

newsletter

Case report -

R v McFeeters *Canada Labour Code.*

As reported previously in this *newsletter*,¹ according to a news report,² a worker was killed in the workplace of a trucking company, 13 July 2011, Niagara. Niagara Regional Police were reported to have found the worker stuck inside a machine, and he died at the scene. There followed a prosecution under the *Canada Labour Code*.

From the *information* document, at Ontario Court, Niagara --³

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[2014 06 12. R v McFeeters.pdf](#) :

On 02 August 2013, G. MCFEETERS ENTERPRISES INC. – the corporation -- plead guilty to:

...

14. Between the 31st day of March, 2011 and the 13th day of July, 2011, GREG MCFEETERS and G. MCFEETERS ENTERPRISES INC. operating at 2825 South Grimsby Road #21, Smithville, Ontario, both being employers within the meaning of Part II of the Canada Labour Code, wilfully failed to ensure Premier Tech Bagger #2, a machine with exposed moving parts, was equipped with guards to prevent access to the area of exposure and was safe under all conditions of its intended use, contrary to subsection 13.13(1) of the Canada Occupational Health and Safety Regulations and paragraph 125.(1)(t) of the Canada Labour Code, knowing that this was likely to cause the death of or serious injury to an employee, thereby committing an offence under subsection 148.(3) of the Canada Labour Code.

...

-- and was fined \$90 000, with one year to pay.

On 02 October 2013, GREG MCFEETERS – an individual person – plead guilty to:

...

9. On or about the 13th day of July, 2011, GREG MCFEETERS, ALEX GRAOVAC, and G. MCFEETERS ENTERPRISES INC. operating at 2825 South Grimsby Road #21, Smithville, Ontario, all being employers within the meaning of Part II of the Canada Labour Code, failed to ensure that employees who have supervisory or managerial responsibilities, namely Alex Graovac and Rondon Rowley, were adequately trained in health and safety and were informed of the responsibilities they have under Part II where they act on behalf of their employer, contrary to paragraph 125.(1)(z) of the Canada Labour Code, thereby committing an offence under subsection 148.(1) of the Canada Labour Code.

...

-- and was fined \$5 000, with 30 days to pay.

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And also, on 02 October 2013, ALEX GRAOVAC – an individual person – plead guilty to:

...
12. On or about the 13th day of July, 2011, GREG MCFEETERS, ALEX GRAOVAC, and G. MCFEETERS ENTERPRISES INC. operating at 2825 South Grimsby Road #21, Smithville, Ontario, all being employers within the meaning of Part II of the Canada Labour Code, failed to take all reasonable care to ensure that Alan Hicks, an employee within the meaning of Part II of the Canada Labour Code, was made aware of every known or foreseeable health or safety hazard in the area where he was working, namely the hazard of injury while working around unguarded Premier Tech automated packaging machinery, contrary to paragraph 125.(1)(s) of the Canada Labour Code, thereby committing an offence under subsection 148.(1) of the Canada Labour Code.

-- and was fined \$5 000, with 60 days to pay.

The remainder of the original sixteen charges were withdrawn as against various of the three accused. (It should be noted that although the three accused are mentioned in the counts copied above, only one was proceeded with in each.)

G. McFeeters Enterprises Inc. is Ontario-based and includes US interstate trucking, with an apparently good safety record.⁴⁵⁶ The incident here was not a highway trucking matter.

It may be inferred from the transcript part copied below that there was no federal inspectional history at McFeeters, but that there had been a previous Ontario Ministry of Labour contact for the industrial aspect for which the fatality happened. (Our Clinic has made a *Freedom of Information*⁷ request to the MOL.)

The choice of federal, rather than provincial, jurisdiction is somewhat puzzling, in view of *R v GMC*.⁸ Perhaps the local police, of a border town, as first responders, had convenient communication experience with federal border personnel?

From the transcript -- ⁹

[2014 07 04. \[1\] R v McFeeters cover.doc](#)

[2014 07 04. \[2\] R v McFeeters contents.doc](#)

[2014 07 04. \[3\] R v McFeeters G.McF. & A.G. plea transcript.doc](#) :

Information Nos. 12-2836(01)
12-2836(02)
ONTARIO COURT OF JUSTICE
HER MAJESTY THE QUEEN
v.
GREGORY MCFEETERS
and
ALEX GRAOVAC

PROCEEDINGS AT
PLEA AND SENTENCE
BEFORE THE HONOURABLE
JUSTICE A.J. WATSON
on October 2, 2013,
at ST. CATHARINES, Ontario

CHARGES:

s.125(1)(c)(z) Canada Labour Code
– Fail to provide adequate training

s.125(1)(s) Canada Labour Code –
Fail to make known any hazards

APPEARANCES:

D. Ives Counsel for the Federal Crown
R. Kis Counsel for Gregory McFeeters
A. Graovac In Person

...

THE COURT: All right. Now, Mr. Graovac, as well, I take it that you have reviewed plea comprehension provisions with Mr. Graovac, as well?

MS. KIS: Yes.

THE COURT: Is that correct? All right. And you're satisfied that these are fully, all together, fully informed and voluntary pleas on both the part of Mr. Graovac and Mr. McFeeters?

MS. KIS: I am.

THE COURT: Thank you. All right. I believe the Crown already proceeded by summary conviction.

MS. IVES: That's correct, Your Honour.

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THE COURT: And I take it, you're acting as agent then for Mr. McFeeters?

MS. KIS: I am.

THE COURT: And Mr. Graovac, the plea will be - you'll be addressed directly then, concerning the charge, so the charges will be read and counsel will be asked how she pleads on behalf of Mr. McFeeters and his position. He was charged personally, correct...

MS. KIS: That's right.

THE COURT: ...with this count, and so, you're acting as agent directly for Mr. McFeeters.

MS. KIS: That's right.

THE COURT: All right. Madam Clerk, if you could please arraign Mr. McFeeters, through his agent, on count nine, and Mr. Graovac on count 12.

COURT CLERK: Thank you, Your Honour. Greg McFeeters stands charged that on or about the 13th day of July, 2011, operating at 2825 South Grimsby Road, #21, Smithville, Ontario, all employers within the meaning of Part II of the Canada Labour Code, failed to ensure that employees who have supervisory or managerial responsibilities, namely: Alex Graovac and Rondon Rowley, were adequately trained in health and safety and were informed of the responsibilities they have under Part II, where they act on behalf of their employer, contrary to paragraph 125(1)(c)(z) of the Canada Labour Code, thereby committing an offence under subsection 148(1) of the Canada Labour Code. How does Mr. McFeeters plead to this count?

MS. KIS: Guilty.

THE COURT: All right. Just note Miss Kis, counsel and agent for Mr. McFeeters, has entered the plea on Mr. McFeeters' behalf. Thank you.

COURT CLERK: Thank you, Your Honour. Alex Graovac, you stand charged, on or about the 13th day of July, 2011, operating at 2825 South Grimsby Road, #21, Smithville, Ontario, being employers within the meaning of Part II of the Canada Labour Code, failed to take all reasonable care to ensure that Alan Hicks, an employee within the meaning of Part II of the Canada Labour Code, was made aware of every known or foreseeable health or safety hazard in the area where he was working, namely: the hazard of injury while working around unguarded Premier Tech automated packaging machinery, contrary to paragraph 125(1)(s) of the Canada Labour Code, thereby committing an offence under subsection 141(1) of the Canada Labour Code. How do you plead to this charge, guilty or not guilty?

MR. GRAOVAC: Guilty.

THE COURT: All right. You can take a seat, sir, if you'd like. That's fine. You can sit at counsel table. And we'll just listen now to the facts as they are read in by the prosecutor.

MS. IVES: I do have a copy for Your Honour, if you would like.

THE COURT: Thank you. All right, is this an agreed statement of fact that's been filed then?

MS. KIS: It is.

THE COURT: All right. We'll mark the agreed statement of fact as Exhibit One.

COURT CLERK: As Exhibit One on the sentencing, Your Honour?

THE COURT: No, it will be Exhibit One on the plea.

COURT CLERK: On the plea. Thank you, Your Honour.

THE COURT: Thank you.

EXHIBIT NUMBER 1 - Agreed Statement of Facts - Produced and Marked

MS. IVES: G. McFeeters Enterprises Incorporated is a medium sized company with about 30 employees, in Smithville, Ontario. Its business consists of a for-hire trucking operation that provides transport services across international boundaries and a wood-shaving production and packaging or bagging plant that is functionally integrated into the trucking operations. McFeeters Enterprises is therefore in Federal work, undertaking or business within the meaning of section 2(b) of the Canada Labour Code. Greg McFeeters is the sole owner and Corporate Director of McFeeters Enterprises. Alex Graovac is the Operations Manager for McFeeters Enterprises. As Operations Manager, Mr. Graovac exercises supervisory and management responsibilities, and in this role, he acts on behalf of McFeeters Enterprises and Mr. McFeeters. Greg McFeeters and Alex Graovac are therefore employers within the meaning of Part II of the Canada Labour Code. Alan Hicks was a temporary worker on the payroll of KAS Personnel Services Incorporated, which had been supplying temporary workers to McFeeters Enterprises for many years. He had been assigned to McFeeters Enterprises on May 18th, 2011 and had been working there as a general labourer for about eight weeks before his death on July 13th, 2011. Mr. Hicks worked alongside permanent employees. The tools and equipment he needed for work were supplied by the company,

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and he reported to and was supervised and directed in all aspects of his work by supervisory employees of the company. He was therefore an employee within the meaning of Part II of the Canada Labour Code. At the time of the investigation, neither Mr. McFeeters nor Mr. Graovac were aware that McFeeters Enterprises fell within Federal jurisdiction^[1] and was therefore required to comply with the Canada Labour Code and its regulations. As a result, no specific focus was given to the requirements of the Canada Labour Code and its regulations. Mr. McFeeters and Mr. Graovac, with the assistance of a health and safety consultant employed by the company, had taken some steps towards health and safety, but these steps did not satisfy the requirements of the Canada Labour Code and its regulations. In relation to count nine, Mr. McFeeters failed to ensure that employees who have supervisory or managerial responsibilities, namely: Mr. Graovac and Mr. Rowley, who was the floor supervisor, were adequately trained in health and safety and were informed of the responsibilities they have under Part II of the Canada Labour Code. Mr. McFeeters made available to Mr. Graovac and Mr. Rowley, safety program information, including a procedurals manager, power-point presentations and standard operating procedures manuals, but did not provide direct training through a formal, standardized program to ensure that the transfer of knowledge occurred or to verify that it had occurred, as required by the Code and regulations. Specifically, Mr. Rowley advised health and safety officers that he was not aware of the Canada Labour Code Part II requirements or health and safety laws, and that he was not advised by Mr. McFeeters of his responsibilities regarding health and safety, and supervision of

other workers. Mr. Graovac advised health and safety officers that he was aware^{[2][3]} of his responsibilities under the Canada Labour Code Part II, but he failed to ensure proper compliance with the Code and its regulations. In relation to count 12, Mr. Graovac failed to take reasonable care to ensure that Mr. Hicks was made aware of every known or foreseeable health or safety hazard in the area where he was working, namely: the hazard of injury while working around the unguarded baling machinery. As Operations Manager, Mr. Graovac had knowledge of the known hazards associated with working around the unguarded baling machinery, including mechanical hazards from contact with moving parts. Despite this knowledge, Mr. Graovac did not ensure that Mr. Hicks receive the orientation he should have received before being assigned to work in the area, nor did he ensure that other supervisory or managerial personnel at the company had provided Mr. Hicks with such orientation.

THE COURT: All right. Ms. Kis, on behalf of Greg McFeeters, are the facts admitted as being correct?

MS. KIS: They are correct.

THE COURT: All right. And if you could stand then, please, sir. Mr. Graovac, asking you, sir, are the facts that have been read in by the Crown correct?

MR. GRAOVAC: Correct, yes.

THE COURT: Thank you. All right. I'll just indicate that given the pleas of guilt - you can remain standing, sir - given the pleas of guilt and your admission of the facts are correct, I find Mr. McFeeters guilty, and that would be - he was count 12?

COURT CLERK: Nine, Your Honour.

THE COURT: Count nine. And Mr. Graovac, you are guilty of count 12 in the information. Thank you. You can take a seat then. Now, with respect to sentencing in this matter, is there any record or history that I should be aware of with respect to either defendant?

MS. IVES: No. Neither defendants, nor the company for that matter, have any history in terms of non-compliance before with the Canada Labour Code, either on a prosecution level or administrative...^[4]

THE COURT: All right. I appreciate that, but I also read that they did not - they weren't aware that they fell within Federal jurisdiction.^[5]

MS. IVES: Were also - they were attempting to comply with the Ontario regulations.

THE COURT: I see.

MS. IVES: There was no history that we were aware of with the Ontario Government either. It is a case where there was a jurisdictional inquiry by both levels of government...^[6]

THE COURT: Yes.

MS. IVES: ...as to who, in fact, had jurisdiction.

THE COURT: All right. Thank you. And so what is the position with respect to sentence? Are you filing any material with respect to sentence?

MS. IVES: No.

THE COURT: No? All right.

MS. IVES: There is a joint submission in this case for fines of \$5,000 for each individual. That is

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taking into consideration both their circumstances and the compliance efforts that both they and the company have made since the incident – the death of Mr. Hicks occurred. It's also taking into account their lack of any non-compliance history before this incident and it was part of a global resolution involving the plea on the part of the company. In...

THE COURT: Yes, the company has already entered a plea of guilt.

MS. IVES: That is correct.

THE COURT: That's correct.

MS. IVES: In circumstances where the company has also entered a plea, the fines that have been levelled against the individual associated with the company, the management or the supervisors, have generally ranged in the area of \$4,000 up to \$20,000.

THE COURT: Yes.

MS. IVES: In the circumstances, without the compliance history and given the steps that the company has taken, which included bringing in the full guarding for the area and improving their health and safety standards, and given the \$90,000 fine against the company, the joint submission which has been approved by the labour department, was for \$5,000 fines against each of the individuals.

THE COURT: All right. Is there a victim fine surcharge under this legislation?

MS. IVES: Not under the Federal legislation, there's not.

THE COURT: All right. And are you filing any victim input in this matter?

MS. IVES: Yes. My friend has seen these.

THE COURT: Yes.

MS. IVES: They are the same ones that were provided in relation to the company.

THE COURT: All right. I believe these are the same...

MS. IVES: Yes.

THE COURT: ...the same statements that were introduced at the time that the corporation entered its plea?

MS. IVES: That is correct, Your Honour.

THE COURT: Thank you. All right, well we'll have them made part of the record. Collectively, Exhibit Two.

COURT CLERK: Thank you, Your Honour.

EXHIBIT NUMBER 2 – Victim Impact Statements – Produced and Marked

THE COURT: And if I could just review those briefly again, thank you. All right, thank you. Yes, Ms. Kis, your submissions?

MS. KIS: My friend addressed a lot of the compliance efforts that the company has taken and that both of these defendants have taken, with respect to ensuring that the workplace is now in accordance with the Canada Labour Code. In total, the amount of money that the company has spent in order to bring the workplace into compliance is in excess of \$100,000, in addition to the fine. I understand from Mr. Graovac that the company now does have what is required under the Code, in terms of the Health and Safety Committee. All of the provisions of the Canada Labour Code are being complied with. My friend alluded to the fact that the

company was not aware that it was under the Canada Labour Code.[7] This was because one part of the operations carries on a transport industry. The other part is this packing, wood-packing operation, and because of the transport part of the company, they fall under the Canada Labour Code, which they were not aware of. They had had Ontario Ministry of Labour people in and they were satisfied, from what I understand, with the working conditions at the site.[8] Mr. Graovac and Mr. McFeeters are both very remorseful with respect to what's occurred. They take this matter very seriously and they have done whatever they could, as quickly as they could, in order to bring the company into compliance. They're a small business of approximately 30 employees, and it has taken, certainly a financial toll, and obviously, an emotional toll as well, given what occurred in July of 2011.

THE COURT: All right. Is there anything that Mr. Graovac would like to say before he's sentenced?

MS. KIS: I understand that he is prepared to say something.

THE COURT: Thank you.

MR. GRAOVAC: Yes, Your Honour. I speak for both myself and Greg McFeeters here with respect to this issue. I've spent some 48 years in the industrial and the heavy transportation sector, and it certainly, a worst nightmare that I'd – I ever envisioned I'd have to endure, either a serious injury or a death in the workplace, and it resulted in considerable trauma to myself, the coworkers, the management of the company as well. And I mean, there's no statement could bring back and if there's anything we could do, to undo the harm that was done that day, we'd certainly undertake to do so. So you know, you know,

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with respect to the family, who I've never had the opportunity to meet, I'm extremely sorry. I did read the victim impact statement. I can certainly relate to the grief that they have unfortunately been forced to endure as a result of that fatality. The, I would say for lack of a better term, I guess a culture shift that has occurred as a result of that tragedy in the workplace has been very dramatic. Everybody's operating from a, certainly a heightened sense of awareness and almost paranoia, in terms of trying to envision what could go wrong here for failure to adhere to certain procedures and policies. We've certainly made tremendous strides in that area, and again, you know, on behalf of the company and myself, I don't think there's anyone from the family here, but....

THE COURT: I'm going to inquire in a moment.

MR. GRAOVAC: Okay. Anyway, it, again, you know, we're....

THE COURT: Maybe I could just know, are there family members present?

MS. IVES: No, they were advised and they declined to attend today.

MR. GRAOVAC: Oh.

THE COURT: All right. I just wanted to ensure, because I noted that they wanted to read their victim impact statement into the record, and if they were here...

MS. IVES: That was their original wish, but not....

THE COURT: ...I was going to see - all right.

MR. GRAOVAC: And in my particular case, Alan was an individual that I got to know on a personal level, in that he was without a vehicle and he lived in

downtown Hamilton, and I'd pick him up and drive him home every night. So you develop a bit of a camaraderie and some friendship, a lot of lighthearted banter, and you know, just good times. He was a very good person, an extremely hard worker, and it is a loss that kind of affected me a little more than what might one consider normally in the workplace, where you're distanced from employees. And he gave us something that I'll carry through, you know, for the rest of my life and something I'd never thought I'd have to endure.

THE COURT: All right. Thank you, sir.

MR. GRAOVAC: Thank you.

REASONS FOR SENTENCE

WATSON, J. (Orally): All right, this obviously was a most unfortunate incident that occurred, that resulted in the death of an employee.

The employee was a temporary worker, as I understand it, in reading one of the victim impact statements from the step-father of the victim. I note that he had had his own struggles and that there were financial issues, and this was a job that he was hoping would assist in turning things around for him.

And unfortunately, these types of incidents still occur far too frequently in the community, and I suppose, coming from the bench, you see these incidents occurring, and this is what people do not realize, that the legislation is there; it is there in order to protect workers such as the victim in this case, Mr. Hicks.

Having said that, I do believe, Mr. Graovac, that obviously this has affected you personally and very seriously, and the company

involved and Mr. McFeeters, have obviously done everything that they can do now to ensure that they are in compliance. And I think that the message has gone out to the company and hopefully to the community, that you really do have to ensure that these safety measures are in place in companies such as this, because of the potential danger for this type of incident to have occurred.

The corporation has already entered a plea and was fined to a substantially greater amount, obviously, on an earlier occasion, and these pleas reflect the involvement of Mr. McFeeters and Mr. Graovac, and the sentence that is being jointly proposed also reflects, I take it as well, the efforts that have been made by the company at this point to comply, and the remorse that they have shown. In entering the plea, originally this came before the court and it was going to be a lengthy trial, and so the pleas are obviously something that needs to be reflected in the sentence that is being suggested.

And so I would ask you to stand, sir, and I will indicate perhaps you could stand as well then. The fines will be to both Mr. McFeeters and Mr. Graovac, a fine of \$5,000, and I need to know whether or not either require time to pay the fine, and if so, how much time.

MS. KIS: Mr. McFeeters would require 30 days to pay, and I understand Mr. Graovac would require 60 days.

THE COURT: Is that agreeable, sir?

MR. GRAOVAC: Yes.

THE COURT: All right then. Mr. McFeeters will be given 30 days to pay the fine, and Mr. Graovac will be given 60 days to pay the fine. Thank you, sir.

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MR. GRAOVAC: Thank you, Your Honour.

THE COURT: All right. And I think your words, if the family were not – they are not here, but if they were here, I think that they would appreciate the comments that you made.

MR. GRAOVAC: Thank you.

THE COURT: Thank you.

MS. KIS: Thank you, Your Honour.

THE COURT: Are you withdrawing all other counts at this point, then?

MS. IVES: Yes, please. All of the remaining counts against the two individuals and against the company can be marked as withdrawn, please.

THE COURT: All right. And I believe that completes everything in relation to this information now.

MS. IVES: Yes, it does, Your Honour.

THE COURT: Thank you. Thank you for your assistance.

...



Case report -

R v Pal Distributors ***Ontario OH&S Act.***

Reported previously in this *newsletter*²³ were the sentencings of the corporation and an employee who was a supervisor. The transcript of the corporation's sentencing was copied in the previous issue. From⁴ the transcript of the supervisor's sentencing:

ONTARIO COURT OF JUSTICE
HER MAJESTY THE QUEEN
v.
SANDRA CHURNEY

PROCEEDINGS AT COURT

BEFORE THE HONOURABLE
JUSTICE HIS HONOUR R.
BOIVIN

[Old City Hall, Toronto]

...

TUESDAY APRIL 1, 2014

MS. CHAN [Counsel for the Crown]: Thank, Your Honour, I apologize for the delay and thank you for your indulgence. Ms. Churney is here now. As I indicated -- are we on the record?

THE COURT: I believe we are on the record. Yes, we are.

MS. CHAN: My name is [J.] Chan, ... I'm Crown for the Ministry of Labour in the Pal Distributors and Sandra Churney matter. You'll recall that Pal Distributors pled guilty earlier this year. Ms. Churney is here and there will be a plea and a joint submission. The plea to count 14 on the Information, if she could be arraigned on that count, please?

THE COURT: Very well. Sandra Churney, you are charged on or about the 19th day of June, 2012, in the City of Toronto, in the central region, Province of Ontario, did commit the offence of knowingly furnish an Inspector with false information in the exercise of his powers or duties, contrary to s.66.3, of the *Occupational Health and Safety Act*, as amended.

And, this is a straight summary matter, I am not used to dealing

with these types of offences, they are, right? How do you plead to this offence, guilty or not guilty?

MS. CHURNEY [Self-represented]: Yes, guilty, guilty.

THE COURT: Very well. I will hear the facts, you may have a seat while the Crown reads out the facts.

MS. CHURNEY: Thank you.

MS. CHAN: Thank you, Your Honour. The Defendant, Pal Distributors is a manufacture of bubble wrap at its facility at 110 Woodbine Downs Boulevard -- actually I'll hand this up to you Your Honour, and you can read along.

THE COURT: Very well, I believe I saw it before.

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MS. CHAN: It's largely the same as what you saw before, it's been condensed and then the facts related to Ms. Churney have been added.

THE COURT: Very well. Continue please.

MS. CHAN: Pal employed the Defendant, Sandra Churney, as a supervisor at the Woodbine Downs facility.

On January 19, 2012, Mr. Jowett Jo-Yee Lau, a worker employed by Pal was operating the Malex air bubble film machine, which was experiencing several jams. Mr. Lau was in the process of cleaning one such jam when the glove of his right hand was caught between unguarded rollers drawing his hand in, where it was pinched. The rollers continued to rotate after Mr. Lau's hand was caught. The emergency stop button closest to those rollers had been disabled, requiring a co-worker to go to another emergency stop button to stop the machine, to extricate Mr. Lau. As a result of the incident, Mr. Lau suffered severe friction burns and swelling.

Joel Magnan, an Inspector with the Ministry of Labour conducted an investigation into the incident and determined that the Malex machine had a number of safety deficiencies, which had resulted in the injuries to Mr. Lau, including an absence of guards at pinch points and disabled emergency stop buttons.

In addition, Pal had failed to obtain the required pre-start engineering review, before the machine was put into service.

On that date, Inspector Magnan issued a Stop-Work Order that the Malex machine not be used until the safety deficiencies had been remedied and Stop-Work Order lifted by him. This included

placing a tag and a copy of the order on the machine itself.

On a subsequent visit to the workplace on June 19th, 2012, Inspector Magnan observed the Malex machine being operated by a worker. The Inspector had not lifted the Stop-Work Order and the deficiencies had not been remedied. On that date Ms. Churney told the Inspector that she did not know that the machine was being used.

Inspector Magnan later determined that the machine had been in continuous operation that day and for several weeks prior to his visit and that in fact Ms. Churney, herself, had conveyed her superiors instructions to the worker to operate the machine on that date and on prior dates.

As such, on January 19th, 2012, Sandra Churney knowingly furnished false information to an Inspector in the exercise of his powers of the performance of his duties under the *Occupational Health and Safety Act*, RSO 1990, Chapter 01, as amended. And, this is contrary to s.63.3 of the *Act*. Those are the facts the Crown relies on in this part of the conviction.

THE COURT: Ms. Churney your heard those facts, are you in agreement with those facts?

MS. CHURNEY: Yes.

COURT REPORTER: ...

[MS. CHAN:] Your Honour, I can advise that the Crown and the Defendant have come to an agreement for a joint submission of a fine of \$3000, plus the victim fine surcharge. I understand Ms. Churney will request an indefinite period of time to pay the fine.

THE COURT: Very well, Ms. Churney, anything to add to this joint submission.

MS. CHURNEY: No, nothing.

THE COURT: And, you are seeking time to pay, is that what you were saying?

MS. CHURNEY: Yes, if that's possible, yes I'd like to do \$300 a month, until it's paid.

THE COURT: So, one year would do it?

MS. CHURNEY: Sorry?

THE COURT: Ten months you would have it paid?

MS. CHURNEY: Yes.

RULING

BOIVIN, J: (Orally)

Okay. Well, Ms. Churney you have to realize that we have these type of laws to protect people, and more specifically, injuries to workers working in unsafe conditions. I understand that you were obtaining instructions from your superior as the facts which were read in indicate, but it does not dispense your obligation...

MS. CHURNEY: Yes.

THE COURT: ...which is solely on your shoulders as well, to ensure that the work and safety provisions are complied with.

As I indicated, when dealing with Pal, your employer, in a way you are lucky standing here today that there was not a more serious injury. Certainly the disposition that is being recommended now would not have been fit had the injuries been more severe than this. But, I pre-tried this matter throughout, I think I have had it on my desk for over a year now.

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MS. CHAN: Yes, thank you, Your Honour.

MS. CHURNEY: Thank you.

THE COURT: ...and I understand some of the reasoning and why this joint submission is being proposed and I think it is a fit and reasonable joint submission and regard to all the facts, and I adopt it.

Therefore, there will be a \$3000 fine, in addition there is the obligatory victim fine surcharge, which is what percentage again?

MS. CHAN: Twenty-five percent.

THE COURT: Twenty-five percent. So, it is going to land up being

\$3750, if my math is right, and you indicated \$300 a month.

MS. CHAN: Actually, I think that is a total of \$4000, it is 25 percent, no? I am sorry, you are right, your math is better than mine.

THE COURT: I passed grade 11 math.

MS. CHAN: I must not have.

THE COURT: Anyway, so that would be a total, which will be added by the staff. I am going to give you 15 months to pay...

MS. CHURNEY: Thank you.

THE COURT: ...the fine, and all the other charges are to be withdrawn I take it?

MS. CHAN: There aren't any more charges remaining.

THE COURT: That was the only charge?

MS. CHAN: There was only one against Ms. Churney.

THE COURT: Very well, that concludes our matter then, thank you.

MS. CHURNEY: Thank you.

MS. CHAN: I appreciate your assistance throughout, Your Honour.

THE COURT: Thank you.

MS. CHURNEY: Thank you.

This case is still yet to appear on the MOL website as an entry under "Court Bulletins are announcements about convictions for violations of Ministry of Labour legislation."¹² Although the incident may have been at a small industrial site (3 workers), it would appear to be part of Pal Distributors as a large interprovincial industrial organization,³ but the actual corporate and organizational structure is not known here. ■

Case -

R v Live Nation Ontario OH&S Act.

As reported previously in this *newsletter*,¹ in June 2012, there was a fatality related to a stage collapse in Toronto² that resulted in charges under the *OH&S Act*, now before the Ontario court.³

<http://www.workers-safety.ca/> → Home page → Main Menu → Publications → Downloads →

[2014 02. R v Live Nation.PDF](#)

On 30 May, trial dates, at **Old City Hall**, were set for **next year 2015:**

13→17July, 20→31 July, 09→27 November. ■

TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

Building inspectors needed

letter to *Toronto Star* editor, 30 June 2014. 2 3 4 5 6

Building inspectors needed

Re: Worker plunges 22 floors to his death, June 22 [7]

Worker plunges 22 floors to his death, June 22

When health and safety advocates continually ask the government to increase the number of inspectors for more rigorous enforcement, the government responds by relying on hiring done 10 years ago. Relying on an action a decade ago does little today – another worker sadly dies from a fall to his death.

Given that Toronto is in a construction boom and that lives are at risk, it's time we hired more inspectors. Regular unannounced inspections would go a long way to preventing these tragedies. Enforcement and vigilance are important when the stakes are so high.

John Bartolomeo, Staff Lawyer, Toronto Workers' Health and Safety Legal Clinic

Clinic Budget 2014–2015 Fiscal Year = \$535 762.



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Fax / Télécopieur : 416-979-2948
www.legalaid.on.ca

June 30, 2014

Chair of the Board
Toronto Worker's Health and Safety Clinic
c/o Linda Vannucci
Executive Director
2000 - 180 Dundas Street W.
Box 4
Toronto, ON M5G 1Z8

Dear Chair of the Board,

The purpose of this letter is to notify you that the LAO Board has approved funding for the clinic program for 2014-15.

As WORK has signed the Framework Agreement, pursuant to Section 20 (iii), your funding for 2014/15 will remain at the 2013-14 levels, with the usual adjustments for changes in operational costs.

Please find attached your signed 2014-15 Approved Annual Budget along with an explanation on general changes to the 2014-15 funding from the 2013-14 funding.

The retroactive adjustment to April 1, 2014 will also be provided in a separate direct deposit in July 2014. Further monthly direct deposits will reflect this new 2014-15 funding.

Please review the 2014-15 Approved Annual Budget with your board, and return one signed scanned copy by e-mail or original mail to Kimberly Roach, Clinic and Programs Advisor (CAPA) by September 2, 2014. Please ensure that the signed copy is received by this date, to ensure your monthly direct deposit is not affected.

If you have any questions, please contact, Kimberly Roach, CAPA.

Sincerely,

Janet Budgell
VP Southwest and Specialty Clinics

PAGE 2

General Changes to Clinic Funding For 2014-15 Fiscal Year

Operating Funding Changes

- The clinic's funding for office lease costs has been adjusted to reflect the projected costs to clinics in 2014-15. The adjustment is based on signed leases and landlords' invoices as provided by clinics.
- Contingency funding is the same as 2013-14: \$3,500 for non-unionized clinics and \$5,250 for unionized clinics. This was provided in June, 2014.

Salary and Statutory Benefits

- Compensation funding adjustments for 2014-15 have not yet been approved. Further information will be provided later this year;
- Funding for statutory benefits reflects maximum CPP and EI rates for 2014. Funding also takes into account the increase in the EHT exemption to \$450,000 of Ontario payroll, which was effective January 1, 2014.

Pay Equity

- Funding for the full amount of 2014 pay equity adjustment has been added to the pay equity funding amount included in the 2013-14 Approved Annual Budget.

Group Benefits

- Clinics on Manulife plan
 - Funding reflects an increase in group benefits rates of 2.02%
 - Funding employer's share of each plan as follows:
 - Core – 80% of total
 - Medium - 60% of total
 - Enhanced – 50% of total
- Clinics not on Manulife plan
 - Funding reflects an increase in group benefits rates of 2.02%

Professional fees

- \$1,940 per funded lawyer and \$1,035 per licensed paralegal

Clinic's March 31, 2014 Year-End Surplus

- The reallocation of the clinic's cash surplus held on March 31, 2014 will be made later this year.

Biased opinion -

The end is near ?

M. Grossman

At its meeting, 25 June, our Clinic's Board considered a motion to facilitate the progress of co-location of several LEGAL AID ONTARIO speciality clinics:

... that the Board approve in principle a commitment to participating in the Co-location Project with other specialty clinics based on the parameters contained in the Strategic Facilities Report and assuming that LAO commits to providing adequate funds for the Project and that we be allowed to re-invest any and all savings to expand TWHSLC's capacity to deliver direct services to our client community. This approval is predicated on the assumption that our Clinic requirements are met, i.e., within our geographic requirements with no reduction in funding, closed offices for case workers and continued Clinic independence ...

It passed unanimously, except for my vote against. I should explain why:

Effectively, LAO has promoted co-location as a cost-saving measure, and maybe it is, although not likely by too much.

The question of what will happen to our almost-totally-LAO-financed budget if we don't co-locate is unanswered. LAO, as the government's funding agency of the clinic

system, effectively has the authority to command the rearrangement. In my opinion, even though there have been the formalities of consultative process, with our's and other clinics, there has been, in practical reality, a silent command to co-locate.

For our clinic, to move its location to shared facilities is not a good idea:

- Where we are, and have been for more that two decades, is well known to the clients and communities we serve.
- It is conveniently and centrally located near the tribunals at which we represent clients.
- It is near TTC, Greyhound, and Union Station (GO bus and rail, and VIA rail).
- It is near major research libraries, and universities with engineering, occupational hygiene and law faculties.
- It is near Queen's Park and the MOL, where we attend for various committee functions; and participate in public demonstrations, and free-speech expression, with others.
- Our office space is reasonably priced, and

we have a history of getting along with our landlord.

We well appreciate the valuable work of the other speciality clinics, but co-location means changes to layout, organization and procedures that are otherwise not needed for us. All changes offer opportunities of possible serious glitches. Why risk this when it is unnecessary; and not even to much financial advantage?

Our clinic engages in a range of business not covered by any other clinic. I have serious concern that eventually our intake and role will become blurred with the business of the other clinics. And, maybe, sometimes at odds with their business. Why risk this when it is unnecessary; and not even to much financial advantage?

Although the clinic system has its inefficiencies and its missteps, it does, overall, well-serve the poor and defenceless clients as originally intended. I have serious concern that acclimating to a new environment, without genuine compelling reason other than the command of the

TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

funding agency, will hobble system performance. Why risk this when it is unnecessary; and not even to much financial advantage?

If LAO gives a budget command -- as essentially it has -- for us to move, then we must move. But that command, into a risky process, should be regarded

with an ominous expectation that the end may be coming for what is worthwhile that we do. ■

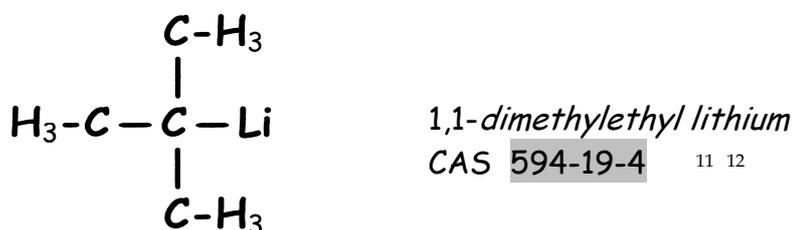
in the press -

- In the *Toronto Star*: "WSIB expands surveillance on clients, documents reveal / Concerns of clients being 'targeted.'" ²
- In the *Toronto Star*: "Worker plunges 22 floors to his death / Ministry to probe accident at Bay-Bloor construction site." ³
- In *The Globe and Mail*, Toronto: "SPECIAL REPORT / NO SAFE USE / Canada's embrace of asbestos has created an epidemic of killer cancers. Yet many Canadian are still exposed to the 'miracle mineral' every day. And Ottawa continues to defend an industry that, like its victims, is wasting away." ⁴
- Also in *The Globe and Mail*, Toronto: "WORKPLACE SAFETY / Much asbestos is still on the loose." ⁵
- Also in *The Globe and Mail*, Toronto: "WORKPLACE SAFETY / Government mum on asbestos policy / Ottawa provides few answers about the lack of a ban, but agrees to allow mineral's listing on a hazardous-substances treaty." ⁶
- In *CHEMICAL & ENGINEERING NEWS*, Washington, DC, 20036: "MENTORING FOR SAFETY / Faculty engage with lab members in multiple ways to ENSURE SAFE WORK ENVIRONMENTS." ⁷

TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

● Also in *C&EN*: "PANEL CALLS FOR SAFER PROCESSES / [US] FEDERAL REPORT: Task force stops short of recommending inherently safer technology mandate." ⁸

● Also in *C&EN*: "DEAL REACHED OVER LAB DEATH / PROSECUTION : UCLA professor Patrick Harran to complete community service, pay fine." "A LOS ANGELES County judge approved ... an agreement that could end a criminal case against University of California ... chemistry professor ... was charged with four felony violations of the state labor code ... a 2008 fire in his lab that led to the death of research assistant ... " ⁹ ¹⁰



● In *The New York Times*: "Children Don't Belong in Tobacco Fields." ¹³

● Also in *The New York Times*: "2 Killed in West Virginia Mine Where Safety Lapses Were Cited." ¹⁴

● In *The New Yorker*: "ANNALS OF SURVIVAL / SIXTY-NINE DAYS / The ordeal of the Chilean miners." ¹⁵

● From *InfoTel News Ltd* : "B.C. rights commission hears racism, sexism complaint against tree planting firm" ¹⁶¹⁷ & from *HUFFPOST BRITISH COLUMBIA* : "Khaira Enterprises: Golden B.C. Tree Planters Bring Racism, Sexism Case"¹⁸ ■

TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

<http://www.workers-safety.ca/>

<https://www.facebook.com/pages/Toronto-Workers-Health-and-Safety-Legal-Clinic/226662537458898?fref=ts>

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data added to <http://www.workers-safety.ca/>

documenting Clinic's history, law reform advocacy, etc.

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TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC

NOTES:

R v McFeeters Enterprises - case report.

- ¹ 2014 04. Vol22 No1 page 3.
- ² Jeff Bolichowski, "West Lincoln man killed in industrial accident," *The St. Catharines Standard, Niagara Falls Review*, 13 July, 2011 12:00:00 EDT AM <http://www.niagarafallsreview.ca/2011/07/13/west-lincoln-man-killed-in-industrial-accident>
- ³ <http://www.workers-safety.ca/> → Home page → Main Menu → Publications → Downloads
2014 06 12. R v McFeeters.pdf
- ⁴ <http://www.quicktransportsolutions.com/truckingcompany/ontario/g-mcfeeters-enterprises-inc-usdot-1190871.php>
- ⁵ See also transcript page 10, lines 3, 4, 5, 6.
- ⁶ See also transcript page 10, lines 13, 14, 15, 16.
- ⁷ *Freedom of Information and Protection of Privacy Act* RSO 1990, CHAPTER F.31
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f31_e.htm
- ⁸ *R v GMC* 1984 48 OR 2d 204.
- ⁹ 2014 07 04. [11] *R v McFeeters cover.doc*
2014 07 04. [12] *R v McFeeters contents.doc*
2014 07 04. [13] *R v McFeeters G.McF. & A.G. plea transcript.doc*
- ¹ transcript page 7, line 27.
- ² transcript page 8, line 27.
- ³ Should this read "unaware" ? -- see other notes.
- ⁴ transcript page 10, lines 3, 4, 5, 6.
- ⁵ transcript page 10, lines 8 & 9.
- ⁶ transcript page 10, lines 13, 14, 15, 16.
- ⁷ transcript page 12, lines 29 & 30.
- ⁸ transcript page 13, lines 4, 5, 6. ■

R v Pal Distributors -- case report.

- ² 2014 05. Vol22 No2 pages 2 & 3.
- ³ 2014 04. Vol22 No1 page 1.
- ⁴ Copied here with character recognition from a transcript ordered by the Clinic from the Court Reporter. \$25.60 [+HST]. This is a public document. While likely accurate and not out of context, this copy is not a court document.
- ¹ <http://www.labour.gov.on.ca/english/news/courtbulletins.php>
- ² www.labour.gov.on.ca
- ³ <http://www.palgroup.ca/distributors/> ■

R v Live Nation - case.

- ¹ 2014 04. Vol22 No1
- ² <http://www.citynews.ca/2013/06/07/live-nation-others-charged-in-fatal-toronto-stage-collapse/>
- ³ 2014 02. R v Live Nation.PDF ■

Building inspectors needed.

- ² John Bartolomeo, "Building inspectors needed," letter to *Toronto Star* editor, 30 June 2014, page A10.
- ³ http://www.thestar.com/opinion/letters_to_the_editor/ors/2014/06/30/building_inspectors_needed.html
- ⁴ See also: 2013 10. Vol21 No5 page 8.
- ⁵ Linda Vannucci, letter to editor, *Toronto Star*, 17 July 2012, page A12.
- ⁶ <http://www.thestar.com/opinion/letters/article/1227277--more-job-site-inspectors-needed>
- ⁷ See in the press - below. ■

Clinic Budget.

 ■

The end is near ?

- ³ Opinions expressed here are the writer's, and are not necessarily of the Clinic; he may be contacted: d441267@yahoo.ca . ■

in the press -

- ² *WSIB spies on workers.* Patty Winsa, URBAN AFFAIRS REPORTER, "WSIB expands surveillance on clients, documents reveal / Concerns of clients being 'targeted,'" *Toronto Star*, 16 June 2014, pages A1 & A4.
- ³ *Toronto worker plunges 22 floors to his death.* Paul Clarke, STAFF REPORTER, "Worker plunges 22 floors to his death / Ministry to probe accident at Bay-Bloor construction site," *Toronto Star*, 24 June 2014, page 2.
- ⁴ *asbestos.* Tavia Grant, "SPECIAL REPORT / NO SAFE USE / Canada's embrace of asbestos has

created an epidemic of killer cancers. Yet many Canadian are still exposed to the 'miracle mineral' every day. And Ottawa continues to defend an industry that, like its victims, is wasting away," *The Globe and Mail*, Globe Focus, Toronto, 14 June 2014, pages F1, F5, F6, F7.

- ⁵ *asbestos.* EDITORIAL, "WORKPLACE SAFETY / Much asbestos is still on the loose," *The Globe and Mail*, Globe Focus, Toronto, 17 June 2014, page A16.

- ⁶ *asbestos.* Gloria Galloway, "WORKPLACE SAFETY / Government mum on asbestos policy / Ottawa provides few answers about the lack of a ban, but agrees to allow mineral's listing on a hazardous-substances treaty," *The Globe and Mail*, 18 June 2014, page A3.

- ⁷ *Lab safety.* Jyllian Kemsley, *C&EN WEST COAST NEWS BUREAU*, "MENTORING FOR SAFETY / Faculty engage with lab members in multiple ways to ENSURE SAFE WORK ENVIRONMENTS," *CHEMICAL & ENGINEERING NEWS*, Washington, DC, 20036, VOLUME 92, NUMBER 23, 09 JUNE 2014, pages 30 & 31.

- ⁸ *Inherently safer technology.* Glenn Hess, "PANEL CALLS FOR SAFER PROCESSES / [US] FEDERAL REPORT: Task force stops short of recommending inherently safer technology mandate," *C&EN*, 16 June 2014, page 5.

- ⁹ *Deal reached over California lab death.* Michael Torrice & Jyllian Kemsley, "DEAL REACHED OVER LAB DEATH / PROSECUTION : UCLA professor Patrick Harran to complete community service, pay fine," *C&EN*, 30 June 2014, page 4.
- ¹⁰ See in this newsletter 2013 10. Vol21 No5 page 11.

- ¹¹ 1,1-dimethylethyl Lithium (CH₃)₃-C-Li
CAS 594-19-4 64.055 g/mol.
¹² <http://en.wikipedia.org/wiki/tert-butyllithium>

- ¹³ *Children Don't Belong in Tobacco Fields.* EDITORIAL, "Children Don't Belong in Tobacco Fields," *The New York Times*, Sunday Review, 18 May 2014, page 10.

- ¹⁴ *W.Va. mine fatalities.* Daniel Heyman & Michael Wines, "2 Killed in West Virginia Mine Where Safety Lapses Were Cited," *The New York Times*, 14 May 2014, page A16.

- ¹⁵ *Chilean miners.* Hectoe Tobar, "ANNALS OF SURVIVAL / SIXTY-NINE DAYS / The ordeal of the Chilean miners," *The New Yorker*, 07 & 14 July 2014, pages 54 → 73.

- ¹⁶ *B.C. tree planters.*
- ¹⁷ <http://infotel.ca/newsitem/tree-planters-discrimination/cp25249144>
- ¹⁸ http://www.huffingtonpost.ca/2013/09/30/khaira-enterprises-golden-bc-tree-planters_n_4015188.html ■

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data added to <http://www.workers-safety.ca/> ■
newsletter archive. ■

for future issues:

- *Maquila.* www.maquilasolidarity.org
- Canadian federal OH&S inspections.*
- US Chemical Safety & Hazard Investigation Board.
- topic revisited—Ministry of Labour library. **
- book review: *Occupational Health & Safety-Theory, Strategy & Industry Practice, 2nd Edition.* ***

* David Macdonald, *Success is No Accident / Declining Workplace Safety Among Federal Jurisdiction Employers*, CANADIAN CENTRE for POLICY ALTERNATIVES, Ottawa K1P 5E7; 27 April 2010; ISBN 978-1-897569-88-7

<http://www.policyalternatives.ca/publications/reports/success%E2%80%89%E2%80%89no%E2%80%89accident>
http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Success%20Is%20No%20Accident_0.pdf
"Report blasts federal workplace inspection," *Canadian Occupational Health & Safety News*, 03 May 2010, Vol.33, No.17, pages 1 & 2.

** See in this newsletter Vol. 15 No.4.

*** [LexisNexis http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=2089](http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=2089)

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This clinic is one of a system of community legal clinics; it receives most of its financing from LEGAL AID ONTARIO.

Don't agree with opinions here? Or want to comment otherwise? Send your manuscript to: TWH&SLC -- newsletter.

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not legal advice. This newsletter includes information considered correct and up-to-date according to its context. It also contains opinions. But nothing here should be taken as legal advice. Legal advice should be obtained from professional counsel, which might include our Clinic's lawyers, when acting on a lawyer-client basis.

Errors and misstatements happen, although we try to be careful and strive for accuracy. We would try to correct as soon as possible. Please let us know if you see any needed corrections or explanations.