FTR Now

Ontario Court of Appeal Increases Fine to $750,000 for Christmas Eve Fatalities

Date: September 6, 2013

In a recent decision (*R. v. Metron Construction Corporation*, 2013 ONCA 541), the Ontario Court of Appeal overturned the fine imposed by the Ontario Court of Justice in respect of four fatalities, and imposed a fine almost four times greater.

As previously reported (August 20, 2012 *FTR Now* – "Court Imposes *Criminal Code* Fines For Workplace Accident"), in 2012, Metron Construction Corporation ("Metron") pleaded guilty to criminal negligence causing death under the *Criminal Code* in respect of the fatalities of four construction workers on Christmas Eve 2009. On that date, six workers were repairing concrete balconies on the 14th story of a high rise building. Four workers were killed when their swing stage (suspended scaffolding) in which they were descending collapsed and fell to the ground. The fifth worker, who had been improperly attached to a safety line, suffered serious, permanent injuries. The sixth worker, who had been properly attached to a safety line, suffered no injuries.

A subsequent investigation determined that the swing stage was improperly constructed and that it would not have been safe for two workers to descend on it, let alone six. Moreover, it only had two lifelines available on it. The rented swing stage had also arrived with no manual, instructions or other production information, as required by the *Occupational Health and Safety Act* ("OHSA"). Toxicology reports also indicated that three of the four deceased, including the site supervisor, had recently ingested marijuana.

At the sentencing hearing, the Crown sought a fine of $1 million. However, the Ontario Court of Justice imposed a fine of $200,000.

The Court of Appeal overturned the sentencing decision, finding that the sentencing judge erred by using the sentencing range developed under the OHSA to determine the sentence, without regard to the higher level of culpability inherent in criminal offences and the particular gravity of the offence of criminal negligence causing death. That offence involves morally blameworthy conduct that amounts to a wanton and reckless disregard for the lives or safety of others.

The Court further held that the sentencing judge erred by determining the amount of the fine based on the company's ability to pay. The Court noted that "an organization's ability to pay should not be treated as a prerequisite to the imposition of a fine" and that if appropriate, "the prospect of bankruptcy should not be precluded." The economic viability of a corporation is not determinative of the appropriate fine.

Lastly, the Court found that the sentence of a fine of $200,000 was "manifestly unfit" and failed to convey the message of the importance of worker safety. As a result, the Court of Appeal imposed a fine of $750,000.

It is important to remember this was a conviction under the *Criminal Code*, not the OHSA. While the vast majority of workplace accidents continue to be prosecuted only under the OHSA, this decision confirms that regardless of a company's financial situation, courts will not shy away from imposing substantial fines for health and safety breaches.

Should you have any questions regarding this decision or its impact on your organization, please contact Nadine S. Zacks at 416.864.7484 or any member of the Occupational Health group.

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This

publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©