Recent OHS Cases of Interest

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Metron update

- Swing N Scaff Inc.: $350,000 (OHSA)
- Patrick Deschamps, Director of Swing N Scaff: $50,000 (OHSA)
- Metron Construction Corporation: $750,000 (Criminal Code – Bill C-45)
- Joel Swartz, Director of Metron: $90,000 (OHSA)
- Vadim Kazenelson (Project Manager): 3 ½ years (under appeal)

Kazenelson, “person of good character”, given 3 ½ years in jail

- 40 year old Kazenelson,“unquestionably a person of good character”
- 3 ½ years in prison for criminal negligence
- “ . . .to make it unequivocally clear that persons in positions of authority in potentially dangerous workplaces have a serious obligation to take all reasonable steps to ensure that those who arrive for work in the morning will make it safely back to their homes and families at the end of the day.”

Mechanic facing criminal negligence causing death charge: *Ramono*

- Issued a Safety Standards Certificate to the purchaser of a 17-year-old pickup truck
- Fatal accident a month later
- Evidence “excessive free play” in the steering wheel
- Criminal negligence charge may proceed to trial

After co-worker washes feet with vinegar, employee entitled to transfer to different building: *Emond*

- Mr. X moved to the cubicle next to the worker's office
- Worker alleged Mr. X washed his feet with vinegar in his cubicle
- "What is your problem?… there is a line on the floor and do not cross that line because I do not know what will happen…"
- Employee entitled to transfer to another building

Employee posed naked on coworker's car at company social event - just cause for dismissal: *Innophos*

- "Fish Fry dinner" offsite
- Employee removed clothes, posed naked on coworker's car
- Security video
- Just cause for dismissal
- Bill 132 reminder: sexual harassment

Employer breached OHSA, collective agreement by sharing employee's medical information with another employer: *St. Patrick's Home*

- Employee requested accommodation
- Employer provided information, including medical note, to other employer
- Breached OHSA and collective agreement
- Ordered to comply with confidentiality policy, and pay $1,000.00

Alberta decision provides example of how to maintain privilege over investigation records: *Suncor*

- Alberta OHS investigation
- Internal company investigation – careful process
- Privilege upheld

Death of visitor leads to employer's conviction, $100,000 fine under OHSA: *Seavale*

- Self-storage facility
- Visitor fell through floor and died
- $100,000 fine under OHSA

$250,000 fine against school board may be largest-ever against not-for-profit organization in Ontario: *Ottawa Catholic School Board*

- Maintenance worker at school
- Rolling aerial device down ramp off trailer, tipped over
- $250,000 fine under OHSA

Waiver was unenforceable under WSIA, employee entitled to sue employer after workplace injury: *Fleming*

- National Capital Kart Club: non-registered employer
- Employee signed waiver, injured after crash, sued
- Waiver unenforceable: section 114(1) of WSIA
- Consider: enforceability of waivers

Employee stopped production line “to be difficult”, not due to safety issue: work refusal not justified: *McNerney*

- Pushed an “E-stop” button
- Said he did so because he saw two coworkers fighting
- OLRB: *his* safety not threatened
- Employee angry with supervisor and decided to be difficult

“I guess I’d have to kill you” remark could not reasonably have been interpreted as a “viable threat”: *Harriott*

- Worker had confrontation with coworker
- Coworker: if you hit me, you will be “put away for the rest of your life”.
- Worker chuckled and said, ”I guess I’d have to kill you”.
- Not “wilful misconduct” under *Employment Standards Act*

Judge chides employer that countersued against employee for making allegedly “false” safety complaint to Ministry of Labour: *Leverton*

- Wrongful dismissal suit
- Employer countersued for filing allegedly false safety complaint with MOL
- Judge chides employer

Double (16-hour) shift was not prohibited by ESA or OHSA: *Regional Municipality of Durham*

- Unionized long-term care employees
- Voluntarily worked two 8-hour shifts consecutively
- Arbitrator: s. 18(1) of ESA permitted if *voluntary*
- OHSA did not require employer to ban for safety reasons:
  - No evidence of more accidents or resident complaints
  - Generally-accepted industry practice

Request for post-incident alcohol and drug test was not justified where no sign of impairment: *Jacobs Industrial*

- Backed into the only other vehicle in the parking lot.
- Employer demanded post-incident drug and alcohol test
- Arbitrator: no one thought that he was impaired. Cause was obvious: carelessness
- Demand for test was not reasonable

“Industry standard” is not always appropriate safety precaution, and MOL inspector’s “gut instinct” is not enough to ground compliance order: *Glencore*

- MOL argued Industry standard is to refrain from skipping while inspecting
- Company showed industry standard should not apply in this case
- OLRB: OHSA requires balance between risk of harm and ability to carry out a business enterprise

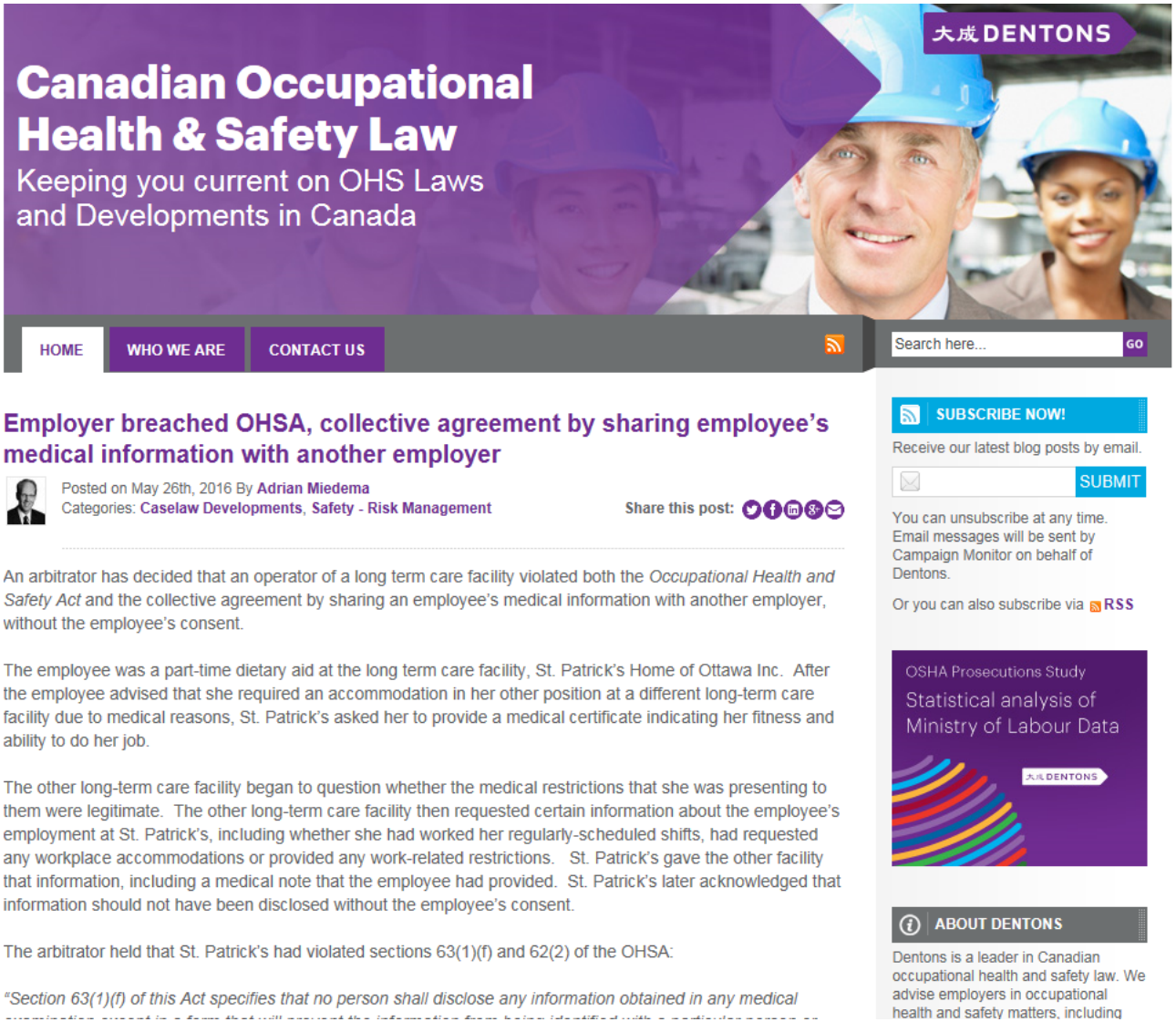
Refusing to provide a written statement was not obstruction, but grabbing safety officer and pushing him out the door was: *Prodromidis*

- Accused charged under NWT *Safety Act* with obstructing safety officer
- First meeting: loud and aggressive, “vented” but responded to questions. Refused to give written statement and drawing, but did not impede or delay investigation
- Second meeting: confronted investigator, grabbed him by arms, pushed him out the door, and slammed the door behind him

Ontario OHSA convictions, fines inch up in 2014/15, MOL field visits at 11-year low

- 70,604 field visits in 2014/15 (down from 73,204 in 2013/14 and 101,275 in 2007/08)
- 817 convictions in 2014/15 (up slightly from 780 in 2013/14)
- Number of convictions had been declining, reached six-year low in 2013/14
- Average fine per conviction in 2014/15 was $11,464
- 1,095 “critical injuries” reported to MOL in 2014

Occupationalhealthandsafetylaw.com



Thank you

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