

The BATHROOM BARRISTER

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Speed limits determine how fast we can drive. Litter regulations are designed to keep our communities clean. Food inspections are meant to ensure what we eat is safe.

These three simple examples demonstrate three ways that law is all around us. But think more deeply about these examples, and you'll also realize that they demonstrate that law provides order for our diverse society.

So what is law? Laws are democratically-constructed and broadly accepted rules meant to serve several purposes:

- Law supports broad social values with goals such as promoting democratic processes, protecting the right to a fair trial, prescribing honest business practices, and establishing social programs.
- Law is a way of resolving disputes in an orderly manner following legal rules.
- Law protects citizens, their property, and rights.
- Law provides a framework for order in our society and ensures some degree of predictability and stability.

This issue of *The PLEA* takes an uncanny approach to examining these purposes of law. From a quick introduction to laws and regulations associated with the washroom to an in-depth case study of the sewers of London, what will emerge from *The Bathroom Barrister* is a better understanding of yet another way that the law is all around us. So sit down and settle in for a new perspective on a room common to everybody.

PLEA



Legal Information for Everyone

A Legal Trip

Contrary to popular belief, the flush toilet was not invented in the mid-1800s by a British plumber named Thomas Crapper. Rather, it first appeared in the late 1500s. Invented by Queen Elizabeth's godson Sir John Harington, the toilet was installed in the Queen's palace at Richmond. The slang name "The Throne" suddenly seems more appropriate, doesn't it?

As bathrooms have evolved, so has the law. Let's take a look at some of the ways the law applies.

Right to Use the Washroom

The Supreme Court of Missouri stated "a person's right to use public restrooms is about as fundamental a right as one can imagine, probably equal to or more fundamental than speech rights."



If the right to use the restroom is believed to be a fundamental right, what obligations does the state have to ensure this right is respected and promoted?

Patents

Patents grant an individual or organization the right to make, use, or sell an item of their invention. A patent will protect inventions from being copied for several years. The first patents for toilets appear to date back to the 1770s. Thomas Crapper was granted several patents in the mid-1800s for his innovations that helped popularize the flush toilet.



Because patents grant inventors exclusive rights to their new designs, do they encourage innovation or exclude others from advancing technology?

Seawater Toilets

To curb the shortage of fresh water in Hong Kong, in 1960 laws were changed to encourage the use of seawater toilets. One barrier to introducing seawater toilets was that the construction of a separate water system for Hong Kong was required. Today, around 80% of Hong Kong's toilets use seawater.



Would the construction of a second, non-treated water system for lawn watering and toilets be a sound use of public money?

Around the Loo

Toilet Paper Tax

In 2009, a 3% tax on toilet paper was proposed in the *American Water Resources Protection Act*. The idea was to tax sources of water pollution. Although it is within the rights of the government to tax sources of pollution, the law did not pass.



Is it fair to tax toilet paper when most governments already charge user fees for sewers?

The Public Spitting, Urination and Defecation Bylaw

In 2004, Saskatoon City Council passed *The Public Spitting, Urination and Defecation Bylaw*. It specifically prohibited spitting on public property, and urinating and defecating anywhere in public. The penalties for breaking this law can be as high as \$200 or up to thirty days in prison.



If a community prohibits public urination and defecation, should it then ensure the availability of 24-hour public washrooms?

Gender-Neutral Bathrooms

For transgendered people, it can be difficult to find a bathroom appropriate to their gender identification. Groups have formed to help remedy bullying and discrimination. One such website, safe2pee.org, has a user-created database of single-stall locking bathrooms and many links to resources on gender-neutral bathrooms.



What would be the merits and drawbacks of having laws promoting gender-neutral bathrooms in public places?



Think

Review the four purposes of law put forth on the front page of this issue of *The PLEA*. How do the bathroom laws and regulations outlined above fulfill these purposes of law? Can you think of laws you would like to see put in place?

Dine and Dash... To the Washroom

In Saskatchewan, restaurants are required to have public washrooms. And it's not enough to simply have any available washroom. The province's *Public Eating Establishment Standards* spell out specific criteria for the washrooms of most eating establishments. While the standards themselves are not—strictly speaking—considered laws, they become legally binding on restaurants when they are included as a condition of the restaurant's licence to operate. A particular restaurant can ask to have the requirements modified in some circumstances.

Location, Location, Location

Restaurants can't just put a washroom anywhere they please. Certain location requirements are spelled out in the *Public Eating Establishment Standards*. Washrooms must be conveniently located and the public must be able to get to them without having to pass through an area where food is stored, prepared, or served. The path to the washroom must be of appropriate width and clear of obstructions.

Once Inside

Restaurant washrooms are not just required to be in certain locations. They must be built to certain standards. Sinks with hot and cold water must be provided. Floors and walls around toilets and urinals must be finished in an impervious

material that can be cleaned easily. There must be an adequate number of easily-cleaned waste containers. Paper towels, roller-type towels, or hot air dryers are required. And dispenser soap is mandatory.

How Many?

The number of washrooms is largely dependent upon the seating capacity of the restaurant. There must be at least one washroom for each sex when the seating capacity is 50 or less. For every 50 more people in seating capacity, one additional washroom fixture must be added for males and two additional washroom fixtures for females.

But What if it's dirty?

Just because the washrooms are there doesn't mean that they're always in that great of shape. Luckily, public standards require washrooms to be "clean and in good repair" and that they be cleaned at least once a day.

Barrier-Free Washrooms

Generally speaking unless the restaurant was built before accessibility standards came into effect and has not since been renovated restaurants must ensure that their washrooms are barrier-free to accommodate people with physical disabilities.

The washroom must be designed with a clear path of travel and with an appropriate width. At least one stall must be at least 1.5 metres long and 1.5 metres wide. Grab bars and coat hooks must be present and at specific heights and positions so that they can be reached from a seated position. Sinks, toilets, and door handles must have lever-type hardware. If mirrors are provided there must be at least one lower or downward-slanted mirror so that a person in a wheelchair can use it. And sinks must have clearance below so hands can be washed while sitting in a wheelchair. The requirements are meant to ensure people with physical disabilities will have equitable access to washrooms.


Are Standards Necessary?

It may seem silly that all these standards need to be in place. But what happens when government absents itself from regulating restaurant washrooms? Consider one example. In Honolulu, Hawaii, many fast-food restaurants and coffee shops have no public washrooms at all! This means after you finish that large coffee or super-sized soda, you're on your own.

Think

1. How do Saskatchewan's laws and regulations for restaurant washrooms provide a degree of predictability and stability for restaurant patrons?
2. What public health concerns come about when a restaurant has no washroom at all?

Yes You Can! Sort of...



Almost all restaurants are required to have public washrooms. However, most businesses—while required to have washrooms for their employees—are not required to have public washrooms. But if you really have to go, what can you do? Are you entitled to use the bathroom of any private business?

In short, the answer is no.

However, there has been a movement afoot in the United States to change this. The *Restroom Access Act*, passed in Illinois in 2005, requires retail establishments to provide access to employee-only restrooms in the case of medical emergencies. Also known as Ally's Law, the *Restroom Access Act* was spurred by Crohn's Disease sufferer Ally Bain. Shopping in an Old Navy, she suddenly found herself in need of a restroom. Denied access to the employee restroom, Ally had an unfortunate accident in the store.

From a Negative to a Positive

Ally successfully lobbied the Illinois state government for a law so that

this would never happen to anyone again. Today, versions of Ally's Law are now in force in 12 states.

Given Ally's experience, it is difficult to dispute the value of such legislation. This, however, has not stopped some online blog posters from criticizing it. And while it's always healthy to critically question laws, what may be most surprising for Ally's Law's critics is the philosophical company they find themselves in. Those questioning its merits may share the perspective of Canada's former Prime Minister John Diefenbaker.

People Doing Good

To be clear, it appears that John Diefenbaker had no particular stance on restroom access. However, in his memoirs *One Canada*, Diefenbaker put forth a philosophy about the purpose of laws. Citing his most

influential political science and law professor, Diefenbaker wrote:

"a people can never be made good by legislation, a point that many of us never learn."

Whether or not you agree with Diefenbaker's stance, he does raise a point worthy of debate. On its face, Ally's Law does not make retailers good. Instead, Ally's Law requires retailers to do good, by providing access to their washrooms.

The Diefenbathroom

Over 30 years after Diefenbaker's passing, it is impossible to say exactly how he would react to Ally's Law. But for what it's worth, Diefenbaker House Museum in Prince Albert does have a public washroom. As Diefenbaker said, "there is an inherent fairness in people."

Think

1. Should businesses be legislated to provide the public with access to their washrooms?
2. What can we learn about society given the fact that several American states need to legislate that businesses allow customers to use their washrooms, even in an emergency?

The Great Stink of

The advancement of public sanitation systems—such as garbage and recycling—have helped to reduce disease and make cities cleaner. Such public health improvements have just as much to do with the advancement of technology as they do with the application of law. The story of London's sewers illustrates this well.

London's Washroom History

London's earliest-known toilets date back to the mid-eleventh century. Simple tunnels drained into water flow-throughs below residences. These toilets were called "garderobes." The name translates as "guarding one's robes" and is believed to have originated from the practice of hanging one's wardrobe in the toilet shaft because ammonia from urine would kill fleas. By the 1200s, many of the extremely well-to-do in London had elaborately-constructed garderobes.

For those without a garderobe—and there were many—other forms of medieval toilets existed. Private and public latrines were built over running streams and moats. As well, the cellars of many homes had cesspools with a latrine built overtop. The cesspools were periodically cleaned out, with the waste sold to farmers for fertilizer.

Other people used chamber pots. The pot's contents were tossed into street gutters. Because the gutters did not always flow well, the person whose residence abutted the gutter was responsible for keeping the gutter clean and clearing out any clogs.

The end-destination of all of London's waste was the River Thames.

With the river filled with garbage and human waste, most Londoners used well water for drinking.

Laws to Protect the Public

Because the polluted streets and waterways created environmental concerns, laws were needed to preserve London's public health and cleanliness. By 1347, a concerned King Edward III forbade anyone from throwing rubbish or human waste into the city's streams and rivers. Instead, such filth was to be hauled out of the city by street cleaners called "muckrakers."

Attitudes and laws about dumping waste in London's waterways changed as years passed. In 1383, latrines—but not garbage—could again be dumped into the Thames and its feeder streams. But banishment returned in the mid-1400s. Latrines over the Walbrook and the Fleet, two of the Thames' feeder rivers, were restricted.

By 1531, London's growth in population required more drastic action. In response King Henry VIII put forth a Bill of Sewers. The bill was a major coordinated effort to construct and regulate underground pathways for London's waste.

Progress: The 1800s

By the early 1800s, London had a somewhat organized public sewer system. However, the system suffered two major problems. The first problem was that the sewers were primarily meant for rainwater. Household waste was not yet linked to the city's sewer system. The second problem was a lack of coordination. London

had no true central government, leaving parishes and boards to oversee each neighbourhood's sewer.

Meanwhile, strict restrictions on dumping into rivers drove up the need for cesspools. By 1810, London had over 200,000 cesspools for its population of just over one million. The contents of these pools leached into the ground water, spreading diseases such as cholera. It has been said that the "sparkling wells" of the city were sparkling because of the presence of ammonia and other organic materials from waste.

The Great Stink

By 1850, London was in the throes of great change. Its population hit two million. The flush toilet or "water closet" went from niche item to commonplace. And the agricultural market for cesspool waste collapsed. As a result, legislation was put in place requiring homes to be connected to sewers. But with all this waste draining into the River Thames, disaster was brewing. When the thermometer rose in the summer of 1858, the stench from the Thames made London unbearable. Thus began The Great Stink.

So bad was the smell, the Palace of Westminster—the riverside meeting place of the United Kingdom government—was virtually uninhabitable. Members of Parliament were seen rushing out of the legislative chamber holding handkerchiefs over their noses. Curtains were soaked in lime chloride to absorb the foul stench blowing in. With legislators now suffering first-hand, something was about to be done.



London: A Case Study

A New Sewer System

What London required was a centralized and orderly sewer system capable of moving its sewage out of the city and closer to sea. Unfortunately, what London had was a sewer system controlled by 1,000 commissioners from various neighbourhood authorities.

The United Kingdom's Parliament concluded that a central government had to be given authority to build an integrated sewer system. The Metropolitan Board of Works, a central public works board with elected members from each area of the city, was created by Parliament to rebuild London's sewer system. The new sewer system would discharge London's waste downstream from the city and closer to the ocean. This, it was hoped, would abate The Great Stink.

Opposition

Opposition to the Metropolitan Board of Works was rampant. When the idea was first proposed, many were concerned that a central authority of public works undermined the authority of local government. Some opponents even speculated that the Board was the end of government accountability to the people.

Despite criticisms, the Board took office. When it was given authority to construct a central sewage system, its opposition changed tactics. They now argued that flushing sewage out of London interfered with, as Prime Minister Lord John Russell put it, "individual will and freedom from control." The British magazine *The Economist* also believed that cleansing London

of sewage was a responsibility for individuals and not the government. They editorialized that:

"Suffering and evil are nature's admonitions; they cannot be got rid of; and the impartial attempts of benevolence to banish them from the world by legislation, before benevolence has learned their object and their end, have always been more productive of evil than good."

In the end, good sense trumped arguments of individualism. London's Metropolitan Board of Works was entrusted with constructing a central sewage system.

By 1870, London's new sewage system was discharging the city's waste outside the city limits. The most obvious effect was the elimination of stench

coming from the River Thames. More importantly, the efficient removal of sewage from London eliminated many water-borne diseases such as cholera.

The Result

In retrospect, even those who opposed the sewer were still winners. The construction of London's central sewage system improved the environment and freed all Londoners from many diseases. In fact, it has been said that John Bazalgette, the chief engineer of the system, probably "saved more lives than any single Victorian public official" due to the public health benefits of an integrated and effective sewer system. The laws and regulations that created London's public sewer system allowed for the resolution of centuries of sanitation issues. Thus, the law achieved one of its purposes: protecting citizens.

Think

1. Did the laws and regulations to create London's central sewage system:
 - a) restrict freedom, by requiring citizens to follow rules for public sanitation; or
 - b) promote freedom, by providing individuals freedom from the burden of sewage clean-up and disease, thus allowing pursuit of other choices?
2. Members of Parliament only worked to solve London's sewage problem once they were directly affected by The Great Stink. What does this teach us about the importance of elected representatives being in tune with the people they are elected to represent?
3. Look back to Diefenbaker's philosophy about laws on page 5 ("a people can never be made good by legislation"). Is it similar to *The Economist's* rationale for opposing London's sewers? What does The Great Stink teach us about the limitations of this philosophy?
4. Do you see any similarities between The Great Stink and local recycling? Climate change? The bitumen sands?



Recommended Bathroom Reading

This issue of *The PLEA* has barely plunged into how the law relates to washrooms. Below are many of the sources used for this issue of *The PLEA*. Exploring some of them will help you further understand the law's ever-present role in our lives. Check them out!

The Development of the Flushing Toilet

British bathroom fixture manufacturer Twyford Bathrooms developed this detailed timeline for the 400th anniversary of the flush toilet's invention.

www.twyfordbathrooms.com/company/~media/Twyford/Files/the-development-of-the-flushing-toilet.ashx

The Right to use the Bathroom and the Torts Involved When Forcing the Retention of Human Waste

Brian Pedigo's research paper examines American legal precedents related to preventing people from using the bathroom.

<http://pedigolaw.com/assets/files/PDFs/Bathroom%20Rights.pdf>

The Cross-Dressing Case for Bathroom Equality

Jennifer Levi and Daniel Redman examine the discrimination transgendered people face when using public washrooms.

<http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1218&context=facschol>

Barrier-Free Washrooms

This Government of Saskatchewan pamphlet outlines the requirements for barrier-free washrooms.

<http://www.publications.gov.sk.ca/details.cfm?p=10541>

The Great Stink of London: Sir Joseph Bazalgette and the Cleansing of the Victorian Metropolis

Stephen Halliday's book examines the obstacles and successes that civil engineers, government, and citizens faced when constructing a sewage system for Victorian London.

The History Press, 2001

An Asbo in 14th Century Britain

This feature from the United Kingdom's public broadcaster uses primary source documents to frame a discussion about historical sewage issues facing London.

www.bbc.co.uk/news/magazine-12847529

Latrines and Cesspools of Mediaeval London

Ernest L. Sabine's 1934 examination of official and private documents brings to light the history of private toilet facilities.

www.personal.leeds.ac.uk/~cen6ddm/History/MediaevalLatrines.pdf

The History of Sanitary Sewers

This non-profit educational website provides history about the development of sewers over the past 5,500 years, including a wide array of outside links.

www.sewerhistory.org




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