The Top 12 OHS Compliance Cases of 2024 & Their Impact on You

1. SaskPower Hit with Record $840,000 OHS Fine for Workers' Bucket Fall Deaths

Once a relative rarity confined to Ontario, 6-figure fines for OHS violations have become commonplace, with 59 such fines reported across Canada in 2024. Utility giant SaskPower was on the receiving end of the biggest of these fines for an incident in which 2 workers tying in power lines from a bucket truck elevated 15 feet above the ground fell to their death when the bucket collapsed. The bucket had a fall arrest system but neither worker had clipped their safety belt lanyards to the "D" ring. SaskPower was charged with 3 OHS violations, each carrying a maximum penalty of $1.5 million, including failure to provide adequate safety plans, ensure competent supervision, and letting workers work from an elevated platform without required fall protection. The Crown asked for a $2.1 million fine given the company's size and the fact that 2 workers got killed. The power company contended that $200,000 per violation – $600,000 total – was more appropriate given that the victims were experienced journeypersons who

should have known better than to work without clipping in and that this was only its second OHS violation in nearly a decade. After weighing all of the factors, the Saskatchewan court decided on a fine of $410,000 for the first offence and $210,000 each for the other 2—a total of $840,000. That's the highest OHS fine ever imposed in Saskatchewan, easily surpassing the previous record of $560,000 levied in 2019 against a cement company for a fatality [*R v Saskatchewan Power Corporation*, 2024 SKPC 33 (CanLII), October 18, 2024].

Takeaway & Impact on You

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Takeaway & Impact on You: Failure to provide required fall protection is one of the most common grounds of 6-figure OHS fines, not to mention workplace fatalities and workers' comp claims. Consequently, employers whose workers perform their jobs at an elevation of 3 or more metres above the ground must establish and implement a legally sound Fall Protection Compliance Game Plan that complies with OHS requirements of their jurisdiction. That Game Plan should also provide for a Scaffold & Elevated Platform Compliance Policy where workers work from bucket trucks and other elevated platforms like the SaskPower workers in this case.

2. Nova Scotia Supervisor Not Guilty of C-45 Criminal Negligence for Fall Death

In a significant ruling just 4 days into the new year, a Nova Scotia court found that a supervisor was not guilty of criminal negligence resulting in a worker's death under the

law still commonly called Bill C-45. Adopted in 2005, the law amends the Canadian *Criminal Code* to provide that persons who directly work and fail to take reasonable steps to prevent bodily harm to those performing it are criminally negligent to the extent they show "wanton or reckless disregard" for the lives or safety of others. The case began when a young worker installing Blueskin tape on a tower fell 18 feet to his death. The foreman of the victim's crew was charged with criminal negligence. After hearing from over a dozen witnesses, the court concluded that the Crown didn't meet its burden of proving beyond a reasonable doubt that the foreman broke any safety laws; and even if he did, there was no proof that he did so with wanton or reckless disregard of the victim's safety. **Result:** A verdict of not guilty [*R. v. Gooch*, 2024 NSSC 4 (CanLII), January 4, 2024].

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Potential liability for criminal negligence extends not just to corporate officers and directors but also to managers and supervisors that control the work. Coincidently, the *Gooch* acquittal comes just 7 months after another Nova Scotia supervisor was found guilty of the same criminal negligence offence in connection with a worker's death [*His Majesty the King v Jason Andrew King*, 2023 NBKB 084, June 5, 2023]. The key point for OHS coordinators is to recognize the need to take steps to manage supervisor liability risks, as well as criminal liability risks under C-45 to protect not just supervisory staff but the entire company.

3. Québec Employer Didn't Use Due Diligence to Prevent Deadly Forklift Tire Explosion

As usual, there were several important cases involving an employer's attempt to make out the due diligence defence for an OHS violation. One of the more notable cases was the prosecution following the serious injury of a warehouse worker when the forklift tire he was repairing unexpectedly exploded. He died of those injuries a few days later. CNESST charged the employer with violating Section 237 of the *OHS Act* which bans any action or omission that "directly and seriously" compromises a worker's safety. The case went to trial and the employer was found guilty. The Québec court then rejected the employer's appeal and due diligence defence, finding that forklift tire inflation is a dangerous operation and the company took no measures to ensure it was carried out safely, other than requiring workers to use an inflation cage. Nor did the company provide specific training for this type of wheel, relying instead on the experience of its workers [*9033-5878 Québec inc. v. CNESST,* 2024 QCCS 3161 (CanLII), August 28, 2024].

Takeaway & Impact on You

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For OHS coordinators, monitoring court cases is imperative because it sheds light on which steps a company is reasonably expected to implement to prove "due diligence" and thus avoid liability for a safety violation. Using the OHS Insider Due Diligence Scorecard is one of the best ways to keep track of the cases and draw the appropriate practical lessons for your own OHS program. The other moral of the *Stevin Contracting*

case is the need to implement an effective Powered Mobile Equipment Compliance Gameplan to prevent vehicle incidents and injuries at your workplace.

4. Alberta Tribunal Clarifies Rules for Appealing OHS Orders

OHS laws authorize government inspectors to issue orders compelling companies to take steps to address real or potential workplace hazards. A key case from Alberta illustrates the difficult decisions employers face when receiving stop work or other burdensome OHS orders. On August 2, 2024, an OHS officer issued an order requiring an environmental servicing firm to complete air sampling testing for an airborne contaminant by August 16. While carrying out the order, the firm asked the OHS agency for feedback but the agency didn't respond until September 11, confirming the order and extending the deadline to September 25. On September 24, the firm appealed the order. The Alberta Labour Relations Board dismissed the appeal because it wasn't filed by the required 30 days for appealing an OHS order. The OHS Appeal Body affirmed the dismissal, finding that the 30-day deadline began to run on the date the order was issued, August 2, rather than the date on which the deadline for complying with it was extended [*Sherlock Environmental Services Ltd. v Occupational Health and Safety*, 2024 ABOHSAB 19 (CanLII), November 7, 2024].

Takeaway & Impact on You

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A company that receives an OHS order has 2 basic choices: comply with the order or appeal it. Both elections must be

made within a specific deadline. The *Sherlock Environmental* case illustrates that getting an extension to comply with an OHS order doesn't equate to getting an extension to appeal that order. That's why it's important to make informed decisions about whether to appeal OHS orders.

5. Ontario Tribunal Draws New Line on Employer's Duty to Investigate Harassment

A significant case took place in Ontario involving a fitness worker who complained to her employer about being sexually harassed by a coworker. The problem is that she didn't do so until more than 6 months after being terminated. Consequently, the employer contended it had no obligation to investigate the complaint. The Ontario Human Rights Tribunal agreed and dismissed the harassment complaint. Failure to investigate a harassment complaint is normally a violation of a worker's right to be free from discrimination in the workplace, the Tribunal reasoned; but that's not the case when the worker is no longer in that workplace [*Rougoor v. Goodlife Fitness Centres Inc.*, 2024 HRTO 312 (CanLII), February 28, 2024].

Takeaway & Impact on You

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Workplace violence and harassment have become an increasingly common basis for OHS enforcement action and litigation. Failure to properly investigate violence and harassment complaints is a key issue in many of these cases. The *Rougoor* case is among the first to address how this duty applies when the person who complains no longer works for the company. Even

so, it's crucial for employers to implement an effective workplace violence and harassment compliance game plan that provides for prompt, thorough, and fair investigation of worker complaints.

6. Ontario Says Telecommuters Count toward JHSC Minimum Worker Threshold

OHS laws require employers to establish a JHSC at each workplace where a minimum number of workers, typically 20, are regularly employed. The question, which is especially crucial in the post-COVID era, is whether workers who telecommute count as workers toward the JHSC threshold. A key case addressing that issue began in Ontario when the MOL ordered a media company to establish a JHSC for a warehouse after determining that 26 workers were regularly employed at the site. The company claimed that there were fewer than 20 such workers at the site and that the MOL shouldn't have counted remote workers who work from home as regularly employed. The Ontario Labour Relations Board ruled against the company, citing previous cases upholding the MOL's "dispersed workplace" policy of including workers who spend little or no time at but are still associated with a particular workplace as counting toward the 20-or-more worker threshold. The remote workers in this case listed the warehouse as their business address in their email signatures, came to the warehouse on a regular basis—albeit for only a short time—and exercised "clear managerial authority" over warehouse operations [*Postmedia Network Inc. v A Director under the OHS Act*, 2024 CanLII 61005 (ON LRB), June 12, 2024].

Takeaway & Impact on You

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The question of whether an employer's duty to protect workers under OHS laws extends to workers who work from home. The answer largely depends on which jurisdiction you're in. Best Practice: Take measures to ensure the safety of telecommuters who work from a home office or other remote location. The *Postmedia Network* case also suggests that employers should also count telecommuters toward the minimum worker JHSC threshold, particularly if they're required to report to the workplace during the week.

7. Failure to Document Required Safety Training Costs Ontario Employer $160,000

If it isn't documented, it never happened. This lawyerly bit of wisdom on the importance of keeping records demonstrating compliance sums up a very instructive OHS case from Ontario that began when a waste collection truck tipped over and fell into a ditch, killing the driver who was operating the vehicle from the right side. While the company had a training program for drivers, trainers didn't have a checklist to document that new drivers met all the required competencies before being allowed to operate the vehicle from the right side. As a result, the company was fined $160,000 after pleading guilty to failing to provide information, instruction, and supervision to ensure workers were able to operate the vehicle safely [*Norfolk Disposal Services Limited*, MOL Press Release, September 27, 2024].

Takeaway & Impact on You

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One of the first things a government OHS inspector visiting your workplace will ask you is whether you provide your workers with the required safety training. This is especially true if the officers are responding to a safety incident or complaint. They'll also demand proof that you not only delivered the training but also took steps to verify that workers understood it. Failure to meet this burden cost Norfolk Disposal $160,000. You can safeguard your company against this fate by implementing an OHS Safety Training Records & Documentation Compliance Game Plan.

8. Employer Can't Blame Fall Protection Violation on Workers

Tying in power lines in a bucket truck 15 feet above the ground was routine for the 2 highly experienced Saskatchewan Power Corporation (SPC) journeymen workers that lost their lives on Oct. 8, 2020. At least it should have been. Regrettably, neither of them had their safety belt lanyards anchored to the "D" ring when the bucket tipped over. Prosecutors charged SPC with 4 OHS violations and won conviction on 3—failure to provide safe equipment, proper training, and fall protection on elevated work platforms. The Sask. court rejected SPC's due diligence defences. SPC didn't adequately inspect the equipment, especially when it was aware of the risk of bolt breakages; and it was reasonably foreseeable that journeymen workers with nearly 20 years of experience might forget to clip in their fall protection while being elevated, a situation the company could have easily rectified [*R. v. Saskatchewan Power Corporation*, 2024 SKPC 12 (CanLII), April 30, 2024].

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OHS laws require employers to take safety measures to protect workers from reasonably foreseeable hazards. The *SPC* case reflects the consensus view among courts across Canada that the possibility of workers taking short cuts and evading safety rules is a reasonably foreseeable hazard. That makes it imperative to establish, implement, and strictly enforce a legally sound Fall Protection Compliance Game Plan at your site.

9. Alberta OHS Board Upholds Stop Work Order for Asbestos Violation

In addition to dishing out fines, OHS inspectors can issue stop work orders in response to safety violations that pose an immediate danger to workers. This is a particularly onerous penalty since it forces companies to shut down or partially shut down for the period until the OHS violation is corrected. In April, Alberta OHS inspectors issued a stop work order at a hotel after observing removal of materials that could contain asbestos (ACMs). As ordered, the employer sent the material for testing to an independent lab, which reported that 1 of the samples contained 1-5% Chrysotile asbestos; the other 6 samples were negative. The employer then asked the Alberta OHS Appeals Board to lift the stop work order, contending that asbestos wasn't an issue for this type of work and that no drywall work was being done. The Board refused, reasoning that even a small presence of asbestos is enough to justify the order and that, while it would no doubt cause inconvenience to the company, the order wouldn't inflict irreparable financial harm [*Westgate Property Management Ltd. v Occupational Health and Safety*, 2024 ABOHSAB 5 (CanLII), April 5, 2024].

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According to workers' comp data, asbestos exposure is the nation's leading cause of workplace death, with mesothelioma, asbestosis, and other asbestos-related diseases accounting for more than 1 of every 3 fatality claims accepted by Canadian workers' comp boards since 1996. Despite not having been in use since 1990, ACMs are present in workplaces across the country—within walls, ceilings, tiles, insulation, and even car parts. You can use the OHS Insider Compliance Game Plan to implement a legally sound Asbestos Exposure Control Plan at your workplace.

10. Ontario Arbitrator Issues First Ruling on New Electronic Monitoring Policy Rule

In 2022, Ontario amended its *Employment Standards Act* to require employers with 25 or more employees to implement a written policy regarding electronic monitoring of employees. Accordingly, an addiction services provider adopted a new electronic monitoring policy (EMP), but the union claimed it was unreasonable. The Ontario arbitrator disagreed, finding that the EMP's provisions regarding the monitoring of personal computers, cellphones, emails, and Internet use were all "reasonable exercises of management rights." The vulnerability of the employer's clients and its "clear legal obligation" to protect the confidentiality of their personal health information and identity made the need for security and monitoring very high, the arbitrator reasoned [*Ontario Public Service Employees Union v Rideauwood Addiction and Family Services*, 2024 CanLII 120507 (ON LA), December 9, 2024].

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This case of first impression illustrates how important it is for employers in Ontario to implement an Electronic Monitoring Policy that meets the requirements of the electronic monitoring rules that took effect in 2022. While the requirement currently applies just in Ontario, it's only a matter of time before other jurisdictions adopt it. Accordingly, all employers outside of Ontario that rely on GPS or other means of electronic monitoring of workers to ensure safety should implement a written policy as a matter of best practice.

11. Ignorance of the Law Is No Excuse for Employer's OHS Violation

The dollars involved belied the significance of the Nova Scotia case that began when an inspector fined the owner of a boatyard $1,000 for violating electrical safety requirements contained in the OHS regulations. "Give me a break", the owner argued, "I'm not an electrician and I didn't and shouldn't be presumed to know the technical details contained in the electrical safety standards, especially since nobody identified them as issues in previous inspections". But the argument didn't work. Ignorance of the law isn't a valid defence against an administrative monetary penalty, reasoned the Nova Scotia labour board. And since the owner didn't demonstrate that it exercised due diligence to comply, the penalties stood [*Yarmouth Boat Works Ltd. (Re)*, 2024 NSLB 13 (CanLII), February 27, 2024].

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The old maxim that ignorance of the law is no excuse isn't quite true, at least in the OHS enforcement context. There's actually a form of the due diligence defence that applies when the defendant proves by a preponderance of evidence that they reasonably believed in a set of facts that turned out to be wrong, but had they been right, that would have made the charged act or omission innocent. Go to the OHS Insider site to find out more about the Reasonable Mistake of Fact Due Diligence Defence.

12. Federal Court Okays Random Drug Testing of "Safety-Critical" Nuclear Plant Workers

Drugs and drug testing are a perennial source of crucial litigation pitting the employer's duty to ensure a safe workplace against the worker's right to privacy. One of the year's most significant cases involves the ongoing battle between the Canadian Nuclear Safety Commission (CNSC) and the unions over new regulations requiring nuclear power plants seeking Class I licences to perform pre-placement and random alcohol and drug testing on "safety-critical workers." In 2023, a federal court ruled against affected workers who claimed the testing policy violated their Charter privacy rights. In this most recent ruling, the Federal Court of Appeal rejected the workers' appeal, finding that it wasn't "erroneous" for the lower court to conclude that the policy was reasonable and well within the CNSC's regulatory powers and reject the workers' Charter claims [*Power Workers' Union v. Canada (Attorney General*), 2024 FCA 182 (CanLII), November

6, 2024].

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Keeping drugs and alcohol out of the workplace has become even more challenging since Canada legalized recreational cannabis. Bottom Line: You have not only the right but also the duty to ensure workers don’t perform their jobs while they’re impaired, especially in a safety-sensitive workplace. But there must also be a legal foundation that’s fair and respectful of workers’ privacy and other legal rights. The key documents are a legally sound:

- Substance abuse policy; and
- Drug and alcohol testing policy and procedures.