

Occupational Health & Safety Law

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New Year, New World? Sentencing Under the *Occupational Health and Safety Act*

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Historically, penalties against individuals convicted of offences under the *Occupational Health and Safety Act* (“OHS”) were limited to fines. Prior to 2000, there were only one or two reported cases of jail time. In the last decade or so, there still have been only a handful of cases, all of which had what the courts describe as aggravating factors, including things such as repeated stop-work orders.

In a court decision handed down on January 13, 2015, a furniture company was fined \$250,000 and two of the company’s directors were each sentenced to 25 days in jail. The directors pleaded guilty, as did the company, NewMex Canada Inc.

In 2013, a worker in the Brampton warehouse was using a forklift/platform to move merchandise. The equipment had been modified and there was no guardrail around the platform. The worker did not have fall protection gear. Sadly, the worker was found dead from blunt force trauma.

The facts of this case could be said to be aggravating factors because it appears the directors knew about the

lack of training and especially about the lack of fall arrest equipment. They took no steps to correct the situation and multiple violations were observed at the workplace.

Directors have an obligation to take reasonable care to see that the company complies with the OHS and its regulations. It is safe to say that the more hands-on the director is, the more carefully a court will look at what he or she knew or ought to have known and what steps, if any, were taken by the director to ensure that the company was in compliance or that any gaps were being addressed. However, this is not to say that directors of larger corporations are off the hook completely. Reporting through board committees, a good grasp of health and safety policies and procedures, and the allocation of sufficient resources to fund these policies and procedures are the minimum requirements for due diligence. Regardless of the size of the company or the size of the problem, directors will continue to be a focus for investigation when an incident occurs.



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