

Citing unfairness: court throws out criminal negligence charge against boom truck operator

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Background Decision

The Ontario Superior Court of Justice has stayed a criminal negligence charge against a boom truck operator who pleaded guilty to an Occupational Health and Safety Act charge in a case involving a workplace fatality.⁽¹⁾

Background

The boom truck toppled over, pinning a worker who died as a result. The operator's failure to extend the outriggers and stabilisers resulted in the boom truck toppling over.

The police and the Ministry of Labour investigated. The Ministry of Labour charged the operator with offences under the Occupational Health and Safety Act. Almost two years after the incident, the operator pleaded guilty to one charge under the act and was fined C\$3,500.

However, five months after the operator's guilty plea and more than two years after the incident, the police laid a criminal negligence charge arising from the same incident against the operator.

Decision

The court stated:

"The evidence is clear that both the Ministry of Labour and the OPP had concluded within three days of the incident that they had reasonable and probable grounds to lay charges. The Ministry proceeded to lay charges on May 6, 2013, approximately 11 months following the incident. On April 17, 2014, approximately 11 months following the laying of the charges, the applicant pled guilty to one of the charges under the [Occupational Health and Safety Act](#). Then on September 12, 2014, five months after the plea of guilt, the charge of criminal negligence was laid. In total, 26 months and 23 days expired from the date of the incident to the laying of the criminal negligence charge."⁽²⁾

The court found no reason why the police and Ministry of Labour investigations could not have proceeded in tandem. The sequence in which the charges were laid was unfair to the operator. At the very least, the crown should have given an emphatic notice to the operator that he would likely be charged criminally. When making a decision on a set of charges, an accused person should be able to have a sense of security that the decision will resolve the case in its entirety. According to the court, to have further charges laid after such a lengthy period and after the operator had pleaded guilty to the Occupational Health and Safety Act charge was unfair.

The potential for serious prejudice arose, as the fact that the operator had pleaded guilty to the Occupational Health and Safety charge could be put before the court in his criminal negligence case. Further, a witness had died in the interim.

The police's act of laying criminal charges after the operator had pleaded guilty to the Occupational

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Health and Safety Act charges constituted a breach of the sense of fair play, an act which offends the community. The court therefore stayed the criminal negligence charge, citing a breach of Sections 7 (the right to life, liberty and the security of the person) and 11(d) (the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal) of the Canadian Charter of Rights and Freedoms.

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Endnotes

(1) *R v Campbell*, 2017 ONSC 3442 (CanLII).

(2) At para 40.

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