

Court of Appeal holds general duty clause can impose higher obligations than regulatory requirements

January 30 2018 | Contributed by [Dentons](#)

Facts

Decision

Comment

In *Ontario (Labour) v Quinton Steel (Wellington) Limited* (2017 ONCA 1006 (CanLII)) the Ontario Court of Appeal held that the Ministry of Labour can prosecute employers under the general duty clause of the Occupational Health and Safety Act even where the charges impose greater obligations than those set out in the regulations under that act.

Facts

A trial and appeal justice had decided that the employer could not be found guilty of failing to provide guardrails around a temporary work platform. They reasoned that the Industrial Establishments Regulation under the Occupational Health and Safety Act, which deals with the issue of guardrails, did not require guardrails in this situation (a temporary work platform at a height of six feet). As such, the courts held that the Ministry of Labour could not use the 'general duty' clause in [Section 25\(2\)\(h\)](#) of the act, which requires employers to take every precaution reasonable in the circumstances, to impose obligations greater than those in the regulation.

Decision

The Ontario Court of Appeal disagreed, stating that regulations cannot be expected to anticipate the circumstances of all Ontario workplaces. The key question in this case was whether the installation of guardrails was a reasonable precaution. The court held that the trial justice failed to address this point.

The appeal court concluded that:

"It may not be possible for all risk to be eliminated from a workplace, as this court noted in Sheehan Truck, at para 30, but it does not follow that employers need do only as little as is specifically prescribed in the regulations. There may be cases in which more is required – in which additional safety precautions tailored to fit the distinctive nature of a workplace are reasonably required by Section 25(2)(h) in order to protect workers. The trial justice's erroneous conception of the relationship between Section 25(2)(h) and the regulations resulted in his failure to adjudicate the Section 25(2)(h) charge as laid."(1)

The court allowed the appeal and ordered a new trial before a different justice.(2)

Comment

Ministry of Labour inspectors will likely consider using this decision to issue compliance orders or charges under the general duty clause even where the regulations deal with the specific safety issue at hand (eg, guardrails and fall arrest), but do not apply in the particular case. For instance,

AUTHOR

[Adrian Miedema](#)



inspectors may issue compliance orders or charges for failing to provide guardrails around a temporary work platform that is only one foot high.

For further information on this topic please contact [Adrian Miedema](#) at Dentons Canada LLP by telephone (+1 416 863 4511) or email (adrian.miedema@dentons.com). The Dentons Canada LLP website can be accessed at www.dentons.com.

Endnotes

(1) At paragraph 45.

(2) For more information please see www.occupationalhealthandsafetylaw.com.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).