

Late Change in OHS Prosecution Strategy Results in Exclusion of Evidence



The Crown charged a company with three OHS violations related to an incident involving the collapse of a drill rig, which killed one worker and seriously injured another. Before the trial began, the prosecutor told the defendant that the Crown wouldn't use the results of a laser scan conducted at the incident site as part of a separate police investigation. But it *did* introduce such evidence. So the defendant asked for a mistrial, claiming its Charter rights were violated. The court found that although the prosecution didn't act in bad faith, the effect of its legitimate decision to change its mind and pursue the laser scan evidence infringed on the defendant's right to make a full defence. The court ruled that exclusion of that evidence, rather than a mistrial, was the just and appropriate remedy. It left the trial intact and didn't end the prosecution, but it remedied the unfairness occasioned by the late decision to introduce that evidence [*Ontario (Ministry of Labour) v. Advanced Construction Techniques Ltd.*, [2016] ONCJ 392 (CanLII), June 28, 2016].