

Failing to Maintain Truck Results in Criminal Negligence Conviction Against Supervisor

By Ryan Conlin and Jeremy Schwartz

Can a supervisor be found criminally negligent when he knowingly allows a worker to operate equipment that a worker under his charge suggests is potentially dangerous? This is the question that the [Ontario Superior Court of Justice](#) confronted in a criminal prosecution of a supervisor for criminal negligence causing death.

Brief Summary of the Facts

The tragic facts of the case involve a fatal single-vehicle collision of a dump truck. The dump truck was proceeding on a roadway, and tragically, its front left tire exploded, causing it to veer into a ditch and hit a tree. The driver of the dump truck died instantly.

The company that owned the dump truck was a very small operation and there was some dispute about the role of the Defendant in the business. However, the supervisor made admissions at the outset of the trial that he had hired the deceased worker and more importantly that he was the worker's supervisor.

The most important evidence at trial established that the supervisor received a text message that stated, *"The steering wheel turning with the wheels cuts in and out like standard steering"*.

The supervisor responded with information about where the worker was required to go the next day and did not address the safety concern. The Prosecution tendered expert evidence that the front tires of the dump truck were in deplorable condition. There was no tread on the inner half of either tire, and the tires were visibly bald. The Court accepted the expert evidence that this type of tire deterioration often comes with improper alignment and takes several thousand kilometers to develop.

The Court further found that the tire condition caused the steering problem identified by the worker in his text and caused the explosion that led directly to the fatal accident.

The Supervisor argued that he was only alerted to a steering issue and that the left tire caused the accident. The Court had no patience for this argument and held that the Supervisor had a duty to ensure that all aspects of the dump truck were safe for the road. The Supervisor also suggested that the worker consented to drive a dangerous vehicle, which should assist him in his defence. The Court summarily dismissed this argument, holding that pointing to the worker's safety errors does not offer a defense to a criminal negligence charge. This is consistent with a long line of cases stating that the civil principle of "contributory negligence" does not apply to criminal cases.

It was clear that the Court felt that the tires' conditions were so bad, that had the supervisor followed even the most basic safety practices, he would have sent the vehicle to be checked by a mechanic.

It is important to appreciate that a defendant will only be convicted of criminal negligence where the actions of an accused amount to wanton and reckless disregard or what some Courts have called an “unrestrained disregard for the consequences.”

It is important to appreciate that the burden of proof on the Crown is considerably higher in a criminal prosecution than in a case that proceeds under provincial occupational health and safety legislation. In an OHSa prosecution, the prosecutor need only prove that the contravening act or omission occurred (*i.e., lack of compliance with the requirement to maintain vehicles in safe working order*). Once the contravention is proven, the burden shifts to the defendant to prove reasonable precautions were taken to prevent the contravention (*known as “due diligence”*). By contrast, in an OH&S criminal negligence case, typically the Crown must still prove the contravening act or omission beyond a reasonable doubt, but the Crown must also prove beyond a reasonable doubt that the Defendant’s actions represented a marked and substantial departure from those of a reasonable site supervisor in the circumstances.

Meeting this high burden has been challenging for the Crown in [other serious cases](#).

In this case, the Court had little difficulty in finding the Supervisor was wanton and reckless because he knew about a potentially serious safety issue and literally did nothing about it. The Court pointed out that bald tires are the type of hazard that is plain and obvious to anyone on a cursory inspection.

Our Take

In our view, the case's results are not surprising in light of the Court’s findings. The Supervisor ignored a significant safety risk that he ought to have dealt with, and a worker died as a result.

This judgment serves as a stark reminder to all supervisors and employers to ensure that systems are in place to respond to safety complaints and, more importantly, to set up a system to assess the fitness of equipment proactively.

The case is yet another signal to the employer community that prosecutors take workplace criminal cases seriously. Matters that might once have been prosecuted under workplace safety or traffic legislation are now being examined more closely under the *Criminal Code*. It is now more likely than ever that serious criminal cases will be prosecuted criminally.

The supervisor has yet to be sentenced, although we anticipate that a jail term will be imposed under the *Criminal Code*, exceeding the one-year maximum that could have been imposed under the OHSA.

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