

Significant OHSA Penalties For Company And Director And Officer Serve As A Warning Of Future Prosecution Trends



On January 13, 2022, five employees of Eastway Tank, Pump and Meter Ltd. (the “Employer”) were killed in an explosion at the worksite. A sixth employee succumbed to his injuries in hospital the following day, while a seventh employee survived but suffered severe injuries.

The Employer was charged with three offences under Ontario’s *Occupational Health and Safety Act* (“OHSA”):

- failing to ensure that a process that is likely to produce a gas, vapour, dust or fume, to such an extent as to be capable of forming an explosive mixture with air was carried out in an area that has no potential sources of ignition;
- failing to take every precaution reasonable in the circumstances for the protection of workers, and
- failing to provide information, instruction and training to protect the health and safety of a worker.

The director and officer was charged was charged with three offences for failing to ensure that the corporation took reasonable care to comply with the Employer’s duties to take every reasonable precaution for the protection of workers, to provide information, instruction and training, and to ensure that a process was carried out in an area that has no potential sources of ignition.

The Employer plead guilty to two charges, and the officer and director plead guilty to one charge. The Employer was fined \$300,000 for each count, and the director and officer was fined \$80,000. The Court also imposed a 25 per cent victim fine surcharge as required under the *Provincial Offences Act*, bringing the total fines to \$750,000 for the company and \$100,000 for the director and officer.

The fines levied against the corporation were significant, given that the Employer was a medium sized company with no prior record of offences under the OHSA. The fine against the director and officer was also significant in that it approached the maximum potential penalty that was possible under the legislation at the time. At the time of the incident in 2022, the maximum potential penalty for a corporation under the OHSA was \$1.5 million per count, and the maximum penalty for an individual was \$100,000 and/or 12 months imprisonment. In July 2022, the OHSA was amended to

increase the potential penalties for officers and directors of a corporation to \$1.5 million. The maximum fine for all other individuals was increased to \$500,000. In September 2023, the maximum penalty for a corporation was further increased to \$2 million.

In his sentencing submissions to the Court, the Crown Prosecutor stated that corporate directors are increasingly being charged and prosecuted under the OHSA. The Crown Prosecutor took the position that corporate directors cannot take a hands-off approach with respect to health and safety in the businesses they are involved in.

Key Takeaways

The significant increases in maximum fines under the OHSA for corporations, individuals, and especially officers and directors combined with the comments by the Crown prosecutor in the Eastway case should serve as a warning to corporations, and their officers and directors. Prosecutors in Ontario appear to be taking a more aggressive approach to director and officer obligations, and will prosecute in the appropriate circumstances.

Corporations across Canada should ensure that their officers and directors are aware of any statutory duties and/or potential liability under occupational health and safety legislation and are taking reasonable and documented steps to ensure those duties are discharged or liability avoided in accordance with the applicable legislation.

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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