

Criminal Charges in the Elliot Lake Mall Collapse

Date: February 04, 2014

Lawyers You Should Know: Mark Geiger

Original Newsletter(s) this article was published in: Blaneys on Building: February 2014

Earlier this week the police laid criminal charges against the engineer who inspected the Algo Mall in Elliot Lake just weeks before it collapsed killing two women. This follows closely on the Ontario Court of Appeal's recent decision on the famous Metron case. Just before Christmas of 2009 three workers and a site supervisor plunged to their deaths when all of them attempted to descend from the fourteenth floor of a construction site on a swing stage designed for only two. Contrary to *Ontario Health and Safety Act* (OHSA) Regulations, only one worker was wearing fall arrest. Three of the four workers, including the site supervisor who also died, had recently ingested marijuana.

At trial the corporation pleaded guilty to criminal negligence causing death. Under the *Criminal Code*, the site supervisor's actions, under the law, were deemed to be the actions of the corporation. He was a 'senior officer' and his actions resulted in the deaths - including his own.

At trial, the owner of Metron was fined under the OHSA at almost the maximum level available under that Act. But under the *Criminal Code* amendments introduced in 2004 following the Westray disaster, there is no maximum fine for the *Criminal Code* offense. The Company can be fined a maximum of \$500,000 under the OHSA, but at trial, under the *Criminal Code*, with no similar limitation, the trial Judge fined Metro only \$200,000 - less than many fines for fatalities under the OHSA which IS NOT a criminal statute.

The Court of Appeal, on appeal by the Crown, raised that fine to \$750,000 notwithstanding the fact a fine of that magnitude might bankrupt Metron. The court found that not to be a deciding factor in the case. This was an extremely serious criminal act and an appropriate fine against a corporation must reflect that fact.

The recent charges against Mr. Wood in the Elliot Lake case demonstrate once again the serious responsibility everyone involved in construction and related industries have to ensure safety in the workplace. In the Metron case, only the Company was charged criminally. In this most recent situation in Elliot Lake, the engineer has been charged personally with two counts

of criminal negligence causing death and one count of criminal negligence causing bodily harm. These charges are in addition to charges brought against him by the Ministry of Labour for providing 'negligent advice'. These latest charges could result in significant fines and even jail time for Mr. Woods.

It is becoming increasingly clear that our society is prepared to seriously punish those who through negligence or neglect cause workplace accidents. Both companies, and the individuals responsible for them, need to be aware of the significant responsibility they have to ensure safety in the workplace, and the very real risks they take if they fail to do so.