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Chair's Column

Joe Raia

Once again, we have an edition of the International Law News that addresses issues that are both current and enduring. Former Section Chair Bob Lutz writes a call to action and describes how senior lawyers are engaged, and can engage, in the U.S. Department of Commerce's pro bono Commercial Law Development Program. As we celebrate the 30th anniversary of ROLI, Greg Brelsford tells the sometime chilling story of ROLI's on-the-ground work in Egypt – accomplishments interrupted, but not ended, by the sudden threats from revolution and midnight evacuation. In this time of resurging pandemic (19 months by my count), there is advocacy for One World, One Health and for addressing Treaty Clauses and intellectual property laws that affect the price and thereby access to medications and vaccines. Long time Section leaders and friends from Canada, Jacqueline Bart and Sergio Karas (along with his co-author Ari Goodman), offer current insights into Immigration law. We anticipate the possible legalization of Cannabis in Brazil and we have substantive articles of interest on laws and developments in Canada, Egypt, and India. Once again, I invite you to peruse the table of contents. You will find an article that will pique your interest or touch your area of practice, and you will learn something for your trouble. Once again, I congratulate and thank the editors, staff, and authors, for this edition ILN – a habit we can appreciate.

Joe Raia is Chair of the ABA International Law Section and Shareholder at Gunster in Miami, FL. He has contributed to ABA policy and comparative work on multiple legal and policy issues. He served for several years on the board of the Italy America Chamber of Commerce Southeast, Inc., a member of the Italian government's Assocamerestero network. He is a member of the International Advisory Committee of the Beacon Council, the economic development agency for Miami-Dade County, Florida. He frequently speakers on matters relating to international dispute resolution.

Foreign Investment Review in Canada

The Impact of the COVID-19 Pandemic Thereon

Mark Katz

In March 2020, government authorities in Canada began implementing measures to deal with the impact of the COVID-19 pandemic (the "Pandemic"). In this article, we discuss the various policies adopted and measures taken to adapt Canadian foreign investment review law to the new realities imposed by the Pandemic. As will be seen, the Canadian government reacted to the Pandemic by broadening the scope of transactions that may be give rise to issues, especially insofar as Canadian national security is concerned. As a result, foreign investors must be particularly alert to the potential impact of Canadian government review of their investments in Canada.

A. Overview

The *Investment Canada Act* (Canada) (the "ICA") is the principal Canadian legislation governing the review of foreign investments in Canada. It is a federal statute and is administered and enforced by the Investment Review Division ("IRD") of the Ministry of Innovation, Science and Economic Development ("ISED").[1]

The ICA authorizes the Canadian government to review certain investments by non-Canadians in Canadian businesses and, where considered appropriate, to prohibit these investments from proceeding, to order investments to be unwound or divestitures made, or to permit the investments to proceed subject to conditions or undertakings.

There are two aspects to ICA review:

- the "net benefit review" process, and
- the "national security review" process.

(i) Net Benefit Review

Pursuant to the net benefit review process, a non-Canadian acquiring acquire control of a Canadian business (including a business in Canada owned by a foreign entity), and whose acquisition exceeds certain thresholds, must satisfy the government that its investment will be of net benefit to Canada. These reviews are typically required to take place pre-closing, and are typically completed within approximately 75 days of filing.

Although the ICA sets out various "net benefit" factors to be considered, the decision is largely discretionary and will depend on the type and quality of binding commitments (undertakings) that the non-Canadian investor is prepared to provide the Canadian government with respect to the Canadian business post-investment. Typical undertakings relate to the role of Canadian management; employment; and investments in the Canadian business, such as for capital expenditures and research and development. Virtually all transactions that are subject to net benefit review are approved on the basis of such undertakings

Because of recent increases to the relevant thresholds, only a very few foreign acquisitions of control are subject to full net benefit review in a given year. For example, in the most recent fiscal year for which statistics are available (April 1, 2019 to March 31, 2020), less than 1% of reportable transactions underwent a full net benefit review (nine in total). As for investments where net benefit review thresholds are not exceeded (the vast majority), investors are only required to submit a notice advising the government that the transaction has taken place ("ICA Notice"); they are not required to obtain government approval for the investment. Investors in these circumstances have the option of filing the ICA Notice either before closing or within 30 days following closing.

(ii) National Security Review

The ICA also authorizes the Canadian government to investigate if foreign investments are potentially injurious to Canadian national security interests. If the Canadian government finds that a transaction would be injurious to Canadian national security, it may prohibit the transaction, order it unwound (if already completed), or

[1] For a more detailed discussion of ICA review in Canada, see the Annual Report under the Investment Canada Act for fiscal year 2019/2020, https://www.ic.gc.ca/eic/site/ica-lic.nsf/vwapj/2019-20AnnualReport_eng.pdf/$file/2019-20AnnualReport_eng.pdf.

require "mitigating" undertakings as a condition for approval.

In contrast to the net benefit review process, there are no thresholds for the national security review process. For example, the value of the target Canadian business is irrelevant and minority investments are also subject to review (not just acquisitions of control). The ICA also does not define what qualifies as a "national security" concern, leaving the government broad discretion to decide. In short, essentially every foreign investment is potentially subject to national security review.

There is also no separate application process for national security reviews. In cases where a filing must be made pursuant to the ICA's net benefit review process, whether an application for review or an ICA Notice, it is the filing of these materials that triggers the national security review process. In cases where the ICA net benefit review process does not apply, e.g., where there is only a minority investment and not an acquisition of control, the national security review process is triggered by implementation of the investment, meaning that any review will take place post-closing.[2]

Once the national security review process is triggered, the Canadian government has an initial period of 45 days to decide if it will commence a formal review, which it can extend unilaterally by another 45 days (for a total of 90 day after filing). If the government decides to initiate a formal review (either after 45 or 90 days), the review can last at least another 110 days, subject to further extension. As such, national security reviews can take 200 days or more to be completed.[3]

There have been approximately 29 national security reviews commenced between 2009 (when the national security regime was enacted) and March 31, 2020 (the most recent timeframe for which statistics are available). The government has issued orders in 18 of these reviews; in seven of the remaining cases, the investor abandoned the transaction after the national security review was commenced, while the remaining four transactions were permitted to proceed without a remedy. In most of the 18 cases where an order was issued, the government required that the investment either be blocked or unwound; there have only been four cases where an investment was allowed to proceed based on conditions imposed. It is also worth noting that 17 of the 29 reviews involved Chinese investors.[4]

A. Impact of the Pandemic

1. "Enhanced Scrutiny" and Extended Timelines

The Canadian government moved quite quickly – and substantively – to adjust its approach to foreign investment review in the wake of the Pandemic. Although no changes were made to applicable thresholds, the government announced in an April 2020 policy statement (the "Policy Statement") that it would be applying "enhanced scrutiny" under the ICA to all "foreign direct investments of any value, controlling or non-controlling, in Canadian businesses that are related to public health or involved in the supply of critical goods and services to Canadians or the Government". The government added that it would also apply "enhanced scrutiny" to all investments by foreign state-owned enterprises ("SOE's") or "private investors assessed as being closely tied to or subject to direction from foreign governments". The Canadian government did not state expressly what it meant by "enhanced scrutiny" in this regard, but suggested that this could involve additional information requirements or extensions of timelines for review.[5]

The Policy Statement explained that the Canadian government's new approach was necessary "to ensure that inbound investment does not introduce new risks to Canada's economy or national security, including the health and safety of Canadians." The Policy Statement specifically pointed to the concern that foreign investors might engage in "opportunistic behaviour" by snapping up Canadian businesses which had recently seen their valuations decline as a result of the Pandemic. The Policy Statement also expressed concern that foreign SOE's "may be motivated by non-commercial imperatives that could harm Canada's economic or national security interests", e.g., by buying up Canadian companies and re-directing their production to the new "home jurisdiction."

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[2] The IRD will scan public sources and use other resources to identify minority investments that may be of concern, and then reach out to the investors for additional information.

[3] According to the most recent government statistics, it took the Canadian government an average of 217 days to complete the national security reviews it conducted in fiscal 2019/2020.

[4] In addition to the foregoing, at least one other transaction involving a Chinese investor was blocked in 2021, i.e., the proposed acquisition by Shandong Gold Mining Co., Ltd.(a Chinese state-owned gold mining company) of TMAC Resources (a Canadian gold mining company operating in the Canadian North).

[5] The Investment Review Division of Innovation, Science and Economic Development Canada, Ministerial Statement, "Policy Statement on Foreign Investment Review and COVID-19" (April 18, 2020), https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81224.html.

Following upon the Policy Statement's suggestion of extended timelines, the Canadian government passed legislation in July 2020 permitting the extension of certain legislative time limits, including those under the ICA. Pursuant to this authority, the government extended the timelines for the national security review process by as much as six months (subject to even further extensions on consent), meaning that the entire process could take up to 260 days to complete (or more).[6] The amending legislation provided that these longer timelines would expire on December 31, 2020 unless otherwise extended. Fortunately they were not extended, and the pre-Pandemic national security review timelines again apply.

The other key question was how long the government would apply its "enhanced scrutiny" of foreign investments as set out in the Policy Statement. The Policy Statement said that its enhanced scrutiny would apply "until the economy recovers from the effects of the COVID-19 pandemic," which afforded the government considerable leeway to decide. In light of that, many observers believed that, whether formally or not, the government's temporary policy would likely become a fixed part of foreign investment review in Canada.

And that is effectively what happened.

In March 2021, the government issued revised "Guidelines on the National Security Review of Investments" (the "Revised Guidelines") outlining changes/clarifications to the government's approach to national security reviews.[7] Among other things, the Revised Guidelines state that: all investments by foreign SOEs in Canadian businesses will now be subjected to "enhanced scrutiny" regardless of the value of the investment. The Revised Guidelines also re-emphasize that one of the factors the government will consider in determining whether a foreign investment constitutes a national security risk will be the impact on "the security of Canada's critical infrastructure," including infrastructure that is "essential to the health of Canadians." The Revised Guidelines also clarify that, in considering whether a transaction will involve the transfer of "sensitive technology" outside of Canada (another form of national security risk), the government will include "medical technology" among its areas of concern.

In other words, the two key (but ostensibly temporary) aspects of the Policy Statement – i.e., an enhanced focus on investments by SOE's and on investments that impact the public health sector – are now enshrined by the Revised Guidelines as permanent elements of the Canadian national security review process going forward.[8]

2. Looking Ahead – Possible Future Amendments

The Pandemic has had the additional effect of generating new interest in foreign investment issues in Canada, and specifically whether the ICA regime should be made more robust.

Most notably in that regard, the House of Commons Standing Committee on Industry, Science and Technology initiated a study in June 2020 to determine if additional changes to the ICA are required, including in response to issues raised by the Pandemic. The committee issued its report in March 2021 with nine recommendations, some of which echo the concerns already seen in the Policy Statement and the Revised Guidelines.[9] For example, the committee recommended that:

a) the ICA thresholds for net benefit review be reviewed on an annual basis (currently only certain thresholds are subject to annual adjustment);

b) all SOE investments, regardless of value, be reviewed under both the ICA's national security regime (as provided for in the Revised Guidelines) and the net benefit review regime (currently, only SOE investments exceeding a prescribed threshold are subject to net benefit review);

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[6] Government of Canada, "Temporary Extension of Certain Timelines in the National Security Review Process Due to COVID-19" (July 31, 2020), https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81225.html.

[7] Government of Canada, "Guidelines on the National Security Review of Investments" (March 24, 2021), https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81190.html. The original Guidelines were issued in December 2016.

[8] There were several other notable changes included in the Revised Guidelines. First, in addition to medical technology, the Revised Guidelines identify other sorts of technology as being "sensitive", including artificial intelligence, biotechnology, and space technology. Second, the Revised Guidelines provide additional examples of what constitutes "critical infrastructure" for national security review purposes, including energy and utilities, finance, food, transportation, water and manufacturing. Third, the Revised Guidelines add two new areas of scrutiny for national security review: whether the transaction will impact the production of critical minerals and critical mineral supply chains, and whether the transaction will enable the foreign investor to access and exploit sensitive personal data. In truth, the addition of these two factors came as no surprise in that they had already arisen as issues of concern in prior national security reviews.

[9] House of Commons, Report of the Standing Committee on Industry, Science and Technology, "The Investment Canada Act: Responding to the COVID-19 Pandemic and Facilitating Canada's Recovery" (March 2021), https://www.ourcommons.ca/DocumentViewer/en/43-2/INDU/report-5/page-84#18.

c) the ICA be used to protect strategic sectors including, but not limited to, health, pharmaceuticals, agri-food, manufacturing, natural resources, and intangibles related to innovation, intellectual property, data and “expertise”;
d) any Canadian business or entity holding a “sensitive asset” be required to notify the federal government 30 days before implementing the transfer of that asset to a non-Canadian entity;
e) there be enhanced and mandatory cooperation between the IRD and Canada’s national security apparatus to analyze possible national security threats; and
f) the government be required to explain the factors for decisions made under the ICA, and to make public any undertakings or conditions imposed on foreign investors as the basis for the approval of transactions.

In addition to the Parliamentary committee efforts, a federal government task force is currently leading an interdepartmental policy review examining if any additional measures are needed to ensure Canada’s continued ability to respond to economic-based threats to national security.[10] The Pandemic was a significant impetus to this effort, as Canada’s national security establishment has expressed concerns that the “uncertain environment” created by the Pandemic is “ripe for exploitation by threat actors seeking to advance their own interests.” Specific concerns include the loss of sensitive goods, technology and intellectual property, the malicious use of sensitive personal information of Canadians, and compromised critical infrastructure.

Among the issues the task force is exploring is whether the ICA should be amended to help Canada better address economic-based threats to national security. The task force’s consultation process is focusing on three principal questions in that regard:
a) should the ICA’s procedures be amended to increase the scope of transactions that are subject to mandatory pre-closing review?
b) are mitigation measures (e.g. undertakings) that permit a transaction to proceed subject to conditions effective in dealing with potential national security concerns?
c) should the penalties for non-compliance with the ICA be increased?
It is anticipated that the task force will issue its report in the coming year.

II. IMPLICATIONS AND CONCLUSIONS

The Pandemic has had a profound effect on the application and enforcement of Canadian foreign investment review law, and proposed amendments to the ICA may make the situation even more complicated. This is particularly the case with respect to national security reviews, given that the process can be applied so broadly.[11] As a result, foreign parties considering investments in Canada must pay even more attention to the ICA’s national security review process in their transaction planning.[12] In certain cases, investors – and especially foreign SOEs - may be well-advised to engage with the authorities as far as possible in advance in order to clarify the regulatory risk they face. This could involve informal discussions with the IRD and other relevant government agencies. It could also involve adopting filing strategies that expedite the government’s assessment of their investments.[13]

For example, in cases where an investor is obliged to file an ICA Notice (discussed above), it is important that foreign investors consider if they will do so pre-closing or post-closing. Investors that are concerned about the prospect of a national security review are now frequently submitting the ICA Notice prior to closing, rather than waiting to do so until 30 days after closing (which had been the consistent practice before the national security regime was enacted). The objective is to permit the initial review period (of 45 to 90 days) to expire before the transaction is implemented, in order to see whether the government will either decide to allow the transaction to

[10] Government of Canada, News Release, “Government of Canada expands work to address economic-based threats to national security” (May 27, 2021), https://www.canada.ca/en/public-safety-canada/news/2021/05/government-of-canada-expands-work-to-address-economic-based-threats-to-national-security.html.
[11] Statistics and details regarding national security reviews since the Pandemic started are not yet available, so it is not possible yet to measure if the Pandemic led to more national security reviews in areas that would not necessarily have been of concern previously. The only transaction blocked in the past year for which information is publicly available involved the proposed acquisition by a Chinese state-owned gold mining company (Shandong Gold Mining Co., Ltd.) of a Canadian gold mining company operating in the Canadian North (TMAC Resources). That transaction likely would have been at risk even without the “enhanced scrutiny” of SOE investments precipitated by the Pandemic. That said, our firm has dealt with several cases where this “enhanced scrutiny” led to intensive and extended initial reviews of foreign investments that would not have raised issues pre-Pandemic (although fortunately did not culminate in the commencement of formal national security reviews).
[12] It would be a mistake to conclude that national security reviews are ”just a problem” for Chinese investors. Although Chinese investments make up a majority of the transactions subjected to national security reviews so far, the gap is closing.
[13] The IRD strongly encourages early engagement if there are any concerns that a transaction could raise national security concerns.

proceed without review or commence a full scale formal review. In other words, foreign investors are increasingly looking for clarity pre-closing rather than taking the risk that there could be a national security review post-closing. However, since there is no legal requirement in the ICA to file the ICA Notice pre-closing, vendors/targets sometimes object to this approach on the grounds that they should not be obliged to share in a regulatory risk that is not legislatively mandated. Vendors are also incentivized in these circumstances to include a “hell or high water” provision in the transaction agreement as a *quid pro quo* to ensure that investors will be obligated to do what they can to secure government approval.

Similarly, in cases where no net benefit review filing is required, e.g., in the case of a minority investment, foreign investors must consider if and how they will deal with the risk that a national security review may be triggered post-closing. For example, an investor may wish to consult with IRD informally before closing to assess whether there are any likely national security concerns that could be raised. In these circumstances, the IRD will not provide a formal or binding view, and will always caution that the statutory process will have to run its course regardless. That said, in our experience, it can be helpful to engage in this type of informal discussion and it is possible to get a relatively firm, albeit not 100% concrete, sense of whether issues are likely to be raised.

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The Path to Cannabis Legalization in Brazil

Nathália Bier

Discussions regarding the legalization of cannabis in Brazil have come a long way. Recently the Brazilian Chamber passed a bill that would enable cannabis cultivation, which is currently illegal. The bill stills to be approved by the upper house. Until then regulations are being written by ANVISA – Brazil's National Sanitary Vigilance Agency – to accommodate cannabis medical use. In addition to ANVISA's regulations, attorneys have been a key party to safeguard patients' rights for the use and cultivation of the cannabis plant.

Cannabis has been reportedly used as medicine in Asia as far back as 2900 B.C. It was only in the 19th century that the plant was introduced to Western medicine. In Brazil, the cannabis plant was introduced by Portuguese colonists in the early 1800s; not long after, in 1830, the Brazilian constitution prohibited it as a psychoactive substance. Recently, cannabis has gained attention due to its potential benefits of alleviating symptoms and treating diseases.

Yet, legalization of cannabis continues to be under discussion. Steps have been taken to authorize individuals to import medicinal cannabis products for prescription medical use. In addition, Brazilian courts have been supportive of the cultivation of cannabis for medicinal purposes. This article discusses past and current legislation involving cannabis in Brazil and the solutions attorneys have found to protect patients' rights.

In the 1970s, drug consumption in Brazil became more visible; cannabis, cocaine, and hallucinogens were the main drugs circulating at the time. In 1976 the law 6368, also known as the Narcotics Law, was approved. The law not only prohibited, but also criminalized the recreational and medicinal use of cannabis products.

In 2006 the drug legislation changed, giving birth to the current regulations concerning drugs in Brazil. Law 11343/06 still prohibits transporting, selling, and trafficking cannabis; Article 33 of the Law imposes a penalty of 5 to 15 years of imprisonment for the import, export, transport, production, purchase, sale, storage, or prescription of drugs or their raw materials. The same punishment applies to anyone who sows, cultivates, or harvests plants that constitute raw material, input, or chemical used for the preparation of drugs.

One of the main changes in the 2006 law was that it decriminalized personal consumption. It provides that whoever "acquires, keeps, stores, transports, or carries for personal use drugs without authorization" will receive only socio-educational measures. Furthermore, the legislation created exceptions for medical and scientific cultivation of cannabis, as is seen in Article 2, Sole Paragraph, and in Article 31 respectively:

> The Federal Government may authorize the planting, cultivation, and harvesting of the plants referred to in the main clause herein only for medical or scientific purposes, in a predetermined place and time, by means of inspection, subject to the above-mentioned provisos," and

> one must obtain prior authorization by the competent authority to produce, extract, manufacture, process, prepare, hold, store, import, export, re-export, ship, transport, display, offer, sell, buy, exchange, assign or acquire, for any purpose, drugs or raw material intended for preparation thereof.

In other words, the legislation created exceptions for the use and cultivation of cannabis on a case-by-case basis. Since then, other regulations were written to clarify and guide the population regarding the use of the plant. For example, the therapeutic medicinal use of cannabis was first approved by Brazil's National Sanitary Vigilance Agency (ANVISA) in 2015; ANVISA allowed the prescription of medicines having CBD and THC to be imported by means of exceptional authorization. Metavyl, which is the same as Sativex, a medicine compromised of both THC and CBD, was approved by the agency in 2017.

Cannabis, however, remains listed as a plant that cannot be cultivated, harvested, exploited, imported, exported, traded, extracted, handled, or used in Brazil. Because of that, patients have to go through a long and expensive process to obtain medicine. In addition to a doctor's prescription, patients must meet certain

regulatory requirements, set out by ANVISA. They also must complete a medical report, justifying their use of the drug. Once authorized, the patient is allowed to purchase the medicine.

To facilitate and lower the costs for those patients, ANVISA published Resolution RDC No. 327 on 9 December 2019 (‘RDC 327 of 2019’) to regulate the manufacturing, importation, commercialization, prescription, dispensation, monitoring, and inspection of a new category of products named ‘Cannabis Products’. Brazilian companies, now, are allowed to produce ‘Cannabis Products’, if they follow the agency's new regulation for clearance. The products that are allowed to be commercialized must be predominantly CBD, containing less than 0.2% of THC. Yet, products with more than 0.2% of THC can be commercialized only for patients that have no other therapeutic alternatives and are in irreversible or terminal clinical situations. Since, the Resolution did not legalize the cultivation of cannabis, companies must import the pharmaceutical input in the form of plant derivative, phytopharmaceutical, in bulk, or industrialized product, prohibiting the import of the plant or parts of it.

Attorneys, on the other hand, have found another solution to minimize the costs for patients and to allow them to cultivate the plant. They are using habeas corpus (HC), a constitutional action which goal is to guarantee the individuals' right of freedom when threatened or in any way restricted. In this case, people are filing HC to domestically cultivate cannabis for medical use. HC guarantees freedom of the patient to plant and guarantees the preservation of its cultivation in case of any police action. Courts are slowly being more accepting and granting HC for patients, however, it is still analyzed on a case-by-case basis.

Brazil has a long way to go for cannabis legalization, but it is walking toward the 21st century of medical cannabis regulations. In June of 2021, a special committee of the Brazilian Chamber of Deputies passed a bill that would enable cannabis cultivation for medicinal, veterinary, scientific, and industrial use. If approved the bill will legalize cannabis cultivation only by companies, patient associations, and NGOs; individual cultivation would still be illegal. The bill must still be approved by the upper house to take effect; nonetheless, it was great a step towards cannabis legalization.

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One World, One Health

Martha Smith-Blackmore, DVM and Lenore M. Montanaro, Esq.

As of this writing, the World Health Organization (WHO) has documented 185,038,806 confirmed cases and 4,006,882 deaths[1] from the COVID-19 disease, shared between 223 countries, areas, and territories.[2] The disease, caused by a new coronavirus called SARS-CoV-2, is believed to have emerged during the latter half of 2019, "following a report of a cluster of cases of 'viral pneumonia' in Wuhan, People's Republic of China."[3]

Approximately only one month after COVID-19 was first identified, the WHO declared the coronavirus a "global health emergency."[4] There are numerous reasons why the COVID-19 disease spread within a short period of time, including, but not limited to: transmission occurred via asymptomatic individuals, perhaps because the incubation period for the virus is longer than the serial interval for the virus (enabling transmission by presymptomatic or asymptomatic carriers); the virus is believed to have been transmitted via fomites and more importantly by aerosols with a long "hang time";[5] and transmission spread due to the interconnectedness of people and animals in a global ecology.

The COVID-19 global pandemic reveals the importance of recognizing that people, animals, and the environment[6] are interconnected. It also reaffirms the concept of "One Health" which is a call for all individuals, communities, organizations, professions, governments, and nations to work together for the betterment of people, animals, and the environment.

What is One Health?

The American Veterinary Medical Association (AVMA) understands One Health as two related ideas: (1) humans, animals, and the environment are "inextricably linked" and (2) the goal within the concept of One Health is to attain a "collaborative effort of multiple disciplines working locally, nationally, and globally to attain optimal health for people, animals, and the environment."[7]

The Centers for Disease Control and Prevention (CDC) also recognizes the importance of One Health, noting that "human populations are growing and expanding into new geographic areas" and, as such, "more people live in close contact with wild and domestic animals, both livestock and pets."[8] The CDC has determined that close contact can cause zoonotic[9] disease. The U.S. Department of Agriculture notes that "[d]uring the last [three] decades, approximately 75 percent of emerging infectious diseases among humans have been zoonotic diseases, which can be transmitted from animals to people."[10] Additionally, the CDC has identified that the "earth has experienced changes in climate and land use, such as deforestation and intensive farming practices."[11] This "disruption" can cause "new opportunities for diseases to pass to animals" and/or to humans.[12] Moreover, the "movement

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[1] The authors remain humbled and saddened by all loss of life and suffering and extend their solidarity, sorrow, and grace to all people and animals directly impacted by the tragedy of COVID-19.

[2] *Coronavirus disease (COVID-19)*, WORLD HEALTH ORG., https://www.who.int/emergencies/diseases/novel-coronavirus-2019 (including links and resource materials about the novel coronavirus of 2019) (last visited July 9, 2021).

[3] *Coronavirus Disease (COVID-19)*, WORLD HEALTH ORG., https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19 (last updated May 13, 2021).

[4] Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N. Y. TIMES (Mar. 17, 2021), https://www.nytimes.com/article/coronavirus-timeline.html.

[5] "Fomite" transmission means that the virus was spread via contaminated surfaces or objects. *See SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html; *see also Summary of recent changes,* CENTERS FOR DISEASE CONTROL AND PREVENTION (May 7, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-sars-cov-2.html.

[6] In this writing, the use of the word "animal" means "nonhuman being." The use of the words "people," "person," or "persons" in this writing refer to human beings and is not intended to be a rejection of an interpretation that animals are "nonhuman persons." In this writing, "environment" means the surroundings or conditions in which a human, animal, plant, or other matter lives or operates.

[7] *One Health*, AM. VETERINARY MED. ASS'N, https://www.avma.org/resources-tools/one-health.

[8] *One Health Basics*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/onehealth/basics/index.html (last visited June 3, 2021).

[9] *Id.* (defining "zoonotic diseases" as "diseases that can spread between animals and people").

[10] *The History of One Health*, U.S. DEPT. OF AGRIC., https://www.aphis.usda.gov/animal_health/one_health/downloads/one_health_info_sheet.pdf (last visited June 3, 2021).

[11] *One Health Basics, supra* note 8.

[12] *Id.; see also Animals & COVID-19*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Mar. 25, 2021), https://www.cdc.gov/coronavirus/2019-ncov/daily-life-

of people, animals, and animal products” occurs via “international travel and trade[].”[13] This means that “diseases can spread quickly across borders and around the globe.”[14] Some of these diseases began as viruses, such as how COVID-19 is the disease caused by the SARS-CoV-2 virus.

In addition to physical health and safety, the inclusion of mental health[15] in the One Health framework is crucial for the benefit of people, animals, and the environment. Mental health is important because, among other reasons, there are “significant correlations between animal abuse, child abuse and neglect, domestic violence, elder abuse[,] and other forms of violence.”[16] In other words, many mental health conditions endured by people impact people, animals, and the environment because of the connection that people have to animals.

Attorneys Should Work Towards Advancing “One Health”

Subject to an attorney’s duties to the client, and the attorney’s requirement to abide by all Rules of Professional Conduct[17] within the attorney’s jurisdiction(s) of practice, an attorney can and does have a substantial impact in advancing or hindering the objectives of One Health. Just as veterinarians “play an integral role in One Health because animals both impact and are impacted by people and the environment[,]” attorneys, too, play an important role in One Health because an attorney’s client, or clients, are affected by laws and policies that impact people, animals, and the environment.[18]

Attorneys in nearly all sectors of law, as well as those not practicing law, such as those working within advocacy, policy, or within other areas, generally have the knowledge attained during law school to critically analyze and evaluate issues (i.e., “issue spotting”), which can, in turn, lead to creative or novel solutions to complex problems. This means that generally, an attorney may explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions, which may include decisions that have an impact upon people, animals, and/or the environment.[19] Subject to an attorney’s legal and/or ethical requirements, and the specific facts of a case, generally the attorney may properly inform the client, so that the client may direct the legal services with full situational awareness necessary to make an informed decision, which could impact global health. Generally, an attorney may use the attorney’s unique skill set to foster initiatives or objectives to “help to predict, prevent, and control zoonotic disease outbreaks that threaten human and animal health, and […] address other threats that affect humans, animals, and our shared environment.”[20]

On the policy front, attorneys are critical to identifying areas where laws may be enacted that are consistent with the One Health approach to help minimize the risk of transmission of zoonotic disease and protect public health, animals, and the environment. In fact, in February 2021, the American Bar Association House of Delegates adopted a resolution sponsored by the International Law Section and co-sponsored by the Tort Trial and Insurance Practice Section that does just that—Urging “all nations to negotiate an international convention for the protection of animals that establishes standards for the proper care and treatment of all animals to protect public health, the environment, and animal wellbeing.”[21]

Conclusion

People continue to learn about and strive toward the One Health approach. There are significant steps that all people can take to prevent disease and injury and make the world a better place for all people and animals. From keeping companion animals safe and healthy to enjoying wildlife from a distance, people can be kinder to other people and to animals.[22]

coping/animals.html (“We do not know the exact source of the current outbreak of coronavirus disease 2019 (COVID-19), but ***we know that it originally came from an animal***, likely a bat.”) (emphasis added).

[13] *One Health Basics*, *supra* note 8.

[14] *Id.*; *see also Coronavirus disease, supra* note 2.

[15] *Mental Health*, WORLD HEALTH ORG., https://www.who.int/health-topics/mental-health#tab=tab_2 (“Mental health conditions can have a substantial effect on all areas of life, such as school or work performance, relationships with family and friends[,] and ability to participate in the community. Two of the most common mental health conditions, depression and anxiety, cost the global economy [one trillion dollars U.S. dollars] each year.”) (last visited June 3, 2021).

[16] NATIONAL LINK COALITION, https://nationallinkcoalition.org (last visited June 3, 2021).

[17] MODEL RULES OF PROF’L CONDUCT (AM. BAR ASS’N 1983), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/; *see id.* r. 1.2(a) “[…] a lawyer shall abide by a client’s decisions concerning the objectives of representation and […] shall consult with the client as to the means by which they are to be pursued”).

[18] *One Health, supra* note 7.

[19] *See* MODEL RULES OF PROF’L CONDUCT, *supra* note 17, r. 1.4.

[20] *One Health Basics*, *supra* note 8.

[21] ABA Resolution 21M101C (Feb. 2021).

[22] *One Health Basics, supra* note 8.

Attorneys within nearly all areas of law can use their particular skills to "have the biggest impact on improving health for both people and animals."[23] Moreover, attorneys can work with veterinarians to capture their unique "expertise in toxicology, epidemiology, and ecology […] to understand, control, prevent, diagnose, treat environment-associated diseases that affect both people and animals."[24]

**Authors' Note: this writing and any of its content therein are not intended to be, nor should it or they be, construed as legal, veterinary, medical, or other professional advice.*

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[23] *Id*.

[24] *One Health, supra* note 7.

Turmoil, Training, and Transformation During the Egyptian Revolution:

An ABA Rule of Law Initiative Snapshot of Making a Difference

Gregg B. Brelsford

> The rule of law bakes no bread, it is unable to distribute . . . [food or clothing] . . . (it has none), and it cannot [easily] protect itself against external assault, but it remains the most civilized and least burdensome conception of a state yet to be devised.
>
> Michael Oakeshott, *The Rule of Law* in What Is History? And Other Essays[1]

Recently, there has been little widely-available documentation of the on-the-ground practice, experience, and accomplishments of the American Bar Association's (ABA), Rule of Law Initiative (ROLI), one of modern history's great global rule-of-law development strategies.[2] Granular stories of ROLI's work in high-turmoil settings are rare. Presently, we live in a world of ferocious attacks on the rule-of law (ROL) by dictatorial and autocratic national governments, and terrorist groups. It seems that these governments and groups are widely using the same "worst practices" rule of law-assault manual. In these precarious times, it is important that first-hand stories be told. We need to learn about what happens, and what makes a difference, in global rule-of-law development programs.[3]

A. TURMOIL

A machine gun clattered sharply in the distant darkness as I answered an emergency 3:00am phone call from ROLI's Washington, DC headquarters. The directive: Get out of there. Groggily, I scrambled to pack and flee the violence exploding in Cairo on August 13, 2013. The crescendo of bloody street-battles between the Egyptian army that ousted former president Mohamed Morsi six weeks earlier, and the Muslim Brotherhood he belonged to, was spiking. After nearly six weeks of this, the exasperated ROLI Middle East regional director ordered her two American lawyers, the Country Director and me, to leave Egypt immediately.

She gave us three hours to gather the barest of belongings and arrange a taxi to the airport. In the eerie quiet of the early dawn shadows, as Muslims kneeled on their prayer mats, and before another day of fierce battle erupted, we rushed to catch a flight out. We raced past abandoned remains of burned-out cars, battered barricades, and broken tear gas canisters that littered the streets from recent clashes.

The regional director's prescient wisdom was quickly and dramatically borne out. The morning after our plane took off the Egyptian government forcibly removed thousands of protesters dug-in to encampments in two of Cairo's public squares, Al-Nahda Square and Rabaa Al-Adawiya Square. Approximately 1,000 protestors, soldiers, and police officers died, and more than 1,400 were injured. The interim government declared a month-long state of martial law and a dusk-to-dawn curfew.

We evacuated to Amman, Jordan, not knowing if we would ever return to our staff and friends, our urgent rule of law work, or the belongings we left behind. Amman was the location of the ROLI office nearest to Cairo and the ROLI-Jordan staff took us in as family. After two weeks the regional director cleared our return to Egypt. We came back to martial law, a 7:00 pm to 6:00 am curfew - during which the streets of Cairo, a city of 20 million people, were hauntingly deserted - and to

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[1] Michael Oakeshott, in M. Oakeshott, *The Rule of Law* in What Is History? And Other Essays, 1119 at 164 (Barnes and Noble1983), *quoted in* Rachel Kleinfeld Belton, *Competing Definitions of the Rule of Law: Implications for Practitioners*. Carnegie Endowment for International Peace, 2005, www.jstor.org/stable/resrep12779 (visited May 28, 2021).

[2] There is a multiplicity of rule-of-law program reports in the files of numerous funding agencies, but little information is circulated in more widely available publications like this one. *But see* the ROLI blog Rule of Law Insights at https://abaruleoflaw.blogspot.com (visited May 29, 2021).
For a comprehensive historical summary of ABA ROLI, and other, rule of law programs, see former ABA President James R. Silkenat's article, "*The American Bar Association and the Rule of Law*," 67 SMU L. R. 746 (2014), http://scholar.smu.edu/smulr/vol67/iss4/7/ (visited May 28, 2021).

[3] Elsewhere, the author discussed this in greater depth. *See* Gregg B. Brelsford, *Turmoil, Teaching, Training, and Transformation During the Egyptian Revolution: Global Rule of Law-Development 3D-360 in the 21st Century*, in Careers in International Law, 5th Edition, 157-181 (Marcelo Bombau, ed. 2018).

sporadic, diffuse and continuing violence in greater Cairo.

Most ROL development work in developing countries[4] is characterized by less-extreme circumstances than the level of violent conflict that requires evacuation from a host country. However, many 21st-century developing countries are rife with social, political, economic, ethnic, gender, and religious tension, oppression, disagreement, and conflict. Many 21st-century developed countries are too.

But what distinguishes the two is that many developing countries have few or weak institutions for peacefully resolving disputes or changing oppressive structures. There is often minimal access to justice and fair elections, and limited or no freedom of expression, the press, and association. What rights exist are influenced by income and wealth. In the absence of institutions for resolving conflict peacefully, members of these societies may turn to "guns in the street" for resolving differences or seeking structural change.

Many 21st-century rule of law-development settings are a mixture of instability, endemic conflict, varying degrees of violence, and zero-sum competition for political power, and economic and social goods (including food and water). Indeed, tumultuous settings like the one described here in Egypt may point to some type of "new normal."

B. TRAINING and TEACHING in ROL-Development: ROLI-Egypt

There is no broadly accepted definition of ROL.[5] For our purposes, ROL means a legal system governed by a constitution and laws generated by representatives chosen through fair elections, in which the government is held accountable by enforcing constitutional and other rights through an independent judiciary. This requires skilled practitioners in courts, law schools and private and governmental law practice settings who are explicitly committed to the rule-of-law. Developing and strengthening these practitioners, as well as constitutions, parliaments, elections, and legislation, among other things, is specifically the goal of ROL-development. There is no universal strategy, but all strategies have one universal purpose: strengthen global ROL. One rule of law-development strategy is to deliver ROL-training on-the-ground in host countries. Additional approaches include periodic training online, organizing conferences, advising on drafting constitutions and statutes, collaborative work with country bar associations, and bar leadership visits with legal system leaders in developing countries.[6] The ABA, ROLI, and many other organizations, do this.[7]

ROLI is a nongovernmental organization and international development program that, since it started more than 25 years ago, promotes justice, economic opportunity, and human dignity through the rule of law.[8] It operates in 50 countries worldwide and currently targets six large thematic areas: (i) Governance and Justice System Strengthening, (ii) Human Rights and Access to Justice, (iii) Transition, Conflict Mitigation and Peacebuilding, (iv) Inclusive and Sustainable Development, (v) Internet Freedom, and (vi) Justice Works.

ROLI-Egypt reflects the vigorous nature of global ROL-development programs generally. It illustrates the programmatic structure of a typical overseas development organization and the struggle to do valuable short-term work while also seeking to institutionalize its long-term impact. The work that it does is vital, diverse, rich, and amazing.

1. Short-term Teaching

In late 2009, ROLI-Egypt secured its first five-year permit from the Egyptian government. It started operations with a multiyear, multimillion-dollar, USAID grant to create and deliver an "Innovation in Teaching and Training in the Egyptian Legal Education System" program. This program created and delivered short "CLE-type" practical skill-building courses to young Egyptian lawyers,[9] created and managed national law school

[4] The term "developing country" refers here to economic development, not the sophistication of the legal system leaders and professionals. Indeed, every day, these legal professionals fight courageously for ROL in very challenging circumstances. Nor does this article suggest that knowledge flows only one-way from developed countries to developing countries, or that developed countries have nothing to learn from developing countries.

[5] *See* Silkenat, supra note 2, and Belton, supra note 1.

[6] Elsewhere, the author has proposed an additional, virtual strategy that builds upon these approaches by adding a continuous, digital, interactive component. *See* Gregg B. Brelsford, *21st Century Global Rule of Law Under Siege: A Proposed ABA Virtual Grassroots Intervention*, International Law News, American Bar Association, Section of International Law, Volume 48, No. 3, Spring 2021.

[7] *See generally* Mary Noel Pepys, *The Journey of a Private Practitioner Who Became an International Rule of Law Attorney*, *in* Careers in International Law 4th Edition, 128-152 (Salli Anne Swartz, ed. (2012).

[8] https://www.americanbar.org/advocacy/rule_of_law/what-we-do/ (visited May 28, 2021).

[9] In Egypt, as in most civil law countries, a law degree is an undergraduate degree and legal education is highly theoretical – it

moot arbitration and legal writing competitions, and supported start-up law school clinics. This funding expired in 2016.

ROLI-Egypt added two more far-reaching USAID grant-funded programs in 2014-2015. One program focused on training Egyptian judges on contemporary skills, such as mediation, and on legal issues such as money laundering, trafficking, and numerous international treaties. The other program focused on training Egyptian prosecutors on contemporary skills such as forensic evidence gathering, use of DNA evidence, human trafficking, and interviewing witnesses, including in domestic violence cases. As of 2019, the funding for the prosecutor training was on-going.

2. Long-term Training: Training of Trainers

Admirably, ROLI-Egypt delivered more than critically important and valuable short-term practical skills training to individual judges, prosecutors, and lawyers. It also fortified the *long-term sustainability* of these skill-training programs by *institutionalizing Interactive Teaching (IAT) methods*[10] in contemporary-skills training for Egyptian legal professionals. Strategically, it created and delivered IAT Training of Trainer (TOT) courses for the entire spectrum of the Egyptian legal system: lawyers,[11] law professors, judges[12] and prosecutors.[13]

C. TRANSFORMATION

ROLI-Egypt's teaching and training work significantly changed and improved major sectors of the legal profession in Egypt. It transformed the *perspectives*, and *skills*, of thousands of individual Egyptian judges, prosecutors, law professors, young lawyers and law students. I saw thousands of *light bulb moments* as we *opened the eyes* of these legal professionals. ROLI-Egypt's impact was powerful and pervasive.

Judges. ROLI-Egypt transformed judicial perspectives by teaching not only specific content but also how it fits into a larger systems-approach to legal sector change. Among other things, it taught Egyptian judges mediation techniques, the role mediation plays in increasing access to justice by resolving disputes more quickly than the typical six years waiting time for trial, and the institutional and societal value of creating court mediation systems. Additionally, ROLI-Egypt taught over one hundred judges in using IAT in teaching mediation and other topics to future generations of judges.

Prosecutors. Similarly, ROLI-Egypt transformed the perspectives and skills of thousands of public prosecutors on skills and knowledge relevant to their work, and created a cadre of trainers using IAT in the public prosecutorial training program.

Law Professors and Law Students. ROLI-Egypt also worked with law professors and law students in a majority of Egypt's twelve major public law schools. For example, ROLI-Egypt created top-tier annual national law school competitions for moot arbitration and legal writing, and helped begin student family-law clinics. This included training hundreds of law professors on how to start and continue these programs at their schools. These programs reached thousands of Egyptian law students and law professors.

Young Lawyers. Similarly, in CLE-type classes, ROLI-Egypt trained thousands of young new law school graduates and early-career practitioners in the practical legal skills of client interviewing, legal analysis, legal writing, contract drafting, oral advocacy, negotiation, and arbitration. It trained Egyptian lawyers, and interested judges and prosecutors, to teach these classes in Arabic using IAT. Many of these trainees went on to make further contributions to Egypt as adjunct professors in other law teaching settings.

Institutional Development. Further, ROLI-Egypt generated the emergence of an Egyptian-led legal-skills training "industry" in Egypt. Before ROLI-Egypt started delivering CLE-type classes in 2010, there were no other organizations doing this type of training. By 2017, numerous Egyptian-founded organizations were doing this.

gives little or no attention to practical application of the law. Nor does the Egyptian Bar Association provide any CLE-type training.

[10] These interactive methods included Socratic questioning, group discussion, brainstorming and problem solving, and role-playing. During the time period described here, law schools, and judicial and prosecutor training organizations, conducted instruction through the "traditional" one-way lecture method. There was little *interaction* and little focus on practical training or application. This style produces less effective and meaningful learning than does contemporary IAT.

[11] This training qualified them to teach CLE-type courses for ROLI, and in the plethora of other newly-emerging legal skills training institutes, and as adjunct professors in law schools.

[12] This program was integrated into the Judicial Training Institute of the Ministry of Justice, the training department for new judges and for continuing-education for experienced judges.

[13] This program was integrated into the Criminal Training and Research Institute of the Public Prosecutor's Office, the training department for new prosecutors and for continuing-education for experienced prosecutors.

Quantitative Impact. Beyond the remarkable qualitative impact described above, the sheer volume of ROLI-Egypt's impact is equally impressive. To conservatively estimate it, ROLI-Egypt offered at least 350 classes to an average of 25-50 judicial, prosecutorial, lawyer, law professor and law student trainees in each class. At six hours per class for each class, that totals more than 52,000 classroom hours of training.[14]

Additionally, ROLI-Egypt actively recruited female young-lawyers for attendance at its CLEs, ultimately reaching an average classroom composition of 39% women. Further, it actively recruited experienced female lawyers and administrative judges for IAT-TOT training and service in leadership positions as CLE Instructors, reaching a composition of 21% women Instructors. These were cutting-edge "gender statistics" in patriarchal Egypt at that time.

D. CONCLUSION

Some say that the rule-of-law movement is failing, as they see the growth of authoritarianism, dictatorship, and terrorism in many corners of the world. But the fact is that even within such regimes and settings, there are those who yearn for democratic institutions and rule of law. As the Egyptian example here shows, there is much that can be accomplished to set the foundations for rule of law in autocratic environments when people strive to make a difference.

What rule of law work accomplishes in such constrained settings may not be the stuff of great novels or epic movies, but it can be the stuff of important stories and valuable achievements. This Egyptian story is one clear example. Here is the same story told more poetically:

> One day, a beachcomber came upon a large expanse of fish stranded in small pools of water as a result of a receding tide. This extended as far as the eye could see. The beachcomber knew these fish would die before the tide came back in. So, she urgently set to work, throwing as many fish as possible out into the deeper water where they could survive. Before the returning tide drove her back, she saved many hundreds of fish. But she didn't save them all. Perhaps she failed to make a significant difference at the macro-level of all the fish stranded for miles on the beach. But she made a dramatic difference in the concrete lives of each of the fish she did reach with the resources she had.

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[14] This conservative estimate is based on the following calculation: 350 classes X 25 trainees per class X 6 hours per class = 52,500 classroom hours.

The Status of India's New Labor Codes

Poorvi Chothani and Ashwina Pinto

India is in the current midst of streamlining its labour reforms by consolidating certain labour related statutes and enacting four labour codes in their place namely - Code of Wages, Code on Social Security; The Occupational Safety, Health and Working Conditions Code; and The Industrial Relations Code. In this article we will highlight some of the key features of the four Labour Codes which India intends to implement shortly.

In an attempt to boost India to the top 10 countries in the World Bank's Ease of Doing Business rankings, the government is bringing about changes in the labor reforms of the country. To this effect, the government has enacted the following four labor codes:

- Code of Wages,
- Code on Social Security;
- The Occupational Safety, Health and Working Conditions Code; and
- The Industrial Relations Code.

The Codes were set to be implemented on April 1, 2021 but the Government has deferred the implementation for the time being as most states were unable to notify rules under the Codes in their jurisdiction. Since labor falls under the concurrent list of subjects as per the Constitution of India, both the Central and State Governments must notify rules under the Codes for it to become law.

The Code of Wages subsumes the existing statutes that deal with wages - The Minimum Wages Act, 1948; The Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. The Code seeks to amend and consolidate the laws concerning wages, bonus and its associated matters. A key highlight of the Wage Code is that it will provide a uniform definition of 'wages'[1] which will now include (i) basic pay, (ii) dearness allowance and (iii) retaining allowance. Under the provisions of the existing Minimum Wages Act and the Payment of Wages Act, "employees" were restricted to workers drawing wages below a ceiling and in certain specified categories of scheduled employment. The Wage Code, however, will extend to all types of establishments[2]. It also modifies the definition of "employees," which will benefit a large number of workers in the unorganised sector who do not work under written contracts.

The Code on Social Security[3] subsumes the following 9 labor laws namely Employees' Compensation Act, 1923; Employees State Insurance Act, 1948, Employees Provident Funds and Miscellaneous Provisions Act, 1952; Building and Other Construction Workers Cess Act, 1996; Unorganized Workers Social Security Act, 2008; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972; Cine Workers Welfare Fund Act, 1981; and Employment Exchanges (Compulsory Notification of Vacancies) Act 1959. The Code on Social Security seeks to implement new rules for contribution to social security and payment of employee benefits including retirement benefits. The Code also seeks to widen the coverage to include the unorganized sector, fixed-term workers, gig workers and platform workers and inter-state migrant workers.

The Occupational Safety, Health and Working Conditions Code subsumes and replaces 13 labor laws relating to safety, health and working conditions including Factories Act, 1948; Mines Act, 1952; Dock Workers Act, 1986; Contract Labour Act, 1970; and Inter-State Migrant Workers Act, 1979. The Code aims to ease doing business for the employers by replacing the need for various registrations under several statutes to one registration[4].

The Industrial Relations Code[5] subsumes and replaces The Industrial Disputes Act, 1947; The Trade Unions Act, 1926; and The Industrial Employment (Standing Orders) Act, 1946. This Code is set to provide for the recognition of trade unions, notice periods for strikes and lockouts, standing orders, and resolution of

[1] The Code on Wages, 2019, Section 2 (y), available at http://egazette.nic.in/WriteReadData/2019/210356.pdf
[2] The Code on Wages, 2019, Section 2 (k), available at http://egazette.nic.in/WriteReadData/2019/210356.pdf.
[3] The Code on Social Security, available at https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf
[4] The Occupational Safety, Health and Working Conditions Code, available at https://labour.gov.in/whatsnew/occupational-safety-health-and-working-conditions-code-2020-no-37-2020
[5] The Industrial Relations Code, available at https://egazette.nic.in/WriteReadData/2020/222118.pdf

industrial disputes. The Industrial Relations Code is being implemented with the aim of providing a better structure to protect the workers' rights of forming unions and to provide regulations for the settlements of industrial disputes.

Once the labor codes are implemented, companies would need to adhere and conform with the new rules to ensure compliance with the labor laws of the country. In addition to overhauling the labor reforms of the country, the government with the implementation of these four codes intends to use technology to ensure enforcement and compliance.

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The Use of Artificial Intelligence in Immigration Law
Legal and Ethical Issues

Sergio R. Karas and Ari Goodman

Artificial intelligence (AI) tools and services are testing ethical boundaries. The government of Canada intends to use AI systems to assist and replace humans in decision-making process. In an immigration context, people's futures will be decided by sophisticated algorithms. Procedural fairness requires that these systems be appropriately regulated and that safeguards be put in place against arbitrary decisions.

There is no globally accepted definition of AI, which has resulted in varying interpretations by different authorities. The European Commission defines AI as:

> "…systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals.
> AI-based systems can be purely software-based, acting in the virtual world (e.g., voice assistants, image analysis software, search engines, speech and face recognition systems) or AI can be embedded in hardware devices (e.g., advanced robots, autonomous cars, drones or Internet of Things applications)." [1]

AI is distinguished from other technologies by its autonomy and analytical capabilities. The European definition of AI is comprehensive, it explains how these systems interact with the world and it provides examples of AI from every-day life.

Immigration Legislation and AI

In 2017, the *Immigration and Refugee Protection Act*[2] was amended to include a section on Electronic Administration. The provisions related to AI systems are as follows:

> **Decision, determination, or examination by automated system**
> **186.1 (5)** For greater certainty, an electronic system, including an automated system, may be used by the Minister to make a decision or determination under this Act, or by an officer to make a decision or determination or to proceed with an examination under this Act if the system is made available to the officer by the Minister.
> **Requirement to use electronic means.**
> **186.3 (2)** The regulations may require a foreign national or another individual who, or entity that, makes an application, request or claim, submits any document or provides information under this Act to do so using electronic means, including an electronic system. The regulations may also include provisions respecting those means, including that system, respecting the circumstances in which that application, request or claim may be made, the document may be submitted, or the information may be provided by other means and respecting those other means.[3]

These subsections require that applicants use automated decision-making systems once they are implemented by Immigration, Refugees and Citizenship Canada (IRCC).

Automated Decision Systems in Canada

The Government of Canada disclosed its intention to use AI with its report, *Responsible Artificial Intelligence in the Government of Canada – White Paper Series*.[4] It has the objective of using AI technologies to improve administrative decision-making processes. The purpose of an automated decision system is to either assist or replace personnel. IRCC is increasing the automation of its services because of the volume growth of temporary resident applications, which include Study Permits, Work Permits and Temporary Resident Visas for visitors. The goal of automating these tasks is to increase efficiency and to reduce the processing time of applications.

[1] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on Artificial Intelligence for Europe, Brussels, 25.4.2018 COM (2018) 237 final.
[2] *Immigration and Refugee Protection Act*, SC 2001, c 27.
[3] *Ibid* at s 186.1(1), 186.3(2).

[4] Treasury Board of Canada Secretariat, "Responsible Artificial Intelligence in the Government of Canada," Digital Disruption White Paper Series (April 2018), https://buyandsell.gc.ca/cds/public/2018/06/28/05baa93c08b6f2d3000855170f831066/ABES.PROD.PW__EE.B017.E33657.EBSU000.PDF.

A 2018 IRCC pilot program used an automated decision-making system for temporary and permanent residence applications from China and India. Under this program, low risk assessment approvals were granted without the need for review by immigration officers. The AI system made positive eligibility decisions using rules from past officer decisions. IRCC found that low risk assessments from China were processed 87% faster using advanced analytics.[5] These results are promising because an increase in efficiency can allow for quicker service. However, IRCC expressed that contextual reasoning and fraud detection remain tasks that are best suited to immigration officers.

On April 1, 2020, the Treasury Board implemented the Directive *on Automated Decision Making*[6]. This policy responded to regulatory and ethical concerns. Its objective is to ensure that automated decision systems are used to reduce risks, be efficient and accurate, and to provide consistent and interpretable decisions under the law. The Algorithmic Impact Assessment is a mandatory risk assessment tool for AI designers that provides a course of action in response to their answers. This assessment includes two sets of questions for risks and mitigation. The Directive requires that an assessment be completed at the beginning of the design phase of an automated decision system project. There are four "impact assessment levels":

> **Level 1**: The decision will likely have little to no impact, decisions will often lead to impacts that are reversible and brief.
>
> **Level 2**: The decision will likely have moderate impacts; decisions will often lead to impacts that are likely reversible and short-term.
>
> **Level 3**: The decision will likely have high impacts; decisions will often lead to impacts that can be difficult to reverse and are ongoing.
>
> **Level 4**: The decision will likely have very high impacts, decisions will often lead to impacts that are irreversible, and are perpetual.

These levels indicate the likelihood and degree of impact that the system is expected to have on the rights of individuals or communities, the health or well-being of individuals or communities, the economic interests of individuals, entities, or communities, and the ongoing sustainability of an ecosystem. After an impact level is determined, AI designers must follow the level-specific requirements that are assigned to their project. There are impact level requirements prescribed for peer review, notice, human involvement in the decision-making process, result explanations, training, contingency planning, and approval for system operations. Projects with higher impact levels have more onerous requirements.

Ethical Considerations for Automated Decision Systems

There are concerns that the government's use of automated decision-making systems will infringe on individual constitutional rights. Human rights violations may occur when public institutions rely on AI for law enforcement and administrative decision-making. The *Canadian Charter of Rights and Freedoms*[7] (the Charter) guarantees that:

> **Fundamental Freedoms**
>
> **2.** Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion.
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.
> (c) freedom of peaceful assembly; and
> (d) freedom of association.
>
> **Life, liberty and security of person**
>
> **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> **Search or Seizure**
>
> **8.** Everyone has the right to be secure against unreasonable search or seizure.
>
> **Equality Rights**
>
> **15. (1)** Every individual is equal before and under the law and has the right to the equal

[5] Immigration, Refugees and Citizenship Canada, "Augmented Decision-making @ IRCC" (April 2019), https://www.canada.ca/content/dam/ircc/documents/pdf/english/services/ai-agenda/laferriere-eng.pdf.

[6] Treasury Board of Canada Secretariat, "Directive on Automated Decision Making" (April 2020), https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592.

[7] *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s 2, s 15.

> protection and equal benefit of the law without discrimination and without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[8]

Facial recognition AI uses images to create a biometric profile known as a "feature vector". These systems have databases that contain large numbers of feature vectors that are gathered from the internet. A search involves uploading an image of which a feature vector is created and matched against feature vectors from the database. A sufficient "similarity score" between vectors determines the basis for a match. An American study found that facial recognition AI in the United States had a higher rate of false positive matches for Asian and African American persons. The group that experienced the highest rate of false positives were black females. These errors can occur because of poor image quality, aging, or similar features amongst individuals.[9]

A police officer who acts on a lead from a false positive may violate constitutional protections. In Canada, the search or detention of an individual based on algorithmic bias would likely breach their Charter rights. There are severe immigration consequences for people who are flagged by detection-making software due to a mistaken identity. This could lead to rejected immigration applications, false allegations, and detention. Inherent biases in AI decision-making can extend beyond race, ethnicity, and sex to marginalize protected groups when other factors are used in determinations.

AI Tools for Lawyers

AI tools marketed to lawyers can be grouped into six categories: document management, document analytics and generation, e-discovery, expertise automation, legal research, and predictive analytics. [10] A document management AI is a system that accurately reviews documents in seconds without inaccuracies that arise from human error. Similarly, document analytics and generation tools assist with drafting contracts and litigation documents. These tools use machine learning to assist with analyzing contracts, reviewing due diligence, and abstracting clauses from agreements. E-discovery software analyzes large numbers of documents according to search criteria, it identifies relevant documents much faster than regular searches. Expertise automation commoditizes legal knowledge and finds answers to questions that would normally require meetings between clients and their lawyers. Legal research tools are being developed by publishers to provide lawyers with answers to questions of law. Predictive analytics AI speculate likely outcomes, like the results of a hearing based on information from a databank of prior decisions.

Lawyers' Professional Responsibility

Ethical dilemmas may arise from the use of AI in legal practice. AI technologies can impact a lawyer's duties and obligations concerning the preservation of attorney-client relationships. The Law Society of Ontario requires that legal professionals adhere to the *Rules of Professional Conduct*.[11] When deciding whether to use AI tools and services, lawyers must consider their duties of professional competence and confidentiality:

> **Competence**
> **3.1-1** In this rule, "competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client including…
> **(b)** investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action, …
> **(e)** performing all functions conscientiously, diligently, and in a timely and cost-effective manner.[12]
> **3.1-2** A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.
>
> **Confidential Information**
> **3.3-1** A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless

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[8] *Ibid* at s 2, s 8, s 15.
[9] National Institute of Standards and Technology, "Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects" (December 2019), https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf.
[10] Anthony E. Davis, "The Future of Law Firms (and Lawyers) in the Age of Artificial Intelligence" (2020), https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/the-future-law-firms-and-lawyers-the-age-artificial-intelligence/.
[11] Law Society of Ontario, *Rules of Professional Conduct*, Toronto: LSO, 2019.
[12] *Ibid* at s 3.3-1, s 3.1-1, s 3.1-2.

(a) expressly or impliedly authorized by the client.

(b) required by law or by order of a tribunal of competent jurisdiction to do so.

(c) required to provide the information to the Law Society; or

(d) otherwise permitted by rules 3.3-2 to 3.3-6.

When an AI system lacks appropriate security measures, confidentiality can be compromised. Client data may be targeted by cyber criminals in an "AI attack". These attacks involve the manipulation of AI systems to change its behavior and to breach data security. AI attackers can change, damage, and steal information by exploiting inherent vulnerabilities in the algorithms. Regulatory guidelines that can mitigate the risk of attacks include considering the risk of attacks, IT-reforms to decrease system vulnerability, and response plans.[13]

With respect to professional competence, the guideline to perform functions in "a timely and cost-effective manner" may encourage the use of AI as an element of this duty. The Rules suggest that options should be explored. In some cases, the use of an AI tool may be the best possible option to assist a lawyer to reach a client's objective.

The Brazilian Experience:

Brazil is developing AI to ease the burden on its court system. VICTOR is a tool for the Supreme Federal Court that reads extraordinary appeals and identifies their connection with general repercussions. The AI uses data from digitized documents to make its determinations. The court's goal is to automate the textual analyses of case law. VICTOR completes tasks in five seconds that normally take half an hour. SOCRATES is AI for Brazil's Superior Court of Justice. This system groups new cases with similar issues to be judged in blocks. It also screens unrelated cases to bar their entry to the court. SOCRATES 2 is under development; it will provide judges with the necessary elements to adjudicate a case. These elements include the description of the parties and precedent for the subject matter.[14] The success of these initiatives may encourage other nations to follow Brazil's lead, but concerns for algorithmic bias remain.

AI Regulation

The crux of ethical concerns for AI is that people may be subject to biased decisions, technical errors, and data theft. Transparency is a preliminary issue for the use of AI. While human decision-makers can explain their decisions, the decisions of AI systems cannot be interpreted in the same way. This communication gap makes it difficult to navigate the decisions of automated systems and it could lead to violations of procedural fairness.

The *Personal Information Protection and Electronic Documents Act*[15] (*PIPEDA*) is the foundation of privacy protection at the federal level in Canada. It was enacted in 2001, well before the emergence of AI technologies. The *PIPEDA* requires legislative changes to sufficiently address developments in AI. Experts suggest that the Office of the Privacy Commissioner of Canada be granted the authority to issue financial penalties and binding orders, amongst other reforms.[16]

The Law Commission of Ontario published the report *Regulating AI: Issues and Choices*, which provided suggestions to overcome legal and ethical concerns that arise from the use of sensitive data. The Commission advocates for proactive law reform to regulate AI. It recognized that the Directive on Automated Decision Making was a good start, but without a provincial regulatory framework, there are risks of under-regulation. The report suggests guidelines to structure AI regulation, including:

- Baseline requirements for all government AI, irrespective of risk.
- Strong protections for AI transparency, including disclosure of both the existence of a system and a broad range of data, tools and processes used by a system.
- Mandatory "AI Registers."
- Mandatory, detailed, and transparent AI or algorithmic impact assessments.
- Explicit compliance with the Charter and appropriate human rights legislation.

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[13] Marcus Comiter, "Attacking Artificial Intelligence: AI's Security Vulnerability and What Policymakers Can Do About It" (August 2019), https://www.belfercenter.org/publication/AttackingAI.

[14] Fausto Martin De Sanctis, "Artificial Intelligence and Innovation in Brazilian Justice," International Annals of Criminology" (2021), 1-1 at pp 4.

[15] *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5.

[16] "Policy Proposals for PIPEDA Reform to Address Artificial Intelligence Report" (November 2020), https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-ai/pol-ai_202011/.

- Data standards.
- Access to meaningful remedies.
- Mandatory auditing and evaluation requirements.
- Independent oversight of both individual systems and government use of AI and administrative decision systems generally. [17]

There are currently no procedural fairness protections for AI systems that are used by public institutions outside of the federal jurisdiction. A framework that incorporates suggestions from this report would provide the foundation for provincial regulation. The Commission advocates for broad interactions between AI program designers and other groups, which include policymakers, legal professionals, and affected communities. Open communication creates the opportunity for equal access to information and participation in AI decision-making.

Conclusion

The pursuit of efficiency and precision drives the demand for AI services. While the potential benefits of AI are vast, the automation of administrative decision-making processes raises procedural fairness concerns. There are also professional responsibility considerations in the use of AI in legal practice. Structured regulation can preserve rights and mitigate the tension between a lawyer's duties to their client and the use of efficient AI systems. Regardless of a lawyer's decision to use AI, an understanding of these technologies has become essential to remain professionally competent. In the context of immigration law, it is imperative that applicants have recourse to human decision-makers to review negative decisions that can affect their lives permanently.

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[17] Law Commission of Ontario, "Regulating AI: Issues and Choices" https://www.lco-cdo.org/wp-content/uploads/2021/04/LCO-Regulating-AI-Critical-Issues-and-Choices-Toronto-April-2021-1.pdf at pp 49.

Canada's Solution To Family Violence Against Non-Immigrants

Jacqueline Rose Bart

Family/Domestic violence has always been a concern for non-immigrants because they are much more vulnerable generally, without permanent status in the country of their spouse. Since the beginning of the COVID-19 pandemic last year, evidence has emerged of a worldwide increase in family violence thought to be linked to lockdown measures and associated stressors, such as social isolation and increased financial pressure.[1] Helplines and police agencies in Canada, too, say there have been increased reports of domestic disturbances.[2] Due to the pandemic and public health measures, abuse victims may have lost access to in-person supports and the usual opportunities to leave their homes and distance themselves from abusers. At the same time, a widespread decline in mental health may have precipitated or worsened abusive situations.

Victims of family violence who are also noncitizens often face additional, specific vulnerabilities linked to their immigration status. In recent years, Immigration, Refugees and Citizenship Canada (IRCC) has introduced additional policies and guidelines which emphasize that "[f]amily members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel compelled to stay in the relationship or abusive situation so they can remain in Canada".[3] The clearest example is the situation of an abusive relationship in which a spousal sponsor for permanent residence threatens withdrawal of sponsorship or to report the victim to IRCC, whether or not such a report would have any valid basis.

IRCC has published family violence guidelines for both humanitarian and compassionate assessments and the issuance of temporary resident permits (TRPs). Current IRCC guidance for processing of humanitarian and compassionate applications instructs officers to be sensitive to situations in which a spouse or other family member of a Canadian citizen or permanent resident leaves an abusive situation and therefore lacks an approved family class sponsorship. Officers may exempt family violence victims from inadmissibility for financial reasons in recognition of the fact that many family violence victims face barriers that prevent them from finding stable employment and supporting themselves without social assistance. IRCC guidelines also encourage officers to recognize that victims may face barriers to reporting abuse or may have reasons for not doing so.

IRCC has also recently updated guidance on the issuance of TRPs for out-of-status foreign nationals experiencing family violence. Created by Ministerial Instruction in 2019, the policy's stated intention is to promote expeditious assessment of TRP applications by victims of family violence and their children whose pathway to permanent residence depends or would have depended on an abusive relationship.[4]

An application for permanent residence need not already have been submitted for applicants to be eligible for the TRP for victims of family violence. TRPs for victims of family violence are issued for a minimum of 6 months. The initial application is fee-exempt and also creates eligibility for an initial fee-exempt open work permit and the Interim Federal Health Program (IFHP). Among the considerations relevant to issuance of a TRP to a victim of family violence is whether victims require a period of reflection to consider their immigration options or to allow the victim a chance to escape the influence of an abuser so they can make an informed decision on a future course of action. Lack of some traditional establishment indicators, such as support networks or language or other skills, are not to weigh against granting the application. The guidelines instruct officers to also consider the application of humanitarian and compassionate grounds.

On April 8, 2021, IRCC issued a program delivery update to its family violence TRP guidelines. Applicants or their representatives should now send their family violence TRP application to the closest local IRCC office rather than the Case Processing Centre in Edmonton to ensure timely identification and processing. The update also clarifies guidelines for officers assessing eligibility in cases where an application for permanent residence has not yet been submitted; and specifies that prioritized processing should also be given to any TRP application

[1] Kim Usher, Navjot Bhullar, Joanne Durkin, Naomi Gyamfi and Debra Jackson, "Family violence and COVID-19: Increased vulnerability and reduced options for support", Int J Ment Health Nurs (7 May 2020), online: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7264607/.

[2] Nicole Thompson, "Reports of domestic, intimate partner violence continue to rise during the pandemic", CBC News (15 Feb 2021), online: https://www.cbc.ca/news/canada/toronto/domestic-intimate-partner-violence-up-in-pandemic-1.5914344.

[3] *Operational instructions and guidelines – Permanent residence – Humanitarian and compassionate consideration – Humanitarian and compassionate considerations: Assessment and processing*, IRCC: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/humanitarian-compassionate-consideration/processing/assessment-dealing-family-relationships.html#violence.

[4] *Operational instructions and Guidelines – Temporary Resident Permits (TRPs)*, IRCC: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/family-violence.html.

which clearly involves a situation of family violence, even if the applicant or agent has not marked their application package with the applicable “FV” code.

These recent immigration measures provide an additional degree of protection to non-immigrant victims of family violence. In my recent experience as an immigration lawyer, the government has acted quickly when abuse was identified. IRCC issued an open work permit to the victim within ten (10) days.

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ILS Task Force on Access to Medications and Vaccines at an Affordable Cost

Thomas Andrew O'Keefe

In August 2020, the International Law Section's Administration Committee approved the creation of a Task Force on Access to Medications and Vaccinations at an Affordable Cost. One important Task Force objective was to prevent ABA entities pursuing policy positions that interfere with or otherwise undermine the basic human right to health, including access to life saving medications. Many people die of diseases today not because there is no cure, but because they cannot afford the medications.

Of immediate concern following the Task Force's launch was the Trump Administration's proposed free trade agreement with Kenya because it specifically sought provisions governing intellectual property rights similar to those found in U.S. law, including "undisclosed test and other data", and it was intended to serve as a model for future accords with other African countries.[1]

The reason trade agreements with developing nations are of heightened concern is because of the asymmetrical negotiating power enjoyed by the U.S. as well as the outsized political influence of U.S. pharmaceutical industry lobbyists. In the past, this situation has resulted in trade agreements that extend the monopoly granted to pharmaceutical patent holders beyond the 20-year maximum established by the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These WTO TRIPS plus provisions include additional years to compensate for bureaucratic delays in granting the underlying patent and/or the authorization to market the product by the relevant health authorities (i.e., patent restoration time). These measures may also restrict access to the laboratory and clinical trial data proving a medication's safety, quality, and efficacy that should otherwise become public records once the patent expires (i.e., data exclusivity). The practical effect of such provisions is to delay cheaper generic medications from coming to market.

The inclusion of intellectual property rights within the ambit of the WTO at its creation in the mid-1990's was controversial given the existence for decades of a World Intellectual Property Organization based in Geneva. Equally as controversial was the decision requiring WTO member states to protect pharmaceutical patents. Many countries such as Germany until 1988, Spain and Portugal until 1992, Finland until 1993, and Ireland as well as Norway until 1997, excluded medications from patent protection.[2] Although U.S. negotiators finally succeeded in securing patent protection for pharmaceuticals through the TRIPS, most developing countries were exempt until 2005. Meanwhile, the least developed nations were given until 2016 (since extended to 2033). Interestingly, protecting patents for up to 20 years from the date of filing was primarily to compensate for regulatory delays in approving the underlying patent application or in the registration/marketing approval of a medicine.[3] Prior to TRIPS, those countries that even provided patent protection for medications did so for considerably less years. Even in the United States, patents were only protected for 17 years pre-TRIPS.

For the Task Force to be effective, it was deemed critical that that it include at least one representative from the Intellectual Property Law (IPL) Section. The IPL Section named its Task Force representative, while at the same time raising concerns about the effort led by India and South Africa at the WTO to temporarily waive TRIPS patent protection for COVID-19 vaccines. In May, the Biden administration announced its support for such a waiver.

The Task Force has, to date, been unable to achieve a consensus on an ABA Presidential Statement in support of the Biden administration's TRIPS waiver on COVID-19 vaccines or a House of Delegates resolution making it ABA policy not to advocate for the inclusion of WTO TRIPS plus provisions in any trade agreement the U.S. may negotiate with a developing country. It has,

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[1] OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, UNITED STATES-KENYA NEGOTIATIONS: SUMMARY OF SPECIFIC NEGOTIATING OBJECTIVES (2020), at 1 & 7. Available at: https://ustr.gov/sites/default/files/Summary_of_U.S.-Kenya_Negotiating_Objectives.pdf

[2] J. SUNDARAM, PHARMACEUTICAL PATENT PROTECTION AND WORLD TRADE LAW: THE UNRESOLOVED PROBLEM OF ACCESS TO MEDICINES (2018) at 139, fn. 18.

[3] *Id.* at 108, fn. 73.

however, succeeded in opening a channel of communication with the IPL Section leadership. This has provided an opportunity to inform the IPL Section of future opposition to any letter similar to the one it sent under Blanket Authority to the Office of the U.S. Trade Representative on February 14, 2018 advocating the inclusion of WTO TRIPS plus provisions on pharmaceutical patents in the trade agreement the Trump administration was negotiating to replace the North American Free Trade Agreement (NAFTA).

In the United States-Mexico-Canada Agreement (USMCA) that replaced NAFTA and was signed into law by President Donald Trump on January 29, 2020, the U.S. House of Representatives succeeded in removing text granting "data exclusivity" for so-called biologics for ten years and for new uses of existing pharmaceutical products for up to three years. Also eliminated was a provision that would have locked in the practice of "patent evergreening" by which pharmaceutical companies obtain patents on new uses for known products as a result of minor or insignificant chemical modifications. Furthermore, the USMCA expressly allows generic manufacturers to utilize compounds used to make a patented drug in order to develop a generic version in anticipation of that drug's patent expiration. These modifications to the USMCA removed "provisions that contribute to high prescription drug prices" in order to "improve access to affordable medicines".[4]

The Task Force has also provided a way to provide information to the IPL Section on how the United Nations Guiding Principles on Business and Human Rights (UNGP) imposes an obligation on business enterprises to respect human rights. Law firms, as business enterprises, have a responsibility to avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. Although the UNGP are voluntary in nature, there are efforts at the UN to make these principles legally binding through a Business and Human Rights Treaty. The European Union is also engaged in efforts to make these principles legally binding on companies that are based in member states or that do business with them.

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[4] Chairman Richard E. Neal's Statement on USMCA, U.S. House of Representatives Ways & Means Committee, Press Release, December 10, 2019, 4. Available at: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/USMCA%20win%20factsheet%20.pdf

Decennial Liability in Egypt

A Brief Summary

Howard L. Stovall

Under the Egyptian Civil Code, architects and contractors generally face strict liability for the collapse of a building they erected, for a period of ten years from the date of delivery. This article provides brief background on some of the more significant aspects of such so-called "decennial liability".

A. BACKGROUND ON DECENNNIAL LIABILITY

Egyptian law has applied a decennial (ten year) liability or warranty requirement to architects and contractors for almost 150 years, beginning with the civil code issued for the Mixed Courts in 1876 and then the civil code issued for the National Courts in 1883.[1] Decennial liability is an Egyptian legal concept adopted from France, which has provided for such a warranty since the French civil code of 1804.

One British judge who served on both the Mixed Court and National Court in Egypt described the rationale for such decennial liability as follows:

> According to general principles the contractor should cease to be responsible for the building he has erected as soon as it is finished and handed over to the employer. But this would be a dangerous rule to apply to buildings, because defects in construction do not appear at once, and it is only when the building has "settled down," as it is called, that one can say whether the work has been well done or not. On these grounds the law has imposed a special legal responsibility on architects and builders, and for ten years they are jointly and severally responsible for the destruction of the buildings erected by them.
>
> The fall of the buildings may be due either to defective construction or to the fact that the site selected was bad. This does not affect the responsibility of the architects and builders who are liable even if the employer selected the site or authorized the defective buildings. Unsafe buildings are a public danger, and the law rightly prevents the architects and builders from shifting the responsibility from themselves to their employers, who may not have the technical knowledge necessary to enable them to detect the defects.[2]

When the 'new' unified Egyptian Civil Code (the "Civil Code") was enacted in 1948, the decennial liability rules were retained and expanded in Articles 651-54.[3] An unofficial English translation of these decennial warranty provisions, which remain the current legal rules in Egypt today, appears at the end of this article.

Decennial liability provisions appear in a section of the Civil Code applicable to a particular type of transaction, the so-called "contract for work" (in Arabic, muqaawala). Under such a contract for work, one of the contracting parties (an independent contractor) undertakes to perform some work in consideration for remuneration from the other contracting party (an owner). In order for the decennial liability rules to apply, there must be a "contract for work" and not, for example, an employment contract or a sales contract. In an employment contract, by way of contrast, the employer directs the performance of work by the employee, and in such case decennial liability rules will not apply.[4]

1. Scope of Decennial Liability

Under Article 651(1) of the Civil Code, architects and contractors[5] generally face joint and several liability to

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[1] Davies, *Business Law in Egypt* (1984), at p. 214.

[2] H. W. Halton, *An Elementary Treatise on the Egyptian Civil Codes* (Cairo 1911), vol. II at pp. 156-57.

[3] Similar decennial liability provisions are found in other civil codes in the Arab Middle East. See, e.g., Jordanian civil code articles 788-791; Kuwaiti civil code articles 692-697; Libyan civil code articles 650-653; Qatari civil code articles 711-715; and United Arab Emirates civil code articles 880-883. In some other Arab countries, the strict liability period extends for only five years. See, e.g., Bahraini civil code articles 615-620; and Lebanese code of obligations and contracts articles 668-669.

[4] Article 646 of the Civil Code. See also Al-Sanhuri, 7 *Al-Waseet Fi Sharh Al-Qanoon Al-Madani* [Intermediate Treatise on the Civil Code] 108 (House of Arab Heritage Revival, Beirut 1964).

[5] The term "architect" is not narrowly confined to those professionals who are qualified as such. The Arabic term used in the Civil Code is "muhandis mi'mari", which is broadly interpreted to also include certain types of "engineer". Thus, for purposes of decennial liability under the

the owner for the partial or total collapse of a building or other permanent structure, for a period of ten years from the date of delivery (unless the construction was intended by the parties to last for less than ten years). Decennial liability is a special warranty which extends the normal contractual liability of a contractor or architect, is a type of strict responsibility, and generally applies even if the failure/collapse is due to a defect in the ground itself.

Under Article 651(2) of the Civil Code, decennial liability also covers defects discovered in a building even though there has not yet been a collapse, although not every defect is covered under this provision. Article 651(2) specifies that the defect must threaten the strength or safety of the building or other permanent structure -- not merely the usefulness, efficiency or functioning of the structure -- in order to be covered by decennial liability rules.[6]

Article 651(1) of the Civil Code refers to "buildings and other permanent structures", which has been interpreted to mean works of a fixed immovable nature, such as houses, offices, schools, hospitals, factories, mosques, churches, bridges, dams, tunnels, railways and the like. The construction must be permanent, in other words, it cannot be moved without being damaged. Movable equipment and fittings are not subject to the decennial warranty.[7]

One influential Egyptian jurist, Dr. Abdel-Razzaq Al-Sanhuri,[8] has suggested that any of the following causes may give rise to decennial liability:

> (a) A defect in engineering or construction practice, such as a deficiency in foundations.
>
> (b) A defect in the soil on which the construction is erected, for example, if the soil is not solid or is soggy and the necessary measures to remedy this defect have not been taken according to good engineering practice.
>
> (c) A defect in the materials used in construction, such as bad quality supplies or a departure from specifications.[9]

Under decennial liability rules, the beneficiary of the warranty is the owner. A third party does not benefit directly from this warranty and generally may only sue the architect or contractor during the ten year warranty period if the third party establishes an alternate basis for liability, e.g., negligence by the architect or contractor. However, a third party may sue the owner (or possibly the architect or contractor if damages occur during the construction phase) pursuant to Article 177 of the Civil Code, which states in part:

> A person in charge of a building, even if he is not its owner, is liable for damage caused by the collapse of the building, even if such collapse is only partial, unless he shows that the accident did not occur as a result of negligent maintenance, or the age of, or a defect in the building.

The decennial warranty provisions of the Civil Code do not generally allocate liability between the architect and contractor, but rather assume their joint and several liability towards the owner. In practice, such division of responsibility is usually determined by a court with calculations similar to those used to determine contributory negligence (i.e., showing the relative negligence of each party). A contractor who is not at fault may claim reimbursement from another negligent contractor, but this has no impact on each contractor's absolute liability to the owner.

However, Article 652 of the Civil Code states that an architect who only undertakes to prepare the plans for a building or other structure, without supervising its execution, is responsible only for defects resulting from its plans.

Article 651(4) of the Civil Code emphasizes that a main contractor's statutory rights against its sub-contractor do not include the decennial liability rules contained in Article 651. Rather, a sub-contractor's liability to its main contractor normally would be based on general contract principles, while sub-contractor liability to the owner normally would be based on general tort principles.

2. Nature of Decennial Liability

Liability under the decennial warranty is a contractual liability. Since this warranty arises from contract, the architect and contractor will not be held liable for

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Civil Code, "architect" is intended to apply to parties involved in the design and/or supervision of construction on a building, whether a licensed architect, engineer, contractor or otherwise.

[6] See also, Alhajeri, "Defects and Events Giving Rise to Decennial Liability in Building and Construction Contracts Under The Kuwaiti Civil Code" (undated), at https://www.irbnet.de/daten/iconda/CIB14488.pdf .

[7] Al-Sanhuri, supra note 4, at 107-08.

[8] Dr. Al-Sanhuri was probably the most important drafter of the Civil Code. In the 1950s, this same basic text was adopted – in some cases, through the support and efforts of Dr. Al-Sanhuri -- in Syria, Iraq, Libya and Kuwait. The Civil Code has more recently influenced the development of civil codes in other Arab countries, such as in the Arab Gulf States.

[9] Al-Sanhuri, supra note 4, at 113-114.

damages greater than those which could have normally been foreseen at the time of entering the contract.[10]

Under Article 653 of the Civil Code, any advance contractual agreement between the owner and the architect or contractor, whether to waive or limit the latter's decennial liability, is void. This is because the imposition of decennial liability is considered a matter of Egyptian public policy.[11] The public policy behind decennial liability has been described as follows: unsafe buildings are a public danger, and Egyptian law rightly prevents an architect or contractor from shifting responsibility to the owner, who might not have the technical knowledge needed to detect the defects.

Decennial liability differs from tort liability in that the latter requires evidence of a negligent act (Article 163 of the Civil Code). In effect, Articles 651-54 of the Civil Code establish a presumption of fault (strict liability) on the part of the architect and the contractor whenever a building or other permanent structure collapses, or if a defect affecting its structural stability and soundness is discovered. Thus, an architect or contractor would not be absolved from the decennial liability even if it was able to show that it took every precaution to prevent such defect or collapse of the building. Similarly, an architect or contractor will not be able to avoid decennial liability on the basis that the reason for the building's defect or collapse remains unknown.

3. Exoneration from Decennial Liability

As mentioned above, and in accordance with Article 653 of the Civil Code, any advance agreement between the owner and the architect or contractor, whether to waive or limit the latter's decennial liability, shall be void as contrary to Egyptian public policy. Thus, the parties cannot contract in advance to cancel the warranty, reduce the ten year period (unless the building is intended to last for less than ten years), or restrict the warranty to certain defects.[12]

However, an owner may (explicitly or implicitly) renounce the benefit of decennial liability after that owner has acquired the right to invoke it. Thus, an owner's unconditional acceptance of the works upon delivery, with defects either readily apparent or known to the owner at that time, exonerates the architect and contractor from decennial liability for such defects.

Otherwise, the architect or contractor cannot rebut the presumption of fault (and strict liability) except by showing that the collapse or defect was due to an event beyond its control, for example, in the case of force majeure.[13] By showing that the damage was due to a cause beyond their control, the architect and contractor do not contradict the strict presumption of error attributed to them, but rather they remove the causal relationship.

However, according to Dr. Al-Sanhuri, the Egyptian courts should not allow the presumption of architect/contractor fault to be easily rebutted, such as by a contractor resorting to expert testimony in an effort to show the existence of force majeure. Rather, the Civil Code provisions on decennial warranty should be interpreted to limit instances in which force majeure discharges strict fault/liability, allowing such exoneration only where force majeure is clearly and definitely ascertained without the need for expert opinion.[14]

Although the general rule is that a force majeure event would allow an architect or contractor to rebut the presumption of fault, the Civil Code would also allow the parties to contractually agree that the architect or contractor accepts liability even for a force majeure event.[15] By permitting such contractually agreed allocation of risk, the Civil Code in effect makes the architect or contractor an 'insurer' against any damage the owner might suffer as a result of force majeure.

Although decennial liability remains in effect for a period of ten years, Article 654 of the Civil Code imposes a limitation period -- any claim against the architect or contractor under the decennial warranty must be filed no later than three years after the discovery of a structural defect in, or after the collapse of, the building or other structure.

[10] Attia, "Decennial Liability and Insurance Under Egyptian Law", 1 Arab Law Quarterly 504 (Part 5, November 1986), at p. 512.

[11] In rare instances, the Egyptian government has exempted contractors from decennial liability, such as in the inter-governmental agreement for the 1980s Cairo Wastewater Project, but those contractors otherwise remained subject to normal contract and tort liability rules. See, e.g., Attia, supra note 10, at 520-22; the text of that relevant agreement was published in EGYPT – Section B, Middle East Executive Reports (January 1980), pp. 22-23.

[12] Davies, supra note 1, at 219.

[13] Force majeure is defined under Egyptian jurisprudence as a supervening ('overpowering') event, not foreseeable by the parties at the time of contracting, and which is impossible to avoid despite reasonable efforts. In general, such force majeure events would normally excuse a party from its otherwise applicable contractual obligations. See Article 165 of the Civil Code.

[14] Al-Sanhuri, supra note 4, at 135: "Moreover, we should not make it easy to refute this presumption by resorting to expert opinion in order to show that the contractor did not commit any technical error in inspecting the ground's nature and identifying the defects therein. The concern here is that the experts will favor those of their own profession and thus the protection intended in the text would be lost. Therefore, the text is intended to limit the cases where force majeure is acceptable as a reason for the lapse of responsibility, and restricts it to cases where force majeure is definitively ascertained without the need for expert opinion."

[15] Article 217(1) of the Civil Code: "The debtor may by agreement accept liability for unforeseen events and for cases of force majeure."

B. DECENNIAL WARRANTY AND SOIL CONDITIONS -- SOME EXAMPLES

As mentioned above, Article 651(1) of the Civil Code states that an architect or contractor is liable "even if the collapse was due to a defect in the ground itself". In general, soil defects will not be unexpected to a prudent architect or contractor -- solidity of the soil is of obvious importance, and defects in the soil usually can be assessed and addressed before construction. Therefore, soil defects will not generally be deemed an event of force majeure that would exonerate the architect or contractor from decennial liability.

On this basis, an Egyptian court imposed decennial liability on a contractor when a house collapsed under the pressure of an exceptionally heavy (but foreseeable) rainstorm, particularly as the building was built low to the ground and near to the street (and thus susceptible to the rain washing away its foundation).[16]

In another instance, the Egyptian court ruled that the contractor was required to check the soil conditions on which to build and, in particular, to determine whether there were any old foundations that might interfere with the newly-constructed ones. Failing that, the contractor's was responsible for the harmful consequences that resulted, and he was liable for the damage that was directly imputable without being able to allege, to exonerate himself from liability, that the owner was aware of the faulty layout of the foundations and had authorized it.[17]

Similarly, an Egyptian court denied a contractor's attempted reliance on force majeure to exonerate itself from liability arising out of the subsidence of sidewalks built alongside the Nile River. The court attributed the subsidence to the nature of the ground located alongside the river; the case is also among a large group of decisions that refer to the 'self-propelled movement' of soil, with the court denying exoneration of the contractor by reason of force majeure.[18]

In contrast, if the defect in the ground was so concealed, undetectable and/or unforeseeable by a prudent contractor using all the available techniques of detection, then the Egyptian courts have customarily considered such a circumstance to be a case of force majeure exonerating the contractor from decennial liability.[19]

For example, an Egyptian court did not impose decennial liability on a contractor hired to pave a road with asphalt, when the asphalt subsequently subsided due to a flaw in water lines running underground. Since the contractor proved that the subsidence in the asphalt was traceable to the depression of the street resulting from a flaw in underground water lines, the Egyptian court held that such circumstance would constitute force majeure -- because the subsidence in the road is what caused the cracking of the asphalt, something that is not attributable to either the location of the ground or its (again, so-called 'self-propelled') nature. Rather, the defect in the asphalt is attributable to water lines running underground, which burst, causing the road to collapse. Thus, the contractor was not held liable in that case.[20]

* * * *

Decennial liability presents some potentially significant risks to architects and contractors in Egypt (and elsewhere in the Arab Middle East). Although decennial warranty insurance is sometimes available, it is usually quite expensive and most contractors resort to self-insurance, relying on the fact that decennial liability claims are relatively uncommon.[21] Nonetheless, such parties should carefully consider their potential exposure -- as well as methods to mitigate their overall liability, such as by contractually allocating responsibility between the architect and contractor(s), and seeking

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[16] XV Bulletin de Legislation et de Jurisprudence egyptiennes 358 (24 June 1903), Mixed Court of Appeal, cited in Al-Sanhuri, supra note 4, at 136.

[17] XVII Bulletin de Legislation et de Jurisprudence egyptiennes 99 (26 January 1905), Mixed Court of Appeal, Alexandria, cited in Halton, supra note 2, at 157.

[18] Al-Sanhuri, supra note 4, at 136. See, also, XX Bulletin de Legislation et de Jurisprudence egyptiennes 111 (5 March 1908), Mixed Court of Appeal, Alexandria, cited in Halton, supra note 2, at 157: "With regard to building in the bed of a river and in particular of the Nile, the instability of the ground is not unforeseen. It is therefore the contractor for the construction of a wharf, which guarantees its solidity, good construction and stability, to conduct soundings and works consolidation values before any construction, and it cannot exonerate himself if the work carried out, such as the wall of the quay, collapsed as a result of subsidence."

[19] Al-Sanhuri, supra note 4, at 114 footnote (1).

[20] XIII Bulletin de Legislation et de Jurisprudence egyptiennes 221 (28 March 1901), Mixed Court of Appeal, cited in Al-Sanhuri, supra note 4, at 135-36.

[21] Egyptian Law No. 106 (1976) required insurance for "true" decennial liability (owed directly to an owner by the architect and contractor, under Articles 651-654 of the Civil Code), but amendment by Law No. 2 (1982) eliminated the insurance requirement for such "true" decennial liability, and instead required only insurance cover for liability to third parties. See also Law No. 119 (2008), the current law on these issues, which similarly does not require insurance for "true" decennial liability but only for liability to third parties.

indemnification agreements from relevant sub-contractors.[22]

Excerpts from Egyptian Civil Code Decennial Liability Provisions

Article 651

(1) The architect and the contractor are jointly and severally responsible for a period of ten years for the total or partial collapse of buildings or other permanent structures built by them, even if such collapse is due to a defect in the ground itself, and even if the owner authorized the building of the defective structure, except in instances where the contracting parties had intended that the structure was to last for less than ten years.

(2) The warranty imposed by the preceding paragraph extends to defects in buildings and structures that endanger the solidity and security of the building.

(3) The period of ten years runs from the date of delivery of the works.

(4) This Article [651] does not apply to the rights of action which a contractor may have against its sub-contractors.

Article 652

An architect who only undertakes to prepare the plans, without being entrusted with the supervision of their execution, is responsible only for defects resulting from its plans.

Article 653

Any clause tending to exclude or restrict the warranty of the architect and the contractor is void.

Article 654

Claims on the above-referenced warranties shall lapse after three years from the date of the collapse of the works or the discovery of the defect.

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[22] See, e.g., Coertse (CharlesRussellSpeechlys), "Decennial liability in the Middle East: What is it and does insurance cover it?" (5 October 2020), at https://www.charlesrussellspeechlys.com/en/news-and-insights/insights/constuction-engineering-and-projects/2020/decennial-liability-in-the-middle-east-what-is-it-and-does-insurance-cover-it/ .

Pro Bono Opportunities to Advance the Rule of Law Globally

Robert E. Lutz

"Volunteer Senior Lawyers bring expertise and gravitas to U.S. government international technical assistance for commercial law reform." This sentiment, expressed by a number of U.S. government officials, is central to an opportunity for ABA International members to engage remotely and in-person in commercial law reform projects around the world. The idea of a possible synergy between volunteer senior lawyers and USG technical legal assistance was initially suggested by a close colleague.[1] The result was a collaboration between the U.S. Department of Commerce's Commercial Law Development Program ("CLDP") and the Senior Lawyers Division (SLD), Senior International Committee. Born in April 2021, the collaborative relationship benefitted from the focused involvement of CLDP's leadership (Joe Yang and Marc Tejtel), and Bob Lutz, Co-chair of the International Committee of the SLD,[2] who worked in the subsequent several months to shape the original notion. Ultimately, they fine-tuned this partnership to establish a program of opportunities for senior lawyers.

What is CLDP?

CLDP is a division of the U.S. Department of Commerce's Office of General Counsel that was established in 1992.

CLDP has a double mandate: To help developing countries create legislative, regulatory, and judicial environments conducive to trade and investment, and, at the same time, to create a level playing field in these countries for U.S. firms. Since its inception, CLDP, working at the behest of U.S. embassies, has helped more than 70 foreign governments create legislative, regulatory, and judicial environments conducive to increased trade and investment.

CLDP is a small organization of about 70 employees: international lawyers and international program specialists supported by an administrative staff. To carry out its work, CLDP relies on the expertise of its lawyers, often supplemented by the expertise of two kinds of outside experts: USG officials, in particular federal judges and regulators, as well as volunteer senior lawyers with expertise in private practice.

Where and what specifically does CLDP do?

CLDP operates worldwide and offers volunteer opportunities to senior lawyers through this unique collaboration to contribute to efforts that advance the rule of law through commercial legal reform. Current programming is conducted in many regions of the world:

- Europe and Eurasia;
- Latin American and the Caribbean;
- the Middle East and North Africa;
- South Asia;
- Southeast Asia and the Pacific; and
- Sub-Saharan Africa.

There are also Global Initiatives that target the development of commercial law frameworks, regulations and policies in energy sectors, women-owned and small business access to government contracts, digital connectivity, and international commercial arbitration.

A sample of regional projects illustrates the breadth of subject matter involved. For example, to assist the transition of countries to stable, market-based economies that are integrated with the world's economies, CLDP works with countries aligning their rules and processes with international best practices [Eastern Europe, Southeastern Europe, the Southern Caucasus, and Central Asia]. It works with government procurement agencies to improve transparency, and effectiveness of systems and procedures, and also supports better insolvency practices [Latin America and the Caribbean]. In the Middle East and North Africa, CLDP connects U.S. experts with country counterparts for assistance and training on a range of commercial and

[1] The suggestion to the Office of General Counsel of the U.S. Department of Commerce is attributed to Don De Amicis, (former ILS Chair-2002-03), who works on legal assistance projects for the DOC.
[2] Included in the leadership of the ABA-SLD International Committee's leadership on this project were: Aaron Schildhaus, Co-Chair of the Committee, and Robert Brown, Co-Vice-Chair. Support from the SLD leadership was also instrumental and is gratefully acknowledged: Michael Van Zandt (SLD Chair, 2020-21); Al Harvey (SLD Immediate Past Chair); Carole Worthington (SLD Chair-Elect); Jim Schwartz (SLD Vice-Chair); and Tony Barash (Chair, SLD Pro Bono Committee).

legal issues. Relying upon private sector lawyers, businesspersons and professionals along with governmental officials, CLDP programming includes trade and investment assistance, intellectual property protection, technology transfer and innovation, competition and consumer protection, company and franchise law reforms, energy and mining extractive concerns, information and communication technology, transportation and infrastructure, eCommerce and cyber law, banking and financing, insolvency and bankruptcy, ADR, and women's economic empowerment [South Asia]. CLDP also works with Southeast Asian and Pacific Island countries to develop transparent legal and procedural frameworks to oversee complex infrastructure projects in order to attract high quality investors and developers [Thailand, Cambodia, Burma, Myanmar, Malaysia, Timor Leste, Indonesia, Philippines, Vietnam, and the Pacific Islands.] In Sub-Saharan Africa, CLDP seeks to reform and strengthen intellectual property legislation, administration and enforcement on a country and regional basis [Ghana, Nigeria, Liberia, Mali, South Africa, Kenya]; plus the Economic Community of West African States (ECOWAS), Southern Africa Development Community (SADC), and East African Community (EAC)].

On a global-initiative level, CLDP helps countries on the verge of becoming major oil and gas producers to establish the capacity to manage resource revenues maximizing value and transparency. It relies on many *pro bono* lawyers and experts to help build and implement commercial law frameworks incorporating best practices of contracting, accounting and taxation in order to attract foreign investment.

What are the Roles of Volunteers and their Expertise?

"CLDP operates on an invitational basis to identify and address problematic points in a host country's commercial law framework."[3] The CLDP attorneys, who have experience employing a variety of development approaches, assess whether improvements needed in a host country's commercial law framework are substantive or procedural, human or institutional. If expertise is needed and available from private sector *pro bono* volunteers—especially from those with great experience and possessing a "senior's gravitas"—an invitation for volunteers will be issued via various channels, one of which now is the SLD-International Committee.

The type of legal expertise is specified in the CLDP announcement, and volunteers whose expertise matches a project's requirement are invited by CLDP for a Zoom/TEAMS interview with CLDP's project coordinators. Under this new cooperative program with SLD, volunteer senior lawyers—if selected after the interview--may be offered to do in-person or remote work, including *inter alia*—

- Seminar-type presentations for foreign officials;
- Simulation-styled training for the development of negotiation skills of foreign officials;
- Desktop or in-person review of draft laws and regulations to ensure they are compatible with international best practices;
- Revision of national investment laws ensuring they are conducive for foreign investors; or
- Service as arbitrators or judges for international moot competitions.

Thus today—because of the COVID pandemic--many of CLDP's projects are being conducted on a remote basis. However, volunteers in a post-COVID world involved in some of the projects may enjoy the possibility of international travel (CLDP pays travel costs) and of person-to-person interactions with foreign government officials, diplomats, and lawyers.

How do I get involved?

Step One: All interested SLD members are encouraged to join the SLD International Committee. ABA members of 62 years of age or older are automatically entitled to, and enrolled free in the Senior Lawyers Division. To become an International Committee member, however, you may simply send a note to: Emily Roy, Director, ABA Senior Lawyers Division, emily.roy@americanbar.org. Tell her that you would like to be enrolled as a member of the SLD International Committee.

Step Two: To be considered for a CLDP project, please send a note indicating your expertise in subject matters coupled with a copy of your resume to Bob Lutz, CLDP/SLD-Int'l Liaison at: rlutz@swlaw.edu. Relevant submissions will be shared with CLDP and kept on-file to provide a resource-base for current or future assignments.

Step Three: From time-to-time, new projects are initiated. When a special project is developed, CLDP will

[3] *See* CLDP.doc.gov—"Areas of Expertise".

contact the SLD-Int'l Committee and an announcement to the SLD-International Committee membership will be made by Bob Lutz to which members—with the requisite qualifications and interest—may respond, again, with CV and cover letter to: rlutz@swlaw.edu. Applicants will be contacted directly by CLDP thereafter should their expertise and availability make them viable *pro bono* contributors to the project.

Providing this unique access for Senior Lawyers to one of the USG's premier international legal assistance programs dramatically expands the range of opportunities seniors may receive as members of the SLD-International Committee. It also enables Senior Lawyers, whose legal careers span many successful years, to extend their appreciated "gravitas", advance the rule of law, and help make a positive impact on the lives of many people around the globe.

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