



Fines for health and safety offences on the rise

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Carissa Tanzola says there was a time when she could say with confidence that if a company was charged with failing to have a health and safety policy they would be fined in the area of \$10,000 to \$15,000 for a first offence, depending on the size of the company.

But times are changing, fines are changing and the criminal negligence provision of the health and safety equation is being used more frequently, states Tanzola, a lawyer with Sherrard Kuzz LLP.

“Within the last year, the last six months especially, these numbers have increased significantly,” she told those in attendance at the recent Ontario Road Builders’ Association (ORBA) convention and AGM.

Tanzola was speaking to the audience about occupational health and safety and if companies have proper programs in place to educate their employees and protect themselves.

She highlighted examples of how companies are facing massive fines as prosecutors and the Ministry of Labour show “they’re taking this extremely seriously.”

In December 2014, Swing N Scaff Inc., the company responsible for the supplied scaffolding in the deaths of four construction workers on a Toronto renovation project in 2009, was fined \$350,000. A director also pled out to \$50,000 in fines, she stated. This brought the total amount of fines levied against the company to \$400,000.

“There’s a significant financial impact that we’re seeing increase on a regular, steady basis. It would be much better to put your money and your time on the front end of that to avoid getting into that position in the first place,” she said. “The other issue is negative

media.”

She pointed to recent ads that state, “kill a worker, go to jail.”

“I personally think that this kind of advertising is mistaken on many many levels, but it’s out there,” she stated. “So you may be able to afford the fines...can you afford the negative media attention?”

Tanzola, who also sits on ORBA’s Health and Safety Committee, provided insight as to how companies can protect themselves on all levels.

“I can tell you from experience that we like to think every employer, every company, every subcontractor has a culture of health and safety. But as we practically know, sometimes deadlines, sometimes budgets, sometimes a lack of knowledge get in the way of that,” she said.

“Sometimes, however, employers think that they have it covered...because they’ve been lucky enough not to have an issue, or because they have invested some money and some resources into health and safety.”

In 2014 there were 20 fatalities in the construction industry, five in the road building sector or in related road building activities, Tanzola stated.

“When something happens, when a minister of labour gets that email and says somebody’s been fatally injured, chances are the Ministry of Labour inspectors aren’t on site looking to ensure compliance, which is what they’ll tell you when they come for their spot audits or checks,” she said. “They’re looking to find out what went wrong so they can lay charges.”

This can be avoided if measures are put in place to ensure health and safety is top of mind to everyone on site.

“Every employer, every supervisor for that matter, must take every reasonable precaution for the protection of the worker in the circumstances, that’s what the (Occupational Health and Safety)



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Carissa Tanzola, of Sherrard Kuzz LLP, recently gave some health and safety advice to those at the 88th ORBA convention and AGM.

act says,” she said. “If there’s nothing else very specific that the Ministry of Labour can charge you with, they’re going to charge you with that and it’s difficult to defend against.”

That’s when due diligence can come into play, Tanzola explained, adding employers will often use the defense that all reasonable precautions were taken to avoid an incident.

“I did everything I could possibly do and this accident still happened,” she explained. “I gave my employees, my subcontractors, training, information, we had supervisors on site. We did it again, again and again.”

Tanzola states workplace employers must show discipline if workers aren’t taking health and safety seriously.

“You discipline and the next time you discipline harder, and the next time you even terminate and you deal with whatever fallout you might get from the unions,” she told the audience, adding “constant training and education” is essential and “repetition is key. Safety measures taken after the accident

aren’t due diligence.”

Overall, Tanzola had several tips for companies to follow to make sure they are up to date on health and safety practices.

“Everything should be in writing,” she says. “When you are doing any kind of investigation or reporting, have somebody not just your supervisors take a look at those reports.”

“Do you have a policy? If you don’t, get one today,” she added. “If you’ve got a subcontractor onsite, get their health and safety policy. Make that part of the contract that you enter into with them. Make sure that they are following that policy. You can’t subcontract out your responsibilities.”

She also suggests staying on top of legislative changes.

Lastly, she says, foot the bill and invest.

“I’m not saying spend \$400,000 on your health and safety policy and program, but think of the money you could spend now versus the money you’d have to spend on lawyers’ fees and perhaps fines down the road.”