C-45 Charges Dropped in Ontario Crane Case

Since Bill C-45 took effect six years ago, it has resulted in only three criminal negligence cases. Then, in a matter of weeks early last year, criminal charges were laid in connection with two workplace fatalities, one in Ontario and one in BC. The Ontario case was just resolved—with the complete dismissal of the criminal charges against all three defendants. What happened? Here's what the Crown prosecutors had to say.

The Incident

On April 16, 2009, the City of Sault Ste. Marie's Public Works Department was performing sewer work in an excavation at the city landfill. The city had hired Millennium Crane Rentals to provide an 80-tonne mobile crane and crane operator to assist in placing concrete structures into the excavation. The crane fell into the excavation while it was apparently being repositioned. One city worker who was in the excavation at the time was pinned across the stomach and pelvis by the crane. He was rushed to a nearby hospital but later died from his injuries.

In Feb. 2010, the police charged Millennium Crane Rentals, David Brian Selvers (the crane owner) and Anthony Vanderloo (the crane operator) with criminal negligence. In addition, the Ontario Ministry of Labour laid charges under the *OHS Act* against Millennium Crane Rentals and the crane operator, including charges for failing to ensure the crane operator was properly licensed, the crane was maintained in a condition that didn't endanger a worker and the crane wasn't defective and/or hazardous.

The Dismissal

According to the *Sault Star*, the Crown just dropped the criminal charges. "There is no reasonable prospect of conviction based on the evidence we have," assistant Crown attorney David Kirk said when he requested that the charges against Millennium, Selvers and Vanderloo be withdrawn. (Millennium and Vanderloo still face charges under the *OHS Act*.)

In his statement, Kirk explained that expert evidence would play a pivotal role in establishing the elements of the offence in the criminal proceedings. "To prove the charge of criminal negligence causing death, one of the elements the Crown would have to prove as causation: that the condition of the crane directly contributed in the [worker's] death," he said.

The Crown concluded that the engineering report doesn't establish with certainty whether the braking capacity of the crane was able to stop the crane from entering the excavation, which it says is necessary to prove the criminal

charge.

The Implications

It took the Crown nearly a year from the incident to file criminal negligence charges. So the question is why did it only realize *now* that the evidence doesn't actually support such charges? After all, it would appear that it had plenty of time to get an engineering report on the crane.

One of the trends we've seen in the few criminal negligence cases for workplace safety incidents is that public pressure—especially from unions—plays a significant role in whether charges are brought. For example, in the wake of the filing of C-45 charges in this case, Sid Ryan, president of the Ontario Federation of Labour (OFL), said the case may represent a "huge step forward" for worker safety in Ontario because employers will now have to "sit up and take notice" of potential criminal liability when workers are killed on the job.

I suspect that public and union pressure forced the Crown's hand and pushed it into filing criminal negligence charges before it was really sure those charges were appropriate. So what, if anything, does the Crown's decision to now withdraw those charges mean for future C-45 cases? Perhaps prosecutors will be more deliberate when it comes to pursuing criminal negligence charges in workplace safety incidents and less willing to bow to outside pressure. Or it may make no difference at all. We'll have to wait and see.