

RULE OF LAW REPORT

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EDITOR'S NOTE

Heather MacIvor

2

FOREWORD

Loik Amis

3

PROMOTING THE RULE OF LAW OVERSEAS: A LAW STUDENT'S EXPERIENCE IN JERUSALEM

Jimmy Burg

4

ADVOCATING FOR THE WRONGFULLY CONVICTED

Maria Shepherd and Jordan Carter

5

LAWYERS FEED THE HUNGRY - 20 YEARS ON AND STILL GOING STRONG

Jay Brecher

7



EDITOR'S NOTE

Thank you for spending time with this inaugural issue of the Rule of Law Report. You may be wondering why LexisNexis Canada would invest in a free newsletter on the rule of law. There are at least three reasons why we're publishing this Report, and why we hope that you and your colleagues will keep reading it.

1. Engaging the Canadian Legal Community

The rule of law is more than the formal rules laid down by legislators or the institutions that apply and enforce them. It includes unwritten norms and a shared sense of constitutional morality. Without some shared moral sense of how society should work, rule of law dwindles into "rule by law" – cowed or corrupt compliance with unlimited and arbitrary state power veiled by empty pantomimes of due process.

There is a growing consensus that the rule of law is under threat. Freedom House reports that "Democracy faced its most serious crisis in decades in 2017 as its basic tenets" – including the rule of law – "came under attack around the world."

Canada sits near the top of the global league tables measuring democracy and the rule of law. We do very well on measures of individual freedom, transparency, and honest government. But these achievements are offset by embarrassingly low marks for slow, costly and inaccessible justice. Every one of us – lawyers, law students, educators and researchers – has the power and the duty to improve our legal system.

🗨️ There is a growing consensus that the rule of law is under threat.

2. Promoting our Charity Partners

LexisNexis Canada is delighted to celebrate the 25th anniversary of Innocence Canada in 2018. The poignant story of Maria Shepherd and Jordan Carter reveals the ripple effects of wrongful conviction on families and communities.

This year also marks the 20th anniversary of Lawyers Feed the Hungry and its exceptional contributions to Ontario communities. Jay Brecher of LexisNexis Canada, who has been involved with the program for 17 of its first 20 years, shares the remarkable story of the program and its founder.

3. Provoking Informed Discussion

How should we manage the accelerating impact of technology on our work and our personal lives? How can we ensure that power is exercised to benefit the many and not just the few? Should we reshape the law to reflect new findings in neuroscience and other cutting-edge disciplines, and if so, how?

More broadly, how do we know which factual claims are reliable and which are not? Maria Shepherd's experience shows that legal decisions are only as good as the evidence on which they are based. Distinguishing between "alternative facts" and reliable evidence is at least as crucial in law as it is in policy and governance.

Welcome aboard.

I hope you find this newsletter informative and stimulating.

Heather MacIvor,
LexisNexis Canada

FOREWORD

Welcome to the first issue of the LexisNexis Canada Rule of Law Report. Like our parent company RELX, LexisNexis Canada is committed to justice and education. This newsletter is part of our core mission as a company: advancing the rule of law and raising awareness of the needs of vulnerable people in Canada and around the world.

People often talk about “the rule of law” without explaining exactly what they mean. For me, the rule of law entails equality and access to justice. LexisNexis Canada emphasizes equality in our internal culture and in our charity work. Collectively, our employees donate thousands of dollars to charity every year. We organize pancake breakfasts, charity walks, book drives, and other fundraising events.

In September 2017 we invited students from the First Nations School of Toronto to spend an afternoon at LexisNexis Canada. The students especially enjoyed an Escape Room created by our Social Committee to raise money for Level’s Indigenous Youth Outreach Program (<https://leveljustice.org>).

LexisNexis Canada, with the support of RELX, has funded agencies advancing the rule of law. Recipients include the equality effect (<http://theequalityeffect.org>), which led the “50 Girls” campaign to end impunity for sexual violence in Kenya.

But giving money is just the starting point. We also encourage employees to use their time, energy and skills to serve people in need. LexisNexis Canada proudly supports Lawyers Feed the Hungry (<http://www.lawyersfeedthehungry.ca>), which celebrates its twentieth anniversary in 2018. Jay Brecher, our Director of Subscription Content and RE Cares Champion, writes about his – and our – involvement with this exceptional program in these pages.

Finally, we are delighted to support the work of Innocence Canada (<http://www.innocencecanada.com>), which enhances the rule of law by correcting and preventing miscarriages of justice. Innocence Canada, formerly the Association in Defence of the Wrongly Convicted (AIDWYC), celebrates its 25th anniversary in 2018. Exonerée Maria Shepherd and her son Jordan Carter share their family’s experience of wrongful conviction in this issue of the Rule of Law Report.

As these words are written, democracy and the rule of law are under threat. Recent reports from international think tanks and non-governmental organizations paint a disturbing picture. While Canada remains one of the most democratic and lawful countries on earth, there is no room for complacency. In addition to reconciliation with Canada’s Indigenous peoples, we must address the crises of delay and affordability in our justice system and encourage respectful, informed public debate. I hope that this newsletter will raise awareness of the rule of law, spark constructive discussions, and inspire compassion and generosity.

A handwritten signature in blue ink, appearing to read 'Amis', with a large, stylized initial 'A'.

Loik Amis, CEO
LexisNexis Canada

PROMOTING THE RULE OF LAW OVERSEAS: A LAW STUDENT'S EXPERIENCE IN JERUSALEM

In summer 2017, after my first year of law school, I interned with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) at the headquarters of the Department of Legal Affairs in Jerusalem.

UNRWA was created in December 1949 by the United Nations General Assembly. The agency was created to respond to the needs of some 750,000 Palestinian refugees who were displaced by the outbreak of war between Israel and a coalition of Arab states over the control of Palestine. Today, those refugees and their descendants number 5.3 million.

The agency provides services across five territories in the Middle East: Syria, Lebanon, Jordan, the West Bank, and the Gaza Strip. These services include education, health care, employment, food, accommodation, and emergency relief. Providing this range of services in a timely fashion, while navigating a variety of laws, cultures, and sensitive political relationships, takes a lot of organization and legal analysis.

From a central office in Jerusalem, the Department of Legal Affairs is responsible for coordinating all legal aspects of UNRWA's operations. As an intern, I analyzed the human rights impacts of immigration policies across the Middle East. I also worked on employment disputes under the administrative law of the UN, and contribution agreements whereby foreign states or international NGOs donated funds and developed infrastructure and training programs for refugee camps.

Since its upgrade to "non-member observer status" in the United Nations General Assembly, Palestine can now sign and ratify international treaties.

🗨️ As an intern, I analyzed the human rights impacts of immigration policies across the Middle East.

I contributed to a gender analysis of the Palestinian legal system, a requirement of compliance with the UN Convention on the Elimination of Discrimination Against Women. Because this was Palestine's first experience of participating in the international human rights system, there were no legal precedents or administrative framework to draw on. That challenge, and the sheer scale of this project, made it especially fascinating. Contributing to the protection of women and other disadvantaged groups in the Middle East was an enriching experience which I carried proudly away from my time at UNRWA.



Jimmy Burg is a member of the Queen's Law Class of 2019. Before law school, Jimmy studied geology in Halifax and worked as an environmental scientist in Alberta. He hopes to pursue a career in public law.

Jimmy Burg
Law Student

ADVOCATING FOR THE WRONGFULLY CONVICTED

Introduction

In 1991 Maria Shepherd and her husband Ashley were the parents of two little girls. Maria also had a son, Jordan, from a previous marriage, and Ashley had custody of his daughter Kasandra from a former relationship. Three-year-old Kasandra became ill and started having seizures. Despite numerous efforts at diagnosis and treatment, the mysterious condition worsened. Kasandra died at the Hospital for Sick Children in April 1991. Dr. Charles Smith performed an autopsy and concluded that Kasandra had died from a blow to the head. Dr. Smith was then a well-respected pediatric pathologist, despite lacking any formal training in forensic pathology. Maria was charged with manslaughter in Kasandra's death. The following is a summary of remarks by Maria and her son Jordan Carter at the Toronto office of LexisNexis Canada, February 2018.

Maria Shepherd

My lawyer got Crown disclosure of Smith's testimony and tried to find a forensic expert to dispute his findings. No one would challenge Charles Smith. He was like a god. I knew that if I went to trial I would almost certainly be convicted. Even though I was innocent, pleading guilty was the only chance I had to keep my family together. A guilty verdict would mean a long sentence in the Prison for Women in Kingston. A plea would allow me to serve a short sentence in a provincial jail near my children.

I was three months pregnant when I pleaded guilty. I made the plea before my mother arrived at Court; she would have been devastated to hear me say that I killed Kasandra. I was advised to tell other prisoners that I had murdered my husband, because my life would be in danger if they knew I was in jail for killing a child. My cell window faced the road to my parents' house, where my children were staying.

I was released to a halfway house in time for the birth of my third daughter. She was taken away a few hours later. My family unit was restored some years later, but I can never make up for the lost time with my children.

I was publicly crucified again by a 1997 inquest into Kasandra's death. I couldn't risk violating my probation by recanting my confession. My family was together, but the aftermath of the guilty plea was terrible. My entire family was stigmatized by the labels of "baby-killer" and "evil stepmother".

About ten years later James Lockyer contacted me. He explained that he was a lawyer specializing in wrongful conviction appeals, and told me that serious doubts had arisen about Smith's testimony in my case and many others. In 2008 former Justice Goudge of the Ontario Court of Appeal released a report exposing Smith as a fraud. When my conviction was reopened in 2009, I was overjoyed that Smith had finally been discredited – but also devastated. Until then we had never been able to openly grieve the loss of Kasandra.

“ I was released to a halfway house in time for the birth of my third daughter. She was taken away a few hours later.

On Leap Day 2016 I was acquitted by the Court of Appeal. Crown Counsel Howard Leibovich apologized to me. It felt like I was watching a movie. Suddenly the media wanted to hear the true story of the "evil stepmother". After 25 years, my family and I were finally free. Sadly, my mother died eight months before I was exonerated of Kasandra's death.

In October 2016 I became a licensed paralegal. I am active with Innocence Canada, trying to prevent other families from suffering what we went through. But I have also learned that I will always be stigmatized, especially on social media.

Maria Shepherd
& Jordan Carter



Maria Shepherd, Jay Brecher & Jordan Carter

Jordan Carter

I can't say that I have many memories of what life was like as a "normal" child. As far back as I can remember I knew I was different. But I was made strong – after all, I had my mother as a model.

I was born to young parents who chose to go their separate ways when I was very young. I never knew what it was like to have my parents together. That's not uncommon in our society. But being the eldest child and only son of a mother who had to make a defining sacrifice in order to preserve our family – that makes things a bit different.

I never understood what was happening. I was so young, and very confused by what was going on. My sister Kasandra was my best friend. Suddenly she wasn't there anymore. As I grew up I learned that the blame was laid at my mother's feet, but that was impossible. I know her better than pretty much anyone.

☞ I never understood what was happening. I was so young, and very confused by what was going on. My sister Kasandra was my best friend. Suddenly she wasn't there anymore.

I didn't understand why my mom had to go away. She did her best to explain it to me. She talked about "when people do bad things" – which made no sense, because that person loved and cared for me more than anyone else on this planet.

I didn't understand why I had to stay with my grandparents instead of my mom – we had never been apart before.

I didn't understand why I had to go and live with my dad because my mom's conviction made her "less fit" for sole custody.

I didn't understand why I was being punished – I didn't do anything wrong.

I didn't understand why I couldn't see my mom, and when I did see her it was in this weird place called jail.

When the family was reunited, I was the older brother to three beautiful sisters. Big brothers protect. I stood firm during my mom's moments of weakness when it seemed that everything was crumbling around us. No child should have to go through this, especially not my little sisters. I had to shield them from that as much as I could.

I wouldn't let my sisters feel like they matter less than other kids, because NOT THEM TOO.

I wouldn't let my sisters grow up quickly in a world that is cruel and cold and unfair, because NOT THEM TOO.

I wouldn't let their innocence be shattered forever, because NOT THEM TOO.

I wouldn't let the cameras chase them for a newspaper picture or let them freeze after having been asked a flurry of questions, because NOT THEM TOO.

I wouldn't let them feel the same sadness, hopelessness and pain that I felt my whole life, because NOT THEM TOO.

I love my sisters endlessly. I wanted more for them than the life I had.

I never thought that I would be as strong as I am today. For much of my life I felt broken, like all the pieces didn't quite work the way they do for most people. But as I have gotten older I have grown strong.

The Japanese art of kintsugi, "precious scars", uses liquid gold, liquid silver or lacquer dusted with powdered gold to reunite the pieces of a broken pottery item. The technique rejoins the fragments and makes the breaks beautiful. Every repaired piece is unique, because ceramics shatter randomly.

We shouldn't throw away broken objects. When something breaks, it doesn't mean that it is useless. We should try to repair things because sometimes that produces more valuable objects. This is the essence of resilience. Each of us should look for a way to cope with traumatic events in a positive way, learn from negative experiences, take the best from them and remember that those experiences make each person unique and precious.

Some days are better than others. I won't tell you that I'm forever strong or that I don't have days I simply don't want to get out of bed, because I'd be lying. I challenge myself to simply try to face each day with courage and acceptance for what I have been made to endure.



Innocence Canada

LAWYERS FEED THE HUNGRY - 20 YEARS ON AND STILL GOING STRONG

More than two decades ago, prominent Toronto litigator Martin Teplitsky started volunteering at a downtown soup kitchen. He wondered why lawyers weren't doing more to alleviate hunger in Toronto, so he took matters into his own hands and started Lawyers Feed the Hungry ("LFTH") in the spring of 1998.

With the support of then-Treasurer of the Law Society Harvey Strosberg and Bencher Nancy Backhouse (now Madam Justice Backhouse of the Ontario Superior Court of Justice), Teplitsky got the program off the ground and funded it largely out of his own pocket.

Lawyers Feed the Hungry was a family affair for Teplitsky: his brother Allen and nephew Avery helped run the program, and he and Justice Backhouse were married. No surprise, then, that Teplitsky insisted on treating patrons as if they were guests in his home. To this day, LFTH affords every guest the dignity and respect they deserve. They greatly appreciate the excellent meals and the chance to socialize in a safe and friendly environment.

At first, Lawyers Feed the Hungry served one weekly meal. Today we provide two breakfasts and two dinners every week. Unlike seasonal "Out of the Cold" programs, LFTH runs year-round.

Operated by the Law Society Foundation, the charitable arm of the Law Society of Ontario, Lawyers Feed the Hungry now serves more 60,000 meals annually in the cafeteria of Toronto's Osgoode Hall. Affiliated programs operate in Ottawa, London, Windsor, Barrie, Hamilton and Peel. Most of the work is done by volunteers. The Law Society contributes significant in-kind resources, ensuring that almost every dollar donated to LFTH is spent on meals for our guests. Meals are often sponsored by law firms, who underwrite the cost of food and bring their employees to help with service.

Jay Brecher
Director,
Subscription
Content
LexisNexis
Canada



I've been volunteering with the program for over 17 years. Helping to prepare and serve breakfast on Thursday mornings is a highlight of my week. Lawyers Feed the Hungry has an enormously positive impact on the lives of our volunteers as well as our guests.

LexisNexis Canada and its employees generously support Lawyers Feed the Hungry, and have done so for several years. In addition to substantial corporate donations and employee fundraisers, we contribute free advertising space in the *Ontario Reports* to recognize and thank meal sponsors. More than a hundred LexisNexis employees have volunteered with LFTH, which remains one of our most important charity partners.

Sadly, Martin Teplitsky lost his battle with cancer two years ago. But his legacy continues to thrive, as Lawyers Feed the Hungry marks its 20th anniversary in 2018. Please go to <http://www.lawyersfeedthehungry.ca/index.html> for more information about the program.



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