ON Court Says Crown Can’t Use General Duty Clause to Expand Safety Requirements

When the government charges an employer with safety violations, it can take one of two basic approaches. It can charge the employer with violating either a specific requirement in the OHS law, such as a requirement that workers use certain respiratory protection in a confined space, or the so-called ‘general duty’ clause, which broadly requires employers to provide a reasonably safe workplace and protect workers from foreseeable hazards. In a recent case in Ontario, the government charged an employer with a general duty clause violation. But the court dismissed the charge, ruling that the government was essentially trying to use this clause to expand specific requirements in the OHS regulations. Here’s a look at the case and the court’s reasoning.

THE CASE

What Happened: A worker in an industrial workplace was welding a large steel object from a wood platform about 6.5 feet above the ground. The platform was made using an A-frame and plank system. He fell and suffered fatal injuries. No one witnessed the incident. The Crown charged the employer with violating the general duty clause in the *OHS Act* by failing ‘to take every precaution reasonable in the circumstances for the protection of a worker,’ specifically failing to take the reasonable precaution of installing guardrails at the open

sides of a raised wood platform. (The employer was also accused of failing to provide information, instruction and supervision to the worker.)

What the Court Decided: The Ontario Court of Justice acquitted the employer, dismissing both charges.

The Court's Reasoning: The court noted that the applicable *Industrial Establishments Regulation* require workers to wear fall protection when at risk of falling more than three metres. In this case, the worker was only 6.5 feet'or less than two metres'above the ground and so wasn't covered by this requirement. In addition, Sec. 13 of these regulations require a guardrail around the open side of, among other things, any raised floor, mezzanine, balcony, landing, platform or other surface. But the employer wasn't charged with violating this requirement. And in any event, the court interpreted this guardrail requirement as applying only to fixtures in an industrial building'not the A-frame and plank system used in this case. The Crown's argument was that, nonetheless, the employer should've installed guardrails at the open sides of any raised wooden platforms because doing so would've been a reasonable precaution under the general duty clause. However, the court found that it wasn't appropriate for the government to use the general duty clause of the *OHS Act* to expand on or extend the guardrail and/or fall protection requirements beyond those specifically outlined in the *Industrial Establishments Regulation* [*Ontario (Ministry of Labour) v. Quinton Steel (Wellington) Ltd.*, [2014] ONCJ 713 (CanLII), Dec. 17, 2014].

ANALYSIS

The court in *Quinton Steel* acknowledged the need for a general duty clause in the OHS acts, explaining that, as remedial laws, they can't be expected to consider 'every contingency.' This clause is often used for prosecutions when there's no applicable specific regulations. But the court agreed with the

defence's position that this 'catch-all section' of the *OHS Act* can't be 'endlessly malleable' and used as the basis for charges when there are other sections of the *OHS Act* or regulations that are on point. Here, the *Industrial Establishments Regulation* had a specific section on guardrails, but it didn't apply in these circumstances. And it was inappropriate for the government to try to use the general duty clause to get around the limits on that section and essentially expand it to apply to these facts. *Bottom line*: The outcome of this case should provide some comfort to employers (at least those in Ontario) that there are limits on the government's ability to lay general duty clause violations.