PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Eagles, 2010 NSPC 18

Date: 20100212
Docket: 1715571, 1715572 and 1715573
Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Eric Eagles

Revised decision:	The oral decision date should read February 12, 2010. This replaces the previously distributed decision.
Judge:	The Honourable Judge Theodore K. Tax
Heard:	January 22, 2010, February 5, 2010 and February 12, 2010, in Dartmouth, Nova Scotia
Oral decision:	February 12, 2010
Charges:	Section 17(1) and 74(1)(a) of the **Occupational Health and Safety Act** x 3
Counsel:	Peter Craig, for the Crown Donald Murray, Q.C., for the Defence

By the Court:

Introduction:

[1] The decision for the Court to render today is to determine a fit and proper sentence for Mr. Eric Eagles. He has been found guilty of contravening two provisions of the **Fall Protection and Scaffolding Regulations** of the **Occupational Health and Safety Act** of Nova Scotia. Firstly, that he failed to ensure that a guardrail was installed at the perimeter or open side where a person was exposed to a hazard of falling contrary to Section 7(1) and 9(1)(b) of the **Fall Protection and Scaffolding Regulations** and Section 17(1) of the **Act**. Secondly, that he failed to ensure that a guardrail was constructed or installed as required by Section 9(2)(d) of the **Fall Protection and Scaffolding Regulations**, Section 17(1) of the **Occupational Health and Safety Act** and in both cases, he thereby committed an offence contrary to Section 74(1)(a) of the **Occupational Health and Safety Act**.

[2] The facts of the case and all of the legal issues that had to be analysed and determined were set out in my written decision which was released on November 6th, 2009 and reported at 2009 NSPC 49.

[3] Briefly stated, shortly after 8:00 a.m. on September 25th, 2006 Mr. Keith Myles began laying bricks under a steel I-beam supporting the roof overhang above a concrete sidewalk located at the Downsview Mall in Sackville, Nova Scotia. At that time, he was working on a work platform supported by scaffolding that was approximately 13 feet above the concrete sidewalk. As he stepped out and reached to secure his block or level line, he placed one foot on the open edge of the false ceiling suspended by wires under the roof overhang. When he placed his weight on that false ceiling, it gave way and Mr. Myles fell down onto the concrete sidewalk below. He suffered serious injuries, and a short time later, he died as a result of those injuries.

[4] The scaffolding had been placed up against a steel I-beam, supporting the roof overhang, however, no top guardrail or mid-guardrail had been constructed or installed and attached to the scaffolding as required by Sections 7(1), 9(1)(b) and 9(2)(d) of the **Fall Protection and Scaffolding Regulations**.

[5] These are strict liability offences and I found that the *prima facie* case relating to two counts in the Information alleging contraventions of the **Fall**

Protection and Scaffolding Regulations were established beyond a reasonable doubt by the Crown, and that the Defence did not establish a due diligence defence on a balance of probabilities.

[6] In finding that Mr. Eagles did not establish a due diligence defence on a balance of probabilities, I concluded that he did not take every reasonable precaution to avoid the contraventions of the Nova Scotia **Occupational Health and Safety Act** as particularized in counts #1 and #2 of the Information.

[7] In the written decision, I found that Mr. Eagles was negligent in his inspection of the work area before work at heights commenced and for failing to properly supervise the labourer, who he had instructed to install the mid-rail. In the final analysis, Mr. Eagles had the greatest degree of control and authority and he had the ability to create and maintain a safe and healthy workplace on the morning of September 25th, 2006. I concluded that he failed to ensure that guardrails or other fall protection measures were installed before Mr. Myles started to lay bricks under the steel I-beam on the open side or end of that work area.

The Crown's Position on Sentencing:

[8] The Crown's position is that, by operation of the **Summary Proceedings Act**, all of the principles and purposes of sentencing outlined in Sections 718, 718.1 and 718.2 of the **Criminal Code** apply and are superimposed on the contextual principles of sentencing established in regulatory prosecutions.

[9] The Crown refers to the *R. v. Cotton Felts Ltd.* (1982) 2 C.C.C. (3rd) 287 (Ont. C.A.) in support of its position that deterrence should be the court's primary focus. In that case, the Ontario Court of Appeal established the principle that the amount of the fine will be determined by the need to enforce regulatory compliance through deterrence.

[10] However, most cases cited by the Crown involved corporate defendants, often large companies employing many employees, and those cases incorporated the *Cotton Felts* factors such as the size of the company and the scope of its economic activity in reaching their decisions. The Crown acknowledges that many of the factors mentioned in *Cotton Felts* do not apply to an individual, hourly paid defendant charged with regulatory offences, but the Crown submits that deterrence remains the overriding factor, with appropriate modifications to fit the circumstances.

[11] The Crown points out that in Section 74 of the **Occupational Health and Safety Act** there is authority for the Court to impose fines, and under Section 75 there is authority to make orders, which have been referred to as "creative sentencing options".

[12] After referring to fatality cases, both in Nova Scotia and in other jurisdictions, the Crown recommends that the Court order a fine and creative sentencing option in the total amount of $40,000 to $50,000, which amount is to be determined and allocated according to the defendant's circumstances. In response to the Court's inquiries, the Crown recommended some creative sentencing options for the Court to consider.

The Defence Position:

[13] The Defence articulates a different analytical approach for the Court to adopt in coming to its decision as to a fit and proper sentence.

[14] The Defence submits that the Court should first conduct an analysis of the defaults committed by Mr. Eagles and then determine the moral blameworthiness of Mr. Eagles in light of that assessment, the context of the case and the purposes and principles of sentencing in Sections 718, 718.1 and 718.2 of the **Criminal Code**.

[15] Defence counsel submits that the moral blameworthiness of Mr. Eagles, as determined by the Court in the November 6th, 2009 decision, was based upon Mr. Eagles failure to adequately supervise, his misplaced trust in an experienced worker, errors of judgment in interpreting the provisions of the **Act** and the **Fall Protection and Scaffolding Regulations** and his failure to adequately inspect the scaffolding and fall protection measures before work commenced in that "work area", all of which amounted to negligence.

[16] While the Defence submits that Mr. Eagles' actions or his failure to take all reasonable precautions contributed to the possibility that Mr. Myles would suffer injury and that his actions and decisions contributed to Mr. Myles being exposed to the hazard of a fall, those actions did not cause Mr. Myles to fall off the work platform to the ground. He points to Judge Anne Derrick's decision in *R. v. Nova*

Scotia Power Inc. 2008 Carswell N.S. 667 at paras 40 and 43 to support his submissions for this important distinction.

[17] Defence counsel also submits that the Court should have regard to the role that any other contributing negligence may have played in the accident, which resulted in Mr. Myles' death. He maintains that Mr. Eagles' defaults were not conscious or planned and when those factors are taken into account with general sentencing principles, but especially where an individual foreman or supervisor was found guilty, the appropriate range of fine and creative sentencing options is significantly lower than the range recommended by the Crown.

[18] Defence Counsel maintains that a global fine in the amount of $1,000 to $2,000 would be appropriate in all of the circumstances of this case. In addition, after being provided some time by the Court to consider the issue of creative sentencing options, the Defence proposed a creative sentencing option as part of their sentencing submissions.

Applicable Sentencing Principles:

[19] By virtue of the provisions of the **Summary Proceedings Act**, RSNS 1989, c. 450 s. 7(1) as amended, the sentencing considerations outlined in the **Criminal Code of Canada**, R.S.C. 1985, Chap. C-46, Sections 718, 718.1 and 718.2 are also applicable to sentencing in cases such as the one before this Court.

[20] In addition, according to Mr. Norman Keith's **Canadian Health and Safety Law: A Comprehensive Guide to the Statutes, Policies and Case Law, looseleaf (Aurora: Canadian Law Book, 2009),** at pages 10-63 and 10-76.1 to 10-76.4, there are usually three primary sentencing principles for the Court to consider in health and safety prosecutions. They are: (1) deterrence, both specific and general; (2) retribution; and (3) rehabilitation/reform.

1. Deterrence

[21] As a starting point, specific deterrence of the accused person or corporate defendant and general deterrence of others in society should provide a message that similar contraventions of public welfare legislation will have serious consequences.

[22] General deterrence also has an educational element and that element may also be achieved through the publicity and information provided by the decision which will make other people aware of what occurred. Through this information and education, other individuals or companies are encouraged to re-double their efforts to comply with health and safety legislation, check their systems and review legislation in ongoing educational sessions to ensure that a safe and healthy workplace is created and maintained.

[23] Individual or specific deterrence is aimed at the particular defendant before the Court and is premised on the idea that a harsher sentence will discourage further violations.

[24] In assessing the issue of specific deterrence, in my view, the Court is required to consider factors which could be regarded as mitigating or aggravating circumstances, and while the following is not an exhaustive list, factors which ought to be considered are:

(a) whether the accused had any prior violations;

(b) the amount of authority that the accused had over the tasks in question;

(c) was the accused's failure to comply with the legislation due to deliberate recklessness or indifference, or some monetary gain, or more the result of a momentary lapse or inattention;

(d) did the accused make some efforts, even if determined to be inadequate by the Court, to comply with the legislative requirements;

(e) was the accused generally vigilant in relation to safety concerns or were workers previously exposed to unnecessary risk of injury;

(f) was there a fatality - the authorities reviewed by me seemed to indicate a general trend in imposing an elevated monetary sanction where a fatality was involved;

(g) were there any findings or possibilities of contributory negligence to be considered.

[25] This last factor, that is, the possibility of contributory negligence brings into consideration the accused's degree of moral blameworthiness and if so, the appropriate disposition ought to take into account that the accused should not be required to shoulder the burden of all of the contributory negligence that existed in this case on the work platform at the Downsview Mall on September 25th, 2006.

[26] Concerning the issue of whether contributory negligence should be a factor to be considered in determining a fit and proper sentence, Defence counsel referred the Court to the principles of the **Internal Responsibility System** set out in Section 2 of the **Occupational Health and Safety Act** of Nova Scotia. In that section, one finds the foundation of the **Act** and Subsection 2(a) states, "that everyone in the workplace shares the responsibility for the health and safety of persons in the workplace".

[27] Of course, Subsection 2(b) of the **Act** also states that the primary responsibility for creating and maintaining a safe and healthy workplace rests with the person who has the greatest authority and ability to create and maintain that safe and healthy workplace. On September 25th, 2006, Mr. Eagles was that person at the Darim Masonry Limited worksite at the Downsview Mall.

[28] In addition, Defence counsel has cited the case of *R. v. Giant Yellowknife Mines Limited*, 1991 Carswell NWT 33 (NWT Territorial Court) as authority for the proposition that contributory negligence is an appropriate factor to consider in the Court's sentencing decision. I have reviewed the decision of Judge Bourassa in *Giant Yellowknife Mines* and I agree with his reasoning that contributory

negligence is a factor that is open to the Court to consider in the assessment in the penalty as it is relevant to the issue of the moral blameworthiness or criminality of the conduct of an individual accused person. I also note that Bourassa J. held that contributory negligence may also be "carefully considered" in the case of a corporate defendant so as not to penalize a corporation for acts or omissions of employees who deliberately ignored or frustrated the corporation's safety efforts and, in particular, I refer to paragraphs 19 to 22 of the *Giant Yellowknife Mines Limited, supra*.

[29] In my opinion, it is appropriate for the sentencing judge to look at issues of contributory negligence or any intervening acts that played a significant role in the contravention of the **Act** or any injuries that occurred.

[30] The other two primary sentencing principles generally applicable in the sentencing of defendants for violations of health and safety legislation are retribution and rehabilitation/reform.

2. Retribution

[31] Briefly stated, this principle involves the moral condemnation of the offence by society. This principle requires the Court to focus on the particular violations by the defendant as prohibited by law and then relates the punishment of the defendant to the offence committed. In this way, retribution in a criminal context represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the defendant: see *R. v. M (L.A.)* [1996] 1 SCR 500 at pp. 557-558.

[32] This principle of sentencing essentially incorporates the principles mentioned in Sections 718.1 and 718.2 of the **Criminal Code** which require that the Court to consider proportionality, parity and restraint in determining an appropriate sentence.

A. Proportionality

[33] This principle requires a sentence to be proportionate to the gravity of the offence and the defendant's degree of responsibility, but it also requires the sentence to be proportional to the defendant's moral blameworthiness by assessing all aggravating and mitigating factors in light of all circumstances relating to the offence. In assessing this principle, the Court must not be unduly influenced by the enormity of the tragic consequences in its considerations as to the appropriate sentence.

B. Parity

[34] The principle of parity has been described by Judge Anne Derrick, in the *Nova Scotia Power Inc., supra* at paragraph 51, as a sentence that "should be similar sentences imposed for similar offenders for similar offences committed in similar circumstances" which follows very closely, if not identically, the wording of Section 718.2(b) of the **Criminal Code**.

[35] But as Judge Derrick pointed out in paragraph 52 of the *Nova Scotia Power Inc.* case, it is not easy to make comparisons to other cases in which there was a

fatality, especially where there is no specific finding by the Court of a “causal” connection between the infraction and the worker’s death.

C. Restraint

[36] This principle can be simply stated as the penalty imposed should be no greater than is required to meet the objectives of sentencing. This point was accepted and applied by Judge Derrick in *Nova Scotia Power Inc.*, *supra,* at paragraph 56 and by Judge Alan Tufts, in *R. v. Meridian Construction Inc.* and *Donald London* [2005] NSPC 40 at paragraph 22. The application of this principle requires a “measured response” in determining a fit and proper sentence.

3. Rehabilitation and Reform

[37] Finally, the last of the three major sentencing principles which is applicable to occupational health and safety prosecutions is that of rehabilitation and reform. This principle reflects the mutual interest of society and the defendant to foster positive changes so that the defendant and others are more safety conscious in the future. This principle recognizes that the purpose of health and safety legislation is

to protect and improve the occupational health and safety in the workplaces of Nova Scotia. This principle has often resulted in courts employing several creative sentencing orders under Section 75 of the **Occupational Health and Safety Act** to promote health and safety in the workplace.

The Circumstances of the Defendant:

[38] Mr. Eric Eagles comes before the Court as a 47 year old man who is married and is the father of two children.

[39] He completed the masonry program at the Nova Scotia Community College and has worked in the masonry business since 1987. Since 1994, he has been a foreman with Darim Masonry and his employer described him as “an ethical and excellent worker who is responsible and reliable and will have long-term employment with the company”.

[40] Mr. Eagles is an hourly paid employee of Darim Masonry whose moderate level of gross income for the year involves working a significant number of hours of paid overtime.

[41] Mr. Eagles has genuinely expressed his regret and remorse for Mr. Keith Myles' tragic accident and accepts responsibility as the foreman for his failure to adequately supervise and inspect the guardrail installation before work started in that area.

[42] This court process has been stressful for Mr. Eagles and members of his family. Mr. Eagles has had no prior convictions for any occupational health and safety infractions.

Input from the Victims:

[43] Statements were read in Court by Mrs. Katherine Myles, wife of Keith (Mickey) Myles; by his daughter, Annette Travis, and by his former daughter-in-law, Jodie Myles. They spoke of the attributes of Keith Myles as a husband, father, grandfather and a very proud and professional mason. They all spoke about their personal loss and the impact on their lives of Mr. Keith Myles' death, but they also asked the Court to consider any measures that could make Nova Scotia workplaces safer and healthier.

[44] Undoubtedly, the members of the Myles' family have struggled to try and make sense of Mr. Keith Myles' death. This is a tragic case. Mr. Myles went to work on September 25th, 2006 and never came home again. No decision on sentencing today can bring total comfort to the Myles family, but they asked the Court to consider alternatives which might bring some measure of closure for them and, at the same time, promote the maintenance of safer and healthier workplaces in Nova Scotia.

Determining an Appropriate Sentence:

[45] The Nova Scotia **Occupational Health and Safety Act** provides the Court with a great deal of latitude in crafting a sentence under Sections 74 and 75 of the **Act**. Section 74 provides the Court with authority to impose fines of up to $250,000. The Court may also utilize what have been referred to as "creative sentencing options" under Section 75 of the **Occupational Health and Safety Act**. There is no requirement to impose a fine under Section 74, and the Court has the latitude to craft an appropriate sentence using its authority under either Section 74 or Section 75 or both of these sections.

[46] In this case, after an examination of all of the relevant factors under the three primary sentencing principles in occupational heath and safety prosecutions, I am convinced that a considerable degree of restraint is required to achieve a measured response for an appropriate sentence.

[47] At the outset of my earlier decision, I found that Mr. Eagles understood the requirements of the provisions of the **Act** and the **Fall Protection and Scaffolding Regulations** and made efforts to comply with them. This was not a case of reckless disregard or deliberate indifference to the legislative safety measures. With respect to the mid-rail, I found that he instructed a labourer to install a mid-rail, but for some reason that worker did not do so. In this regard, I found that Mr. Eagles failed in his duty to properly supervise the labourer and to inspect the guardrails before work was commenced in that area. I have no doubt that the actions of that worker contributed to the hazard of Mr. Myles working at heights without any fall protection measures in place.

[48] With respect to the top-rail, Mr. Eagles turned his mind to that issue, but I held that he made an error in judgment in believing that the steel I-beam supporting the roof overhang above the sidewalk could substitute as a top-rail in the

circumstances of this case. Again, this is not an issue of reckless disregard, but more so a misinterpretation of the statutory requirements. Defence counsel points out that the "competent person" appointed by the Department of Labour to later inspect the scaffolding when work re-commenced did not require the installation of a top-rail, also believing that the steel I-beam would be sufficient for that purpose.

[49] Both the failure of the worker to do as he was directed to do and the error in judgment or misinterpretation of the **Fall Protection and Scaffolding Regulations** go to the issue of, and the appropriate sanction for, the moral blameworthiness of Mr. Eagles for the contravention of the legislation. However, it must also be remembered that Mr. Eagles had the primary responsibility for creating and maintaining a safe workplace at Darim Masonry's workplace at the Downsview Mall on September 25, 2006.

[50] Furthermore, there is no doubt that Mr. Eagles' failure to inspect and to properly supervise the labourer as well as his errors in judgment regarding the interpretation of the legislation relating to the top-rail led to a situation where a danger was created and Mr. Myles was working at heights without any fall protection measures in place. However, I did not find in my earlier decision that

this dangerous situation caused Mr. Myles to fall off the work platform. We do not know why Mr. Myles stepped off the work platform and placed one foot on the open end of a false ceiling that was only held up by wires. He was not asked, nor was he ordered, to do his work in that manner. The false ceiling was not a concealed hazard. The false ceiling was open to view and it is well known in the construction industry that a suspended false ceiling, like the one at the Downsview Mall, is not designed to bear any significant weight.

[51] In assessing a fit and proper sentence for Mr. Eagles, I conclude that I am required to take into account Mr. Myles' own actions, which contributed to his fall off the platform, as they also impact Mr. Eagles' degree of moral blameworthiness, and in this case, to the specific results or consequences, which arose from the contraventions of the legislation.

[52] Several cases were provided to me to assist in assessing the factors of proportionality and parity. As I previously mentioned, those other cases turn on their particular facts and courts must carefully examine all of the relevant sentencing principles in the context of the facts and circumstances of the instant case. Other cases do offer some guidance, but they must be carefully examined to

determine whether principles of parity and other key sentencing principles were considered and applied by those courts.

[53] Recent Nova Scotia fatality cases where foremen were found guilty of breaches of the **Act** and **Regulations** were *Daniel Magee* (an unreported decision of MacDonald, J. in the Nova Scotia Provincial Court of October 28, 2003) and *Donald London* [2005] NSPC 40, which actually involved the same incident as the one in which *Meridian Construction Inc.* and *Charlie MacIntryre Contracting* were also convicted and fined. There were several breaches of the legislation by the corporations and the individual, hourly paid supervisors and foremen. The trial Judges in those cases ordered fines in the amount of $110,050 against *Meridian Construction Inc.* and its foreman, *Donald London*, in the amount of $11,500. As for *Charlie MacIntyre Contracting*, a fine of $28,000 was levied against the company while its foreman, *Daniel Magee* was fined in the amount of $8,050.

[54] The fatality cases involving *Meridian Construction Inc.* and *Charlie MacIntyre Contracting* are consistent with other cases in this Province and across Canada, which generally impose significantly higher sanctions on corporations or businesses than those imposed on an individual defendant, such as an hourly paid

foremen or supervisor. Factually, those cases are also quite different from this case, as the worker fell to his death by accidentally stepping onto a hidden danger – that is one that could not be seen nor one of which the worker could have been aware. Moreover, the Court found that the hidden danger was present for 13 days. In that case, Judge Tufts said "it was an accident waiting to happen". The failure to properly secure and inspect the skylight opening in the roof, where the worker fell to his death, went to increase the gravity of the offence and the moral blameworthiness of the defendants. As Judge Tufts said in *Meridian Construction Inc.* and *Donald London*, *supra*, at para 17*:*

> As well, the failure to inspect and better repair the skylight openings after Jordan Macumber brought the same to the defendant's attention continued for eight days, notwithstanding that there were not workers presently on the roof this was, in my opinion, serious. This was more than a mere "slip" or an error in judgment. In my opinion it, together with the other incidences of inaction, represented a serious failure in the defendant's implementation of its' safety regime.

[55] Looking at those cases compared to this case and bearing in mind principles of proportionality and parity, Mr. Eagles did not create or negligently leave in place a hidden hazard, which caused Mr. Myles to fall off the work platform. The lack of a top-rail on the work platform was a result of Mr. Eagles actually turning his mind to the question, but making an error in judgment in the circumstances of

this case. In my view, the facts of this case and my conclusions in the trial are significantly different from those of Judge Tufts in the *Meridian Construction Inc.* and *Donald London* case.

[56] The Crown also provided the case of *Delgant 2000 Limited* and *Pasquale Defranco* (2005), W.C.B. (2nd) 61, a decision of the Ontario Court of Justice where the corporate accused was fined $300,000 and the individual accused was fined $30,000. In that case, two workers doing concrete formwork fell 16 floors to their death when the form and the work platform collapsed.

[57] In the *Delgant* case, Mr. Defranco was the supervisor on the job who had also designed and actually constructed the formwork. In the Court's decision at page 4, it was held that Mr. Defranco's design and construction of the formwork was "grossly insufficient" and that he had also failed to get appropriate approvals and inspections – all of which was regarded as "serious failures constituting a high level of negligence".

[58] In my view, the case of *Delgant, 2000 Ltd.* and *Defranco, supra* is in no way a comparator to this case. In that case, the Crown had been seeking a jail

sentence for Mr. Defranco and, based on the facts of that case, it is clear that the sentencing judge determined that Mr. Defranco bore a very high degree of moral blameworthiness. Moreover, in the *Delgant 2000 Ltd.* case there was no contributory negligence whatsoever on the part of the workers who died in the fall. I find that the facts and circumstances of the instant case are clearly distinguishable from those present in the *Delgant 2000 Ltd.* case.

[59] In coming to my decision today, I have also reviewed other cases provided by counsel which documented the trend of significantly higher sanctions for a corporate accused compared to an individual accused. The cases which I reviewed were: *R. v. FKP Tool Manufacturing Ltd.*, 2003 Carswell Ont. 6815 (Ont. C.J.) where the corporation was fined $200,000 plus victim fine surcharge while the supervisor was fined $10,000 plus victim fine surcharge; *R. v. Bradsil 1967 Limited*, (1994) Carswell Ont. 4450 (Ont. C.J. - Prov. Div.) where the two companies involved were fined $15,000 and $12,500 and their supervisors, $1,000.00 and $800. In the *Bradsil 1967 Limited* case, no one was injured and the Court found that the "supervisory lapses were of brief duration". In *R. v. Ricklis Construction Ltd.*, 2003 Carswell Ont. 1654 (Ont. C.J.), the Court convicted the company and found that no guardrails or fall protection measures were in place,

but no one was injured. The corporation was fined $15,000 as deterrence was the primary concern and the Court concluded that the fine adequately reflected the corporation's moral blameworthiness.

[60] Having carefully reviewed all of the sentencing purposes and principles, which form the basis for my decision, and also factors such as parity, proportionality and restraint, I find that the degree of Mr. Eagles' moral blameworthiness would be at the lower end of a continuum. For that reason, I also find that Mr. Eagles should not be required to shoulder the burden exclusively for all of the other acts which contributed to Mr. Myles' fall from the work platform, and ultimately to his death on the morning of September 25th, 2006.

[61] I have determined that a fit and proper sentence in all of the circumstances of this case should include some elements of specific deterrence with the primary focus being on general deterrence and creative sentence options. In reaching my decision, I also believe that the focus on general deterrence and rehabilitation or reform, through creative sentencing, will have an educative effect to shift the attitude of people in the workplace and in the public generally. Creating and

maintaining a safe and healthy workplace is a requirement of law; it is not an option.

Conclusion:

[62] In my view, crafting an appropriate sentence in this case should send a message that vigilance is required at all times and that mistaken assumptions about workplace safety may have dangerous, and sometimes, tragic consequences.

[63] Mr. Eagles knew the requirements of the legislation and turned his mind to what was required to be done, but his misplaced trust in a labourer to do as he was directed to do led to his failure to adequately supervise and ultimately to his failure to inspect fall protection measures before work commenced at that end of the work platform. The error in judgment regarding the top-rail and whether the I-beam would be a satisfactory substitute is one for which I can only assess a low level of moral blameworthiness since the Department of Environment and Labour's own "competent person" maintained the same position as Mr. Eagles. I have already discussed the role that contributory negligence played in all of the circumstances of this case and taking into account all of the purpose and principles of sentencing, I

make the following orders under Section 75 of the **Occupational Health and Safety Act**:

1. Mr. Eagles shall donate the amount of $2,000 to the Public Education Trust Fund established by the Nova Scotia Minister of Environment and Labour no later than the 13th of August 2010.

2. In addition, to further supplement the educational components of this order and to promote workplace health and safety as well as compliance with the regulatory framework of the **Occupational Health and Safety Act** and its **Regulations**, Mr. Eagles shall make 18 presentations of approximately one hour in duration, including time for questions and answers, at various venues such as the annual spring conference of the Nova Scotia Safety Council, the Nova Scotia Community College, Akerley Campus in courses relating to the Occupational Health and Safety Certification Program, the Bricklaying and Masonry course and the Nova Scotia Construction courses in harness and scaffolding as well as the foreman's course. These 18 presentations will be completed within the next 18 months; that is, on or before August 12, 2011 unless such date is extended by order of the Court. The content and venues for these presentations shall be mutually agreed by the

Department of Environment and Labour and Mr. Eagles. For greater clarity, the content and presentations shall follow the general outlines which were provided by the parties to the Court on February 5th, 2010.

3. Mr. Eagles shall appear in Provincial Court in Dartmouth, Nova Scotia on February 11th, 2011 and provide a status report on the progress towards the full implementation of the Court's order, which update should include, if feasible, a listing of the date and location of presentations that have been made, the length of those presentations and the number of people in attendance. I also would note that, if there was any feedback from the presentations, I would appreciate receiving a summary of the feedback provided by those people who attended the sessions but in any event, an overview of the feedback from the sessions is to be related to the Court during the status report on February 11, 2011. Finally, in terms of the rehabilitation, reform and the educational aspects of this order and I would also request that the overview outline how the presentations evolved after the parties received and reviewed the feedback.

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Theodore K. Tax. J.P.C.