

Two occupational health and safety appeal decisions to be aware of

July 11 2018 | Contributed by [Fasken](#)

Sunrise Propane
RCMP
Comment

Occupational health and safety professionals, HR professionals, in-house counsel and operations managers responsible for implementing health and safety management systems should be aware of two recent appeal decisions relating to serious occupational health and safety charges.

Sunrise Propane

The first was the appeal decision in *R v Sunrise Propane Energy Group* (2017 ONSC 6954). After a 14-day trial, Sunrise was found guilty of seven charges under the Ontario Environmental Protection Act and the Ontario Occupational Health and Safety Act. The Superior Court of Justice held that both the conviction and the sentence at the trial court were reasonably supported by the evidence and legal principles, and were therefore upheld. The court held that the explosion and fire, which involved a fatality, at the Sunrise Propane Energy Group Distribution Centre in Toronto resulted in the contravention of both acts.

With respect to the sentence appeal, the court also upheld the heavy double-barrelled penalty totalling C\$5.3 million. Affirming the fines and penalties, the court stated:

It is clear that an Appellant Court must give considerable deference to a sentence imposed by a trial judge and only interfere if that sentence is manifestly unfit... the widespread damage and effects caused by the Appellants' reckless behaviour in conducting truck-to-truck transfers without license and with full knowledge of the risks associated with the practice... there is nothing in the trial judge's decision that indicates error and I agree with the Respondent that the fine was consistent with other fatality cases.

The aggravating factors of a fatality and the company operating without a licence, as well as unsafely, were major factors in the harsh penalty issued by the trial court and affirmed on appeal.

RCMP

The second noteworthy appeal involved a criminal rampage in Moncton, New Brunswick, where four Royal Canadian Mounted Police (RCMP) constables were killed in a targeted shooting by gunman Justin Bourque. After the shooting, the federal occupational health and safety regulator investigated the case and laid charges under the Canada Labour Code, Part II. The RCMP defended the charges at trial but was convicted and ordered to pay C\$550,000 for failing to properly arm and train its members. The trial judge gave a clear and strong rebut to the RCMP's leadership for failing to act sooner to ensure that frontline police officers were equipped with high-powered rifles that could have made a difference in the shooting.

The judgment in the sentencing placed little responsibility on Bourque and more on RCMP senior management for Bourque's criminal actions. The RCMP was criticised for failing to equip officers with adequate firepower to deal with the unforeseeable event. The trial judge agreed that the RCMP had

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acted on 56 of the 64 recommendations in the report into the incident, but held that this was not sufficient to satisfy the prosecutor or the court that there had not been a series of serious health and safety violations under the Canada Labour Code.

The RCMP recently announced that it will not appeal the decision, although it was likely a difficult pill to swallow. Most of the RCMP's penalty – C\$300,000 – will go towards a memorial scholarship fund at the University of Moncton, while another C\$600,000 will go towards education funds for children of fatally injured RCMP officers. These alternative penalties – as opposed to revenue from penalties, which goes into the government's general revenue fund – are permitted in some jurisdictions (eg, the federal regime) but not in others (eg, the province of Ontario).

Comment

The two cases indicate that in both extreme and unusual cases, Canadian health and safety regulators are becoming more aggressive in their enforcement of the legislation when workers are critically or fatally injured. The decisions also demonstrate the high monetary penalties that are available when health and safety laws are not complied with, even if the outcome was neither intended, nor easily foreseeable, and undoubtedly random in its occurrence.

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