

A Fatal Workplace Accident: A Company President Convicted of Manslaughter

Friday, March 2, 2018

On March 1, 2018, Judge Pierre Dupras of the Court of Québec, Criminal and Penal Division, found a company president guilty of manslaughter¹ following the death of a worker.²

This judgment is of national scope since it was rendered pursuant to the *Criminal Code*, which is a federal statute, and will now serve as a precedent on which prosecutions in every province will be able to rely.

Background

The facts are simple.

Mr. Sylvain Fournier, President of S. Fournier Excavation Inc., employed Mr. Gilles Lévesque. Both men were engaged in replacing a sewer conduit, working at the bottom of a trench that was more than 8 feet deep and 42 inches wide. The trench was not shored, although its walls were at 90 degree angles, and there were deposits of excavated soil on both sides located at unsafe distances, in violation of the *Safety Code for the Construction Industry*.

The trench caved in. Mr. Lévesque, the worker, was buried and died of a blunt traumatic brain injury. Mr. Fournier, the company president, attempted to come to his aid, but without success. He too was partially buried. Mr. Fournier sustained fractures to both legs and remained in a coma for two days.

The Crown, following this tragic accident, prosecuted Mr. Fournier on two counts: (1) criminal negligence causing death, by failing to take the necessary measures to prevent injuries to others while directing the performance or execution of work or a task; and (2) having caused Mr. Lévesque's death by committing manslaughter.

Points to Remember

This case is a first of its kind in Québec, in that natural or legal persons were ordinarily convicted of criminal negligence causing death³ or bodily injury,⁴ not manslaughter.

In the case of Mr. Fournier, however, the Court convicted the accused on the single charge of manslaughter, a crime punishable by life imprisonment.⁵

This is a reminder that no one is immune from a criminal conviction when a serious or fatal accident occurs, whether on a construction site or in an establishment. Indeed, the business as well as its officers, directors and employees at all levels, can be prosecuted criminally when they have participated in the commission of an offence.

The Court found Mr. Fournier guilty of manslaughter because:

- Mr. Fournier's conduct was tantamount to an illegal act, since he had contravened a regulatory provision related to occupational health and safety. In this case, Mr. Fournier failed to ensure that the walls of the trench were shored, in accordance with the requirements of section 3.15.3 of the *Safety Code for the Construction Industry*;
- That unlawful act caused Mr. Lévesque's death;

- The failure to shore up a wall of a trench like the one described, was objectively dangerous and constituted a marked deviation from the conduct of a reasonable person;
- The risk of collapse of the trench was foreseeable and a reasonable person, in the same circumstances as those described above, would have foreseen the resulting risk of bodily injuries.

The Court held that in breaching the obligation to shore a trench, Mr. Fortier's behaviour clearly demonstrated indifference, detachment, and disinterest, revealing a lack of consideration for the foreseeable consequences.

Although the Court could also have convicted Mr. Fournier of criminal negligence causing death, Judge Dupras rather ordered a stay of proceedings because of the rule against double jeopardy based on the same facts.

Practical Advice for Employers

When a fatal accident occurs in your establishment or on your construction site, it is important to:

1. understand the circumstances surrounding the event before publishing any press releases that might prove to be incriminating for the business or for any individual;
2. carry out an internal investigation, in tandem with that of the CNESST and the police;
3. call upon a qualified professional who can:
 - a. assist you with the investigations being conducted by the CNESST and the police;
 - b. guide the business or certain employees who might be identified as potential suspects;
 - c. explain the obligations of each actors involved, as the context of the case develops.

Are you ready?

The only remaining question is quite simple: in the event of a serious or fatal accident, is your business prepared to prove that it has acted with reasonable diligence? More specifically, will your business be able to demonstrate:

- that it has fulfilled its duty of foresight by identifying work-related risks and determining appropriate measures to be implemented?
- that it has fulfilled its duty of effectiveness by requiring implementation of concrete measures to ensure worker safety, as regards equipment, training and supervision, in order to secure compliance with safety regulations?
- that it has fulfilled its duty of authority, by refusing to tolerate dangerous behaviour and by imposing sanctions on employees who fail to comply with a basic standard of care?

This recent judgment reminds us of just how important it is to put in place concrete measures to control health and safety, both in industrial establishments and on construction sites.

¹ *Criminal Code*, sect. 222.

² *R. v. Fournier*, 2018 QCCQ 1071.

³ *Criminal Code*, sect. 220.

⁴ *Criminal Code*, sect. 221.

⁵ *Criminal Code*, sect. 236(b) — The sentencing hearing will be held later.

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