

Appeal court holds that fact of accident alone is not enough to convict

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In *R v St John's (City)* (2017 NLCA 71 (CanLII)) the Newfoundland and Labrador Court of Appeal held that a trial judge was wrong to find a city guilty of Occupational Health and Safety Act charges solely because an accident had occurred in which a worker died. It held that the trial court should have gone further and analysed each charge.

The charges were filed against the city of St John's after an accident on a road construction site that resulted in one worker dying after being hit by a car. Seven charges were brought against the city, including failure to provide adequate training and failure to maintain adequate traffic control.

The trial judge held that the mere fact of the car striking the employee was proof of the *actus reus* (guilty act) of the charges. The appeal court decided that this was wrong; the trial judge should have analysed each charge to determine whether the prosecutor had called evidence to prove each element of the offence. The trial judge had wrongly focused on the consequences of the alleged breach of the Occupational Health and Safety Act (ie, the accident and the worker's death), rather than "the identification and proof of the actual elements of each offence".

The decision is a welcome reminder that prosecutors cannot simply rely on the fact that an accident took place in seeking to obtain a conviction on Occupational Health and Safety Act charges. Instead, they must prove each charge.⁽¹⁾

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Endnotes

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

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