

Alberta Court of Queen's Bench Reigns in Director Liability for Injured Employees

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Employees who are injured on the job cannot sue their employers or co-workers for damages because of the Workers' Compensation scheme. However, one option that remains available to employees is to sue the directors of the corporate employer. To do so requires asking the Court to "lift the corporate veil", as a corporation is a separate legal entity, distinct from its directors, and any liability arising from the actions of directors acting *bona fide* within the scope of their authority, and in the best interests of the corporation, normally attaches to the corporation.

One situation in which Courts are willing to lift the corporate veil to impose liability on directors personally is when a director's actions are themselves tortious or exhibit a separate identity or interest from that of the corporation so as to make the act or conduct complained of their own. Therefore, the question becomes, in what situations will a director's negligence in failing to prevent a workplace accident be sufficiently separate from the corporation so as to impose liability on a director personally for an employee who was injured on the job?

The recent Alberta Court of Queen's Bench decision *Bower v Evans*, 2016 ABQB 717 sheds some light on the answer. In *Bower*, one employee was killed and another employee (the Plaintiff) was seriously injured while steam-cleaning an oil tank at work. The Plaintiff sued the directors of the numbered company who operated the shop where the accident occurred, claiming that the directors had the authority to implement safety policies which would have avoided the accident, and were negligent in failing to do so. In this case, the two directors were directors in name only, and did not have any involvement in running the company, which was run by their husbands. The directors applied for summary dismissal of the claim against them.

The Master dismissed the application, relying on *Nielsen Estate v Epton*, 2006 ABCA 382. In paragraphs 14 and 15 of *Epton*, the Court of Appeal upheld the trial court's finding that legislation in Alberta establishes a duty on directors to "establish corporate policies that are reasonably oriented towards the corporation [meeting] its legal requirements as to worker safety and public safety", and that this duty was not met by a director "blindly delegating everything as to safety to others without any standards, supervision or guidance."

On appeal, the Court of Queen's Bench found that the Master should have distinguished *Epton*, since in *Epton* the director was present when the accident took place, and had a direct supervisory role. In *Bower*, there was no evidence that the directors were present when the tank was being worked on, and the Court held at paragraph 17 that while the directors "may have been negligent in their corporate capacities... this is not sufficient to create independent tortious liability." The summary dismissal application was granted.

The Court's decision to distinguish *Epton* reaffirms that, a director with no operational involvement in a corporation will most likely not be held liable to injured employees for negligence in failing to implement adequate safety policies. However, directors who take a more involved role in operations, or who are otherwise personally connected to a workplace accident, should be aware that there remains a risk they could be personally liable should an employee be injured on the job.

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