Court File No. 13-6164

Citation: *R. v. ABS Machining Inc.*, 2015 ONCJ 213

Ontario Court of Justice

R. v. ABS Machining Inc.

Heard: February 26, 27, March 5, 2015
Judgment: April 10, 2015

A. Amenta, Justice of the Peace

Counsel:

For the Crown: M. Nicol

For the Defendant: M. Stieber

Reasons for Judgment

Introduction

1. The Defendant ABS Machining Inc. ("ABS") is in the business of producing machined metal products from its premises in Mississauga. In March, 2012 it received a purchase order from Caterpillar Inc. to manufacture six rear spindles, which are large cylindrical components for Caterpillar's massive trucks used in the oil industry. Each rear spindle weighs about 10,000 pounds and is 4 to 5 feet long with a wider diameter at one end.

2. The second rear spindle to be manufactured was nearly completed when ABS received instructions from Caterpillar on May 3, 2012 to make a modification to it. In particular, a "tunnel" groove located at the wider end of the rear spindle would have to be ground down. As the rear spindle had already been machined, the modification would be done by hand. The next day, this task was assigned to Michael Antoni ("Antoni"), a relatively inexperienced deburrer who had been employed by ABS for seventeen months.

3. The rear spindle was lying horizontally on two stands, with the tunnel at the top. The rear spindle would have to be rotated so that the tunnel faced down in order for it to be worked on. Antoni claimed that he was instructed by his supervisor Ian Sue ("Sue") to rotate the rear spindle, which Sue denied. Antoni used an overhead crane to rotate the rear spindle. During this manoeuver, the rear spindle fell off its stands and onto Antoni's right foot, which had to be amputated as a result of this tragic accident.

4. ABS was charged with the following:

    1. On or about the 4th day of May, 2012, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 45(a) of Ontario Regulation 851, R.R.O 1990, as amended, were carried out at the workplace located at 1490 Sedlescomb Drive, Mississauga, Ontario, contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

        Particulars
        The defendant failed to ensure that the spindle was lifted and/or carried and/or moved in such a way and/or with such precautions and/or safeguards that did not endanger the safety of the worker.

    2. On or about the 4th day of May, 2012, did commit the offence of failing, as an employer, to provide information, instruction and supervision to a worker to protect the health or safety of the worker at the workplace located at 1490 Sedlescomb Drive, Mississauga, Ontario, contrary to section 25(2)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

        Particulars
        The defendant failed to provide information and/or instruction and/or supervision to a worker regarding how to safely move the spindle.

5. These charges are strict liability offences which means that the Crown must prove the *actus reus* beyond a reasonable doubt. The burden then shifts to the defendant to establish the defence of due diligence on the balance of probabilities. This will require an inquiry into whether what transpired was reasonably foreseeable as well as a consideration of ABS's safety training and procedures.

The *Actus Reus* – The Facts

6. Other than the issue of whether Sue instructed Antoni to rotate the spindle, the material facts were not in dispute.

7. Antoni's job as a deburrer consisted of grinding down any burrs or rough edges on ABS's products, which was usually the final step in the manufacturing process.

8. Caterpillar's order for the six spindles was a limited run in order to determine if ABS would receive a larger order. They were described as prototypes.

9. Shaidi Mohaisen ("Mohaisen"), ABS's Operations Manager, described the process of engineering and manufacturing a new product. Unlike products that are in a full production run, the designing and manufacturing of new products happens simultaneously.

10. With respect to the spindles, ABS received the unfinished product in its "raw" form after it had been cast elsewhere. ABS was then responsible for the machining process, including drilling holes, creating the tunnel groove and smoothing out and polishing the device. Mohaisen explained that the product needed to be handled in order to devise a procedure for lifting or rotating it.

11. The first spindle had been completed and shipped to the customer. In a telephone conversation on May 3, 2012 between Caterpillar's Dan Beeler and ABS's Angelo Venturin and in a subsequent email the same day, Caterpillar required ABS to grind down an additional 4 to 5 mm of the tunnel groove.

12. Until that point in time, there was no need to rotate the spindle nor had any procedure been devised to do so as the creation of the tunnel groove was accomplished through the machining process.

13. Antoni was usually assigned to work at ABS's Brampton plant but on May 4, 2012, he was required to temporarily work out of the Mississauga location to fill in for absent colleagues. His usual manager Henry Choi was on vacation so he was instructed to work with Sue.

14. That morning, Antoni and Sue went together to the rear spindle in order for Antoni to make the requested modification using hand tools. At that point, Sue realized that the tunnel groove was facing the wrong direction. He told Antoni that it "looks like it's on the wrong side."

15. The two walked to an adjacent building to retrieve the tools they would need for the task. The worker responsible for the safe-keeping of the tools was not there.

16. Sue instructed Antoni to return to the job site while he waited to sign out the tools.

17. Antoni claimed that Sue told him to "prep and rotate" the spindle. Sue denied having told Antoni to rotate the spindle. Rather, he claimed to have instructed him to "prep the tools" and to "get all the tools ready for the job".

18. Sue testified that because the spindle was a very heavy new piece, there was no expectation that a junior deburrer would be responsible for rotating it. Rather, as the senior employee on the job, it would be his responsibility to do so for Antoni. Lastly, Sue testified that he himself had not yet decided on how to rotate the spindle.

19. Antoni returned to the spindle on his own. He threaded a piece of rebar which was flattened at one end (which was normally used as a scraper) through one of the holes on the wider end of the spindle and attached hooks for the overhead crane to each end of the rebar. He had the crane lift the spindle from this attachment at which point it fell off the stands and onto his foot.

20. ABS concedes that Antoni moved the spindle in an unsafe fashion.

21. Although Antoni had received safety and overhead crane training (which will be reviewed later in this judgment), he did not receive any training or instructions on how to specifically rotate the spindle. Due to the unique sizes and shapes of the items being worked on, each piece required its own specific procedure for its movement.

22. Further, there was no dispute that at the time of the accident ABS had not yet developed a plan on how to rotate the spindle (although such a plan was developed after the accident). Nor was it disputed that Antoni was unsupervised when he attempted to rotate the spindle.

23. Both Sue and Mohaisen testified that ABS had a protocol in place whereby any new and large pieces needing to be moved or rotated would be done only by materials handlers or

supervisors. There was no expectation that a junior deburrer such as Antoni would undertake such a task. I accept this evidence for the following reasons:

1. Antoni admitted that it was "exceptional" and "extraordinary" for him to be instructed to rotate the spindle;
2. He admitted that it was "not the way it works at ABS" for a junior deburer to be instructed to rotate such a large a new piece ;
3. He indicated that the spindle had never previously been rotated by anyone at ABS; and
4. That these new and large pieces had always been rotated for him in advance by someone else.

The *Actus Reus* – The Law

24. The applicable provisions of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended are as follows:

> **Duties of employers**
> 25. (1)An employer shall ensure that,
> (c) the measures and procedures prescribed are carried out in the workplace;
>
> (2)Without limiting the strict duty imposed by subsection (1), an employer shall,
> (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;

25. The applicable provisions of Ontario Regulation 851, R.R.O 1990, as amended are as follows:

> **45.** Material, articles or things,
>
> (a) required to be lifted, carried or moved, shall be lifted, carried or moved in such a way and with such precautions and safeguards, including protective clothing, guards or other precautions as will ensure that the lifting, carrying or moving of the material, articles or things does not endanger the safety of any worker;

26. Mr. Stieber contends that the Crown has failed to prove the actus reus beyond a reasonable doubt. He argues that ABS had no obligation to provide Antoni with "measures and procedures" or "information, instruction and supervision" for the safe movement of the spindle since it was not Antoni's responsibility to move it.

27. Mr. Stieber relies upon the judgment of Zisman J. in *Ontario (Ministry of Labour)* v. *679052 Ontario Ltd. (c.o.b. Auction Reconditioning Centre)*, [2012] O.J. no. 5849 (Ont. Court of Justice). In that case, the worker's job was to clean cars but he was not authorized to drive them. The worker nevertheless drove a customer's car and collided with another thereby injuring a co-worker.

28. In concluding that the *actus reus* had not been proven beyond a reasonable doubt and in setting aside the convictions, Zisman J. stated at paragraph 41:

> If the trial justice had applied the law properly it is difficult to understand on what basis she could have found that an individual whose job it was not to drive should have received information, instruction and/or supervision about the safe operation of a vehicle or that a worker, who was not hired to drive a vehicle at the workplace, should have a valid driver's licence and/or be sufficiently trained in the safe operation of a vehicle.

29. The case at hand, however, is distinguishable. Unlike the worker in *Auction Reconditioning* who was not authorized to drive under any circumstances (in fact, he did not possess a driver's licence), Antoni was not prohibited from moving any pieces, just the large and new ones. In fact, Antoni received training on the use of a crane (although not on moving the spindle) and had previously moved smaller pieces on his own.

30. Public welfare statutes such as the OHSA are to be interpreted liberally in order to satisfy their intended role in safeguarding a minimum level of protection for the health and safety of workers. Sharpe J.A. writing for the Court of Appeal in Ontario (Ministry of Labour) v. Hamilton, [2002] O.J. No 283 stated at paragraph16:

> The OHSA is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers. When interpreting legislation of this kind, it is important to bear in mind certain guiding principles. Protective legislation designed to promote public health and safety is to be generously interpreted in a manner that is in keeping with the purposes and objectives of the legislative scheme. Narrow or technical interpretations that would interfere with or frustrate the attainment of the legislature's public welfare objectives are to be avoided.

31. In this case, the narrow interpretation of an employer's obligations under OHSA as suggested by Mr. Stieber would be inconsistent with its intended purpose of ensuring a minimum level of safety for workers. The crown has proven the actus reus beyond a reasonable doubt that ABS failed to have "measures and procedures" and it failed to

provide "information, instruction and supervision" to Antoni for the safe movement of the spindle.

32. Furthermore, to give such broad and liberal effect to the legislation, this conclusion is irrespective of whether or not Antoni was instructed to rotate the spindle. In either case, I am satisfied beyond a reasonable doubt that ABS failed to have "measures and procedures" and it failed to provide "information, instruction and supervision" to Antoni for the safe movement of the spindle. Accordingly, an analysis of this conflicting evidence as set out in *R.* v. *W(D),* [1991] 1 S.C.R. 742 (S.C.C.) is unnecessary (although I will be assessing credibility on this issue in my analysis of the "due diligence" defence).

The *Due Diligence Defence* – Training

33. There was a great deal of uncontradicted evidence regarding the safety and crane training provided to Antoni.

34. At the beginning of his employment on November 29, 2010, Antoni attended a safety orientation session and was given a handbook. Among the topics covered were the following:

    1. "Don't use any equipment for uses other than its intended purpose"; and
    2. The right to refuse any dangerous work or task that was likely to endanger himself or another worker.

35. On January 14, 2012, Antoni also received overhead crane training. This consisted of a classroom session as well as a practical 'hands-on' session. Antoni successfully completed the certification exam with a score of 96%.

36. Among the topics covered were the following:
    1. "Only use attachments as per the manufacturer's recommendations for what they were designed, do not modify or alter its intended use."
    2. "Never use in-house (homemade) devises unless they are properly inspected, rated and certified by a qualified technician/engineer."
    3. "Always verify load weight before lifting (don't take chances, ask if you cannot determine it)."
    4. "Load weight must not exceed the capacity of the lowest rated lifting device being used (i.e. crane, sling, hardware, or attachment)."
    5. "Final decision to lift is made by the operator (ensure it is safe to do so)."

6. "Use your common sense. Think safety!"

37. Antoni claimed that he was taught to use the rebar to rotate devices by a fellow deburrer by the name of "Damian". However, he conceded that the piece rotated by Damian was a crank shaft (which was much smaller than the spindle) and that he should not have relied on a fellow deburrer to instruct him.

38. Antoni also conceded that he failed to adhere to his training in the following ways:
    1. He had no idea how much the spindle weighed;
    2. He failed to ensure that the traveller (which sets out the crane's lifting capacity) was attached to the crane;
    3. He knew that the rebar was not an approved lifting device and that he did not use it for its intended purpose;
    4. He agreed that it was hazardous to attempt to lift the spindle with the rebar and that he knew it would be hazardous at the time he attempted to do so;
    5. He acknowledged that he failed to verify the load capacity for the below the hook attachment;

The *Due Diligence Defence* – The Law

39. Subsection 66(3) of the Act codifies the common law provisions as set out *R.* v. *Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299 regarding the defence of due diligence. It reads as follows:

> Defence
> (3)On a prosecution for a failure to comply with,
> (a) subsection 23(1);
> (b) clause 25(1)(b), (c) or (d); or
> (c) subsection 27(1),
> it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken.

40. The Crown did not deny that Antoni's actions in attempting to rotate the spindle were unsafe or contrary to his training. Rather, it contended that the provisions of the Act were designed to ensure that all employers safeguarded against a worker's accidental, inadvertent or careless behaviour.

41. The Crown relied on a judgment of Whitten J. in *R.* v. *Stelco Inc.* [2006] O.J. No. 3332 (Ont. S.C.). It reads, in part, as follows:

[31] A safe working environment at a minimum must trap for accidental, inadvertent and careless behaviour on the part of the employees. As Justice Harris stated in R. v. Commodore Business Machines (1985) Nov. 15 Provincial Court (Criminal Div.); "*the scheme of the Act appears to be to protect the foolish, heedless, thoughtless employee; the wise careful or thoughtful one will protect himself or herself.*" (at p.11) Regrettably, the reality is that "*no one in any occupation can work 100% of the time without occasional carelessness*". (ref. Collins J., R. v. Spanway Buildings Ltd., April 3, 1986 Provincial Court (Criminal Div.))

[33] The trial judge noted that in this particular context, *"(t)he real question here is what might be anticipated by a reasonable person, did a danger exist and could it be prevented by taking reasonable steps, not whether an employee might take a foolish or thoughtless course of action, it being accepted that people will do foolish or thoughtless acts on the spur of the moment of the ongoing job at hand, or for whatever reason. We do not know exactly why Mr. Turner chose to enter the pit area*."

[34] Obviously, the basement area of the bundler packager was perceived by Stelco as a dangerous area, it had a lock out policy or protocol before entry. Signs were posted to that effect. As the trial judge had noted an internal audit prepared as a result of discussions with Ministry representatives had noted this to be a dangerous area. Specifically, the audit (Exhibit #33) contained comments noting that there were unsecured gates and that an interlock was required.

[35] The trial judge was satisfied with the adequacy of the training of the employees. However, "*in (his) opinion it would have been a simpler further step to have placed a form of preventive barrier so the worker would not, or could not enter the pit area without taking some further step than simply pushing open a gate and entering the pit area*." The trial judge too noted that there was technology available (essentially some form of interlock) which would shut the machinery down by virtue of the presence of an employee. The jurist concluded that a further step is the form of a locked/secured gate, or interlock was required. In other words, that the measures taken were not enough or completely reasonable in the circumstances.

[37] Is the finding that due diligence was not made out because there were further steps that could have been taken relative to a swing open gate, undermined by the unexpectedness of the actions of Mr. Turner? The learned trial judge had noted *"(h)uman nature being what it is, wherever guards need to be put in place the Act specifies that they will be put in place. We cannot always be expected to do what is sensible and safe in our everyday world. The purpose of the Act is, as often as not, to protect from our own shortcomings. This is a public welfare statute and becomes a question then when dealing with due diligence, what might be expected from a reasonable man to protect an employee from a dangerous situation*." These sentiments are consistent with what has been stated above with respect to the philosophy of the statute generally and the impossibility of totally trapping for the actions of the reckless or determined employee. There will always be the possibility that an employee could circumvent whatever safety device is in place. However, the objectives of the Act can be met by making that circumvention as difficult as can be reasonably possible. The existence of an unlocked gate presents no hindrance. At the very least a locked or secured gate presents a hindrance to determined effort, a lock out mechanism completely meets such recklessness. The bottom line is that the conclusion of the trial judge that a reasonable approach was that more should have done, was not, "*a palpable or overriding error*." It was a finding that could be legitimately made in the circumstances.

42. The Crown also relied on a judgment of Bennett J. in *R.* v. *Stelco Inc.* [1989] O.J. No. 3122 (Ont. Ct. Prov. Div) where, once again, the issue was one of reasonable foreseeability. At paragraph 38, the judgment states:

> Richard Randall was in charge, he made that very clear at page 111 of the transcript. He ordered the workers to make modifications. He did not personally inquire as to how those modifications were to be performed. Had he given the matter any thought, he should have realized that the workers would choose the simplest method of rectifying the problem, i.e. get off the platform onto the machine. The location of the platform around the electric eye, the machine being only about a foot away and energized, and no guard rails being installed, should have led to the inevitable conclusion that a lock-out was necessary. This was a foreseeable consequence. All reasonable care was not taken to insure compliance with the Act and protection of the workers, regardless of their own incompetence, recklessness or stupidity.

43. Lastly, the Crown referred to a judgment of Hurley J. in *R.* v. *St. Lawrence Cement Inc.* [1993] O.J. No. 1442 (Ont. Ct. Gen. Div). At paragraph 21, the Court stated:

> Had Grant, on one isolated occasion, suddenly and unexpectedly departed from the routine of driving forward after the box on his truck was filled, the accused could rely on the reasoning in Klemack. But here, the accused knew that the trucks had been backing up that day. S. 13(1)(a) and s. 16(1)(a) require their intervention. Lectures given and pamphlets distributed will not suffice. There was evidence to support the trial judge's factual conclusions on that issue. S. 13(1)(a) and s. 16(1)(a) were applicable.

The *Due Diligence Defence* – Analysis

44. Clearly then, it is insufficient for the employer to merely point to the worker's negligent, careless or even reckless conduct for it to successfully rely upon the due diligence defence. The issue is one of reasonable foreseeability.

45. In determining if a reasonable employer should have foreseen Antoni attempting to rotate the spindle, it is first necessary to assess the conflicting evidence regarding whether or not he was instructed to do so.

46. As the onus on the due diligence defence rests with the defendant, it would be improper to apply the *W(D) (supra)* analysis: *R.* v. *Prince Metal Products Ltd*. [2011] O.J. No. 6450 (Ont. C.J) and *R.* v. *Novelo*, [2009] O.J. No 3215.

47. On the balance of probabilities, I cannot conclude that Sue instructed Antoni to rotate the spindle for the following reasons:

1. Antoni agreed that it was "exceptional" and "extraordinary" for him to be instructed to rotate the spindle;
2. He admitted that it was "not the way it works at ABS" for a junior deburrer to be instructed to rotate such a large a new piece;
3. He indicated that the spindle had never previously been rotated by anyone at ABS;
4. He stated that these new and large pieces had always been rotated for him in advance by someone else;
5. He acknowledged that it was very unusual for Sue to tell him to rotate the spindle without telling him how to do so;
6. He decided to rotate the spindle as he was eager to show imitative to the employer;
7. He admitted that he should not have attempted to rotate the spindle without being instructed how to do it; and
8. He admitted that it was very unusual for a senior supervisor to instruct a junior deburrer to rotate such a large and new piece without giving him instructions on how to do so.

48. Could there have been confusion over Sue's instructions to Antoni, especially in light of Sue's comment to him that the tunnel was on the wrong side of the spindle? Sue admitted that the logical conclusion would be that the spindle would have to be rotated although he denied instructing Antoni to do so. However, Antoni never claimed that Sue's instructions were ambiguous. Antoni maintained that he was specifically told to "prep and rotate" the spindle. He clarified that "prep" the spindle meant to clean it not to rotate it and that he was also specifically told to "rotate" it. Accordingly, there is no basis on which I can conclude that there was confusion over Sue's instructions to Antoni.

49. On the balance of probabilities, I cannot conclude that a reasonable employer should have foreseen that Antoni would undertake to rotate the spindle on his own and that he would do so in the manner that he did. I draw this conclusion for the following reasons:
    1. There was no evidence that a junior employee at ABS had ever previously tried to move a new and large piece on his own (unlike in *St. Lawrence Cement* in which trucks had previously backed up, causing the hazard);
    2. There was a protocol in place by which a junior deburrer would not move a new and heavy object without being shown how to do so. Although this protocol was not in writing, Antoni acknowledged that he understood this protocol.
    3. The way in which Antoni attempted to rotate the spindle was knowingly contrary to his training. He did so using a device (the rebar) which was not approved for such purpose. He did not know the weight of the spindle nor the load capacity of the individual attachments used for the rotation.

4. He attempted to rotate the spindle on his own even though nobody at ABS had ever tried to do so previously and even though large and new devices had always been moved or rotated for him by materials handlers or supervisors.

50. Mr. Nicol contends that the employer did not take every precaution reasonable in the circumstances. He argues that the employer should have:

1.Specifically instructed Antoni not to rotate the spindle;

2.Ensured that Antoni was accompanied at all times while on the shop floor;

3.Fenced off the area in which the spindle was located, placed a warning sign and chained down the spindle itself; and

4.Should have used a specifically designed stand for the spindle.

51. He correctly relies on the five factors as cited by Hennessy J. in *Canada (Fisheries and Oceans)* v. *Ontario (Ministry of Transportation)*, [2014] O.J. No 5986 (Ont. S.C.) in which he states at paragraph 20:

> The trial judge properly cited the following five factors to be considered when assessing a due diligence defence:
>
> 1. the gravity of potential harm;
> 2. the likelihood of harm;
> 3. the degree of knowledge or skill expected of the accused;
> 4. the alternatives available to the accused; and
> 5. the extent the accused could control the causal elements of the offence.
>
> See *R. v. Placer Developments Ltd.* (1983), 13 C.E.L.R. 42 (Y.T. Terr. Ct.), at para. 26; and *Regina v. Gonder* (1981), 62 C.C.C. (2d) 326 (Y.T. Terr. Ct.) at para. 22.

52. In assessing the five factors, the gravity of the potential harm from a falling 10,000 pound piece of equipment is obvious. With respect to the second factor, the Court in *Canada (Fisheries and Oceans)* found (at paragraphs 22 and 23) that the harm was "inevitable" which cannot be said in the case at hand. For the reasons indicated herein at paragraph 49, the potential harm was not reasonably foreseeable and certainly not inevitable or likely.

53. In assessing the fourth factor and Mr. Nicol's suggestions as to what ABS should have done, I cite Zisman J. in *Auction Reconditioning* (*supra*) at paragraph 41:

> The trial justice thereby erred in imposing a requirement that the worker be contemporaneously supervised at all times. There is no such legal requirement in

> workplaces under the *OHSA* that a worker must be given such information, instruction and warnings every time a task is assigned. I adopt the observation of the court in *R. v. Inco* [2001] O.J. No. 4938 (S.C.J.) that to ask the court to accept that an employer should be required to contemporaneously supervise an employee for each task is an "absurd result".

54. In light of the reasonable unforseeability of what transpired I cannot conclude on the balance of probabilities that the employer was required to take the measures suggested by Mr. Nicol.

55. In assessing the fifth factor, the Court in *Canada (Fisheries and Oceans)* (*supra*) found (at paragraph 25) that:

> In his discussion of the fifth factor, the trial judge was critical of the lack of efforts undertaken by the appellant, in particular their failure to take actions to determine the cause of the rising water in January and February 2008. The Trial judge based his assessment of these efforts on his acceptance of evidence that the MTO's efforts demonstrated a failure to fully appreciate the seriousness of the situation. This lack of appreciation was, in the opinion of the trial judge, a result of a lack of expertise or resources which the appellant brought to the problem from the outset.

56. It cannot be said in the case at hand that the employer failed to appreciate the seriousness of the potential hazard. Its appreciation of the potential hazard is reflected in the orientation session, the overhead crane training and in the protocol for the movement of large new pieces by junior workers.

57. Lastly, in assessing if ABS took every reasonable precaution in the circumstances it is necessary to consider the evidence of Michael Kilchuk ("Kilchuk"), the Occupational Health and Safety Inspector who investigated the accident on the day it occurred.

58. Kilchuk testified that even though he could have issued a "stop work" order for work on the spindle, he declined to do so. He allowed work to continue on the spindles and permitted them to be rotated by supervisors even though a specific procedure had not yet been developed. Mr. Nicol draws my attention to Kilchuk's "Field Visit Report" where, at Order no. 2, the word "Stop" appears. Mr. Nicol suggests that in fact this was a "stop work" order even though there was no evidence to support this contention. I cannot accept this conclusion as it is directly contradicted by Kilchuk himself. He must have concluded that the measures then in place were adequate for the workers' protection.

59. In conclusion, I am satisfied on the balance of probabilities that ABS took every precaution reasonable in the circumstances to avoid this tragic accident. The defendant is acquitted on both counts.