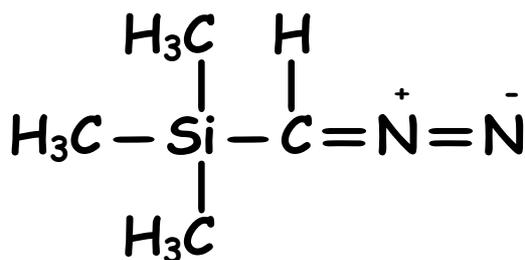
M Also in *The Globe and Mail*: "The legacy of asbestos / My father carried the fibres home from his factory job, and now my mother is dying just as he did. I fear for myself."<sup>18</sup>

M Also in *The Globe and Mail*: "POST TRAMATIC STRESS DISORDER / Hike in RCMP stress-disorder claims raises questions for policy-makers / With more than 1,700 Mounties diagnosed, issues arise about how to protect police, assess claims."<sup>19</sup>

M In the *Toronto Star*: "Labour laws need to be enforced."<sup>20</sup>

M Also in the *Toronto Star*: "Aid for vets fall short / Despite Tory \$2B pledge, only \$12 million a year going to injured soldiers."<sup>21</sup>

M In *CHEMICAL & ENGINEERING NEWS*, Washington, DC : "FIRM FINED FOR CHEMIST'S DEATH / SAFETY: Sepracor Canada admits lack of lab ventilation in worker fatality case."<sup>22 23 24 25</sup> "DRUGMAKER SEPRACOR CANADA pleaded guilty in ... court [in Nova Scotia] on May 2 to one charge of failing to provide proper workplace ventilation ... U.S.\$47,000 fine ... [Roland] Daigle died on Oct. 8, 2008, from lung failure after exposure to trimethylsilyldiazomethane ... when lab fume hoods were not operating because of roof work. ..."



TMSD CAS<sup>26</sup> 18107-18-1 <sup>27 28 29 30 31</sup>

<sup>32 33 34 35 36 37 38 39 40</sup>

M In *The New York Times* : "[West Virginia State] Report Faults Mine Owner For Explosion That Killed 29."<sup>41</sup> & "The Truth About Upper Big Branch / A report leaves no doubt about Massey Energy's responsibility for the mining disaster."<sup>42</sup>

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M Also in *The New York Times* : "[West Virginia] *Mine Owners Misled Inspectors Before Blast, Investigators Say*"<sup>43</sup>

M Also in *The New York Times* : "The Strike That Busted Unions / Regan's mass firing of air traffic controllers devastated labor."<sup>44</sup>

M Also in *The New York Times* : "In a Rush to Find Gold, Indonesians Defy Dangers."<sup>4546</sup>

M Also in *The New York Times* : "The Story of a Dead Sailor [Robert Keyserlingk], His Widow [Michaela] and a Bunch of Boneheaded Politicians" / "Inexplicably, Canada continues to defend the export of asbestos."<sup>47</sup>

M Also in *The New York Times* : "Bid to Aid [California] Farm Workers Union Is Vetoed"<sup>48</sup>

M Also in *The New York Times* : "Antipsychotic Use Is Questioned for Combat Stress."<sup>49</sup>

M Also in *The New York Times* : "N.F.L. Says Drug Testing Will Be Rigorous and Frequent."<sup>50</sup>

M Also in *The New York Times* : "The [US] V.A. Tries to Get Beyond Its Culture of No."<sup>51</sup>

M Also in *The New York Times* : "Poor Models. Seriously. / To wrap up Fashion Week [New York City], a labor analysis."<sup>52</sup>

M Also in *The New York Times* : "Montana: Settlement Approved for Asbestos Victims."<sup>53</sup>

M In *THE NEW YORKER*: "AMERICAN CHRONICLES / OBJECTION / Clarence Darrow's unfinished work."<sup>54</sup> "... Wisconsin v. Kidd ... Oshkosh Municipal Court ... 1898<sup>55</sup> ... Darrow began his defence by calling Kidd, who testified that Paine employed children and that wages he paid for grown men averaged between eighty-five and ninety cents a day ..." <sup>56</sup> "... Darrow ... 'Whether when a body of men desiring to benefit their condition, and the condition of their fellow men, shall strike, whether those men can be sent to jail.' "<sup>57</sup>

M In *NOW*, Toronto : "... How do I green my art supplies? / Choosing eco paints means you won't have to suffer lead and formaldehyde contamination for your art." <sup>58</sup>

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M In the *NATIONAL POST* : "Student dies in blast in school workshop class / PEPPERMINT FUMES / Ottawa teen was making barbecue from drum." <sup>596061626364</sup>

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**Prime Minister Stephen Harper,  
at Asbestos, Quebec, from CTV, 26 April 2011:**<sup>1 2 3 4</sup>

... "The only party that defends the chrysotile industry is our party; the Conservative party" ...

... [a majority Conservative government would not roll back current restrictions in this country] ...

... "We have no plans to do that" ... [chrysotile asbestos] ... "is permitted internationally under conditions of safe and controlled use" ...

... "Canada is one of a number of exporters of chrysotile and there are many countries in which it is legal who are buyers" ...

... "This government will not put Canadian industry in a position where it is discriminated against in a market where sale is permitted" ...

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### Larry Sefton Park, Toronto.



**"MOURN FOR THE DEAD / FIGHT FOR THE LIVING"**<sup>5</sup>

## NOTES:

### 1 Benefit of the Doubt for Canadian Veterans

<sup>2</sup> See also: **veterans issues** - below.  
<sup>3</sup> This article has appeared, and is to appear, elsewhere than in this *newsletter*; it is reprinted in this *newsletter* with the author's permission, and with the Clinic's thanks.

<sup>4</sup> Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: [thecolonel@commandinfluence.com](mailto:thecolonel@commandinfluence.com)

<sup>5</sup> <http://www.commandinfluence.com/>

#### <sup>6</sup> References

- A. Woods Committee Report 1968
- B. *Pensions Act*
- C. *VRAB Act*
- D. *War Veterans Allowance Act*
- E. *Canadian Forces Members and Veterans Re-Establishment and Compensation Act.* O

**case & comment — Attorney General Ontario v Fraser** - Supreme Court of Canada. Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: [bartolj@lao.on.ca](mailto:bartolj@lao.on.ca)

*Ontario (Attorney General) v. Fraser*  
<sup>1</sup> -- see in this *newsletter*, April 2009, Vol.17, No.2, pages 1 & 2.  
<sup>2</sup> 92 O.R. (3d) 481

<sup>3</sup> <http://www.usask.ca/law/sallows/papers/factum%20Fraser%20v%20ontario%20APP.pdf>

<sup>4</sup> <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=32968>

<sup>5</sup> <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/sum-som-eng.aspx?cas=32968>

<sup>6</sup> <http://scc.lexum.org/en/index.html>

<sup>7</sup> <http://scc.lexum.org/en/2011/2011scc20/2011scc20.html>

<sup>8</sup> S.O. 2002, c. 16

<sup>9</sup> *Ontario (Attorney General) v. Fraser*, [2011] S.C.J. No. 20.

<sup>10</sup> *Ibid* at para. 109. O

**case & comment — Ontario (Ministry of Labour) v United Independent Operators Ltd.**

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

<sup>1</sup> 104 OR (3d) 29 April 2011, pages 1 & 15.

<sup>2</sup> *Ibid* at para 1.

<sup>3</sup> R.S.O. 1990, c. O.1, as amended. O

**case & comment — Ontario Ministry of Labour v Sheehan's Truck Centre Inc.** Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: [bartolj@lao.on.ca](mailto:bartolj@lao.on.ca)

104 OR (3d) Part 3, 13 May 13, 2011, pages 182-192.

<sup>1</sup> *Ibid*, para. 41.

<sup>2</sup> *Ontario (Ministry of Labour) v. Sheehan's Truck Centre Inc.* 104 O.R. (3d) 182.

<sup>3</sup> R.R.O. 1990, Reg. 851, as amended.

<sup>4</sup> R.S.O. 1990, c. O.1, as amended.

<sup>5</sup> S.O. 2006, c. 21, Sch. F.

<sup>6</sup> 58 O.R. (3d) 37 (CA), para 16 and 17.

<sup>7</sup> *R. v. Sheehan*, 2011 ONCA 170 (CanLII)

**case & comment — Blue Mountain v OLRB.**

104 OR (3d) Part 3, 13 May 13, 2011, pages 182-192.

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

<sup>1</sup> *Blue Mountain Resorts v. Ontario (The Ministry of Labour and the Ontario Labour Relations Board)*

<sup>2</sup> 2011 ONSC 3057

<sup>3</sup> R.S.O. 1990 c. O.1, as amended.

<sup>4</sup> The full text of s. 51(1) reads, "Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe."

<sup>5</sup> 2008 CanLII 25623 (ON LRB)

<http://www.canlii.org/en/on/onlrb/doc/2008/2008canlii25623/2008canlii25623.html> O

### new articling student.

[Vannucl@lao.on.ca](mailto:Vannucl@lao.on.ca)

<sup>1</sup> See in this *newsletter*, September 2009, Vol. 17, No.4, pages 7 & 8.

<sup>2</sup> See in this *newsletter*, April 2011, Vol. 19, No.1, page 2.

<sup>3</sup> <http://www.spanishservices.org/>  
[http://www.spanishservices.org/index.php?option=com\\_content&view=article&id=90&Itemid=86&lang=en](http://www.spanishservices.org/index.php?option=com_content&view=article&id=90&Itemid=86&lang=en)

<sup>4</sup> [www.iavgo.org](http://www.iavgo.org)

<sup>5</sup> -- see in this *newsletter*, "The Struggle to Improve Working Conditions for Migrant Workers in Ontario," Vol.16, No.3, July 2008, page 1.

<sup>6</sup> see also in this issue of this *newsletter*: "apples & confined space CO<sub>2</sub>" O

<sup>1</sup> **apples & confined space CO<sub>2</sub>** Nicholas Keung, Immigration Reporter, "Inquest sought into migrant [Ontario] farm worker deaths," *Toronto Star*, 22 September 2010.

<http://www.thestar.com/news/investigations/immigration/article/865184--inquest-sought-into-migrant-farm-worker-deaths>  
<http://www.thestar.com/>

<sup>2</sup> <http://www.justicia4migrantworkers.org/>



PROTEST FOR MIGRANT WORKER RIGHTS AND SAFETY

Two Jamaican migrant agricultural workers have died as a result of workplace injuries suffered at Filsinger Farms near Owen Sound, Ontario.

The Jamaican government is reporting that Ralston White and Paul Roach may have died from the inhalation of toxic fumes. Health and safety violations are an everyday occurrence for migrant workers. From chemical and pesticides exposure, to faulty equipment, to workplace bullying and harassment, migrant workers from across the province have described countless examples of dangers while working.

Join us in for a public protest to call on the Minister and Labour to increase rights, protection and safety for migrant workers.

Date: Friday, September 24  
 Location: Ontario Ministry Of Labour  
 (400 university Ave)  
 Time: 12pm



Monday September 13, 2010.

Agricultural Deaths Preventable: Migrant Advocacy group calls on Provincial Government to Protect Workers: Snap inspections, Coroner's Inquest, and Criminal Investigation needed to show Zero Tolerance for

Migrant

Fatalities

(Toronto) Justicia For Migrant Workers (J4MW), a migrant worker advocacy group is saddened to learn of the latest tragedy facing the migrant worker community. On Friday September 10, 2010 J4MW learnt that two Jamaican migrant agricultural workers died as a result of workplace injuries suffered at Filsinger Farms near Owen Sound, Ontario. "We are aggrieved by this tragedy," states Tzazna Miranda Leal an organizer with Justicia for Migrant Workers. "We mourn this loss, and we send our condolences to the families of these workers" continues Miranda Leal.

While details of the fatalities are pending due to an ongoing investigation by the Ministry of Labour, the Jamaican government is reporting that Ralston White and Paul Roach may have died from the inhalation of toxic fumes. Health and safety violations are an everyday occurrence for migrant workers. From chemical and pesticides exposure, to faulty equipment, to workplace bullying and harassment, migrant workers from across the province have described countless examples of dangers while working.

It is critical to examine whether or not these men received safety equipment, what education and training they received or if they were provided information relating to their rights under the Occupational Health and Safety Act. J4MW further argues that the structure of the Seasonal Agricultural Worker Program (SAWP) and the Temporary Foreign Worker Program (TFWP), which employ approximately 30,000 migrant farm workers in Canada, denies migrant agricultural workers labour mobility and the ability to exert rights. Fear of reprimand--firings, repatriations/deportations and permanent disbarment from working in Canada--is a constant concern for many workers, whose employment and ability to work in Canada depends largely on their employers' approval.

J4MW is urging the Minister of the Labour to consider the following options in addressing this tragedy: Snap inspections for all workplaces and accommodations where migrant workers live and work; a coroner's inquest into the details relating to these workplace deaths; an appeals mechanism built into the SAWP and TFW so that migrant workers cannot be arbitrarily and unilaterally repatriated to their homeland (anti-reprisal protection); increased labour rights and protections for all migrant workers; and a criminal investigation into this workplace fatality as mandated by section 217.1 of the criminal code of Canada. The code states

*Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.*

Every year over 300 workers die in occupational related fatalities across Ontario. Countless others are maimed or injured. Agriculture remains one of the most dangerous occupations across Canada. Since 1999 there have been 33 reported deaths of migrant workers employed under the auspices of the Seasonal Agricultural Workers Program in Ontario and 1,129 medical repatriations of SAWP migrants (workers who left Canada because of illness or injuries sustained while in Ontario). The numbers of migrant workplace injuries and deaths are underreported because of premature

# TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

repatriations and workers dying in their home countries as a result of injuries sustained while working in Canada.

For more information please contact Chris Ramsaroop (647) 834 4932-ramsaroochr@gmail.com or Shane Martinez (416) 971-8832 martines@at.lao dot on dot ca

<sup>3</sup><http://www.thestar.com/news/investigations/immigration/article/865184--inquest-sought-into-migrant-farm-worker-deaths>

<sup>4</sup> <http://www.nupge.ca/content/3566/migrant-farm-workers-die-job-related-accident>

<sup>5</sup>[http://www.ufcw.ca/index.php?option=com\\_content&view=article&id=2064&catid=24%3Anews&Itemid=101&lang=en](http://www.ufcw.ca/index.php?option=com_content&view=article&id=2064&catid=24%3Anews&Itemid=101&lang=en)

<sup>6</sup> -- see in this newsletter "... Sullivan Mine disaster ..." January 2007, Vol. 15, No. 1 pages 3 & 4; November 2007, Vol.15, No. 4, page 10.

<sup>7</sup><http://www.osha.gov/SLTC/confinedspaces/index.html>

<sup>8</sup><http://nasdonline.org/document/1042/d000836/confined-space-hazards-a-threat-to-farmers.html>  
<http://nasdonline.org/>

<sup>9</sup>- see also Justine Hunter, Victoria, "Charges laid in deadly B.C. mushroom farm accident," *The Globe and Mail*, 31 August 2010, page A7. -- see in this newsletter October 2010 Vol. 18 No.4 page 9.

<sup>10</sup> [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_050632\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_050632_e.htm)

<sup>11</sup><http://www.osha.gov/SLTC/confinedspaces/index.html>

<sup>12</sup><http://www.cdc.gov/niosh/face/In-house/full8613.html>

<sup>13</sup>[http://en.wikipedia.org/wiki/Apple\\_cider](http://en.wikipedia.org/wiki/Apple_cider)

<sup>14</sup> <http://www.filsingersorganic.com/>

<sup>15</sup> <http://www.filsingersorganic.com/retailers.php>  
<http://thebigcarrot.ca/index.php?id=282>

<sup>16</sup> -- re CAS -- see in this newsletter - July 2008.

Vol.16, No.03, pages 4/7.

<sup>17</sup> CO<sub>2</sub> carbon dioxide O=C=O

CAS 124-38-9 44.01 g/mol

<sup>18</sup> [http://en.wikipedia.org/wiki/Carbon\\_dioxide](http://en.wikipedia.org/wiki/Carbon_dioxide)

## TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

ANNUAL GENERAL MEETING  
JUNE 15, 2011

Location: 180 Dundas Street West, 19<sup>th</sup> Floor

Time: 5:30 p.m.

### Agenda:

1. Approval of minutes of the last AGM June 16, 2010
2. Presentation of the Annual Report
3. Treasurer's Report/Appointment of Auditors
4. Election of new Board members and thanks to previous
5. Other Business
6. Discussion Topic:

On the Clinic's providing advice/representation to Canadian Forces personnel and veterans regarding health and safety and compensation issues

Refreshments - All Welcome - Please Post

<sup>2</sup> 15 June 2011: no quorum.

<sup>3</sup> annual report. <http://www.workers-safety.ca/annual-report/2011>

<sup>4</sup> financial report. <http://www.workers-safety.ca/publications?dir=publications%3A+news>

<http://www.workers-safety.ca/publications?dir=publications%3A+newsletter%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2011+06++AGM>

<sup>5</sup>

## TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

ANNUAL GENERAL MEETING  
SEPTEMBER 7, 2011\*

Location: 180 Dundas Street West, 19<sup>th</sup> Floor

Time: 5:30 p.m.

### Agenda:

1. Approval of minutes of the last AGM June 16, 2010
2. Presentation of the Annual Report
3. Treasurer's Report/Appointment of Auditors
4. Election of new Board members and thanks to previous
5. Other Business
6. Discussion Topic:

On the Clinic's providing advice/representation to Canadian Forces personnel and veterans regarding health and safety and compensation issues

Refreshments - All Welcome - Please Post

\*Please note this meeting was previously scheduled June 15, 2011. All materials (Annual Report, Minutes of last AGM, Financial Statement) were mailed to you during May 2011.

### 6 by-law amendment.

<sup>7</sup> <http://www.workers-safety.ca/publications?do=view&file=publications%3A+newsletters%2C+Workers+Guide%2C+FACT+SHEETS%2C+reports%2C+etc%7C2002+06++Board+Manual%7C2002+06+2+6+13+51.+Board+Orientation+Manual- Revised+2002++%5B%5D.wpd>

<sup>8</sup> changed from "7 shall constitute quorum."

### AGM report -- Clinic Board members

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

<sup>2</sup> <http://www.workers-safety.ca/>

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

<sup>4</sup> for previous: see in this newsletter Vol. 18 No.3 July 2010, page 2.

<sup>5</sup> for previous: see in this newsletter June 2009 Vol. 17, No. 3, page 13.

<sup>6</sup> -- see in this newsletter 2009 09 Vol.17, No.04, page 8. O

### 1 veterans

<sup>2</sup> e.g.: David Pugliese, "Ombudsman Stogran to take side of veterans," *NATIONAL POST*, 16 August 2010

<http://www.nationalpost.com/news/Ombudsman+Stogran+take+side+veterans/3406156/story.html>

<sup>3</sup><http://www.commandinfluence.com/>

<sup>4</sup><http://commandinfluence.com/government/phoenix-rising/#more-6>

<sup>5</sup> <http://www.vrab-tacra.gc.ca/Plans/Publishing-publication-eng.cfm>

<sup>6</sup><http://www.osha.gov/dcspp/partnerships/national/army/army.html>

<sup>7</sup>[http://www.osha.gov/dcspp/partnerships/national/air\\_force/586\\_air\\_force\\_20070829.html](http://www.osha.gov/dcspp/partnerships/national/air_force/586_air_force_20070829.html)

<sup>8</sup>[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=MOU&p\\_id=236](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=236)

<sup>9</sup><http://www.veterans.gc.ca/eng/sub.cfm?source=your-rights>

<sup>10</sup><http://www.veterans.gc.ca/eng/sub.cfm?source=department/organization/bpa1>

<sup>11</sup> <http://www.vrab-tacra.gc.ca/Home-accueil-eng.cfm>

<sup>12</sup> <http://www.vrab-tacra.gc.ca/faq/FAQ12-eng.cfm>

<sup>13</sup> <http://laws-lois.justice.gc.ca/eng/acts/P-6/index.html>

### 1 veterans

<sup>2</sup><http://www.veterans.gc.ca/eng/sub.cfm?source=department/organization/team>

<sup>3</sup> <http://www.vrab-tacra.gc.ca/Plans/Publishing-publication-eng.cfm>

<sup>4</sup> 13 September 2010

Col. Patrick Stogran  
Veterans Ombudsman  
P.O. Box Stn B  
Ottawa, ON K1P 6C3

Dear Col. Stogran:

Thank you for your letter dated August 3 and meeting of August 19 regarding the publishing of decisions rendered by the Veterans Review and Appeal Board (VRAB, the Board). We are always interested in the ideas and issues you bring forward as Veterans Ombudsman and share your commitment to ensuring our Veterans are treated fairly.

As an administrative tribunal, the Board recognizes the need for transparency in decision-making processes and the need to inform the public and Veterans about our work. That said, unlike the courts, the Board is subject to the *Privacy Act* ... [ <http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html> ] and must fulfill its obligations in this era of online access to information. In light of these competing interests, the Board has given much consideration over the years to the matter of striking a balance between openness and privacy.

As the Board hears reviews and appeals of disability pension and award decisions made by the Department of Veterans Affairs, its decisions often include medical diagnoses, details about family matters and other personal information. The Board is also in a unique position in that it rules on disability claims for Veterans as well as still-serving members of the Canadian Forces and the Royal Canadian Mounted Police (RCMP).

The Office of the Privacy Commissioner of Canada has provided some guidance... [ [http://www.priv.gc.ca/jto/administrative\\_tribunals\\_on\\_protecting\\_the\\_privacy\\_of\\_individuals\\_while\\_maintaining\\_the\\_transparency\\_of\\_administrative\\_justice](http://www.priv.gc.ca/jto/administrative_tribunals_on_protecting_the_privacy_of_individuals_while_maintaining_the_transparency_of_administrative_justice) ]. Suggestions include removing personally identifying information that is not essential to an understanding of the decision or the decision-making process.

In 2009, the Board considered the impacts of anonymizing and posting all of its decisions on its Web site. It should be noted here that since its inception, the Board has been driven to produce quality and timely decisions for a high volume of claims. It has issued an average of 7,000 decisions per year since 1995, which is in stark contrast to the organizations referenced in your letter (eg. the Pensions Appeal Board issued only 172 decisions last year).

As discussed, there is a significant cost and effort associated with anonymizing and translating decisions as well as implementing and maintaining a user-friendly system for online publishing.

The Board is undertaking a further review to determine whether options other than posting all of its decisions would equally serve the public interest while improving transparency. This review will consider the unique aspects of our appeal process, including the individual nature of decisions. It will also include a review of best practices used by other tribunals. At the end of the day, our goal is to adopt an informed and responsive approach. We will also continue in our efforts to expand our Web site to provide more relevant information about our hearing process.

In closing, I would like to thank you for this opportunity to discuss the challenges faced by a small tribunal

# TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

such as ours. Please be assured of the Board's commitment to striking a balance between privacy and openness for the benefit of applicants.  
Yours sincerely,

John D. Larlee  
Chair, VRAB

O

## in the press -

<sup>6</sup>**sour gas leak** Nathan Vanderklippe, Calgary, "OCCUPATIONAL HEALTH AND SAFETY / Worker killed in Alberta sour gas leak near Fox Creek," *The Globe and Mail*, 02 May 2011, page A6.

<sup>7</sup><http://www.theglobeandmail.com/news/national/prairies/worker-killed-in-alberta-sour-gas-leak/article2005957/>

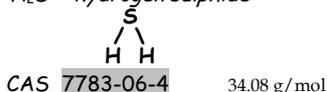
<sup>8</sup> See also in this newsletter 2007 01 Vol.15, No. 01 page 03 & 2007 11 Vol. 15, No. 4 page 10.

<sup>9</sup> -- see also in this newsletter "... Sullivan Mine disaster ..." January 2007, Vol. 15, No. 1 pages 3 & 4; November 2007, Vol.15, No. 4, page 10.

<sup>10</sup> -- re CAS -- see in this newsletter - July 2008.

Vol.16, No.03, pages 4/7.

<sup>11</sup> **H<sub>2</sub>S hydrogen sulphide**



<sup>12</sup>[http://en.wikipedia.org/wiki/Hydrogen\\_sulphide](http://en.wikipedia.org/wiki/Hydrogen_sulphide)

<sup>13</sup><http://www.epa.gov/IRIS/subst/0061.htm>

<sup>14</sup>**mental health** Sue Bailey, St. John's, "PETAWAWA RECORDS / "450 troops sought help for mental health in 10 months" *The Globe and Mail*, 02 May 2011, page A6.

<sup>15</sup>**concussion** Alan Schwarz, Boston, "'FOOTBALL / Diagnosis rekindles concussion fears / Research confirms Duerson's suspicions that he had developed trauma-induced disease," *The Globe and Mail*, 03 May 2011, pages S1 & S6.

<sup>16</sup> see also Rachel Brady, Toronto, "FOOTBALL CFL / [Matt] Dunigan to donate brain to neurosurgeon's research / Hall of Fame quarterback says taking part in [Dr. Charles] Tator's concussion project 'feels right,'" *The Globe and Mail*, 04 May 2011, pages S1 & S2.

<sup>17</sup> **asbestos** Julian Sher & Bill Curry, "Digging in: The politics of asbestos mining / Harper and Charest governments and local Bloc MP provide political cover for reopening of the Jeffrey Mine," *The Globe and Mail*, WORKPLACE SAFETY, 02 July 2011, page A13.

<sup>18</sup> **asbestos** Heidi von Palleske, "The legacy of asbestos / My father carried the fibres home from his factory job, and now my mother is dying just as he did. I fear for myself," *The Globe and Mail*, Facts & Arguments, THE ESSAY, 28 July 2011, page L8.

<sup>19</sup>**PTSD RCMP** Colin Freeze, "POST TRAMATIC STRESS DISORDER / Hike in RCMP stress-disorder claims raises questions for policy-makers / With more than 1,700 Mounties diagnosed, issues arise about how to protect police, assess claims," *The Globe and Mail*, 09 August 2011, page A4.

<sup>20</sup>**laws** EDITORIAL, "Labour laws need to be enforced," *Toronto Star*, 16 May 2011, page A14.

<sup>21</sup> **vets** Bruce Campion-Smith, "Aid for vets fall short / Despite Tory \$2B pledge, only \$12 million a year going to injured soldiers," *Toronto Star*, 20 July 2011, page A4.

<sup>22</sup> **TMSD** Jyllian Kemsley, "FIRM FINED FOR CHEMIST'S DEATH / SAFETY: Sepracor Canada admits lack of lab ventilation in worker fatality case," *C&EN*, American Chemical society, Washington, DC, 20036, 09 MAY 2011, page 15.

<sup>23</sup><http://pubs.acs.org/cen/news/89/i19/8919notw8.html>

<sup>24</sup> *C&EN* refers to *Clin. Toxicol.*, DOI:

10.1080/15563650903076924).

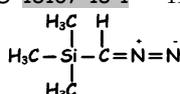
<sup>25</sup><http://www.amherstdaily.com/Manufacturing/2008-10-21/article-384925/Family-says-NS-pharmaceutical-worker-named-chemical-he-used-before-death/1>

<sup>26</sup> -- re CAS -- see in this newsletter - July 2008.

Vol.16, No.03, pages 4/7.

<sup>27</sup> **trimethylsilyldiazomethane**

CAS **18107-18-1**      114.22 g/mol



<sup>28</sup><http://en.wikipedia.org/wiki/Trimethylsilyldiazomethane>

<sup>29</sup><http://www.amherstdaily.com/Manufacturing/2008-10-21/article-384925/Family-says-NS-pharmaceutical-worker-named-chemical-he-used-before-death/1>

<sup>30</sup>[http://www.chemicalbook.com/ChemicalProductProperty\\_EN\\_CB9432840.htm](http://www.chemicalbook.com/ChemicalProductProperty_EN_CB9432840.htm)

<sup>31</sup> <http://en.wikipedia.org/wiki/Sepracor>

<sup>32</sup><http://www.canadaeast.com/front/article/666039>

<sup>33</sup> <http://www.sepracorpharma.ca/>

<sup>34</sup><http://www.cbc.ca/news/canada/nova-scotia/story/2010/09/15/ns-sepracor-daigle-court.html>

<sup>35</sup> <http://www.dcnonl.com/article/id38708>

<sup>36</sup><http://www.google.com/hostednews/canadianpress/article/ALeqM5hHEXTssPJsQELKJ9FUBNFz09dygg?docId=6731134>

<sup>37</sup><http://www.amherstdaily.com/Manufacturing/2008-10-21/article-384925/Family-says-NS-pharmaceutical-worker-named-chemical-he-used-before-death/1>

<sup>38</sup><http://pubs.acs.org/cen/news/89/i19/8919notw8.html>

<sup>39</sup>[http://www.osha.gov/pls/imis/establishment.inpection\\_detail?id=311266522](http://www.osha.gov/pls/imis/establishment.inpection_detail?id=311266522)

<sup>40</sup><http://www.cbc.ca/news/canada/nova-scotia/story/2010/05/25/ns-lab-death-charges-windsor.html>

<sup>41</sup>**W.Va. mine.** Sabrina Tavernise, [West Virginia State] Report Faults Mine Owner For Explosion That Killed 29, *The New York Times*, 20 May 2011, pages A11 & A12.

<sup>42</sup>EDITORIAL, "The Truth About Upper Big Branch / A report leaves no doubt about Massey Energy's responsibility for the mining disaster," *The New York Times*, 20 May 2011, page A20.

<sup>43</sup>**W.Va mine** Sabrina Tavernise, "Mine Owners Misdemeanors Before Blast, Investigators Say," *The New York Times*, 30 June 2011, page A13.

<sup>44</sup> **air traffic controllers.** Joseph A. McCartin, "The Strike That Busted Unions / Regan's mass firing of air traffic controllers devastated labor," *The New York Times*, 03 August 2011, page A23.

<sup>45</sup> **Gold, Indonesia...** Norimitsu Onishi, "In a Rush to Find Gold, Indonesians Defy Dangers," *The New York Times*, 08 July 2011, pages A4 & A11.

<sup>46</sup><http://www.nytimes.com/2011/07/08/world/asia/08indo.html?ref=norimitsuonishi>  
<http://www.nytimes.com/>

<sup>47</sup> **asbestos** EDITORIAL OBSERVER, Serge Schmemmann, "The Story of a Dead Sailor, His Widow and a Bunch of Boneheaded Politicians" / "Inexplicably, Canada continues to defend the export of asbestos," *The New York Times*, 03 September 2011, page A14.

<sup>48</sup> **Calif. farm workers** Jennifer Medina, "Bid to Aid [California] Farm Workers Union Is Vetoed," *The New York Times*, 30 June 2011, page A15.

<sup>49</sup>**veterans combat stress** Benedict Carey, "Antipsychotic Use Is Questioned for Combat Stress," *The New York Times*, 03 August 2011, page A13.

<sup>50</sup> **NFL drug testing** "N.F.L. Says Drug Testing Will Be Rigorous and Frequent," *The New York Times*, 07 August 2011, [sports] page 1.

<sup>51</sup> **US VA** "The V.A. Tries to Get Beyond Its Culture of No," SUNDAY OBSERVER, *The New York Times*, 17 July 2011.

<sup>52</sup> **Fashion Week.** Ashley Mears, Boston, "Poor Models. Seriously. / To wrap up Fashion Week, a labor analysis," *The New York Times*, 15 September 2011, page A29.

<sup>53</sup> **Montana -- asbestos.** "Montana: Settlement Approved for Asbestos Victims," *The New York Times*, National Briefing / ROCKIES, 17 September 2011, page A14.

<sup>54</sup> **Wisconsin v Kidd, 1898.** Jill Lepore, *THE NEW YORKER*, "AMERICAN CHRONICLES / OBJECTION" / Clarence Darrow's unfinished work," 23 May 2011, pages 40 & 45.

<sup>55</sup> at page 42.

<sup>56</sup> at page 44.

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<sup>57</sup> at page 45.

<sup>58</sup> **art supplies.** Adria Vasil, "Q: How do I green my art supplies? / Choosing eco paints means you won't have to suffer lead and formaldehyde contamination for your art," *NOW*, Toronto, ecoholic, 29 September/05 October 2011, page 20.

<sup>59</sup> **school workshop** Meghan Hurley & Michael Aubry, "Student dies in blast in school workshop class / PEPPERMINT FUMES / Ottawa teen was making barbecue from drum," *NATIONAL POST*, 27 May 2011, page A8.

<sup>60</sup><http://www.nationalpost.com/news/Student+dies+blast+school+workshop+class/4848726/story.html>

<sup>61</sup><http://www.montrealgazette.com/Metal+drum+that+exploded+once+stored+peppermint/4845059/story.html>

<sup>62</sup><http://ca.news.yahoo.com/explosion-ottawa-high-school-seriously-wounds-one-injures-152834303.html>

<sup>63</sup><http://www.ottawacatholicsschools.ca/teh/>

<sup>64</sup><http://www.100pureessentialoils.com/pages/Peppermint-Oil-MSDS.html>

<http://libertynatural.com/msd/64.htm>

[http://www.sciencelab.com/xMSDS-Peppermint\\_oil-9925523](http://www.sciencelab.com/xMSDS-Peppermint_oil-9925523) ○

<sup>1</sup> **asbestos** Prime Minister Stephen Harper, at Asbestos, Quebec, from CTV, 26 April 2011.

<sup>2</sup><http://montreal.ctv.ca/servlet/an/local/CTVNews/20110426/asbestos-election-issue-110426/20110426?hub=MontrealHome&camp>

<sup>3</sup> See in this *newsletter* July 2010. Vol. 18 No.3 pages 4-5, "OHCOW and CELA host Dr. Tushar Kant Joshi, prominent Indian anti-asbestos activist and occupational physician, during his week-long trip to Canada."

<sup>4</sup> See in this *newsletter* July 2010. Vol. 18 No.3 pages 5-7, "Canada, Québec, & CHRYSONTILE Institute / -- controlled and safe-use? -- / -- Rotterdam Convention, ILO Convention 162, WHO Group of Experts -- / -- Ontario & India --" ○

<sup>5</sup> **Larry Sefton Park** See also in this *newsletter* July 2008. Vol.16 No.3 page 9. ○

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## for future issues:

- *Maquila*. [www.maquilasolidarity.org](http://www.maquilasolidarity.org)
- Canadian federal OH&S inspections.\*
- US Chemical Safety & Hazard Investigation Board
- more on Advisory Panel on OH&S.
- 92J<sup>238</sup>
- topic revisited -- *Toxics Reduction Act*. \*\*
- topic revisited--Ministry of Labour library.\*\*\*
- book review: *Occupational Health & Safety - Theory, Strategy & Industry Practice, 2nd Edition*. \*\*\*\*

\*David Macdonald, *Success is No Accident / Declining Workplace Safety Among Federal Jurisdiction Employers*, CANADIAN CENTRE for POLICY ALTERNATIVES, Ottawa K1P 5E7; 27 April 2010; ISBN 978-1-897569-88-7  
<http://www.policyalternatives.ca/>

<http://www.policyalternatives.ca/publications/reports/success%E2%80%89%E2%80%89no%E2%80%89accident>  
[http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Success%20is%20No%20Accident\\_0.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Success%20is%20No%20Accident_0.pdf)

"Report blasts federal workplace inspection," *Canadian Occupational Health & Safety News*, 03 May 2010, Vol.33, No.17, pages 1 & 2.

\*\* See in this *newsletter* Vol. 17 No.3, pages 2 & 3, Ontario Bill 167 -- Toxics Reduction Act, 2009 -- commentary --- "what about the workers" ? -- O. Reg. 455/09, 214/11.  
[http://www.e-laws.gov.on.ca/html/reg/english/elaws\\_regs\\_090455\\_e.htm#BK0](http://www.e-laws.gov.on.ca/html/reg/english/elaws_regs_090455_e.htm#BK0)

\*\*\* See in this *newsletter* Vol. 15 No.4.

\*\*\*\* LexisNexis <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=2089> ○

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Toronto Workers' Health & Safety Legal Clinic

180 Dundas Street West

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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