

OLR Podcast Shorts: Are these Canada's weirdest laws?

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TRANSCRIPT

Averi Winn: Hello, and welcome to our shorts episode of the *Ottawa Law Review* Podcast. My name is Averi Winn—

Devon Lamont: And I'm Devon Lamont.

Averi Winn: And we are two Associate Editors with the *Ottawa Law Review*.

I'm sure we've all had some pretty strange ideas for what should or shouldn't be a law. You may have jokingly said to a friend or family member, "you know, it should be illegal to vacuum so early on a Saturday," when you're trying to sleep in and your neighbours decide to vacuum at 7:00 a.m. But what kind of strange laws have really been enacted across the country?

This episode, we'll be diving into the world of strange legislation in Canada. We are going to cover five pieces of odd legislation from across the country, and our challenge to you is to guess whether or not they're still in effect.

Devon Lamont: Picture this: you're strolling down the streets of Edmonton, Alberta, on a crisp autumn morning. The trees have turned golden and brown, and the serenity of the world around you invites you to take a deep breath, drawing in the musty-sweet smell of the fallen leaves.

Suddenly, your friend walks by and that serenity is profanely disturbed. Your nostrils are invaded by an odour so foul it takes your breath away. It's your friend Thomas, and he hasn't taken a shower in two weeks. The stench assumes a palpable aura to which you are rendered completely powerless. You collapse to your knees and beg for the sweet release of death. As he stands over you, he obliviously asks, "What's wrong bro?"—and the only reply you can muster is a fit of uncontrollable gagging.

Does this scenario sound familiar? It happened to me when I visited my stinky friend Thomas in Edmonton. And had I known that there was a law which protected victims like me, I could have avoided this tragic encounter.

In June of 2019, Edmonton passed an *Excessive Odours and Emissions* bylaw, amending its *Community Standards Bylaw*. It stipulated, among other things, that "[a] person shall not engage in any activity that creates odour, emission, smoke, vapour, dust or other airborne matter that is reasonably likely to disturb another individual." It also set out a list of criteria to aid in the assessment of what is "reasonably likely to disturb" others. These criteria included:

- a) the type, frequency, intensity or duration of the airborne matter;
- b) the time of day and day of the week;
- c) the weather and ambient conditions;
- d) the proximity to neighbouring properties (where airborne matter is emitted from the offender's property);
- e) the nature and use of the surrounding area; and
- f) the effects of the airborne matter.

This bylaw was passed in the midst of an apparent stench epidemic, during which the city was receiving about 115 complaints per year about odours and air quality—according to the CBC. These complaints seemed to mainly address dust and dirt from construction projects, garbage, vehicle exhaust, and cigarette or cannabis smoke.

Contravention of the *Excessive Odours and Emissions* bylaw was made an offence by the *Community Standards Bylaw* for which the offender would be liable to a fine of at least \$250, but no more than \$10,000—and even to imprisonment for not more than six months for non-payment of a fine. Does this mean that the bylaw could permit the incarceration of smelly people like Thomas? Probably not—but if you're visiting Edmonton, you might want to bring deodorant just to be safe.

Averi Winn: Law is a profession that can have you run into many high conflict situations. You might have a client who is going through financial difficulties or who is in the middle of a stressful divorce. We're taught, and generally expected, to resolve these issues through civil discussion... but not everyone feels that that's the appropriate method to the resolution of a disagreement.

Imagine you have a friend who collects Pokémon cards, Sam. They're super proud of their collection, it means a lot to them, and they've been growing it for years. They have a new friend, Ange, over for a study session, and said new friend tells them that their Pokémon collection is stupid, ugly, and childish. Now, while that's not very nice, one possible solution is to not speak to that person anymore or raise your concerns in a civil conversation. But Sam has already come to the conclusion that the only solution to this problem is a duel. So the next day in class, they loudly challenge this now-former friend to a duel at noon.

Fun fact! That would be a violation of section 71 of the *Criminal Code of Canada*. This section reads as follows:

“Every one who

- a) challenges or attempts by any means to provoke another person to fight a duel,
- b) attempts to provoke a person to challenge another person to fight a duel, or
- c) accepts a challenge to fight a duel,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.”

What would it take for you to challenge someone to a duel? Do you think this section is still in effect? Keep your guesses in mind for the end of the episode.

Devon Lamont: Our next law has to do with the more mystic and arcane subjects of the *Criminal Code*. The provision in question is one which dealt with the occult and strange practices of the supernatural variety.

Tiffany Butch was a self-proclaimed psychic who went by the name of “White Witch of the North”. She held herself out to be a clairvoyant and delivered fortune-telling services to the residents of Timmins, Ontario. In early December 2018, she was accused of offering to remove a family hex in exchange for \$750 and was consequently charged under section 365 of the *Criminal Code*. According to the *Daily Press*, the charges were later withdrawn on the condition that Tiffany pay an equivalent sum of money to The Lord’s Kitchen. Tiffany nonetheless denied the allegations, claiming—according to the CBC—that she was set up by rival psychics.

The section under which Tiffany was charged prohibited people from pretending to practice witchcraft for consideration. Specifically, the section reads:

“Every one who fraudulently

- a) pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration,
- b) undertakes, for a consideration, to tell fortunes, or
- c) pretends from his skill in or knowledge of an occult or crafty science to discover where or in what manner anything that is supposed to have been stolen or lost may be found

is guilty of an offence punishable on summary conviction.”

According to an article written by Riley Klassen-Molyneaux, the provision’s roots extend to centuries-old English legislation, which gradually shifted from criminalizing witchcraft as a social evil to be exterminated, to prosecuting those who pretend to practice witchcraft in order to fool gullible patrons and turn a profit. This shift in focus from sorcery to fraud happened in the first half of 18th century, when the often specious crusade against witches and devil worshippers was losing steam. By the time the *English Witchcraft Act* was passed in 1736, the notion of “witchcraft” as a serious and credible threat to English society seemed laughable to many Parliamentarians. Section 365 of the Canadian *Criminal Code* essentially copied the provisions in the *Witchcraft Act* nearly verbatim. It was never meant to earnestly suppress the practice of witchcraft. Rather, it was intended as an anti-fraud provision.

Does this mean that the police could lock up county fair fortune-tellers? The answer is no. Case law developments in the 20th century distinguished between paltry fortune-tellers who invited their customers to suspend their disbelief for the sake of entertainment in exchange for a modest fee, and veritable scammers who extorted significant sums of money from those who earnestly believe in their prophetic abilities. The word “fraudulent” was finally added to the provision in 1955 to make its purpose less equivocal.

Averi Winn: I really liked camping as a kid. One of the reasons that I really liked it is because I would go with some family friends to their cabin and their dad would take us tubing. We'd attach a tube to the boat, and he would fling us around on the lake for hours. But usually, once it would start to get dark, we'd have to head back to the campsite. We would complain all the way back that we wanted just ten more minutes. It was always *ten* more minutes, and then *another* ten. I always thought that we had to go back for safety reasons, or because he didn't want to lose one of the kids in the water or something like that. But I'm starting to think that maybe he knew about [section] 250 of the *Criminal Code of Canada*, which reads as follows:

- (1) Every one who operates a vessel while towing a person on any water skis, surf-board, water sled or other object, when there is not on board such a vessel another responsible person keeping watch on the person being towed, is guilty of an offence punishable on summary conviction.
- (2) Every one who operates a vessel while towing a person on any water skis, surf-board, water sled or other object during the period from one hour after sunset to sunrise is guilty of an offence punishable on summary conviction.

That means that if we had been out tubing more than an hour past sunset, my friend's dad could have been in violation of the *Criminal Code*. I think that reason would have been a lot more convincing to get us out of the water than "because it's almost bedtime".

An interesting case involving this law is *R v Gatt*. In 1992, the Supreme Court of British Columbia heard an appeal for a conviction under section 250(1) of the *Criminal Code*. The defendant, Mr. Gatt, had set up a Ski-Free device, which was an automated, drone-like machine which towed him while he water-skiied. He was charged for skiing without a spotter. So if you're ever interested in doing some water-skiing, make sure to bring a buddy.

Devon Lamont: The British royal family is one of the most famous and revered families on the planet. It is also, by consequence, one of the most safeguarded families in the world—enjoying the protective services of Royal Guards and the Special Escort Group, among others. Given their unparalleled status, most people who are fortunate enough to meet the royal family conduct themselves with utmost cordiality and respect. Most would not dare do anything that could potentially offend the monarchy, like playing a prank on the king or queen.

But what would happen if you, say, placed a whoopee cushion on the royal throne, or used a handshake buzzer on King Charles III? According to one section of the *Criminal Code* as old as Confederation, the legal repercussions could be very serious. Section 49 of the *Criminal Code* reads as follows:

"Every one who wilfully, in the presence of Her Majesty,

- a) does an act with intent to alarm Her Majesty or to break the public peace, or

b) does an act that is intended or is likely to cause bodily harm to Her Majesty,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.”

As with other strangely specific provisions of the *Criminal Code*, there was a historical event which prompted legislators to recognize the necessity of such a law. In the case of section 49, the triggering event in question occurred in 1842. As recounted by BBC writer Bob Nicholson, a teenaged boy named John Francis had once pointed a pistol at the Queen Victoria’s carriage as it drove up Constitution Hill. Although Francis had the carriage fixed in his aim, he did not pull the trigger. Rather, he was spotted by Prince Albert and made a swift getaway.

On a subsequent occasion, the Queen’s carriage was deliberately driven down the same route, though with a more reinforced guard, in [an] attempt to catch the assailant. Francis did fire a shot from his pistol at the passing carriage, but the Queen was unscathed, and Francis was promptly intercepted by police.

On account of the multitude of other assassination attempts on the Queen, the legislature—at the suggestion of Prince Albert—enacted the *Treason Act*, which recognized lesser crimes against the Queen so as to afford her additional protection and deter future acts which might endanger her.

The core of the *Act’s* provisions were transferred to Canada’s *Criminal Code* upon Confederation, given that Canada had not been independent from the Crown at its inception and retained the Queen as its head of state.

While playing a harmless prank may not be the same as drawing a pistol on the monarch, it may be best to err on the side of caution when in the presence of royalty and leave your antics at home.

Averi Winn: Alright, those are the five pieces of legislation we’re covering this episode. I hope that you all remember your guesses, because we’re now going to go through and reveal which of these are still in effect. We’ll go through all five laws and then explain which ones have been repealed.

First, Edmonton’s *Excessive Odours and Emissions* bylaw, which prevents people from stinking up the city, is... still in effect!

Section 71 of the *Criminal Code*, which made it illegal to challenge someone to a duel or accept a duel in Canada, is... no longer in effect!

Section 365 of the *Criminal Code*, making it illegal to pretend to practice witchcraft, is... no longer in effect!

Section 250 of the *Criminal Code*, which made it illegal to tube, water-ski, or tow other vessels, either autonomously or after dark, is... also no longer in effect!

And finally, section 49 of the *Criminal Code*, which made it illegal to cause alarm to the Crown, is... no longer in effect!

You may have thought while we were going through sections 71, 250, 365, and 49 of the *Criminal Code* that some of them seemed a little outdated. These are four laws that are part of a group of “zombie laws” that were repealed by the federal government for that exact reason. This is only the third revision that has ever been done of the *Criminal Code*, after one being done in the 1950s and one in the 1970s.

This concludes this episode of the *OLR* Podcast. I would like to thank the *OLR* Podcast Committee for preparing questions for this episode, editing, and transcribing this episode in both English and French. Lastly, thank you all for listening!