

IN THE PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** *R. v. A.W. Leil Cranes & Equipment (1986) Limited*, 2003NSPC61

**Date:** 20030516

**Docket:** 1002471, 1012473, 1002474

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

A.W. LEIL CRANES & EQUIPMENT (1986) LIMITED

**Judge:** The Honourable Judge Alan T. Tufts

**Heard:** October 21, 22, 23, 24 & December 12, 2002,  
in Halifax, Nova Scotia

**Oral Decision:** May 16, 2003

**Counsel:** R. Woodburn, Counsel for the Crown  
Duncan Beveridge, Q.C., Counsel for the Defendant

**By the Court (orally):**

- [1] Thank you counsel, I think I can deal with this matter presently. First of all, I would like to thank counsel for their very thorough and complete submissions with respect to the disposition of these matters. I reserve the right to file more complete and written reasons for my decision on sentencing this morning if necessary. However, I am satisfied that I have sufficient information to render a decision in this matter now.
- [2] The defendant is to be sentenced after the Court found the defendant guilty of three counts on a four count Information, as a result of a trial in October and later continued to December, 2002. The judgment of the Court was rendered early in the new year.
- [3] In the course of the proceedings this morning, the defence raised the issue of the status of count number four, one of the counts on which the Defendant was found guilty. The defence argued that the guilty finding was based on facts that supported both count number one and count number three with respect to which the Court also rendered findings of guilt.
- [4] I agree with the defence submission with respect to that matter and grant the defence request for a stay with respect to count number four. I am satisfied that the facts which supported count four were included in count number one and count number three. More particularly, count number one and count number three included the facts that constituted the finding on count number four.
- [5] This matter of course, dealt with the accident that happened in Bedford on September of 1999. I am not going to go into all of the details of the events in question as that was included in the Court's decision rendered previously.
- [6] However, to summarize, a 50 Ton Grove crane had been positioned to do work on one corner of the subject building. On the third day of a planned three day job, at the end of the day, the engineer who had commissioned the crane and two other men were in the man basket at the end of the crane and had wanted the operator to move the crane away from the planned lift area and up and over the top of the roof and then ultimately down to the eavestroughing of the roof. It was at this time the crane collapsed. It was

when the operator had moved the crane and extended the boom from the planned lift area that he moved away and exceeded the safe threshold operating radius of the crane and contributed, obviously, to the crane tipping over. The complete findings of the Court are in the previous decision.

- [7] The test for the proper disposition of this matter is set out in **R. v. Cotton Felts Ltd.** (1982) 2 CCC (3d) 287, which is a decision which has been quoted by numerous authorities and which has been commented on at length this morning.
- [8] Defence has also referred the Court to another decision, **R. v. Manchester Plastics Ltd.** (1989) 1 C.O.H.S.C. 3 and supp. reasons at 2 C.O.H.S.C. 154 which also includes a series of considerations that the Court should have in mind in arriving at an appropriate disposition with respect to this matter.
- [9] This is a so-called public welfare statute which creates a regulatory environment for work safety. The benefits and objects of the legislation are well stated and reviewed in the authorities referred to this morning by counsel. With respect to sentencing of course, the paramount consideration is deterrence. Deterrence has a punitive aspect but an educational aspect as well, which was pointed out quite ably by defence counsel.
- [10] The **Cotton Felts** case refers to a complex of considerations which the Court is obliged to consider and which I have had an opportunity of reviewing previously and heard counsels' submissions with respect to this matter this morning. The size of the company, the scope of economic activity in issue, that is, this particular job, the extent of actual and potential harm, and the maximum penalty set out in the statute are to be considered.
- [11] The applicable factors mentioned in Canadian Health & Safety Law - Norman Keith (updated April 2001) at p. 10-74 are also relevant, namely: the continuity of the illegal actions, the profitability as a result of illegal actions which is similar to the scope of economic activity referred to in **Cotton Felts** the background and attitude of the defendant, including its safety record, the post-offence actions of the defendant, prior convictions and the consequences of conviction for the Defendant.

- [12] I am also mindful that the workplace is largely self-policing. This is referred to in the decision by Judge MacDonald in **R. v. The Halifax Water Commission**, [1993] N.S.J. No. 574. Accordingly, consequences for violations should have a sufficient effect to overcome the low risk of detection of infractions. As well, the Court should be mindful that the fine should not amount to a licence fee or a “slap on the wrist” which again is referred to in the authorities.
- [13] Here the company is one of the largest crane operators in the Province, although it only has some 57 employees in four locations in the Province. As Mr. Beveridge, defence counsel, has pointed out there are not a lot of large crane operators. The other one referred to was the Irving Company. It would appear that this company does not compare favourably in size to that company. It is also difficult to compare the size of this company with the other defendants referred to in the authorities, particularly the Ontario authorities, so I concluded that while the defendant company here may be a large operator in this particular field, I would not describe it as a significantly large enterprise in the Province.
- [14] With respect to the extent of harm and potential harm, thankfully there were no fatalities with respect to this accident, although the potential certainly existed for that to have occurred. Mr. LaMontagne was described as having a broken ankle and soreness to his back. He spent two and one half months in hospital and there was damage to his ribs. He underwent numerous surgical operations. The engineer, Mr. Cowie had damage to his elbow and underwent three operations and has some permanent disability. Apparently he was knocked unconscious as a result of the accident and was transported to the hospital by ambulance. Mr. Humphreys similarly spent a week in hospital, had fractures to his heels and lumbar area of his leg and had nerve damage, tendinitis and damage to his elbow. Numerous pains and numbness were still present at the time of the trial.
- [15] The maximum fine as set out in the legislation, of course, is \$250,000.00. The Court also has the ability to order monies paid into a trust fund for education purposes, as well as other remedies which are not sought here.
- [16] The defence described in considerable detail the safety record of the defendant and the safety program certification that began in 1997 and

followed thereafter and began as a result of a previous incident that the company was involved in. I can only conclude from the quite lengthy submissions made on this topic that the defendant has taken its responsibilities for safety in the workplace seriously. It has employed outside experts to audit its safety record as well as doing an internal review. I will not repeat all of the details of that, which were again ably detailed by defence counsel, but it would appear from the extensive attention to safety that the defendant has taken its responsibilities, in my view, seriously with respect to this topic.

- [17] The defendant has been convicted before with respect to an offence under the **Occupational Health & Safety Act**, S.N.S. 1996 c.7. The times, the dates of the offence, when the pleas were entered and the disposition were before the Court. Apparently this previous accident happened in 1997. The matter was ultimately disposed of in February of 2000 . The important aspect, in my view, is that the legal proceedings were only brought to the attention of the defendant after the accident which gave rise to this matter occurred. Accordingly, in this particular proceeding, while it may be possible to take the previous matter into account, I am treating the defendant here as having no prior conviction, essentially as a first offender.
- [18] Both counsel took considerable time in reviewing the many previous authorities that dealt with the imposition of fines with respect to offences under the **Occupational Health & Safety Act** of this Province as well as Ontario. I do not propose, at least this morning, to go through each and every one of those cases as Mr. Beveridge again has ably pointed out, cases turn on their respective facts.
- [19] Clearly, the principles that I referred to earlier apply in each of the cases, and of course, each case is different and cases end up having different results, i.e. different amounts with respect to the imposition of fines. Obviously, if there is a fatality, it is clear that the fines are increased and, indeed, the defendant was subject to a fine of \$17,000.00 and was required to pay a series of other costs and restitution and payments totalling some \$52,500.00 for an incident where a fatality occurred as a result of an infraction under the **Occupational Health & Safety Act**, which I referred to above. The different authorities that were referred to by counsel have a range of dispositions ranging anywhere from \$5.00 to approximately \$50,000.00. Generally there are

some that are much higher but of the many authorities referred to by counsel, most cases fell within the \$5,000.00 to \$60,000.00 range.

- [20] In my opinion, the range of sentencing, or the range of fines suggested by the defence is appropriate having taken into account the considerations I referred to above as well as looking at the range of dispositions that were referred to in the authorities by counsel.
- [21] I am satisfied that a total of \$25,000.00 together with victim surcharge on the portion which I intend to attribute to the fine, is a fit and proper disposition having regard to the principles that I alluded to earlier. With respect to count number one, I would impose a fine of \$2,000.00 with respect to count number three, a fine of \$10,000.00 making a total in fines of \$12,000.00 and there will be a victim surcharge of 15 percent which I calculate to be \$1,800.00 for a total of \$13,800.00. With respect to the remaining portion of the disposition, I would order under s.75(1)(b) a contribution by the defendant of \$13,000.00 all of which totals, by my calculation, \$26,800.00.
- [22] The fine and surcharge is due and payable on or before April the 30th of 2004 and the Order under s.75(1)(b) will require the defendant to pay on or before April the 30th of 2004 the sum of \$13,000.00 to the Public Education Trust Fund.

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ALAN T. TUFTS, J.P.C.