



THE LAWRENCES[®] LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

WINTER 2012

INJURIES IN THE WORKPLACE: When Does Liability Begin—and End?

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A recent Ontario court decision about liability for accidental death on premises makes it clear how different the outcome can be for different parties in a case—and how important it is to anticipate and prevent potential legal problems before they arise, if possible.

In 2009, a 14-year-old girl was crushed to death when a wall in a public park washroom operated by the City of Guelph collapsed on her. Charges were brought under the *Occupational Health and Safety Act* (OHSA) against the architect and engineer who designed the wall and the municipality that owns and operates the facility.

The wall was built in 2004. The limitation period under the OHSA is generally one year. As the designers, the architect and engineer argued that the statute of limitations on their work ran out one year after installation of the wall. The Crown argued that the limitation period should start when users of the facility are endangered. The court agreed with the architect and engineer, finding that the limitation period for the charges against them had expired.

However, the case is ongoing against the municipality, since as owner and operator, it was charged with improper maintenance—an ongoing responsibility. The court distinguished between the continuing ill effect of an improper act and the improper act itself.

The case is still before the court; appeals of preliminary rulings and decisions may yet occur. Irrespective of the limitations period set out under the OHSA, different and lengthier limitations periods may exist under tort law for those injured, or families of the deceased. Architects and engineers may also be subject to professional disciplinary proceedings, which could proceed under a different limitation period and include the potential for licence revocation or suspension.

The OHSA deals with highly technical offences



within a very complicated legal framework. For example, if a defendant is charged with not having complied with a specific section of the Act from April 1 to April 30 of any given year, each day constitutes a separate offence, which can theoretically trigger 30 separate fines upon conviction. Businesses are strongly advised to review their operations to see where they might be liable and seek legal advice on how to comply with the law.

The penalties upon conviction under the OHSA can be enormous. Maximum fines for individuals can be \$25,000 per offence, while for corporations, the maximum fine can be \$500,000 per offence. Quite often, the Ministry of Labour may lay charges against both the corporation and its directors. All employers should be well-informed and have legal representation when attending in court if charged under the Act.

Lawrences' Litigation Group has extensive experience in helping businesses prepare for litigation, as both plaintiff and defendant. We can also help you anticipate the problems that can lead to litigation and prevent them wherever possible.



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