

Is this email not displaying correctly? View it in your browser.



Health & Safety

E-BULLETIN

TRAINING ► THE RIGHT THING. THE RIGHT WAY.

A Publication of the Workers Health & Safety Centre

November 23, 2018



Timely news bulletins
for all concerned with
safer, healthier work

Employer general duty should be broadly interpreted says Court



the elevated platform.

The Court of Appeal for Ontario says the general duty clause in the *Occupational Health and Safety Act (OHS)* can impose higher obligations to protect workers than requirements in regulations.

Back in June, 2012, Martin Vryenhoek was killed as a result of a fall from a temporary welding platform six-and-a-half feet above ground. There was **no guardrail** and Mr. Vryenhoek was wearing a welding helmet impeding his visibility as he moved across

His employer, Quinton Steel, was charged under section 25(2)(a) of the *Occupational*

Health and Safety Act with failing to inform, instruct and supervise a worker to protect the health or safety of the worker, and for **failing to take every precaution reasonable** in the circumstances for the protection of a worker [(s. 25(2)h)].

Lower courts dismiss charges

The [original trial](#) justice dismissed both charges.

The Crown did not appeal the ruling to dismiss charges under section 25(2)(a). They did, however, appeal the charge relating to the general duty clause [s. 25(2)(h)]. The Crown continued to argue the employer did not take the “**reasonable precaution**” of installing **guardrails** on the open sides of the elevated work platform.

The appeal justice agreed with the original trial justice ruling the *Industrial Regulations* (section 13 and 85) applicable under the *OHS*A for **this workplace did not require guardrails** in the circumstances (a temporary work platform at a height of less than 3 metres). More specifically, both justices felt the Crown (Ministry of Labour) **could not use the general duty clause** [(s. 25(2)(h))] to impose obligations beyond the specific requirements for guardrails in the *Industrial Regulations*.

Higher court calls for new trial

The Crown then turned to the Court of Appeal for Ontario which ultimately **disagreed with both lower courts**, finding the *OHS*A is **public welfare legislation** and **must be interpreted broadly**. The Court ruled the Crown was **not required to establish failure to comply** with any regulations in order to prove the general duty clause had been violated.

[In summary, the court wrote](#), “Section 25(2)(h) is necessary because, as the Crown submits, the regulations cannot reasonably anticipate and provide for all of the needs and circumstances of the many and varied workplaces across the province.”

Further still, the court wrote “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 s. 25(2)(h) in order to protect workers. The trial justice’s erroneous conception of the relationship between s. 25(2)(h) and the regulations resulted in his failure to adjudicate the s. 25(2)(h) charge as laid.”

This appeal court submitted the original trial justice should have ruled on whether the installation of guardrails on the temporary welding platform was a reasonable precaution to protect Mr. Vryenhoek considering the specific working conditions. This did not happen and so the Ontario Court of Appeal allowed the Crown’s appeal and **ordered a new trial** with a different Justice of the Peace to **address this key question**.

To learn more about “reasonable precautions”

As Ontario’s government-designated health and safety training centre, WHSC can help employers and supervisors gain a full understanding of their legal obligations in terms of protecting workers.

By law, for instance, employers must provide information and instruction to workers to protect their health and safety. Training is a key way employers meet this obligation. Specific examples of mandatory training include [awareness training for workers](#), [supervisory competency](#) along with [joint health and safety committee certification training](#).

Beyond these programs, WHSC offers a [comprehensive catalogue of training](#) to assist workplaces in meeting many additional **specific and general training obligations**. These range from working at heights and lockout/tagout to GHS WHMIS and equipment operator training.

WHSC programs can make a real difference in your workplace by helping:

- Workplace parties understand and carry out their legal obligations
- Support the effectiveness of joint health and safety committees and representatives
- Ensure operator and supervisor competency
- Bolster overall workplace prevention programs
- Reduce work-related injury and illness by identifying and controlling workplace hazards
- Reduce risk of prosecution.

WHSC also offers a host of [resources](#) designed to communicate **critical information** in a convenient and accessible way in support of awareness and workplace prevention programs.

To learn more call 1-888-869-7950 and ask to speak to a training services representative or by email contactus@whsc.on.ca.

Executive Director: Dave Killham
Director, Information Services: Loretta Michaud
Editor: Marty White

Reproduction is permitted, provided the source is acknowledged and a copy sent to the Director, Information Services.

Please send comments and suggestions to Enews@whsc.on.ca
www.whsc.on.ca

[Unsubscribe](#)



Copyright © 2018 Workers Health & Safety Centre. All rights reserved.
Privacy Policy