

EDITORIAL OBITER

By Gabrielle Giroday

HIV and the law

Law Times has an exclusive story this week about how the Divisional Court has ordered the Ministry of the Attorney General to release a set of draft guidelines for prosecuting HIV non-disclosure cases.

It's a timely and fascinating topic.

Lawyer Marcus McCann's efforts to make the guidelines public is admirable — an endeavour that has its roots in grassroots advocacy.

We live in an age where LGBT rights are mainstreamed in popular culture. It is easy to forget, then, how fast these rights can be eroded when discussion about how HIV non-disclosure is prosecuted is obscured behind a veil of unclear legalese, bureaucratic language or overall mystery.

To be clear, in this case, it is not known what the province's draft guidelines say about prosecuting HIV non-disclosure cases. However, the fact they were drafted with input from a program manager with the Sexual Health and Harm Reduction of the City of Hamilton is a good sign. The work to make these guidelines public is part of an overall push-and-pull to clarify the legal response to sensitive politics around sex, and HIV non-disclosure in particular. Legislation and laws are by their nature reactive. Information sharing is a key principle of progressive public health. McCann's efforts seek to fill a void between the two.

On an unrelated note, starting in this issue, Caselaw has an up-



dated workflow, which allows us to provide more current information. You may notice some stylistic differences, but there are no major changes to the content. **LT**

How to avoid getting Trumped

If Donald Trump rips up NAFTA and says "no" to China, expect some interesting twists in Canada.

Trump promised earlier this year that he's going to alter the 1994 free trade deal with Canada and Mexico so American workers keep their manufacturing jobs in the United States. If that doesn't work, he'll rip up what he calls "the worst trade deal in history."

That may not be the smartest thing for Trump to do, although it is the first thing on his list. Closing down NAFTA is simple enough. He gives Canada and Mexico a written notice under NAFTA Article 2205 that he'll be out of the agreement in six months, although it's not clear if he needs the approval of Congress.

Canada's trade lawyers could end up arguing over that for years.

It might be a lot smarter for Trump to do what Prime Minister Justin Trudeau suggests — sit down and discuss changing the agreement to improve it for both countries.

That's been done several times since 1994. And right now Canada is ready to discuss it, even including softwood lumber in the NAFTA agreement, making both countries winners.

They were still counting votes in the United States on the night of election when Americans wanting to move to Canada began jamming up telephone lines in Canadian lawyers' offices. It

lasted all evening and then through the night and into the next morning.

Canadian immigration lawyers told callers that moving to Canada is a lot more complicated than just packing the bags and throwing the kids into the back of the car and then driving off to Canada.

Then they stopped calling about moving and began calling about making money or not losing it because of the Trump election.

They wanted to know from business lawyers and brokers where it was safe or not to invest in Canada.

So many calls came in that some law firms designated an office specialist just to deal with U.S. election calls.

They were told throwing American dollars across the border willy-nilly without knowing the situation was certainly not the smartest approach to investments.

Riyaz Dattu, an international business lawyer with Osler Hoskin & Harcourt LLP, says business investments have to be thought out.

And that takes time. You don't buy or sell on the basis of election results broadcast on U.S. television or a Trump speech.

Maybe Trump's real business target and free trade victim is Mexico, not Can-

The Hill



Richard Cleroux

ada. Who knows right now?

Is the Keystone XL pipeline to Houston, Texas for real again? Who knows? Trump is not even president yet.

One thing is sure. If there is a deal, companies will need good Canadian business lawyers to close it. If there isn't, they will need just as many lawyers.

Or maybe Canada could end up instead with a pipeline to the West Coast to ship oil sales to China and forget about Houston altogether.

It's still more lucrative legal work. Canada is just getting started on its new free trade deal with Europe, covering twice as many people as all of the United States. And who knows how far the Trans-Pacific Partnership might go? These are not the times to jump at the first thing offered to us, trade lawyers are telling clients.

John Boscarriol is an international trademarks lawyer with McCarthy Tétrault LLP in Toronto. He says Donald Trump appears "very dangerous."

But that's just an appearance, he adds.

Boscarriol says Trump could impose "taxes and duties on imports from Mexico" and penalize China by taxing Chinese products.

Trump's policies could easily "trigger

a trade war," but that would be in the future, not right away, he says. Boscarriol advises patience to his clients.

Alan Ross is a managing partner in the Calgary office of Borden Ladner Gervais LLP.

He is an accomplished commercial litigation specialist and a member of the New York Bar Association and the Canadian-American Business Council.

He says president-elect Trump has yet to form his policies on most energy issues, but he does appear friendlier to fossil fuels and is not keen on Prime Minister Trudeau's carbon tax.

All of this could have "significant implications for Canada's energy sector."

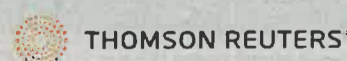
Brock Gibson, chairman of Blake Cassels & Graydon LLP, says Canadian investors are a wise bunch who are "used to handling changes," but, for the time being, it's still early with the new U.S. administration. One area of business in which he expects major changes is the construction of pipelines, which he says could benefit Canada.

So, for now, it's all watch and wait for Canadian trade and business lawyers. Nobody is moving very fast in any direction. **LT**

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