## Case In Point

# Calf-Roping Fatality Case Ends in $275,000 Fine

**Date:** November 14, 2013

The Alberta Court of Queen's Bench has rendered a fine of $275,000 (including victim surcharge) against XI Technologies ("XI") for its failure to ensure the safety of an employee who was fatally struck and injured while operating a faulty calf-roping machine which had been rented by the employer for use at a client event.

This sentencing decision follows the finding of the Alberta Court of Appeal which upheld the conviction of XI under the *Occupational Health and Safety Act* ("OHSA") for failing to do all that was reasonably practicable to avoid the foreseeable risks in the operation of that machine.

The Court noted the unusual facts in this case removed it from the "realm" of typical OHSA sentencing matters, in that "the work environment was not XI Tech's usual workplace and the activities performed were unique to the day of [the employee's] death." None of the employees involved in operating the machine had any experience with such equipment, the machine was clearly faulty and the employees had devised a way to make the machine operate which ultimate led to the fatality. The Court stated:

[21] There is no question that XI Tech was negligent in allowing its employees to operate equipment that they had no familiarity with, and for which they had received essentially no training or instruction. While the employees believed that they had established a safe procedure for loading the CRM, they had not. I accept that management did not know about the risks inherent in operating the CRM observed by those employees tasked with its operation: […] However, the responsibility to ensure a safe workplace cannot be delegated to employees. […]

Once the dangers associated with operating the machine became apparent, the employer should have taken the machine out of operation, which it did not. The risk of an injury from the machine's continued operation was foreseeable. However, the Court accepted that "while the risk of injury was probable, the risk of death was not. […] Although XI was negligent, it was not knowingly non-compliant with safety standards or recklessly indifferent towards employee safety." XI's behaviour here was distinct from other cases where the behaviour of employers had given rise to a sentence that would truly act as a deterrent.

Taking into account the sincere remorse of the family-run company and its actions to prevent such incidents from occurring again, the Court imposed the $275,000 fine, in part to serve as a "reminder to employers to remain vigilant to safety issues in those "unexpected" circumstances

where employees are operating outside of their “core” work functions.”

This case provides a clear message reminding employers that they are responsible for the health and safety of their employees at all times, even when they are not performing their “core” job duties, and even when the task does not directly relate to the employer’s business. Employers must be attuned to all the reasonably foreseeable risks which could present themselves to their employees, and take all reasonable precautions to prevent them. Failure to do so may lead to critical injury, liability and severe fines, as XI unfortunately discovered in this case.

R v XI Technologies Inc., 2013 ABQB 651 (CanLII)