

THE TURNING POINT

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The Vision of the Turning Point

This newsletter is to inform you of recent changes and trends regarding health and safety. The Turning Point is a monthly newsletter covering topics from various industries and sectors. The Turning Point will respond to your inquiries and inform you of current services and updates regarding Raising the Standard Consulting Inc. (RTSC).

THE FIRST BILL C-45 CONVICTION: QUEBEC EMPLOYER PLEADS GUILTY TO OH&S CRIMINAL CHARGES

Written by Ryan Conlin - Stringer Brisbin Humphrey Management Lawyers – Feb. 13, 2008 – OH&S Due Diligence Update

It has been almost four years since the *Criminal Code* was amended by Bill C-45 to make it easier for employers and supervisors to be convicted of criminal negligence for serious breaches of workplace safety standards. The Bill C-45 amendments justifiably received widespread attention in the employer community at the time of their enactment. However, Crown Prosecutors across the country have continued their historic practice of not laying criminal negligence charges for OH&S violations. This has led some to conclude that the OH&S related criminal charges were little more than a theoretical risk. This case shows that the skeptics have been proven wrong.

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MINISTRY OF LABOUR UPDATES

OTTAWA, Nov. 23 - On May 15, 2006, a labourer on a maintenance crew died when his head was crushed in a hopper at his workplace. His employer pleaded guilty under the Occupational Health and Safety Act in connection with his death.

Lafarge Paving & Construction (Eastern) Ltd., of 7880 Keele St., Concord, Ontario, was fined \$325,000 by Justice of the Peace Louise Girault in the Ontario Court of Justice for failing to have a proper safety procedure in place for the work being done.

Court heard that the worker and a colleague were re-installing a 360 kg steel grate over the top of a hopper used in asphalt production at Lafarge's asphalt plant on Moodie Drive, Ottawa. The grate measured three by 1.2 metres and was one of three covering the hopper. It had been removed to allow interior welding. As the workers were re-installing it, the grate collapsed to the bottom of the hopper and crushed the worker's head. He died of his injuries.

A Ministry of Labour investigation found that Lafarge did not have written work procedures for this task in place that addressed issues such as the various hazards involved, the proper equipment to use and the personal protective equipment required for workers. That contravened section 25(2)(h) of the Occupational Health and Safety Act, which states that an employer commits an offence when failing to take every precaution reasonable in the circumstances for the protection of workers.

TORONTO, Dec. 10 - The Toronto Transit Commission pleaded guilty and was fined \$165,000 in the Ontario Court of Justice for failing to protect the health and safety of workers who were overcome by carbon monoxide gas in a subway tunnel in 2006. Judge Robert Bigelow at the Old City Hall courts presided at the sentencing hearing. Seven workers and their foreman comprised a man-made mineral fibre (MMF) crew from the Track and Structure Department. This crew was removing MMF material to permit access to the concrete for repair.

At about 3 a.m., the crew established a work area 1,500 feet (457 metres) north of the Eglinton station. Part of their equipment on a flatbed subway car included a gasoline-powered generator and two gasoline-powered power washers. At about 4:13 a.m., TTC Transit Control received a call from the crew foreman that crew members were

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RAISING THE STANDARD CONSULTING INC.

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First Corporate Criminal Conviction

The landscape may have finally changed as a result of a December 7, 2007 guilty plea by Transpave Inc. to criminal negligence charges arising out of a fatality to a young worker. The accident took place on October 11, 2005, at a workplace that manufactures concrete blocks for patios. The worker was crushed after entering a moving area of a machine that stacks blocks, while attempting to clear a jam in the machine. The worker was not performing his regular job and was acting as a replacement for an employee who was on a break.

The machine was equipped with a light curtain guarding system. This should have interrupted power to the equipment as the worker approached it. Investigators from the Province's workplace safety enforcement body (*La Commission de la Sante et de la Securite du Travail*) concluded that the following caused the accident:

- The light curtain system was disabled at the time of the accident. Investigators determined that the light curtain system was disabled for the majority of the time in 2004 and 2005. An expert who examined the machine concluded that it was very easy to bypass the light curtain system.
- The company did not provide adequate machine safety and hazard awareness training. This lack of training on critical safety issues resulted in the worker not knowing the dangers associated with entering the area and moving the patio stones.
- The company did not implement any specific work procedure that adequately addressed the hazards associated with moving the patio stones.
- The company did not have an inspection program to confirm whether the guarding system was operational.
- Investigators concluded that a member of management had noted in the past that the light curtain guarding system was disabled but did not take any action to address the situation.
- The training system for new operators was not evaluated or reviewed by management.

Implications of the First Corporate OH&S Criminal Conviction

The company will be sentenced in a Quebec Court on February 27, 2008. There is no limit on the amount of the fine that the Court can impose. It remains to be seen whether this case will pave the way for an increased number of OH&S related criminal prosecutions. Crown Prosecutors continue to be pressured by safety advocates and representatives of organized labour across the country to pursue criminal prosecutions. It appears likely that his pressure will increase now that an employer has been convicted. It is my view that the risk of criminal prosecution is particularly high in the context of accidents which receive a great deal of public attention or cases involving fatalities to young workers. Employers must be vigilant to ensure that their organization meets court developed

overcome by fumes. Toronto Fire Services were notified at 4:20 a.m. and responded along with emergency medical services. Eighty-four minutes after the foreman's call, the workers were rescued when their work car arrived at the Eglinton station platform at 5:37 a.m.

Toronto Fire Service reported carbon monoxide readings of over 1000 parts per million (ppm) when they first arrived at the incident location. By 5:30 a.m., levels were in the 550-580 ppm range. The readings indicated that the workers had been exposed to carbon monoxide concentrations at least 40 times the current eight-hour average occupational exposure limit of 25 ppm and 10 times the short term exposure limit of 100 ppm.

A Ministry of Labour investigation found that the TTC breached Section 47 (b) of Ontario Regulation 213/91 and Section 25(1)(c) of the Occupational Health and Safety Act when it failed to ensure that no internal combustion engine was to be operated in a building or other enclosed structure unless the exhaust gases and fumes from the engine were discharged directly outside to a point sufficiently remote to prevent the return of the gases or fumes; or unless there were an adequate supply of air for combustion and adequate natural or mechanical ventilation to ensure exhaust gases and fumes would not accumulate.

Charges against a general superintendent are to be heard in court in February and March, 2008.

WEB BASED TRAINING

Raise the safety, health, and productivity of your employees to the top of your agenda and provide training solutions that deliver real results. We provide web-based training programs for the convenience of your organization. Please visit our web-site to register.

Hand Tools and Automotive Lifts

Identify the Hazards and Controls Regarding: Hand Tools, Hoists, Fixed, Power, Electrical and Pneumatic Tools, Guarding, Powered Lifting Equipment, Automotive Lifts.

Joint Health and Safety Committee

Participants will be able to: know the legislative requirements for establishing a JHSC, describe the powers, functions and duties of JHSCs and their members, describe the activities of an effective JHSC, etc.

Machine Safety and Lockout / Tagout Procedure

Learn about Workplace Responsibilities, Machine Guarding and the Law, Understanding Machine Related Hazards Lockout / Tagout, Applicable Legislation, Hazard Identification, Lockout Procedures.

Health, Safety and The Law

Provide participants with a working knowledge of the Occupational Health and Safety Act and related legislation and more.

due diligence standards to avoid criminal and/or regulatory prosecution. Given that the Criminal Code focuses on the role of Senior Management, particular attention must be paid to the issue of OH&S due diligence at the most senior levels of the organization.

It is important to appreciate that since this case was a guilty plea, the Court did not make any comment about how it would assess whether an organization is guilty of criminal negligence in the OH&S context. However, the sentencing decision in the case may shed some light on the important issue of how an organization will be sentenced under the Criminal Code.

PUBLIC TRAINING COURSES

The following is an example of a few of the training courses we offer. For a full list, please contact us.

JHSC Certification Part 1 Training (2-day course)

\$349.00 +GST - 2-day Course

Apr. 2-3, May 6-7, June 3-4

JHSC Certification Part 2 Training (length depends on industry)

Service Sector (office, hotels/restaurants, retail, etc.)

\$245.00 +GST – 1 day – Apr. 22, May 27, June 24

Healthcare, Warehouse/Distribution, Manufacturing

\$350.00 +GST – 2 days – Apr. 22-23, May 27-28, Jun. 24-25

Construction (including 1 day fall Protection)

\$475.00 +GST – 3 days – Apr. 22-24, May 27-29, Jun. 24-26

WILL YOUR WSIB SERVICE CONTINUE?

Effective May 1, 2008 the Law Society of Upper Canada (LSUC) will require firms operating within a large corporation to separate their existing relationship. Your service provider operating within this organization has to establish a professional corporation to manage or continue to provide a WSIB service.

Links to the WSIB & USUC have been attached for your information.

Should you wish to discuss how this might impact your current relationships or require assistance in managing your current WSIB issues, please do not hesitate to contact us.

[http://www.wsib.on.ca/wsib/wsibsite.nsf/Public/ResourcesPa
ralegalLicences](http://www.wsib.on.ca/wsib/wsibsite.nsf/Public/ResourcesPa
ralegalLicences)

http://www.lsuc.on.ca/media/lawyers_paralegals_public.pdf

Manager and Supervisor Safety Orientation

Learn about Management Responsibilities, Right to Refuse, JHSC, Hazard Recognition, Workplace Accidents, Emergency Procedures, New Employee Orientation, Transfer and Promotion, etc.

Material Handling

This course is designed to teach workers about proper material handling techniques. Upon completion of this course, workers should be able to: describe what factors contribute to back injuries, explain proper lifting techniques, etc.

Accident Investigation

The goal of this module is to ensure you will be able to: recognize the need for an investigation, investigate the scene of the accident, interview victims & witnesses, determine root causes, compile data and prepare reports, make recommendations, etc.

Health Hazards: Recognition, Assessment and Control

The goal of this module is to ensure you will be able to: understand the law pertaining to health and safety hazards, define occupational injury and illness, understand the four types of workplace health hazards, etc.

Workplace Inspection

Provide participants with an understanding of their legal rights and responsibilities with regard to workplace inspections and to prepare them for carrying out effective workplace inspections.

Slips, Trips and Falls

Objective of this training is to: understand the causes and effects of falls in the workplace, to understand legislation relating to slip, trip and fall hazards, to be able to identify potential slip, trip and fall hazards, etc.

WHMIS

Explain how WHMIS is implemented in law, explain how the law defines a controlled product, explain how the law defines hazardous ingredients, identify the exclusions, etc. Register to access the complete training material.

Worker Safety Orientation

Worker Responsibilities, Right to Refuse, Joint Health and Safety Committee, Hazard Recognition, First Aid, Workplace Accidents and more.

