

# AB Court: Corporate Negligence Alone Isn't Enough to Hold Directors Personally Liable



The workers' comp system is based on two trade-offs: Workers give up the right to sue their employers for workplace injuries in exchange for the promise of guaranteed compensation, while employers get protection from lawsuits by injured workers in exchange for participating in the workers' comp program. But does workers' comp protection of *employers* from lawsuits extend to a company's *corporate officers and directors*? In other words, can officers and directors of companies in the workers' comp system be held personally liable for workplace injuries and fatalities? A court in Alberta recently ruled that the directors of a company *could* be held personally liable for workplace injuries, but only if there was some connection between their negligence and the injuries. Here's a look at this decision.

## THE CASE

**What Happened:** Two workers were steam cleaning an oil tank when it exploded. One worker was killed; the other was seriously injured. The injured worker sued the directors of the company that operated the shop where the incident occurred, claiming negligence. Specifically, the worker claimed the directors failed to, among other things, implement safety measures required by the OHS laws and meet the standard and fulfill the duties of a director as required by the *Business Corporations Act*. The directors asked the court to dismiss the lawsuit, arguing that they owed no duty to the worker and so couldn't be negligent. They claimed they were directors and shareholders in name only, and didn't know anything or do anything with respect to running the company. The court refused to dismiss the lawsuit, relying largely on the decision in *Epton* [*Bower v. Evans*, [2016] ABQB 286 (CanLII), May 19, 2016]. So the directors appealed.

**What the Court Decided:** The Court of Queen's Bench of Alberta dismissed the lawsuit.

**The Court's Reasoning:** The appeals court noted that the lower court had relied heavily on the *Epton* case, in which a director was found personally liable for a workplace fatality. But in that case, the director was *directly* involved in the incident that led to the fatality (the attempt to lift a beam). Thus, *Epton* does

*not* stand for the proposition that a director who fails to carry out the duties of a director'or is negligent in doing so'is automatically personally liable. Instead, said the appeals court, 'there must be something more, sufficient to establish independent tortious liability.'

Here, there was no evidence that the directors had any involvement with the work being done on the tank at the time of the explosion. Specifically, there was no evidence that the directors were present when the tank was being worked on, or that the workers had any need or expectation that the directors would give them any instructions on how to do their work. In other words, the appeals court found that the directors had no involvement in the day-to-day operations of the company, which is markedly different from the situation in *Epton* and makes that decision distinguishable.

Although these directors may have been negligent in their corporate capacities, such neglect wasn't sufficient to create independent tortious liability, concluded the appeals court. It also found that there was no causal link between their alleged negligence as directors and the injury suffered by the worker. Moreover, there was no evidence that they were acting in a personal capacity or that what they did (or didn't do) in their personal capacities was a material cause of the worker's injuries [*Bower v. Evans*, [2016] ABQB 717 (CanLII), Dec. 19, 2016].

### ANALYSIS

Directors have a general duty to take steps to ensure the company's compliance with the OHS laws. So it would seem logical that a director's negligence in failing to fulfil that duty could expose a director to personal liability if a worker was subsequently injured or killed. But the court in *Bower* concluded that 'something more' was needed than just corporate negligence. It's not clear whether that 'something more' is a director's personal involvement in the incident that resulted in the injury or fatality (such as in *Epton*) or personal knowledge of certain circumstances that led to the incident, such as awareness that a machine guard was missing from a piece of equipment in which a worker got entangled. Nonetheless, the best way for directors to avoid personal liability in any circumstances is to prevent safety incidents from occurring in the first place by implementing and ensuring the effectiveness of the company's OHS program. (Note that each jurisdiction applies its workers' comp ban on injured workers' bringing lawsuits for damages against their employers or co-workers differently when it comes to shielding officers and directors from such lawsuits. For example, in some jurisdictions, the statutory bar specifically covers a corporation's executive officers or directors and so a case such as *Bower* would never be brought in those jurisdictions.)

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