# Eastway Tank: A Stark Reminder For Officers And Directors

On April 5, 2024, Eastway Tank, Pump & Meter Limited ("**Eastway**" or the "**Company**") and its owner and director, Neil Greene, pled guilty to charges under Ontario's *Occupational Health and Safety Act* ("***OHSA***") in connection with a January 13, 2022 explosion at Eastway's facility in Ottawa that killed six workers and severely injured a seventh. This explosion is considered one of the worst workplace accidents in Ontario in the last 50 years, and the fines paid by Eastway and Greene are some of the highest for a small corporation (total $850,000) and a director ($80,000) issued to-date.

### The Accident

The Company builds and services tank trucks that haul, among other things, fuels, out of its Ottawa fabrication facility. The tank fabrication process requires a "wet test" whereby diesel fuel is added to the tanks to identify any leaks in the tank compartments prior to delivery to customers. During this test, all of the hoses, compartments and pumps are tested to ensure that fluid moves in and out of the compartments as designed and without leaks.

On January 13, 2022, the diesel fuel used to complete the wet test was contaminated with gasoline, which has a much lower flashpoint than diesel fuel. Gasoline vapours in the truck ignited, causing an initial explosion that was followed a few seconds later by a second and much larger explosion. The roof in the shop area collapsed, killing six workers and injuring a seventh.

### The Plea

Following an investigation by the Ministry of Labour, Immigration, Training, and Skills Development (the "**Ministry**"), the Company and Mr. Greene were charged with a combined six counts under the *OHSA*. The Company and Mr. Greene pled guilty to three counts, one count each for failing to ensure that the diesel fuel used for wet testing was not contaminated with gasoline or any other flammable liquid or substance, and one count for the Company only for failing to provide adequate information, instruction and supervision to its workers on safe fuel storage and handling procedures.

## Sentencing

Ontario Court of Justice judge Mitch Hoffman accepted and imposed a jointly-recommending sentence totaling $850,000 in fines and fees on Eastway and Mr. Greene. The penalty was a combination of $600,000 to be paid by the Company and $80,000 to be paid by Mr. Greene personally, plus the additional mandatory 25% victim fine surcharge.

In imposing the penalty, the Court took into account a number of typical sentencing factors, including:

- The sentence was jointly recommended by the Crown and defence;
- The maximum fine under the *OHSA* – at the time, $1.5-million per charge;
- The circumstances of the explosion, including its severe consequences;
- The guilty plea being an indication of the defendants' remorse;
- The need for deterrence;
- The Company's modest size; and
- The Company's *OHSA* record – there were no previous charges against the business and any previous *OHSA* orders had been complied with.

Before imposing the sentence, the Court heard Victim Impact Statements from the families of the deceased and from the injured worker. The Court also heard evidence of the company's long history of successful operations and Mr. Greene's good character, noting that he was a respected community member who cared about and supported his employees, and whose remorse for the accident was deep and genuine. The Court stated a reminder that the fine imposed takes into account *OHSA* regulatory sentencing factors and does not reflect an attempt by the Court or the parties to place value on the injuries suffered and the lives lost as a result of the accident.

## Key Takeaways

This case stands as an important reminder for companies and senior executives of the serious consequences that may result from failure to comply with the *OHSA*.

Corporate directors and officers may be targeted for prosecution and enforcement by the Ministry even if they are not involved in the day-to-day operation of the business. Every director and officer of a corporation operating in Ontario has a legal obligation under section 32 of the *OHSA* to take all reasonable care to ensure that the corporation complies with the *OHSA*, each of its applicable regulations, and any applicable order issued by the Ministry.

Officers and directors must take their obligations under the *OHSA* seriously, or risk consequences. It is also not enough for directors and officers to simply *take* all reasonable care expected of their position, they must also be able to *demonstrate* (i.e. prove) the steps they took to discharge their duty.

The corporate fine imposed on Eastway is the highest ever issued for a small, or even mid-sized company in the history of the *OHSA*. Moreover, the fine against Mr. Greene is among the highest ever issued for an individual charged under the *OHSA*. Justice Hoffman described the penalties as "precedent-setting fines that send a clear message to the business community, to other commercial enterprises about the need to prioritize worker safety".

Maximum fines under *OHSA* continue to increase, with the maximums per count now:

- $2,000,000 for corporations
- $1,500,000 for directors and officers of corporations and/or 12 months

imprisonment
- $500,000 maximum fine or 12 months in jail (or both) for individuals (per count)

If you have questions about how the requirements under *OHSA* impact your organization or have questions regarding your organization's compliance, please do not hesitate to contact a member of McCarthy Tétrault's Labour and Employment Group.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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