

2017 Saskatchewan Construction Safety Summit

Metron Case Study: Exploring Liability & Consequences

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Factual Context

- One of the highest profile workplace accidents in Canada.
- On Christmas Eve, 2009, three workers and a site supervisor employed by Metron Construction Corporation fell to their deaths from a swing stage that collapsed as it descended from the fourteenth floor of a high-rise building.
- Another worker was seriously injured, while the sixth worker survived the collapse.

- The normal practice is to have two men on a swing stage, with each harnessed to “fall arrest” life lines.
- In this case, six men were on the swing stage. While there were only two life lines, only one man was properly tethered.
- Four workers had recently smoked marijuana.

- The swing stage, which had been rented, arrived without any instruction manual or labelling. There was no engineer report certifying its proper erection in accordance with *Occupational Health and Safety Act* (“OHSA”) and Regulations in Ontario.
- The swing stage was not properly constructed. Further, it could not withstand the weight of six men on it at one time.

- In the result, Metron was charged criminally under *The Criminal Code*.
- The president and sole director of Metron was also charged criminally, although these charges were later withdrawn. He was later charged civilly under the OHSA provisions.
- The manufacturer of the swing stage, Swing-N-Scaff Inc. and its corporate director were prosecuted under OHSA.

Issues

A. Criminal Liability

- Stems from *The Criminal Code*, and imposes liability on individuals and corporations that fail to take reasonable measures to protect employees and public safety.
- Requires both 1) a guilty act and 2) guilty mind
- The guilty mind comes through the fault of the corporation's "senior officers"
- "**senior officer**" is defined as "a representative who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of the organizations activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer"

A. Criminal Liability

- With the introduction of this section of the *Criminal Code*, and the definition of “senior officer”, this eliminates the prosecutor’s duty to show that the person charged is the “directing mind” of the corporation, and extends criminal corporate liability to the actions of mid-level managers.
- The main focus in the Metron case was sentencing for criminal negligence causing death under the Criminal Code.

Court Findings

A. Criminal Liability

- Metron was charged and pleaded guilty to criminal negligence causing death under *The Criminal Code*.
- This was as a result of certain acts or omissions of the supervisor, who was also killed in the incident. The supervisor was found to have failed to take reasonable steps to prevent bodily harm and death by:
 - i. Permitting six workers to work on the swing stage when he knew or should have known it was unsafe to do so;
 - ii. Permitting the six workers to be on the swing stage with only two life lines; and
 - iii. Allowing them to work while under the influence of drugs.

Court Findings

A. Criminal Liability

- The Crown requested a fine of \$1 million.
- The trial judge imposed a \$200,000 fine plus a 15% victim surcharge.
- The Crown appealed the trial judge's decision to the Ontario Court of Appeal.

Court Findings

A. Criminal Liability

- The Court of Appeal increased the fine to \$750,000.
- The Court drew a distinction between *Criminal Code* charges that are meant to condemn and punish past conduct and charges under the regulatory offences under the OHSA, which are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

Court Findings

A. Criminal Liability

- The Court noted in its review of the sentencing principles, that it is permissible for a court to set a fine that results in the corporation becoming insolvent if they feel it is required to deliver a strong message regarding the conduct of the corporation.
- However, considerations of economic viability such as importance to a community, its value as a source of supply or as an industry participant, as well as its value as a significant employer will also be considered

Court Findings

A. Criminal Liability of the Project Manager

- The Project Manager at Metron was personally charged and convicted of 5 counts of criminal negligence following a trial.
- Sentenced to 3 ½ years in prison.
- The Court found that the Project Manager:
 - i. Had the authority to direct how the workers employed by Metron performed the work;
 - ii. Had failed to take reasonable steps to prevent bodily harm to the workers; and
 - iii. Showed wanton and reckless disregard for the lives and safety of the workers.

Court Findings

B. Civil Liability

- The owner and sole director of Metron was charged pursuant to the OHSWA provisions and pleaded guilty to four counts for failing to take reasonable care to ensure that Metron complied with the OHSWA Regulations. He failed:
 - i. To ensure all workers who could not read English were provided with written instructions in their native language;
 - ii. To ensure training and instruction records were maintained;
 - iii. To ensure the swing stage was not used while it was defective or hazardous; and
 - iv. To ensure that the scaffold platform was not loaded in excess of the load that the platform was designed to bear.
- He was fined \$90,000 and a 25% victim surcharge.

Court Findings

B. Civil Liability

- The manufacturer of the swing stage, Swing-N-Scaff Inc. was prosecuted under the OHSA and fined \$350,000 plus a 25% victim surcharge.
- The manufacturer pleaded guilty to failing to ensure that the suspended platform supplied to Metron was in good working order.
- The manufacturer's corporate director was personally fined \$50,000 plus a 25% victim surcharge.
- He pleaded guilty to failing to take reasonable care to ensure the suspended platform was in good condition, and that the platform was designed by a professional engineer.

Lessons Learned

A. Responsibility and Accountability

- The *Criminal Code* imposes criminal liability on corporations and senior officers that fail to take reasonable measures to protect employees and public safety.
- Criminal liability can be found against the “senior officers”.

Lessons Learned

B. Due Diligence

- If a company has adequately carried out its due diligence, then the company has done what is reasonably practicable in the circumstances to prevent “reasonably foreseeable” occurrences.

Lessons Learned

B. Due Diligence

- Consider questions such as:
 - i. What have you done to prevent incidents like the one that occurred in *Metron*?
 - ii. What is considered “reasonably foreseeable”?
 - iii. Can you demonstrate proper training records, reasonable instructions, etc?
 - iv. Can all of your employees understand the training? Consider level of communication, technical understanding and any language barriers

Lessons Learned

C. Training

- As part of ensuring due diligence, the company must be able to demonstrate that it has been effective in rolling out training.
- Examples include:
 - i. General safety training;
 - ii. Job-specific training;
 - iii. Training supervisors on their duties;
 - iv. Train managers and supervisors about their duties and responsibilities under statute.

Lessons Learned

D. Supervision

- Individuals who control operations should have appropriate skills such as:
 - i. Ability to provide appropriate training and expertise;
 - ii. Appropriate experience; and
 - iii. Ability to make reasonable judgments
- Ensure appropriate supervision at all times.

Lessons Learned

E. Make Safety a Priority

- Make sure questions of safety are answered.
- Do not place this on the back burner.
- Establish a health and safety program that meets legislative requirements (ie: written).
- Establish ongoing training programs.
- Make safety a priority as part of your culture
- Audit regularly
- Demonstrate that your company takes safety seriously

Lessons Learned

F) Document Everything

- Keep copies of all important health and safety-related protocols and workplace checks.
- Documents relating to orientation training, job safety and general safety training, refresher training, hazards training, attendance, records, etc.
- An absence of documentation can remove your ability to show due diligence has been conducted.

5. Questions

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