How Much Information Does a Company Need to Defend Itself from OHS Violations?

In the board game ‘Clue,’ you don’t win by just identifying the murderer. You must spell out certain details of the faux crime’that is, Colonel Mustard in the library with the candlestick. Similarly, in a safety prosecution, the Crown can’t simply accuse a company or individual of violating the OHS laws. The government must provide certain information about the alleged violations, such as the sections of the law or requirements the defendant allegedly violated and where and when these violations occurred. But exactly how much detail must the Crown provide in the so-called ‘particulars’ so that the accused can adequately defend itself’ A court in Alberta recently responded to a request by a defendant for the dismissal of an OHS prosecution based on insufficient particulars in the charges. Here’s a look at its ruling.

THE CASE

What Happened: During welding at a shut in sweet gas well, an uncontrolled fire occurred. A welder sustained injuries, which required him to stay more than two days in the hospital. As a result, a company was charged with six violations of the OHS laws as both a contractor and prime contractor. It asked the court to dismiss the charges, arguing that they were ‘so devoid of particulars’ that they were defective on their face and that, because of the lack of particularity, it was

‘prejudiced in its ability to make full answer and defence.’

What the Court Decided: The Provincial Court of Alberta dismissed the application, ruling that the charges were sufficient as drafted.

The Court’s Reasoning: The court noted that each of the counts specifies a particular date and a general location. Other than those particulars, the wording of the charges is taken from the OHS laws. That is, the charges are worded in the statutory language creating the offence. For example, Count One said, ‘On or about the 7th day of October, 2012, at or near Grande Prairie, Alberta, being a contractor directing the activities of an employer involved in work at a work site, did fail to ensure, as far as it was reasonably practicable to do so, that the Occupational Health and Safety Act, Regulation and the Adopted Code were complied with in respect of the work site, contrary to section 2(5) of the Occupational Health and Safety Act, R.S.A. 2000, Chapter 0-2, as amended.’

The court explained that the law requires the prosecution to provide ‘sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to.’ But the charges themselves aren’t necessarily the only source of this information for the defendant. The prosecution is also required to provide additional information to a defendant in the form of disclosure. The court concluded that, in assessing the sufficiency of the charges, ‘the disclosure regime should not be ignored.’

As to this specific case, the company had an incident that was investigated by OHS authorities, who then determined whether charges under the OHS laws were merited. The current charges are the result of that process. Thus, the company ‘almost certainly knows what transaction is referred to in the counts.’ In addition, through disclosure, it’ll know all the

evidence in the

Crown's possession. So the court concluded that it's difficult to understand how the company is 'prejudiced in its ability to make full answer and defence, even when the charges make use of the statutory language.' (Note that despite this ruling, the Crown voluntarily agreed to amend the charges to provide more particulars) [*R. v. ConocoPhillips Canada Resources Corp.*, [2016] ABPC 176 (CanLII), Aug. 11, 2016].

ANALYSIS

It's only fair that a company or individual know what it's accused of doing'or failing to do'so that it can properly defend itself in an OHS prosecution. The need for particulars is especially critical if the defendant is simply charged with violating the so-called 'general duty' clause as opposed to a specific requirement in the OHS laws. But as the court noted in *Conoco*, the charges themselves are not the only source of information a defendant has on the accusations. And a defendant can't feign ignorance when, in reality, it knows exactly what incident or event is at the heart of the safety violations it faces.