

Tattooing – From Taboo to Mainstream to Class Actions

Municipalities and public health units are facing new legal challenges today as the result of a fashion trend that has seen a dramatic increase in popularity – the tattoo. In Ontario, we are starting to see multimillion-dollar class action lawsuits being launched against public health units and the municipalities under which they are established. The plaintiffs allege that the municipality and the local public health unit owed them a duty of care to oversee, supervise and inspect the particular tattoo parlour and were negligent in carrying out this duty. The allegations still remain to be proven.

Tattoos – From Taboo to Mainstream

Tattooing or “inking” has gone from taboo to mainstream in the last 10 to 15 years, especially among younger adults and middle aged women – in large part because the tattoo is seen as up-market and hip. The process is viewed as an “artistic practice”. The surge in popularity of tattoo artistry is evidenced by reality TV shows such as “Miami Ink”, “L.A. Ink” and “Tattoo Wars”. To keep up with this new trend, tattoo shops are opening at a quick pace.

There is also a growing perception amongst the public that the health risks associated with tattooing are decreasing. We are seeing a rise in the “professionalism” of the business and the shops opening in popular shopping districts or trendier areas of town place a greater emphasis on cleanliness and sanitary conditions.

The public’s perception is also fueled by the fact that in some jurisdictions tattoo parlours must be licensed to conduct business. In Ontario, the Infection Prevention and Control in Personal Services Settings Protocol (2008) requires public health units to conduct annual inspections.

Tattooing – The Risks of an Unregulated Profession

While tattoos have become part of our mainstream culture – and yes, they can be done safely – if improperly administered, tattoos can result in a number of life-threatening illnesses such as hepatitis B, hepatitis C and HIV among other bacterial and viral infections.

What makes tattooing an even greater risk to the public health is the fact that it is not a regulated profession. There are no standards or licensing requirements for the tattoo artist. The artists are left on their own to learn proper and safe procedures. They learn their profession from other artists through an unregulated apprenticeship, attending an unregulated school or buying a “how to kit” online. Training in health and safety procedures and governing legislation depends on the instructor, the course curriculum and the instructions that come with the online toolkit.

Lack of infection prevention and control practices before, during and after the process can lead to the transmission of blood borne infections to the client, future clients or the tattoo artist.

Managing the Risks

In 1999, Health Canada, in partnership with provincial and territorial governments, published a set of Infection Control Guidelines for Personal Services which includes tattooing. These infection guidelines were written for tattoo practitioners. The regulatory oversight of Personal Services remains a provincial public health responsibility.

While each province and territory handles their own regulatory oversight, we will focus on Ontario since this is where we are seeing the class actions.

In Ontario, the Health Protection and Promotion Act (HPPA) provides the legislative mandate for boards of health. Section 5 of HPPA mandates boards of health provide health programs and services in specified areas. Section 7 of HPPA gives the Minister of Health and Long Term Care (MOHLTC) the power to

“publish guidelines for the provision of mandatory health programs and services and every board of health shall comply with the published guidelines”.

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In 2008, the MOHLTC published guidelines for the provision of mandatory health programs and services. These guidelines are known as the Ontario Public Health Standards (OPHS) 2008. Within the OPHS are protocols that provide direction to boards of health. The Infection Prevention and Control in Personal Services Setting Protocol, 2008 (replaces the Personal Services Setting Protocol, 1998) provides boards of health with direction on how to minimize the risk of contracting blood-borne and/or other types of infections for patrons and workers within the personal service settings.

What Does Ontario's Infection Prevention and Control in Personal Services Setting Protocol, 2008 Mandate?

The Protocol mandates that:

- Tattoo parlours are inspected at least once a year.
- Inspections must also be conducted in response to complaints and to follow-up any identified non-compliance with infection prevention and control practices in the annual inspection.
- Outlines four (4) additional responsibilities; These are identifying and investigating health hazards, educating the general public and the tattoo artist in public health and safety, enforcement of non-compliance and data collecting and reporting.
- Requires that risk assessments be conducted to determine whether or not a health hazard exists. The risk assessment should include reviewing sterilizer monitoring logs and spore test results.

The Role of Public Health

The role of public health is multi-faceted. Responsibilities include the delivery of a wide variety of public health and education programs, investigation and assessment of health and education programs, investigation and assessment of health hazards, enforcement of provincial and municipal legislation and inspections of food premises, public institutions, schools, nursing homes and personal service settings, just to name a few. Public health units and their inspectors have a long list of priorities.

In January 2009 the MOHLTC released the Infection Prevention and Control Best Practices for Personal Services Settings to assist public health inspectors in educating personal services practitioners in reducing the risk of transmission of blood borne pathogens. Though the purpose of this document is education of the personal services worker, it also provides a blue-print for an inspection protocol as it provides recommendations regarding hygiene, sterilization, equipment requirements, laboratory testing and test results, preventing cross-contamination and other operational requirements.

Where are Tattoo Parlours on Your List of Priorities?

Tattoo parlours should be considered a "high priority" due to the health risks they can pose. This invasive procedure, which is administered by an unlicensed and unregulated practitioner, involves piercing the skin with a number of needles holding various dyes, causing a permanent imprint and/or design. Whenever the skin is punctured, blood and bodily fluids can escape.

With the practice increasing in popularity and larger numbers of people frequenting the premises, the potential for infecting thousands of people, from just one unsafe occurrence, is a real risk. When a large group of people are collectively harmed, they could collectively bring a claim before the Court. In law, this is referred to as a class action.

We recommend that public health units reduce the risk of a class-action lawsuit by complying with the legislation, the guidelines and the protocols. Use the best practices documents to develop **your best practices**.

