

# Ten Recent OHS Cases You Should Know About

Presented by: Adrian Miedema, Dentons Canada LLP

Bongarde Webinar, June 13, 2018

# *R. v. Quinton Steel*

- Charge under “general duty” clause of OHSA (s. 25(2)(h))
  - Guardrails also dealt with in Regulation
- Trial justice dismissed charge, holding that general duty clause cannot establish stricter standard than regulations
- Court of Appeal disagrees:
  - Regulations do not limit operation of general duty clause

*R. v. Quinton Steel (Wellington) Limited*, 2017 ONCA 1006 (CanLII)

# *The Corporation of the Municipality of Chatham-Kent*

- Municipal fire service
- Anonymous complaint to Ministry of Labour
- Re training programs for firefighters
- MOL inspector issued “requirement order” for documents
- Employer objected to providing training program flow chart, professional development program, report re pre- and post-hire training, and incident analysis for incidents in past 6 months
- OLRB: Requirement order not suspended. MOL inspector has broad power to require production of documents, even without finding violation of OHSA

*The Corporation of the Municipality of Chatham-Kent v. A Director under the Occupational Health and Safety Act, 2017 CanLII 74130 (OLRB)*

# *Wieler v. Saskatoon Convalescent Home*

- Probationary nurse at long-term care home
- Dismissed as “not suitable”
- Signed release in exchange for one month’s termination pay
- Shortly afterwards, filed complaint alleging retaliation for raising safety issues
- Court: case dismissed. Release binding
  - In general, cannot waive protections of OHSA
  - But once “triggering event” permitting personal complaint, right is “personal” and can be released

*Wieler v. Saskatoon Convalescent Home*, 2017 SKCA 90 (CanLII)

# *North Bay Regional Health Centre v. CUPE, Local 139*

- Mental health nurse at hospital
- Critical comments in closed-door union meeting re workplace violence
- Later those comments published online by local newspaper, and in union press release without her knowledge or permission
  - “easy targets . . .”
  - “Nurses are often blamed . . .”
  - “Often nurses face reprisals . . .”
- Fired by hospital
- Reinstated by arbitrator with one-week suspension
- Comments were made at closed-door meeting, not intended to be public

*North Bay Regional Health Centre v. CUPE, Local 139*, 2018 CanLII 6645 (ON LA)

# *Durham (Regional Police Association) v. Durham (Regional Police Services Board)*

- Police union: harassment grievance arbitration
- Alleged police failed to provide harassment-free workplace to civilian members
- Two workplace investigations
- Reporter wanted to attend hearing
- Police wanted press excluded; two police officials wanted press and public excluded
- Arbitrator: hearing should be open to public, especially given that police service is public body

*Durham (Regional Police Association) v. Durham (Regional Police Services Board)*, 2018 CanLII 28649 (ON LA)

# ***Terra Nova Employers' Organization v. Communications, Energy and Paperworkers Union, Local 2121***

- Millwright screening to board helicopter to offshore platform
- Caught with small amount of marijuana in pocket
- Employer policy prohibited possession of “illegal drug” while on company facility or performing company business
- Employee claimed he did not know how it got into his pocket!
- Employee fired
- Firing upheld by arbitrator and Newfoundland and Labrador Court of Appeal: employee knew he had marijuana and did not take reasonable care to comply with policy

*Terra Nova Employers' Organization v Communications, Energy and Paperworkers Union, Local 2121, 2018 NLCA 7 (CanLII)*

# *R. v. Kazenelson*

- Project Manager for Metron Construction
- Swing stage collapsed: 4 workers died, 1 had permanent injuries
- Charged with criminal negligence
- Found guilty and sentenced to 3 ½ years in prison
- Appealed
- Appeal dismissed: case did not “stretch penal negligence too far”. Also alleged “contributory negligence” of workers not relevant

*R v. Kazenelson, 2018 ONCA 77 (CanLII)*

# *R. v. Sukhwinder Nagra*

- Trench at infill housing site collapsed
- Casual day labourer died
- Trench not braced
- Supervisor charged: pleaded guilty to failing to take reasonable care for safety of worker
- Judge: 4 months in prison for supervisor
  - Supervisor and employer exploited a vulnerable worker for profit and put their own interests ahead of safety
  - Also supervisor lacked remorse, which was a relevant factor

## *Sukhwinder Nagra (Alberta)*

# *Doyle v. Zochem Inc.*

- Plant supervisor, 9 years
- Only woman working in plant
- She needed cooperation of plant maintenance manager, who:
  - Stared at her breasts
  - Kept telling her that she needed to get “laid”
  - Etc.
- Fired after raising safety issues and sexual harassment complaint
- \$60,000.00 in “moral damages” awarded, as well as 10 months’ salary and \$25,000.00 damages for sexual harassment
- Upheld on appeal

*Doyle v. Zochem Inc.*, 2017 ONCA 130 (CanLII)

# *Ontario (Ministry of Labour) v. Samuel, Son & Co. Limited*

- Worker died when he cut a band holding steel coils together
- Did not ensure coils were stabilized. Coils fell on him.
- Company charged with failure to provide information and instruction
- Found guilty at trial
- Appealed: appeal allowed
  - Worker had 18 years' experience, 80 hours of hands-on training and other extensive safety training. Company had safe operating procedures.
  - Court may consider worker's negligence in training charge
- Charge dismissed on appeal

*Ontario (Ministry of Labour) v. Samuel, Son & Co. Limited*, 2017 ONCJ 611 (CanLII)

# *McLeod Safety Services Ltd.*

- Traffic control firm
- Received compliance orders requiring it to ensure that all traffic control signage available and installed and that traffic control checklist was completed prior to traffic control setup
- Company appealed compliance orders: argued safety officer should have issued orders to employee as he had failed to act on his knowledge, training and experience
- Appeal dismissed: there was inadequate supervision of employees and the workplace, inadequate signage for several hours; supervisor arrived hours after work started, left before situation corrected
- Could not avoid responsibility by blaming employee

*McLeod Safety Services Limited v. A Director of Occupational Health and Safety, 2018 NSLB 36 (CanLII)*

# Thank you

大成 DENTONS

Adrian Miedema

416-863-4678

[adrian.miedema@dentons.com](mailto:adrian.miedema@dentons.com)

Dentons Canada LLP

77 King Street West

Suite 400

Toronto, Ontario M5K 0A1

Canada

---

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

[www.dentons.com](http://www.dentons.com)

© 2018 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see [dentons.com](http://dentons.com) for Legal Notices.