A corporation receives a hefty fine and two of its officers face jail time for violations of the Ontario occupational health and safety regulations

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On January 13, 2015, New Mex Canada Inc. ("New Mex"), an Ontario corporation and employer in that same province, was sentenced to pay a fine of $250,000 while two of its officers each received 25-day prison terms after pleading guilty to several offences under the Ontario occupational health and safety legislation and regulations. The proceedings were instituted following a workplace accident in which a worker died after a fall.

On January 18, 2013, the worker in question was moving merchandise in the workplace. He was operating a combination forklift/operator-up platform known as an order picker. The platform had been modified with an additional platform, supported by the forks of the vehicle, on which the worker was standing. The second platform had no guard rail and the employee was not wearing any fall protection equipment. The worker was found dead on the floor as a result of a blunt force trauma to the head.

An investigation by the Ontario Ministry of Labour revealed that New Mex had committed several offences. In particular, the warehouse employees had received no occupational health and safety training, nor had they been provided with any fall protection equipment, contrary to the requirements of the applicable regulation.[1]

Ontario's *Occupational Health and Safety Act*[2] provides for the possibility of a maximum prison sentence of 12 months for anyone who fails to comply with any of the provisions of the Act or the associated regulations.

This decision clearly shows that the Ontario authorities are determined to enforce the penalties set

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out in occupational health and safety legislation. Recall that prison sentences are not included among the penalties set out at sections 236 and 237 of Quebec's *Act respecting occupational health and safety*.[3]

In addition, according to various recently published press releases, the Ontario Federation of Labour is putting pressure on authorities to file criminal negligence charges under the *Criminal Code*[4] in addition to the aforementioned convictions in this case. Generally speaking, the penalties for a criminal negligence conviction are much more severe than the penalties under provincial legislation, reflecting the inherent seriousness of such an offence. An individual charged with criminal negligence causing death is liable, among other things, to imprisonment for life,[5] while, for organizations, there is no limit to the amount of the fine for which they may become responsible.[6]

Lavery will keep you informed of further significant developments on this subject.

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1 *Industrial Establishments*, RRO 1990, Reg 851, s 85.

2 RSO 1990, c O.1, s 66.

3 CQLR c S-2.1.

4 RSC 1985, c C-46.

5 *Ibid*, s 220(b).

6 *Ibid*, s 735.

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