

Occupational health and safety charges in fatality case dismissed for delay

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In *R v Nugent, Guillemette and Buckingham* (2018 ONSC 3546 (CanLII)) an Ontario appeal judge upheld the dismissal of Occupational Health and Safety Act charges against employees due to delay.

The charges followed the death of a mining employee from cyanide intoxication by way of skin absorption. The company had pleaded guilty to criminal negligence charges, after which all 15 Occupational Health and Safety Act charges against it were withdrawn. Criminal charges against one of the employees were also withdrawn at the time.

The total delay – from the laying of the charges to the last day scheduled for trial – was 21 months, which exceeded the 18-month presumptive delay ceiling set out by the Supreme Court of Canada in *Jordan*.

The trial judge found that the Ministry of Labour prosecutor had breached his duty to develop and follow a concrete plan to minimise the delay due to the complexity of the case. In addition, it was not reasonable for the prosecutor to have failed to seek trial dates until five-and-a-half months before the 18-month presumptive ceiling for delay. Further, the prosecutor made no effort to narrow the issues or shorten the trial by seeking admissions, attempting to negotiate an agreed statement of facts or seeking agreement regarding documents until late in the case, despite being invited to do so by the defence. Therefore, the trial judge concluded that the prosecutor's trial management fell well below the standard set out in *Jordan*.

The appeal judge upheld the finding and the trial judge's decision to stay the charges against the employees for delay, thereby ending the prosecution – despite the fact that the charges were particularly serious as they resulted from a fatality.⁽¹⁾

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Endnotes

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

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