

ONTARIO COURT OF JUSTICE  
Toronto Region

In the matter of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33.

B E T W E E N:

**ONTARIO (MINISTRY OF LABOUR)**

Crown

-and-

**J.R. CONTRACTING PROPERTY SERVICES,  
TEISHA (TINA) LOOTAWAN, and ANDREW J. HANIFF**

Defendants

**REASONS FOR JUDGMENT**

Before: Her Worship Mary A. Ross Hendriks, Justice of the Peace

Appearances:

Ms. C. Ashton, Wilson Vukelich LLP, for Ms. Lootawan  
Ms. S. Loosemore and Ms. K. Malabar, Crown Counsel (MOL)  
Mr. S. Weisner, Barrister & Solicitor, for JR Contracting Property Services  
Mr. Andrew J. Haniff, Acting on his own Behalf

Hearing Dates: June 13, 2011, June 15, 2011, March 27, 2012, March 28, 2012, April 3, 2012, May 1, 2012, November 13, 2012

Judgment: April 18, 2013

## INTRODUCTION:

[1] These are my Reasons for Judgment concerning the alleged offences, constituted under Part III of the *Provincial Offences Act*, R.S.O. 1990, c.P. 33 (the “*POA*”), as set out in the sworn Information herein. This Information was sworn by Jeff Lomer, an Inspector and Provincial Offences Officer with the Ministry of Labour, in which he laid seven charges against the defendants under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1, as amended (the “*Act*”) resulting from an accident that occurred on October 15, 2008, at 45 Meadowvale Road, Toronto, that resulted in serious injury to an alleged worker, Garnet Stiff.

[2] The following is a synopsis of the charges, as against Ms. Lootawan:

- (a) failing as a supervisor to ensure that a worker wore protective devices as required by s.26.1(2) of *Ontario Regulation 213/91* (“*O.Reg. 213/91*”) and contrary to s.27(1)(a) of the *Act*;
- (b) failing as a supervisor to take every reasonable precaution to protect a worker in violation of s.27(2)(c) of the *Act*, and in particular, failing to take the reasonable precaution of ensuring that an adequate form of fall protection is provided to a worker where a worker is exposed to a fall hazard of falling more than three metres; and
- (c) knowingly furnish an inspector with false information required by the inspector in the exercise of his or her powers or the performance of his duties, contrary to s.62(3) of the *Act*.

[3] As a result of the Interim Decision (No. 2) on a Charter Motion, dated June 8, 2011, Ms. Lootawan's statement of December 17, 2008 was excluded from the trial. In closing submissions, Crown counsel invited me to acquit on the charge against Ms. Lootawan, of knowingly furnish an inspector with false information, because of the lack of evidence, and I did so, on June 13, 2011. The other two charges remain against her, as set out above.

[4] The following is a synopsis of the charges, as against J.R. Contracting Property Services:

- (a) failing as an employer to ensure that the measure and procedures prescribed by s.26.1(2) of *O. Reg. 213/91*, as amended, were carried out at a project, contrary to s.25(1)(c) of the *Act*;
- (b) failing as an employer to take every precaution reasonable in the circumstances for the protection of a worker at a workplace, contrary to s.25(2)(h) of the *Act*, in particular, failing to take the reasonable precaution of ensuring that an adequate form of fall protection was provided to a worker where a worker was exposed to the hazard of falling more than three metres; and
- (c) failing as an employer to provide information, instruction, and supervision to protect the health and safety of the worker at a workplace, contrary to s.25(2)(a) of the *Act*.

[5] The following is a synopsis of the charge, as against Andrew Joshua Haniff:

- (a) On or about December 23, 2008, in the City of Toronto, he committed the offence of hindering, obstructing, molesting, or interfering with an Inspector in the exercise of a power or the performance of a duty under the *Act*, contrary to s.62(1) of the *Act*.

[6] Pleas of not guilty were entered by Ms. Lootawan, J.R. Contracting Property Services Ltd., and Mr. Haniff, on all charges. None of the defendants testified during the trial.

**ISSUES:**

[7] The following are the relevant issues in this matter:

- (a) Was a worker at a workplace exposed to a fall of more than three metres?
- (b) If the answer to (a) is yes, was the defendant, Ms. Lootawan, acting in the capacity of a supervisor?
- (c) If the answer to (b) is yes, did she fail as a supervisor to ensure that a worker wore protective devices as required?
- (d) If the answer to (b) is yes, did she fail as a supervisor to take every reasonable precaution to protect a worker at a workplace, in particular, did she fail to ensure that the worker was provided with an adequate form of fall protection?
- (e) If the answer to (a) is yes, was the defendant, J.R. Contracting Property Services Ltd., acting in the capacity of an employer?
- (f) If the answer to (e) is yes, did J.R. Contracting Property Services Ltd. fail as an employer to ensure that the requisite measure and procedures were carried out at a project?
- (g) If the answer to (e) is yes, did J.R. Contracting Property Services Ltd. fail as an employer to take every reasonable precaution to protect a worker at a workplace, in particular, did it fail to ensure that the worker was provided with an adequate form of fall protection?
- (h) If the answer to (e) is yes, did J.R. Contracting Property Services Ltd. fail as an employer to provide information, instruction, and supervision to protect the health and safety of the worker at a workplace?
- (i) Did Mr. Haniff hinder, obstruct, molest or interfere with Inspector Lomer in the exercise of a power or the performance of a duty?

**DECISION:**

[8] The Crown has proven each of the counts beyond a reasonable doubt. Convictions are hereby entered.

**LIST OF WITNESSES:**

[9] The following individuals testified at this trial:

- (a) Garnett Stiff, who was injured at 45 Meadowvale Road, Toronto, and who testified on June 13, 2011;
- (b) Wenzell Kraus, homeowner of 45 Meadowvale Road, Toronto, who testified on June 13, 2011;

- (c) Jeffrey Lomer, MOL Inspector, who testified on June 15, 2011 and May 1, 2011;
- (d) Danielle Fortier, Senior Investigator, Rogers Communications, who testified on March 27, 2012;
- (e) Rebecca O'Grady, Security Analyst, Law Enforcement Support Team, Telus, who testified on March 27, 2012;
- (f) Katarina Hodgson, former Advertising Sales Representative, Metroland Media Group, who testified on March 27, 2012;
- (g) Harold Robbins, former labourer, who testified on March 27 and 28, 2012; and
- (h) James Richardson, former labourer, who testified on March 28, 2012 and May 1, 2012;

## SUMMARY OF EVIDENCE:

[10] I heard *viva voce* evidence from the above-noted eight witnesses. Their key evidence has been summarized below.

### *Garnet Stiff:*

[11] Mr. Stiff testified that on October 15, 2008, he went to 45 Meadowvale Road, Toronto, with Harold "Sonny" Robbins. He stated, "We were informed when we showed up at the job what the job entailed; to remove shingles from the top of a roof of a house" (transcript, at p. 28). He described it as a one-storey house, belonging to Mr. Kraus. Mr. Kraus asked them to remove shingles from the roof and throw them into the bin on the back of their truck.

[12] He said that he called Ms. Lootawan, using a cell phone with a 10-4 device on it. She was told the nature of the job and gave him a price to quote Mr. Kraus. Once Mr. Kraus agreed, Ms. Lootawan told him to proceed. He testified that he told Ms. Lootawan that the job meant removing shingles from the roof.

[13] He testified that he was paid between \$250 to \$270, "...in that vicinity" (transcript, at p. 31).

[14] He said that Mr. Kraus was already on the roof, and that he and Mr. Robbins climbed up the ladder.

[15] Mr. Stiff testified that he was tossing off loose shingles from the roof, in front of the garage, towards the bin on the back of the truck. He stepped back and slipped, stating, "I had stepped back and felt something slide underneath my foot and with a matter of a split second I was rolling off the roof of the house" (transcript, at p. 32).

[16] Mr. Stiff said that he had fallen onto the walkway that led to the front door of the house. He was conscious, and realized that he could not move his legs. He said that he yelled, "call 9-1-1, I can't move my legs" (transcript, at p. 32).

[17] He said that Mr. Richardson showed up at 45 Meadowvale Road, after he fell and before he was sent to the hospital, although he cannot recall going to the hospital. He does recall the fire department and two police officers attending the scene.

[18] During his testimony, Mr. Stiff identified several photographs of the scene. He identified the photograph of the house and A.I.C. truck with the shingles at the peak of the roof of the house (Exhibit

2); the photograph of the house and walkway (Exhibit 3); the photograph of the loose shingles on the roof (Exhibit 4); and the photograph of the opposite side of the house and the ladder (Exhibit 5). He also identified a photograph of the corporate logo sticker on the side door of the truck, stating "J.R. Contracting Property Services Ltd." (Exhibit 6).

[19] When asked by the Crown for whom he worked, he replied, "Well the sticker on the side door said JR Contracting Property Limited, I believe it was" (transcript, at p. 40).

[20] Mr. Stiff testified that it was his belief that J.R. Contracting Property Services Ltd. had bought the company and the trucks from 310 Junk, A.I.C., Mr. Trash, which were owned by Ms. Lootawan. He added, however, that we "still took orders from Tina" (transcript, p. 41). Mr. Stiff described himself as a "labourer" (transcript, at p. 42).

[21] Four weeks prior to the accident, at the time that Mr. Stiff believed the ownership of the corporation changed, he said that he received directions from Ms. Lootawan or Ms. Persaud. He was paid in cash, contained in envelopes with the days of the week and the amount of money per day written on the back of the envelopes. He would attend at the office on Toryork Drive to pick up his pay, which is also where the trucks and bins were kept (transcript, at p. 44). Mr. Stiff described the Toryork Drive location as being near Weston Road and Finch Avenue [West], and said that the business included a truck yard, an office and a dump (transcript p. 68). There were seven to eight trucks located at Toryork Drive, and all of them had J.R. Contracting Property Services Ltd. stickers affixed to them. He said there were 15 bins, and all the bins were labeled A.I.C. on the side of them. He was unsure what A.I.C. stood for, when asked.

[22] Mr. Stiff testified that he received envelopes from Ms. Lootawan, "Andrew," Ms. Persaud and sometimes Mr. Richardson. He frequently received a ride from Mr. Richardson, who lived in his apartment building. He said that Monica Mantegari Selonis joined the organization at the time that the J. R. Contracting Property Services Ltd. stickers were placed on the trucks.

[23] Mr. Stiff testified that he would receive a black bag in the morning when starting out, often while at the truck, waiting in the yard. Someone would come out and hand out the bags, which included a clipboard with addresses, a wallet with typically about \$200 in it, in case anyone needed to buy fuel, and a map book. These black bags were distributed by "Kamal," "Andrew" or "James." Once at the job site, he would call "Tina," sometimes "Kamal," for price quotations.

[24] Mr. Stiff testified that Mr. Richardson had told him on the day before the accident that he would be working with Mr. Robbins the next day. On October 15, 2008, the truck that they needed was not available at Toryork Drive, so Mr. Richardson drove Mr. Stiff and Mr. Robbins to the back of a car dealership, where they picked up their truck.

[25] After they picked up their truck, Ms. Lootawan spoke to them and sent them to Meadowvale Road.

[26] He was not paid for his work on October 15, 2008, because he owed \$140.00 to Ms. Lootawan.

[27] Mr. Stiff admitted to his criminal record (Exhibit 7), which consisted of failing to comply with a recognizance, theft under \$5000 and assault causing bodily harm, all from 2006.

[28] Mr. Stiff testified that he did not have any fall protection equipment with him on the roof at 45 Meadowvale Road, nor did he have any in the truck. He explained that he had no harness, no hardhat,

only steel-toed safety boots. He added that Mr. Robbins was not using any fall protection equipment, either.

[29] Mr. Stiff testified that he was not trained in the use of fall protection equipment, and had not used it in the past.

[30] Mr. Stiff described his various interactions with Ms. Lootawan as consisting of seeing her about 10 times. He had met her through Mr. Richardson, who had introduced them when Mr. Stiff was looking for work. Mr. Stiff said that he had seen her at a prior work location twice. He said that he had been to her home in Newmarket a few times, once with Mr. Richardson to drop off the black bags, once so that Mr. Richardson could borrow some money from her, and once with Mr. Richardson to do a clean up of her backyard. He believed that he had known her for about a year at the time of the accident. He identified Ms. Lootawan in the courtroom during his testimony.

[31] Prior to October 15, 2008, he estimates that he had spoken to Ms. Lootawan about 20 times. He would often check with her to see if he had work the next day, or she would call him. Since he did not have his own telephone, he would borrow his sister Judy's telephone, since she lived down the hall in his apartment building. Her telephone number at the time was 416-519-0612.

[32] Mr. Stiff was shown the second voluntary statement that he gave to Mr. Lomer, dated November 13, 2008, and he verified his signature on it (Exhibit 8). In this statement, he had advised Mr. Lomer that Ms. Lootawan's telephone number was 416-457-2154.

[33] As a result of the fall, Mr. Stiff said that he was 28 years old when his spinal cord burst, and that he is paralyzed below the waist. He appeared in court in a wheelchair, and testified that he has not walked since this accident. After spending extensive time at Sunnybrook, where he underwent surgery on his spinal cord, he then spent a significant amount of time at a rehabilitative facility. He has undergone physiotherapy, and continues to take prescription medication for nerve pain and his blood pressure.

[34] He described the impact of the accident, at pp. 75-76 of the transcript of June 13, 2011, as follows:

It's hard to put into words. Every day I wake up hoping that it's a dream. So you just kind of replay that fall off the roof over and over and over again in your head. So it – it's tough to put into words. It's not easy thing to deal with by any stretch of the means and I just hope it can get better somehow, some way.

[35] During cross-examination, he admitted that he had never seen John Rossi until they had met in this courtroom. He relied upon what Ms. Lootawan had told him as the basis of his belief that he worked for J.R. Contracting Property Services Ltd., and the J.R. Contracting Property Services Ltd. stickers that appeared on the sides of the trucks.

[36] Mr. Stiff denied that he was a subcontractor under either JR Contracting Property Services Ltd. or Ms. Lootawan.

[37] Mr. Stiff testified that he had previously advised Mr. Lomer that Ms. Lootawan had told him to lie if he was ever approached by any Ministry inspectors, and to say that he worked for J.R. Contracting or whatever name appeared on the side of the truck, since she had had difficulties with the Ministry of Transportation and the Ministry of the Environment. He was told to say that he did not know her or her

husband, Vince Bishnu.

[38] Mr. Stiff believes that Mr. Haniff is the nephew of Ms. Lootawan, and that Ms. Persaud is her husband's sister, thus her sister-in-law.

[39] Mr. Stiff testified that on October 15, 2008, he and Mr. Richardson had consumed one beer each, in the apartment, prior to leaving for work. He and Mr. Robbins then consumed two more beers each, prior to arriving at 45 Meadowvale Road. It was very clear from his evidence that Mr. Stiff had by his own account consumed three beers in the morning prior to falling off the roof of 45 Meadowvale Road.

[40] In terms of the timing of the three beers that he consumed that day, Mr. Stiff said that the first beer would have been consumed with Mr. Richardson around 6:30 a.m., that the second beer was with Mr. Robbins when they entered the truck, and that he consumed the third beer about five minutes prior to pulling up to 45 Meadowvale Road to do the shingle job.

***Wenzell Kraus:***

[41] At the time of his testimony, Mr. Wenzell Kraus was an 81 year old man. He has lived at 45 Meadowvale Road, Toronto, since he bought that home in 1987, and finished its interior himself. He described the home as a “bungalow, three steps – three steps up” (transcript, p. 121). He further described the home as a one-storey structure, with a cathedral ceiling. He estimates that the height of the home, noting its cathedral ceiling, was between 15 and 18 feet. He testified that the main roof peaks at the top, and believes it to be a bit higher than 15 to 18 feet.

[42] During October of 2008, Mr. Kraus was replacing the roof on his home. All the shingles had been removed, down to plywood, and he had piled up all the shingles on the garage roof, on the north side of the garage.

[43] The garage was attached to the house, and Mr. Kraus measured it. He found that it was 7 feet, 11 inches high to its eavestrough. He estimates that the peak of its roof would be about 4 feet higher.

[44] In October of 2008, Mr. Kraus saw an advertisement in the Scarborough Mirror, under junk removal, stating that the provider had 25 years of service. On October 14, 2008, Mr. Kraus called the telephone number provided in the advertisement for “Josh.” This advertisement, which Mr. Kraus had saved and provided to Inspector Lomer (Exhibit 11).

[45] Exhibit 11 stated, *verbatim*:

AI ½ PRICE  
JUNK REMOVAL !!  
All Junk Removed.  
Homes, Yards,  
Businesses, etc.  
We do all the loading.  
Seniors Discounts.  
Cheap and fast Service!  
In Service for 25 yrs.  
Josh  
416-722-5865.

[46] Mr. Kraus testified that on the next day, Mr. Stiff and the driver came by his house. Mr. Kraus pointed to the shingles on the garage roof, and the few cartons of shingles sitting on the ground. He said that Mr. Stiff walked back to his truck, and telephoned someone, returning to him about 10 minutes later. Mr. Kraus was unable to overhear this conversation. When he returned, he quoted Mr. Kraus a price of \$270.00, to which Mr. Kraus agreed. When asked if any further agreement was made, Mr. Kraus replied, "No. That was it. I said, well go ahead" (transcript, at p. 129).

[47] Mr. Kraus said that Mr. Stiff and the driver climbed up the ladder to the garage roof, and that he followed behind them.

[48] Mr. Kraus confirmed that the photograph of his roof was accurate (Exhibit 2).

[49] Mr. Kraus explained that Mr. Stiff was supposed to push the shingles on the roof up to the driver, and that the driver would drop them in the bin below. Mr. Kraus also pushed shingles up to the driver, who loaded them into the bin below.

[50] Mr. Kraus testified, "...all of a sudden I look over my shoulder and I seen Mr. Stiff rolling down, not sliding, rolling down, with his hands on the side like a kid, which normally goes down a little hill" (transcript at p. 131). Mr. Kraus said that Mr. Stiff landed half on his walkway, and half on the grass.

[51] Mr. Stiff asked them to call 9-1-1. An ambulance came, put Mr. Stiff on a bar, and took him away.

[52] Mr. Kraus paid for the bin, more or less and not the work, because he finished the loading of the bin himself. He paid the driver and obtained a receipt for \$270.00 (Exhibit 12). The receipt is from "R J Contracting."

[53] Mr. Kraus said that two women came to his house, after the police had covered it in yellow tape, and that "they couldn't get in." These women asked Mr. Kraus what happened, and he told them that Mr. Stiff rolled off the roof (transcript, at p. 134). When asked, Mr. Kraus was unable to describe these two women.

[54] Mr. Kraus was shown a photograph of a truck, which he identified as the truck that came to his house in connection with the accident of October 15, 2008 (Exhibit 6). He also testified that the bin attached to the truck was labeled "A.I.C." The bin was left behind, so that he could load the shingles into it. He recognized the driver as being the same man who returned to pick up the bin once it was full. He does not know the name of the driver, nor did he write down the licence plate of the truck.

[55] Mr. Kraus testified clearly that neither Mr. Stiff nor the driver wore a safety harness while on the roof of his garage.

[56] Mr. Kraus also testified that the shingles on the roof had broken into smaller pieces. He described it by stating, "They're not whole shingles because – when you load something, you get bits on your clothes and they fall off when you stand up and go" (transcript, at p. 143).



***MOL Inspector Jeffrey Lomer:***

[57] Mr. Lomer testified that he is employed as an Inspector and Provincial Offences Officer with the Ministry of Labour (“MOL”), and has been so employed for over five years. As such, he enforces the requirements of the *Occupational Health and Safety Act* and regulations, and he has always been assigned to the construction program.

[58] He explained his statutory authority to conduct inspections and issue orders under the legislative scheme. He confirmed that he swore to the truth of the Information that is before the court in this matter, pursuant to Part III of the *POA*, as the lead investigator on this case.

[59] He testified that Toronto Police Services contacted the MOL about a worker who fell from the roof at 45 Meadowvale Road, Toronto on October 15, 2008. As a result, Mr. Lomer was dispatched to that location.

[60] He arrived at 45 Meadowvale Road, about 11:30 a.m., and a second MOL inspector, Jason Williams, attended at this location later on, after Mr. Lomer commenced the investigation.

[61] Inspector Lomer's description of the home matches that of Mr. Kraus. Inspector Lomer said it was a raised bungalow, with a driveway that faced west. There was a vehicle parked in the driveway, which was a white truck with a bin on the back. Toronto Police Services had secured the scene with yellow tape. There was a ladder on the ground and on the south side of the garage. Specifically, he said that the roofing shingles were on the west side of the upper most peak of the roof of the garage where the truck was parked in the driveway.

[62] At 45 Meadowvale Road, Mr. Lomer was introduced to Harold “Sonny” Robbins, Monica Mategari Selonis, Deokallie Prasaud, also known as “Camille,” Wenzell Kraus, and various members of Toronto Police Services.

[63] Inspector Lomer referred to his notes made at the time, and testified about what Ms. Mategari said to him at the time, but with the agreement of all counsel, not for the truth of the contents of those notes.

[64] His notes from this conversation indicate that Ms. Mategari said that she was a co-owner of J.R. Contracting Services Ltd. His notes further indicate that she said that the worker came from an existing company, A.I.C., and that he had a problem with drinking. An internal meeting had been held when new management took over, but Mr. Stiff did not attend this meeting. J.R. Property Services had been in existence for two or three weeks at the time of this accident, when it took over the trucks, leases and workers. She advised him that Mr. Stiff was paid by Canadian Environmental, because payroll for J.R. Contracting Services had not been set up yet.

[65] Inspector Lomer noted that Mr. Stiff's fall from the roof had damaged the eavestrough. Inspector Lomer believes that Mr. Stiff was standing on a pile of shingles at the time of his fall from the roof.

[66] Inspector Lomer testified that the garbage disposal bin, parked in the driveway of 45 Meadowvale Road, had the yellow letters “A.I.C.” and the telephone number of “1-877-241-5865” on its side.

[67] Inspector Lomer also testified that the truck had a “JR Contracting” sign on it and he recorded the CVOR number of this truck (Exhibit 24).

[68] Inspector Lomer testified that he interviewed Mr. Stiff while he was in the hospital, and that Mr. Stiff identified Ms. Lootawan as his supervisor at the time of the accident. The telephone number that he provided to Inspector Lomer in order to contact Ms. Lootawan was used by Inspector Lomer to contact her.

[69] Inspector Lomer provided Ms. Mategari with a Premise/Project Form on October 15, 2008 (Exhibit 13). This form constitutes what Mr. Lomer describes as a “field visit.” Ms. Mategari signed the form on behalf of J.R. Contracting Property Services Ltd., and she wrote down her title as “Manager.” He indicated that the information he required needed to be sent to him by October 17, 2008. Specifically, he was seeking proof of payment, training records for Mr. Stiff and Mr. Robbins, and for any purchase agreement or documentation that J.R. Contracting Property Services Ltd. had in relation to taking over A.I.C. Disposal Services. He also asked for the full names of two other individuals who might have been involved, James and Andrew, and their addresses and telephone numbers.

[70] He testified that as a result, he received from some documents from J.R. Contracting Property Services Ltd., but it was not complete, so he made some follow up telephone calls to Ms. Mategari.

[71] In response, Inspector Lomer received some further documents sent by fax, dated October 17, 2008, subject to a s.67(1) certificate (Exhibit 14). The first document that he identified was entitled, “North American Leasing Corp., addressed to the vehicle licensing office at MTO, dated September 15, 2008. It indicated that North American Leasing Corp. was leasing certain vehicles to J.R. Contracting Property Services Ltd., and listed eight vehicles. One of those vehicles was a 2004 GMC. This document was signed by Deokallie Persaud, Director, North American Leasing Corp. Similarly, a document from Associated Industries Corp., dated September 15, 2008, to MTO's vehicle licensing office, stated that four trucks had been leased by JR Contracting Services. It was also signed by Deokallie Persaud, Director, Associated Industries Corp.

[72] As part of the October 17, 2008 response, Inspector Lomer also received minutes of a meeting. According to the minutes of a meeting held by J.R. Contracting Services, dated October 6, 2008, Ms. Mategari was the new Manager and Operating Officer of JR Contracting Services. These minutes also indicated that J.R. Contracting Services had entered into an agreement with North American Leasing and Associated Industries, to lease some trucks. The minutes further indicated that all drivers and subcontractors providing services to the leased trucks reported directly to Ms. Mategari, with immediate effect. All employees and subcontractors were to follow strict safety procedures, as outlined in a memo distributed at that meeting. Those present at that meeting described in the minutes were: Monica Mantegari, Carmel Persaud, Andrew Haniff, Norman Purdy, James Richardson and Martin Humphries.

[73] As well, contained within Exhibit 14 was the original dispatch slip for 45 Meadowvale Road, on October 15, 2008. Inspector Lomer read it, and it said, “Sonny 2004 GMC” and it further stated “\$200.”

[74] Ms. Mategari had advised Inspector Lomer that the price quoted was for \$250.00, to cover a small ground clean-up project, and that she believed a side deal had been made for the extra \$20.00 between Mr. Kraus and Mr. Stiff.

[75] Inspector Lomer conducted another field visit on November 14, 2008 to J.R. Contracting Property Services Ltd., at its office located at 115A Toryork Drive, Toronto, and attended at that location with Mr. Williams. He provided Ms. Prasaud and Ms. Mategari with another Premise/Project Form (Exhibit 15). Ms. Persaud signed this form, and indicated her title as “worker.” At the end of this Premise/Project Form, Inspector Lomer wrote, “Monica stated she will communicate with this inspector on Wednesday, November 19, 2008 to coordinate either faxing the documentation or arrangements will be made for pick-up.”

[76] It provided that, by November 19, 2008, J.R. Contracting Property Services Ltd. was to provide Inspector Lomer with a completed Constructor and Employee Registration Form for subcontractors James Richardson, Garnett Stiff, and Harold “Sonny” Robbins. The certificate was issued pursuant to s.67(1) of the *Act* (Exhibit 16).

[77] Inspector Lomer testified that the response was a broken up fax transmission, in which most of the pages were blank. He called back Ms. Mategari, and she said that she would have the completed documents sent to him by December 2, 2008. On December 1, 2008, Inspector Lomer testified that he received a telephone call from Ms. Persaud, and that she had dropped off the documents to the MOL at 1201 Wilson Avenue, Toronto.

[78] Inspector Lomer described this package received by him, and his s. 67(1) certificate (Exhibit 17), as containing the one-year employment contract between Mr. Robbins and J.R. Contracting Property Services Ltd., dated October 1<sup>st</sup>, 2008, at a rate of \$11 per hour; and the time-sheets for Mr. Robbins, including October 15, 2008. It also contained the employment contract and time-sheets for James Richardson, which included October 15, 2008.

[79] Inspector Lomer also received a letter dated November 17th, 2008, signed by Ms. Mategari, Manager, on behalf of J.R. Property Services Ltd., in which she denied having any Constructor and Employer Registration forms, and also denied performing construction or demolition work. It stated that they rented containers, did ground clean-ups and hauled away small loads for homeowners and small businesses. This letter and s. 67(1) certificate, were entered as Exhibit 18.

[80] Inspector Lomer also gave a Premise/Project Form (Exhibit 19) to Metroland Printing, Publishing and Distribution on December 5, 2008, with respect to the advertisement provided to him by Mr. Kraus, Exhibit 11, and for the two telephone numbers that he provided.

[81] In it, Inspector Lomer sent Tim Corcoran, Regional Director of Advertising for Metroland, a letter dated December 2, 2008, and a copy of the two advertisements he was concerned with, one stating, “always cheapest, call John, 416-457-2154,” and “A1, ½ Price Junk Removal, Josh, 416-722-5865,” (Exhibit 20), pursuant to s.54 of the *Act*.

[82] As a result, Inspector Lomer received a document back from Metroland, subject to a s. 67(1) certificate (Exhibit 21). It indicated that the sales representative for All-Can Services was Katarina Hodgson and that the class was “Garbage Removal/Hauling,” with reference to an advertisement that stated, “A1 ½ Price Junk Removal ! ...Josh 416-722-5865.” It also included an invoice from Toronto Community News to All-Can Services, c/o Tina Lootawan, invoice dated 10/19/2008, for an advertisement that stated, “A1 ½ Price Junk Removal,” and an identical invoice, dated 09/14/08.

[83] Inspector Lomer testified that he gave J.R. Contracting Property Services Ltd. another Premise/Project Form, dated December 17, 2008 (Exhibit 22), indicating that by December 23, 2008, he required production of all phone and radio/phone records that were used for any business purposes of J.R. Contracting Property Services Ltd., including any detailed billing information and method of payment used, for the months of September to December, 2008, and that it was to provide such documents to him by December 28, 2008. Inspector Lomer left this with Tony Manuel, whom he found at their premises on Toryork Drive operating the scales for trucks entering to deposit garbage. Since Mr. Manuel declined to sign the Form, Inspector Lomer spoke to John Rossi on the telephone.

***Inspector Lomer's Contact with Mr. Haniff:***

[84] Inspector Lomer made a further order, that by December 18, 2008, JR Contracting Property Services was required to leave him a message as to when Andrew Joshua Haniff would attend at MOL to provide information to Inspector Lomer, as requested, pursuant to s.54(1)(h) of the *Act*.

[85] Mr. Rossi advised Inspector Lomer that he would ensure that Mr. Haniff attended as required. On December 23, 2008, Mr. Haniff attended at the MOL office.

[86] Mr. Haniff attended at the MOL office, as ordered, on December 23, 2008. At this time, he handed Inspector Lomer an envelope that contained the telephone record for J.R. Contracting Property Services Ltd., but he did not provide Inspector Lomer with any information as requested.

[87] Inspector Lomer testified as to his opinion that Mr. Haniff had failed to cooperate, and what information was missing from his investigation as a result, as follows, at p.113 of the transcript:

...Like I indicated earlier, I wanted to provide the link from when he took that phone call from the homeowner, Wenzel Kraus, as the person – since his middle name is Joshua, and it said call Josh, and he indicated that he did take the phone call, I wanted to establish from that point on what he did with that information when Wenzel Kraus called him, whether he took the information and provided it to somebody else or if he directed the workers to go from there. That was not answered.

***Inspector Lomer's Evidence Regarding Telephone Records:***

[88] Inspector Lomer identified the Bell telephone records for J.R. Contracting Property Services Ltd. that he received for telephone number 416-741-9652, with a billing date of November 19, 2008, and an address of 115 Toryork Drive, North York, and its s.67(1) certificate (Exhibit 23).

[89] Inspector Lomer testified that that Mr. Kraus had provided to him the two different telephone numbers to arrange for the collection of the garbage bin, and that 416-741-9652 was one of them. One of these telephone numbers was for J.R. Contracting Property Services Ltd., and the other was the cell phone number provided to Inspector Lomer by Ms. Mategari, being 416-802-6659. During cross-examination, Inspector Lomer testified that he had called the 416-457-2154 telephone number several times, and that he had repeatedly reached Tina Lootawan and another individual.

[90] Inspector Lomer issued warrants for various telephone records for Telus and Rogers for the telephone number of 416-457-2154, which he testified that he used to contact Tina Lootawan. From the results of these search warrants, Inspector Lomer prepared a “call details chart” (Exhibit 28) that indicated the in-bound and out-going calls for certain telephone numbers. After hearing some

objections from counsel, I permitted Inspector Lomer to use the chart as an overview, but provided counsel with the opportunity to redact the portions that relate to excluded evidence, and restricted the use of the chart as an overview on the stipulation that the Crown must still prove each telephone number.

[91] Thus, Inspector Lomer's testimony regarding Exhibit 28 provided the following evidence for calls during the time period between October 1 and October 17, 2008, for the telephone number 416-457-2154:

- There were 63 calls between this telephone number, which Inspector Lomer said that he used to contact Tina Lootawan, with 416-722-5865, which was the telephone number contained in the advertisement that Mr. Kraus had used to “call Josh.”
- There was one call between this telephone number and the number for J.R. Contracting Property Services Ltd., 416-748-3606, the later number having been established through a business card
- There were two calls between this telephone number and another number for J.R. Contracting Property Services, 416-741-9652, which was part of the information dropped off to MOL
- There was one phone call between this number and the telephone number for Harold “Sonny” Robbins, 416-620-5784, which matched the telephone number in the dispatch slip for October 15, 2008 (Exhibit 14)
- There were 21 calls made between this number and the number for James Richardson, 416-261-2332
- There were two calls made between this number and the number of Garnet Stiff's sister's apartment, 416-519-0612 (Exhibit 31 established the telephone number of his sister, Ana Bavcevic)
- There were 56 calls made between this number and Andrew Joshua Haniff, based on Inspector Lomer's evidence that he had used this number himself to call Mr. Haniff

[92] Inspector Lomer identified another chart that he had created (Exhibit 29), based on the in-bound and out-bound calls for telephone number 416-722-5865, which is the telephone number that Mr. Kraus had called when he responded to the advertisement to “call Josh.” Between October 1 and October 17, 2008, Exhibit 29 provided the following evidence of calls, after counsel agreed to redact it for any references to excluded evidence:

There were 94 calls in or out to 416-722-5865, which is the number Mr. Kraus used from the advertisement

[93] As a result of the search warrant provided to Rogers for 647-449-9882, the telephone number for Ms. Deokallie “Camille” Prasaud, Mr. Lomer created another chart (Exhibit 30), for the in-bound and out-going calls for her telephone number. Inspector Lomer explained that Exhibit 30 provided the following evidence of calls, for the period October 1 to 17, 2008:

- There were 45 calls between Ms. Prasaud and Ms. Lootawan
- There were 13 calls between J.R. Contracting Property Services Ltd. (using the business card number), and Ms. Prasaud
- There were 8 calls between Monica Mantegari Salenis and Ms. Prasaud
- There were 39 calls between Mr. Haniff, 416-319-7746, and Ms. Prasaud
- There were 7 calls between Mr. Richardson, 416-261-2332, and Ms. Prasaud

***Inspector Lomer's Evidence Regarding MTO Searches:***

[94] Inspector Lomer identified a search he conducted through the Ministry of Transportation (“MTO”) for the CVOR number that matched CVOR number on the sticker attached to the side door of the truck at the scene of the accident (Exhibit 6). This CVOR number is registered to J.R. Contracting Property Services Ltd., 117 Toryork Drive, Toronto, and there are several trucks under this CVOR number (Exhibit 24).

[95] Inspector Lomer also identified another certificate from MTO, which was a search on Ontario licence plate 860 2WT, attached to a leased truck, which was leased by J.R. Contracting Property Services Ltd. (Exhibit 25). The lessor of this 2004, white, model C55 GMC cab was North American Leasing Corp., with the same licence plate. Inspector Lomer also identified a vehicle operation summary for that vehicle (Exhibit 26).

***Inspector Lomer's Evidence Regarding Business Records and Business Cards:***

[96] During cross-examination, Inspector Lomer was shown the corporate profile of JR Contracting Property Services Ltd. Its Ontario corporation number is 948622, and John Rossi is its President and sole director. Its head office is located in Woodbridge, Ontario. (Exhibit 1). He agreed that Ms. Mategari is not listed as a director of that corporation, despite the fact that she had advised him that she was a co-owner.

[97] Inspector Lomer acknowledged that there was also a lack of corporate records for J.R. Contracting Property Services Ltd. with respect to Ms. Lootawan. In particular, there does not seem to be an employment agreement nor references to her in minutes of meetings.

[98] However, the corporate profile report for Mr. Trash, dated Oct 27, 2008 (Exhibit 39) indicates that Teisha Lootawan of Markham is its only director, and has been a director since date of incorporation of March 9, 2006. Mr. Trash was still active on date corporate profile report was generated.

[99] Inspector Lomer also acknowledged that a supervisor for a construction site was required to be present where there are five or more workers present, and at this accident scene, there were only two workers and one homeowner. As of August 14, 2009, Inspector Lomer had not recommended that Ms. Lootawan be charged as a supervisor.

[100] At the scene, Inspector Lomer found two business cards, one for AIC, and the other for 310-JUNK, within a wallet in a black bag inside of the truck parked in the driveway at 45 Meadowvale Road. On the day of the accident, he also received a business card for J.R. Contracting Property Services Ltd. from Monica Mantegari. He also obtained a business card for “1521428 Ontario Inc. O/A J.R. Property Service,” with an address of 115 Toryork Drive, Toronto, and a telephone number of 416-748-3606, which is the same location, although not the same registered head office, and telephone number as J. R. Contracting Property Services Ltd. The business cards were entered collectively as Exhibit 27.

***Danielle Fortier:***

[101] Ms. Fortier testified that she is employed as a Senior Investigator by Rogers Communications.

[102] She identified the production order received for telephone number 647-449-9882. She confirmed that this was a cell phone number, based on what she termed “tower information.” It was previously entered as Exhibit 32, and once she identified it, I ruled that it was a business record (Exhibit 33). The subscriber's name was Deokallie Prasaud, with an address located in North York.

[103] Ms. Fortier also testified that telephone number 416-457-2154 was listed to All Seasons Properties Inc., attention: Tina Singh, with a Newmarket address (Exhibit 34).

[104] Ms. Fortier also identified 416-722-5865, for Mr. Chi (ph), attention: Tina Singh, with a North York address (Exhibit 34).

[105] Ms. Fortier also identified 647-449-9882, for “Deocally Prasad” in North York (Exhibit 34).

[106] Ms. Fortier also identified 416-519-0612, for Anna Bavsevic (ph) in Toronto (Exhibit 34).

***Rebecca O'Grady:***

[107] Ms. O'Grady testified that she is a Security Analyst with the Law Enforcement Support Team at Telus Communications.

[108] Ms. O'Grady identified telephone number 647-449-9882 as a cell phone number, based on their tower information. The record for this number, for the period of October 1 to 17, 2008, was generated based on their billing system, and entered as a business record (Exhibit 32).

[109] She identified the telephone number 416-457-2154 as being the cellular telephone, with a registered owner of “Bonnee Prasad,” which was also entered as a business record (Exhibit 35). This telephone number had a subscriber address of Markham, Ontario. It was activated on June 18, 2007, and had a status change on July 23, 2009.

[110] She also identified “Bonnee Prasad” as the subscriber for cellular telephone number 416-722-5865, which was also entered as a business record (Exhibit 37). There was more than one telephone number under this subscriber information, and it could have had up to seven lines. During cross-examination, she explained that this meant she had multiple lines registered to her, rather than many telephones using the same line.

[111] Ms. O'Grady also identified the subscription information for telephone number 416-457-2154 as a business record (Exhibit 38).

***Katarina Hodgson:***

[112] Ms. Hodgson testified that she is currently employed with Jenny Craig. In her prior position, she worked as an advertising sales representative for Metroland Media Group for about seven and a half years. She testified that Metroland has about 100 newspapers, including the Scarborough Mirror, the North York Mirror, the Etobicoke Guardian, the East York Mirror, and the Beach Mirror.

[113] In her position with Metroland, she said that people would call in, and she would ask them what kind of advertisement they wanted to place. Some clients had accounts set up, and others paid directly by VISA card, cheque, cash or debit card.

[114] She testified that she was the sales representative for All-Can Services, and that the representative at the company was Tina Lootawan, to whom she pointed out in the court room during this trial. She also identified an invoice/receipt that All-Can Services paid, dated "10/10/2008" (Exhibit 21).

[115] She was familiar with Ms. Lootawan, since Ms. Lootawan ran advertisements every week for what Ms. Hodgson described as "garbage removal and hauling" (transcript, at p. 45). Of the approximately seven and one-half years that she worked for Metroland, she testified that she placed advertisements for Ms. Lootawan for "maybe three of those years" (transcript, at p. 46).

[116] When shown Exhibit 21, the advertisement for "Half Price Junk Removal," she recalled placing this advertisement for Ms. Lootawan. The telephone number in this advertisement, 416-457-2154 was the same number that Ms. Hodgson used to call the client.

[117] Ms. Hodgson testified that on December 17, 2008, Ms. Lootawan told her that the company was never called All-Can, and said that it's registered name was Mr. Trash. She added that she had taken over the business several years ago. She identified a screen-shot in which she had posted this information internally (Exhibit 40). She also identified a related screen-shot that identified Ms. Lootawan as the contact (Exhibit 41).

[118] Ms. Hodgson stopped dealing with Ms. Lootawan when Ms. Hodgson's department was outsourced in April of 2010.

***Harold "Sonny" Robbins:***

[119] Mr. Robbins testified that he is currently unemployed, and has been in receipt of disability payments for the last two and one-half to three years. In October of 2008, he was employed as a driver of a roll-off truck. His job was to pick up and drop off garbage bins.

[120] He said that he had been employed with this company for only about a week at the time, when he worked with Mr. Stiff on October 15, 2008, which was the day that Mr. Stiff fell off a roof. He said that the job they were hired to do was to pick up shingles off the ground, and that they went up to the roof for extra money, which was about \$20 to \$25. Once they arrived at the job site and saw the amount of garbage, they called Andrew or Kamal to obtain a price to quote to the customer.



[121] He said that his friend, James Richardson, was the Superintendent of his apartment building, and that Mr. Richardson had referred him to this company.

[122] He testified that he had been hired by “Andrew” and “Kamal.” During cross-examination, he said that “Kamal” was sometimes called “Camille,” but he denied knowing her last name. Later on during cross-examination, he said that he worked for “Monica, “who owned J.R. Contracting and Property Services Ltd., but again said that he did not know her last name. He said he had a valid Ontario Driver's Licence. He also said that he was paid in cash, and that he did not fill in any forms when he was hired.

[123] Crown counsel asked Mr. Robbins about documents that purported to have his signature on them. She relied upon s.67(1) of the *Act* and the certificate to enter these documents for the truth of their contents. I gave Crown counsel leave under s. 23 of the *Evidence Act*, R.S.O. 1990, c. E. 23, to show him the document and question him on it.

[124] While Mr. Robbins acknowledged signing it and also acknowledged that it included his nickname and his telephone number at the time, he said that he had just signed it, and that it had been filled out by someone else. This document was entitled, “Employment Contract Details.” It stated that his employer was “J. R. Property Services Ltd.” with an address of 115A Toryork Drive, Toronto (Exhibit 17).

[125] Mr. Robbins testified in cross-examination that while he signed Exhibit 17, he did not fill it out. He said that he could not recall whether he signed it before or after the accident. He added that he does not believe he signed anything prior to the accident; but during cross-examination, Mr. Robbins testified that he had only worked with Kamal and Andrew for about a week, perhaps two, prior to the accident. The employment contract was dated. Much was made during cross-examination of whether it was dated October 17, October 19 or October 1<sup>st</sup> of 2008, and the name of the corporation at the top of each page.

[126] When shown the photographs of the accident scene, Exhibits 2 to 6, he identified the location, the shingles, and the sign stating J.R. Contracting Property Services Ltd. on the side of the truck, as all being accurate.

[127] When Mr. Stiff fell, he said that they called “J and R”, and that the owner, “Monica,” came to the scene of the accident. Later on in his testimony, he said that both “Monica and Kamal” came to the scene of the accident. He had been told that Monica was the owner. He described “J and R” as a disposal company and scrapyards, located at Finch and Weston Road.

[128] Mr. Robbins testified that the first time they were told not to go on a roof was after this accident had occurred, and a meeting took place. No one had ever told them prior to this accident what to do if there were shingles on a roof. It was at this meeting, and his attendances at the yard, when he saw Monica. He confirmed that there was an office with a garbage dump.

[129] He described what was provided to him as equipment, as being a truck, a bin, and a paper with a description of jobs on it for the day. If something changed, they would receive a phone call, and they had been given a business telephone, along with an attaché that included a licence for the vehicle, the ownership, and the insurance. The cellular telephone was inside the attaché. They were also given a receipt book, and a cash float of \$200. They were provided with the cash float, because garbage dumps require payment by weight. If they needed an advance on their pay, they would speak to Kamal, who would provide it to them.

[130] He testified that the sticker was already on the side of the truck when they left the day of the accident. He further testified that they had no fall protection with them on the roof at the time of the accident, nor had he been given a harness, nor had he been trained on how to use fall protection equipment.

[131] Mr. Robbins identified the receipt that he wrote up for Mr. Kraus, dated October 15, 2008, where he wrote "RJ Contracting" when he should have written "JR Contracting." During cross-examination, he admitted that he had made an error. He was given \$270 cash, and gave Mr. Kraus the receipt (Exhibit 12).

[132] He also identified the statement he gave to Mr. Lomer on the day of the accident, in which he said that he had worked with Mr. Stiff on four prior occasions.

[133] During cross-examination, he admitted that he had received rides to this trial from Mr. Haniff, since he no longer owned a car because of the arthritis in his back. Moreover, he admitted that Ms. Lootawan had given them money to buy lunch during the hearing.

[134] Mr. Robbins identified a woman as Kamal/Camille Persaud when she walked into the courtroom.

[135] He testified that the bins were labeled "AIC Contracting" and that the bin at the accident location had been so labeled as well.

[136] At the time of the accident, his telephone number was 647-349-5883.

[137] Mr. Robbins testified that Mr. Stiff had made a side deal with the homeowner to go onto the roof and that they were going to keep the extra money. He said the \$270 on the invoice did not include the extra money, however, which they never received because of the accident.

[138] Mr. Robbins admitted that when he had failed to attend court on an earlier date, and that I was going to issue a bench warrant for his arrest, both Mr. Haniff and Ms. Lootawan had called him. This evidence contradicted his earlier evidence that he had not spoken to Mr. Haniff in three years.

[139] Mr. Robbins also admitted that he failed to declare any of the cash income he earned for the year he worked for Andrew and Kamal, on his income tax return.

[140] Mr. Robbins said that Mr. Stiff had called Ms. Lootawan the morning of the accident.

[141] Mr. Robbins categorically denied that he and Mr. Stiff had consumed any beer the day of the accident.

[142] Mr. Robbins was shown his criminal record (Exhibit 42), which he identified, but he seemed to be reluctant to discuss it. His record included: mischief (1977), possession of a narcotic (1979); possession of stolen property under \$200 (1979); and possession of a narcotic (1982).

[143] Mr. Robbins disputed the evidence provided by Mr. Stiff to lie if they were ever pulled over and say that they worked for JR Contracting, since there had been problems with various Ministries. However, after denying he was told to lie, he did say that he worked for J.R. Contracting Property Services Ltd., and that Monica owned it.

[144] He could not explain why he could not accurately record the name of JR Contracting on the receipt he provided to Mr. Kraus (Exhibit 12), and agreed that he did not know John Rossi of JR Contracting Property Services Ltd.

[145] Mr. Haniff believed that Ms. Lootawan was more senior than Ms. Persaud within J.R. Contracting Services Ltd.'s management. He used to have Ms. Lootawan's telephone number in his old cell phone.

***James Richardson:***

[146] Mr. Richardson testified that he has been off work and on disability payments for a few years because of his eyesight. He said that his last job was with "J & R Construction" where he delivered and picked up bins with a truck.

[147] He testified that he had worked at the prior company, known as Canadian Environments, which was taken over by J and R. He said that, "J and R was Monica" (transcript, at p. 58). He described Kamal as being "like my supervisor, more or less" (transcript, p. 58). He said that Kamal had been with Canadian Environments and went over as part of the take-over by J and R.

[148] He testified that Kamal provided him with a book, for logging the mileage on the truck, and the monetary float, as well as a company phone that he described as being like a walkie-talkie, which he used to talk to Kamal.

[149] On the date of the accident, Mr. Richardson said that he had picked up Sonny Robbins, and that he had Garnet Stiff with him. He said that he has known Mr. Stiff since he was a baby, because they used to live in the same apartment building, and were friends in the past. The three of them went over to a depot at Weston and Finch and picked up a truck with a bin. He said that Kamal subsequently sent Sonny and Garnet to pick up another truck at Woodbine and Steeles.

[150] He said that he was working at Ellesmere and Neilson when he received a call from Kamal asking him to drive to the location of the accident because Garnet had fallen, and she asked him "to go down to see what was going on" (transcript, at p.61). When he arrived, Mr. Stiff was in the ambulance, and Mr. Richardson did not speak to anyone.

[151] When shown his employment contract with J.R. Property Services Ltd., 115A Toryork Drive, Toronto, he testified that he signed it, but did not fill it in and that he could not recall when he signed it. He also admitted that it contained his correct address and telephone number at the time. It provided a start date of October 1st, 2008, with a rate of pay of \$11 per hour, cash, and described him as a driver/helper, who would perform small ground clean-ups and drop off bins. It specified that he would be paid by Kamal (Exhibit 17). He said there were no changes in his duties going from Canadian Environmental to J.R. Contracting, and that he was aware of this take-over because Kamal had advised him of it. He said that Mr. Trash's trucks went with J.R. Contracting when it switched over from Canadian Environmental, but they were dump trucks and he drove a roll-off truck. Later on in his testimony, he said that the trucks may or may not have been leased, when they had the J.R. Contracting stickers on their doors.

[152] When he was then shown photographs of "1-866- Mr. Trash" labeled trucks and a number of individuals wearing maroon-coloured t-shirts, he did not identify the photographs. However, he did state that sometimes he would drive an empty trash truck to pick up garbage when he worked for "J and

R.” Later on, during cross-examination, he admitted that he was one of the individuals in one of the photographs, wearing red uniforms, standing next to a 1-866 Mr. Trash truck. Despite an objection, since Mr. Richardson identified himself in both photographs, they are properly exhibits to this trial (Exhibits 42 and 43).

[153] Mr. Richardson testified that he used to carry a black book, to log mileage, and float money, and that at the end of the day, he would return all of this to Kamal, and give her any receipts.

[154] During cross-examination, he testified that he does not know Bonnie Persaud or Tina Lootawan, but that he had heard of them through Kamal. Mr. Richardson also testified later during cross-examination that he had only met Ms. Lootawan for the first time during this trial. However, during cross-examination, when confronted with the information that the telephone records indicated that three calls took place between his telephone number and 416-457-2154, whose registered subscriber was Bonnie Persaud, on the evening of October 15, 2008, and another telephone call occurred between his number and that number on October 17, 2008, he testified that he could not recollect these telephone calls.

[155] He confirmed that at the time of this accident, his telephone number was 416-261-2332. When he was shown a series of telephone records (Exhibit 35), he was shown a call to Bonnie Persaud's number from his number. He then denied knowing Kamal's surname, and could not explain why his telephone called Bonnie Prasaud's telephone. He then admitted that it was possible that Kamal had a different name.

[156] In contrast to the testimony of Mr. Stiff, Mr. Richardson denied having consumed any alcohol on the day of the accident. He also denied ever having been to Ms. Lootawan's home in Newmarket.

[157] Again in contrast to the testimony of Mr. Stiff, Mr. Richardson insisted that he only returned the black bag and cash to Kamal and never to Ms. Lootawan.

[158] Moreover, in contrast to the testimony of Mr. Stiff, he denied having been told Ms. Lootawan that if stopped by authorities, to say he worked for J.R. Contracting Services.

[159] Mr. Richardson's testimony was confusing when he stated that Mr. Haniff was in charge of Canadian Environmental Services, but then said he always talked to Kamal and wasn't certain if Mr. Haniff owned it. When asked if he worked for AIC, he replied that the trucks were all together and owned by the same company, Canadian Environmental. He denied knowing that Mr. Haniff owned the trucks, and kept insisting that Kamal was his supervisor.

[160] He admitted that he had lunch with Sonny Robbins during this trial. He said that he was in the bathroom at one point, and was not certain if Mr. Robbins had received any money from Andrew Haniff or Tina Lootawan to buy lunch.

[161] He testified that the source of his information concerning his employer was “Kamal.” He was never paid by J.R., he did not drive its trucks, and that John Rossi had nothing to do with him. He would return the money and the receipts to Kamal or Andrew, and not to John Rossi or J.R. Contracting Property Services Ltd.

[162] He stated that he took direction from Kamal and Andrew Haniff. He agreed that Andrew Haniff is the brother of Shawn Haniff, the owner of Canadian Environmental.

[163] During his cross-examination, he admitted to his criminal record, which includes theft and two counts of sexual assaults on children.

[164] When shown his employment contract for JR Property Services Ltd., (Exhibit 17), he could not recall who prepared the document, but agreed that he signed it, although he could not recall when, although he stated that he had been with J. R. Contracting for about two weeks prior to the date of the accident. He described it as an “agreement.”

[165] During his cross-examination, a number of significant discrepancies arose about his cash job, his social benefits, and the status of his driver's licence in relation to his diabetes.

[166] Further, he denied having any recollection of information he provided to Mr. Lomer about discussions with Ms. Lootawan over \$140. He also denied any recollection of advising Mr. Lomer that Mr. Stiff's money was with Ms. Lootawan.

[167] When asked why he tried to avoid a meeting with Mr. Lomer, even though he only worked part-time while receiving social benefits, he replied that he had “a lot of medical appointments” (transcript, at p. 84).

## **FINDINGS OF FACT AND LAW:**

[168] After a detailed review of the *viva voce* evidence of all the witnesses, and the documentary evidence presented at this trial, my findings of fact and law are set out below.

### ***Burden of Proof:***

[169] Each of the defendants is presumed innocent until proven guilty, and the Crown must prove the guilt of each of them beyond a reasonable doubt. The offences alleged are all strict liability offences.

[170] If the evidence discloses a reasonable doubt, the defendant must be acquitted. Reasonable doubt is a doubt based on reason and common sense that is logically connected to the evidence or absence of evidence. It is not based on sympathy or prejudice. See: *R. v. Murafa*, 2009 ABPC 214 CanLII at paras. 7-8, and *R. v. Lifchus*, 1997 CanLII 319 (S.C.C.), [1997] 3 S.C.R. 320.

[171] As Justice Creagh held in *R. v. Murafa*, *supra*, at para. 9:

On the other hand, reasonable doubt does not involve proof to an absolute certainty; it is not proof beyond any doubt such as an imaginary or frivolous doubt.

[172] Moreover, the evidence must be considered on each count independently. On the evidence that is admissible, I must be satisfied beyond a reasonable doubt, that the essential elements of the offence have been made out in relation to each count. See: *R. v. Rankin*, 2007 ONCA 127 (CanLII), at para. 34. The Crown must prove the necessary elements of the *actus reus* of an offence beyond a reasonable doubt, and then the burden shifts and the defendant is entitled to prove the defence of due diligence on a balance of probabilities.

### ***Credibility:***

[173] With respect to the credibility of witnesses, I rely the analysis provided by Justice Duncan in a sexual assault case, *R. v. Jaura*, 2006 ONCJ 383 (CanLII). At the outset of his judgment, Justice Duncan described it as a “she said – he said” case. Justice Duncan held, at paras. 12, 13 and 15, as follows:

The assessment of credibility is not a science (*R. v. Gagnon* 2006 SCC 17 (CanLII), [2006] 1 S.C.R. 621) nor can it be reduced to legal rules or *formulae*: *R. v. White* (1947) 89 C.C.C. 148 (S.C.C.). However, proper credibility assessment is closely related to the burden of proof. For this reason, an accused is to be given the benefit of reasonable doubt in credibility assessment: *R. v. W. D.* 1991 CanLII 93 (S.C.C.), [1991] 1 S.C.R. 742, 63 C.C.C. (3d) 397. Credibility assessment must not be assessed in a way that has the effect of ignoring, diluting or worse reversing the burden of proof. What must be avoided is an “either/or” approach where the trier of fact chooses between competing versions - particularly on the basis of mere preference of one over the other: *R. v. Challice* (1979) 45 C.C.C. (2d) 546 (C.A.) cited with approval *R. v. Morin* 1988 CanLII 8 (S.C.C.), [1998] 2 S.C.R. 345; see also *R. v. Chan* (1989) 52 C.C.C. (3d) 148 (Alta CA and authorities cited therein). Acceptance of a complainant's version does not resolve the case. The court must still consider and weigh the defendant's version and, if unable to reject it, must consider itself to be in a state of reasonable doubt: *R. v. Riley* (1979) 42 C.C.C. (2d) 437 (Ont. C.A.)...

In assessing the credibility of any witness, including the accused, the existence of evidence that contradicts the witness is obviously relevant. For my part I regard it as the single most important factor in most cases, though the relative weight given to this versus other factors – such as demeanour, contradictions within the witnesses evidence itself, potential bias and criminal record or other factors – varies from case to case. No witness is entitled to an assessment of his or her credibility in isolation from the rest of the evidence. Rather, his or her evidence must be considered in the context of the evidence as a whole...

It is beyond dispute that, in any other criminal case, rejection of the defendant's evidence can be based solely on the contradicting Crown evidence, particularly where the latter is scientific in nature or otherwise practically exempt from the usual credibility assessments to which witness testimony must be subjected. For example, an accused's denial of being present at the crime scene could surely be rejected if there is DNA evidence or a videotape putting him there.  
[emphasis added]

[174] None of the defendants in this matter chose to testify. Thus, I must consider the competing evidence of various witnesses, as well as the Crown's evidence of business records, business cards, MTO searches, and telephone calls.

[175] I have carefully considered the *viva voce* testimony of Mr. Stiff, and I am satisfied that his testimony has been straightforward and consistent throughout this trial. He admitted to his criminal record, and that he had consumed three beers the morning of the accident, prior to going onto the roof at 45 Meadowvale Rd. While the consumption of alcohol prior to the accident impacts the reliability of his evidence, nevertheless, his testimony was clear, and more importantly, it was corroborated by the eyewitness accounts of Mr. Kraus and Mr. Robbins at the scene of the accident, as well as the investigation conducted by Inspector Lomer, that he had not been provided with any fall protection

equipment or any training in its use during the course of his work. Mr. Robbins testified clearly that the first time they were told not to go onto a roof was after this accident had occurred.

[176] Mr. Stiff's evidence about his reporting relationships, and how work was assigned to various workers, was buttressed by the evidence from the MTO that proved that J. R. Contracting Property Services Ltd. leased the white truck in the driveway which he used to attend at 45 Meadowvale Rd., and that the C.V.O.R. number for that vehicle was also registered to J.R. Contracting Property Services Ltd., as well as its licence plate.

[177] Mr. Kraus was also a highly credible witness. His demeanour was matter-of-fact, and his testimony was corroborated by the evidence of other witnesses, including Mr. Stiff and Mr. Robbins. He had a good recollection of the events surrounding the accident, and he had saved the advertisement that he had called. He testified clearly that after the accident, two women came by his home to ask what had happened, but that he did not know their names. His evidence was corroborated by Mr. Robbins, who testified that it was "Monica and Kamal" who attended at the scene after the accident to find out what had happened to Mr. Stiff.

[178] I rely on Mr. Kraus' evidence that was corroborated by Mr. Stiff, that the oral agreement made to remove the shingles from his roof was the only agreement made, and that no "side deal" existed for them to go onto the roof of his home. Mr. Kraus testified clearly that the oral agreement could not be confirmed until after Mr. Stiff made a telephone call, and returned to say he had authorization to proceed at the agreed upon price.

[179] Inspector Lomer was also a credible and reliable witness. In his role as an MOL inspector, he conducted an investigation into this accident. As part of his duties, he interviewed or attempted to interview a number of individuals who had knowledge of the accident, and he issued a number of orders so that he could obtain documentary evidence regarding the workplace.

[180] Inspector Lomer was straightforward, and professional. When he did not know an answer, he said so. He was quite candid when asked if he had recommended charging Ms. Lootawan, and he said that he recommended against it. Moreover, I found his organization of various telephone records to be quite methodical, and I rely upon them in this judgment, since the telephone numbers have been attributed by him, and buttressed by the evidence provided by Ms. Fortier and Ms. O'Grady. Similarly, the evidence he obtained regarding the placement of advertisements in local newspapers was supported by the evidence of Ms. Hodgson, who was able to identify Ms. Lootawan during this trial, from her prior dealings with her placing advertisements.

[181] I was also impressed by the clear and uncontroverted evidence provided by Ms. Fortier of Rogers Communications, Ms. O'Grady of Telus Communications, and Ms. Hodgson, who used to work for Metroland Media Group. In particular, they established to whom certain key telephone numbers belonged, and also, that Ms. Lootawan regularly placed newspaper advertisements on behalf of Mr. Trash in the Scarborough Mirror and other community newspapers. Ms. Hodgson's evidence establishes that Ms. Lootawan placed the advertisement to which Mr. Kraus responded, which was confirmed by Exhibits 20 and 21, and subject to a s.67(1) certificate.

[182] Mr. Robbins was a reluctant witness, and he was hesitant to disclose information. When he failed to attend court, and I spoke on the record about the possibility of issuing a bench warrant, Mr. Robbins admitted later that both Mr. Haniff and Ms. Lootawan had called him to tell him he needed to come to court. This evidence contradicted his earlier evidence that he had not spoken to Mr. Haniff in three

years.

[183] However, parts of Mr. Robbins testimony rang true. I accept that he signed an employment contract with J.R. Property Services Ltd., shortly before the accident happened, which is borne out by the date of the agreement, which I find was October 1<sup>st</sup>, 2008, based on my inspection of this document. He believed that Ms. Lootawan had more seniority with J.R. Contracting Property Services Ltd. than did Ms. Persaud, although this is clearly opinion evidence. He also admitted that he used to have Ms. Lootawan's telephone number in his prior cell phone. He identified Ms. Prasaud when she entered the court room. I accept as true his evidence that the workers were not told to refrain from going onto roofs until after this accident had occurred. He also admitted that Ms. Lootawan had given him some money to buy lunch during the trial, the day he had lunch with Mr. Richardson. His demeanour improved when his answers were more open, as well.

[184] It was obvious that Mr. Robbins had hoped to refrain from testifying against his old friends and former colleagues, and that he did so very reluctantly.

[185] In contrast to the other witnesses, Mr. Richardson's credibility was questionable. He was often inconsistent with his own earlier testimony, as well as that of other witnesses. Mr. Richardson would not admit that he had been involved with Mr. Trash, until he was confronted with two photographs of himself, along with many others, standing in matching t-shirts beside a Mr. Trash truck (Exhibits 42 and 43). He denied knowing either Tina Lootawan or "Bonnie" Persaud, and advised the court that he had not met Ms. Lootawan until the outset of this trial. Nevertheless, he was aware that Mr. Trash's trucks had gone to J. R. Contracting Property Services Ltd. when "it switched over from Canadian Environmental, " and he knew that the trucks had J.R. Contracting stickers on their doors.

[186] During cross-examination, when confronted with evidence of telephone records that demonstrate two calls between his telephone number and Ms. Persaud's telephone number, which occurred on October 15 and 17, 2008, he then testified he could not recall those calls. He was being evasive again when he testified that he had had "a lot of medical appointments," when asked why he avoided meeting with Inspector Lomer.

[187] Mr. Richardson's credibility was further damaged by his admission that he had lunch with Mr. Robbins during the trial, but was in the bathroom when Mr. Robbins may have received money from either Ms. Lootawan or Mr. Haniff for them to use to buy their lunch. Mr. Robbins admitted to having received this lunch money.

[188] Mr. Richardson identified his employment contract with "J. R. Property Services Ltd.," which he signed and was dated October 1<sup>st</sup>, 2008. It contained his correct address and telephone number at that time. It specified that he would be paid by "Kamal," at the rate of \$11 per hour, in cash. I am satisfied beyond a reasonable doubt, despite my concerns with his credibility, that he was employed by J. R. Property Services Ltd. as an employee, at the time of the accident, which corresponds to the business card in that name (Exhibit 27). It was for this reason that he was dispatched to the accident site by "Kamal" Persaud, to find out what had happened to Mr. Stiff.

[189] Mr. Richardson testified that he had known Mr. Stiff since he was a baby, because they used to live in the same apartment building. Mr. Stiff had asked him for assistance in finding employment. Mr. Robbins also testified that Mr. Richardson had also referred him to the company, since Mr. Richardson had been the Superintendent of his apartment building. Clearly, Mr. Richardson had been the link between this workplace and Mr. Stiff.



***Relevant Statutory Provisions:***

[190] Section 1 of the *Act* defines certain key terms:

“employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

“supervisor” means a person who has charge of a workplace or authority over a worker;

“worker” means a person who performs work or supplies services for monetary compensation but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program;

“workplace” means any land, premises, location or thing at, upon, in or near which a worker works.

***Was a Worker at a Workplace Exposed to a Fall of More Than Three Metres?***

[191] On the date of the accident, Mr. Stiff was clearly a “worker” within the meaning of the statute. He attended at 45 Meadowvale Road, Toronto, on October 15, 2008, in order to perform work as a labourer for monetary compensation. In making this finding, I rely upon the *viva voce* testimony of Mr. Stiff, Mr. Kraus, who both testified that an oral agreement was reached, the uncontroverted evidence that Mr. Stiff fell from the roof while performing this work, and the invoice (Exhibit 12), which was written out by his co-worker, Mr. Robbins, albeit containing a transposition of letters in the spelling of the name of the corporation, that confirmed this agreement.

[192] Further, I find that 45 Meadowvale Road, Toronto, was at the date and time of the accident, a “workplace” within the meaning of the statute. Mr. Stiff and Mr. Robbins both testified that they had been directed to attend this location, in order to perform the work of removing shingles. Their *viva voce* evidence was supported by the dispatch slip, dated October 15, 2008, to this location (Exhibit 14).

[193] I also find that Mr. Stiff was indeed a worker at a workplace exposed to a fall of more than three metres. I rely on the testimony of Mr. Kraus, as to the height of the roof of his garage, and also on the testimony of Inspector Lomer, regarding of the height of this roof, which he measured, as well as the photographs taken by Inspector Lomer of the scene (Exhibits 2-6).

[194] I accept the testimony of Mr. Stiff, corroborated by Mr. Kraus, that there was no side deal with respect to Mr. Stiff and Mr. Robbins going onto the roof of 45 Meadowvale Road, Toronto, and that the one and only agreement was for Mr. Stiff and Mr. Robbins to remove the shingles from the garage roof and throw them in the bin. Both Mr. Stiff and Mr. Kraus testified that the agreement was not reached until Mr. Stiff had telephoned his superiors (whom Mr. Stiff identified as Ms. Lootawan), described the work, and received authorization to proceed if the price was met. While Mr. Robbins was of the opinion that Mr. Stiff had made a “side deal” with Mr. Kraus to go onto the roof, it was Mr. Stiff alone who called Ms. Lootawan, which Mr. Robbins corroborated. Thus, I prefer the direct evidence of Mr. Stiff and Mr. Kraus in this regard, over the opinion evidence of Mr. Robbins.

[195] In the alternative, I reject the call to place the blame on the shoulders of the injured worker, even if Mr. Robbins' opinion evidence of a side deal to go onto the roof were to be correct, since Mr. Robbins testified that they were never advised not to go onto a roof until after the accident had taken place. To be sure, Mr. Stiff admitted that he had consumed three beers prior to performing his work, which is of far more concern.

[196] In doing so, I rely upon the Court of Appeal's judgment in *R. v. Dofasco Inc.*, 2007 ONCA 769 (CanLII), in which it quoted Laskin J.A.'s decision to grant leave to appeal, at para. 24, that "...workplace safety regulations are not just designed for the prudent worker. They are intended to prevent workplace accidents that arise when workers make mistakes, are careless, or are even reckless." In our view, this principle also extends to deliberate acts of employees while performing their work."

[197] In other words, "employee misconduct does not go to the actus reus of the offence," *Ontario (Ministry of Labour) v. Reid & Deleye Contractors Ltd.*, 2011 ONCJ 472 (CanLII), at para. 50, relying upon *R. v. Dofasco*, *supra*.

[198] I rely upon the clear and uncontroverted testimony of Mr. Stiff, Mr. Kraus and Mr. Robbins that there was no fall protection equipment of any kind for the workers at this workplace, on October 15, 2008, as required by section 26.1 of O. Reg. 213/91. Moreover, I rely upon the eyewitness account of Mr. Stiff's fall as provided by Mr. Kraus, that he slid off the roof rapidly and landed half on the walkway and half on the grass, below. Further, I accept the evidence of Inspector Lomer, based on his investigation at the accident scene, that Mr. Stiff's fall from the roof at 45 Meadowvale Road, Toronto, damaged the eavestrough.

[199] The existence of the hazard of the height of the roof and the exposure of a worker to a fall of more than three metres, contrary to section 26 of O. Reg. 213/91, has been proven beyond a reasonable doubt. I rely upon the interpretation of this *Act* as provided for by Justice Keast in *R. v. National Wrecking Company*, 2005 ONCJ 371 (CanLII), at paragraph 38, as follows:

The prosecution does not have to prove the defendants had knowledge of the danger or hazard. The prosecution would have to prove the existence of the hazard only. The prosecution does not have to show why the accident was reasonably foreseeable in the way it actually happened. That does not mean the foreseeability of a hazard cannot be an important issue. Foreseeability of a hazard is properly to be considered as part of the due diligence defence. See *R. v. Timminco Ltd.* 2001 CanLII 3494 (ONCA), 2001 54 O.R. (3d) 21 (C.A.) and *R. v. Rio Algom Ltd.* (1988), 66 O.R. (2d) 274 (C.A.).

### ***Was Ms. Lootawan Acting in the Capacity of a Supervisor?***

[200] Ms. Lootawan was not present at the time of the accident, nor were there five or more workers at the workplace, that would have necessitated a supervisor's presence. However, the definition of "supervisor" is disjunctive. I find that she did indeed have "authority over a worker." I base this finding on the testimony of Mr. Stiff, that Ms. Lootawan directed them to job sites, paid them weekly in envelopes containing cash that indicated the number of hours worked, and provided them with cash advances when they needed them. In particular, Mr. Stiff testified, and Mr. Robbins corroborated this evidence, that Mr. Stiff had called Ms. Lootawan the morning of the accident. Mr. Stiff said it was to obtain authorization to do the shingle removal work at the price discussed, which she provided to him. It was only after he had received her authority to proceed, that he returned to Mr. Kraus and confirmed the oral contract, which was also corroborated by Mr. Kraus during his testimony.

[201] In other words, Ms. Lootawan was someone who had “hands-on authority,” based on an objective test, see: *Ontario (Ministry of Labour) v. Walters*, 2004 CanLII 55057 (ON SC), at paragraph 18. Whether or not Ms. Lootawan considered herself to be a supervisor is not relevant, see: *Ontario v. Walters*, *supra*, at para. 18, citing *R. v. Adomako* [2002] O.J. No. 3050. Also see the judgment of Her Worship Coopersmith in *Ontario (Ministry of Labour) v. Lockyer*, 2009 ONCJ 73 (CanLII) in this regard.

[202] There was significant evidence of her authority at this trial. She assigned work, answered questions, set price quotations, paid them, and answered their questions throughout the day, after she dispatched them, by answering the telephone provided to the workers that included a “10-4” feature. The evidence of her authority over the workers provided by Mr. Stiff was corroborated by the evidence of Inspector Lomer, who provided evidence of the extensive activity on her telephone number to various workers. I find that Crown counsel established each of the telephone numbers in question, as directed.

[203] Therefore, I find that Ms. Lootawan's telephone number had 63 incoming or outgoing calls with the telephone number in the advertisement used to “call Josh,” during the relevant period of time. She had three calls with two different numbers belonging to J R Contracting Property Services Ltd., one call between her number and Mr. Robbins' telephone number, 21 calls with James Richardson, 56 calls with Mr. Haniff, and two calls between her number and the number of Mr. Stiff's sister, Ana Bavcevic, whose telephone he borrowed regularly.

[204] Further, I accept the evidence of Ms. Hodgson, who testified that Ms. Lootawan had placed advertisements for garbage removal and hauling with her every week for about three years, under the name “All-Can,” and subsequent to the accident, advising that the name of the corporation was “Mr. Trash.” I am satisfied with the evidence provided by Inspector Lomer, based on his requests made of Mr. Corcoran, that the advertisement to which Mr. Kraus responded, had been placed by Ms. Lootawan.

[205] Mr. Richardson identified himself in two group photographs depicting a number of individuals in maroon t-shirts, standing next to a 1-866-Mr. Trash truck (Exhibits 42 and 43). Ms. Lootawan was the sole director of Mr. Trash (Exhibit 39). Thus, Ms. Lootawan placed the advertisement to which Mr. Kraus responded, and directed which workers were to attend at his home, at the time of the accident.

[206] A supervisor's duties are set out under section 27 of the *Act*. Specifically, s. 27(1) of the *Act* requires that a supervisor ensure that a worker, (a) “works in the manner and with the protective devices, measures and procedures required by this Act and regulations; and (b) “uses or wears the equipment, protective devices or clothing that the worker's employer required to be used or worn.”

[207] A supervisor had additional duties, prescribed under section 27(2) of the *Act*, as follows:

- (a) advising a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
- (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and

(c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1990, c.O.1, s.27.

[208] Mr. Stiff, Mr. Robbins and Mr. Kraus all testified that there was no fall protection equipment at the accident scene, nor in the truck. Mr. Stiff was clear that he had not been trained in its use, nor had he been provided with any such equipment.

[209] I rely upon Justice Epstein's judgment in *Ontario (Ministry of Labour) v. Walters, supra*, at para. 16, as follows:

The argument that a supervisor must have sufficient authority to be able to fulfill the duties set out in s.27(1) and (2) of the OHSA. An interpretation that results in the imposition of such obligations without appropriate enforcement powers is inconsistent with the rules governing the construction of statutes.

[210] Thus, I find that each of the charges against Ms. Lootawan have been proven beyond a reasonable doubt.

### ***Was J.R. Contracting Property Services Ltd. Acting in the Capacity of an Employer?***

[211] Section 1 of the *Act* defines “employer” as noted above in paragraph 190 of this judgment. The duties of an employer are set out in detail in sections 25 and 26 of the *Act*. Section 25.(1) requires an employer to ensure that, (c) the measures and procedures prescribed are carried out in the workplace. Similarly, section 25(2) of the *Act* provides, that 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; and (h) take every precaution reasonable in the circumstances for the protection of a worker.

[212] In order to establish these offences, the Crown must prove beyond a reasonable doubt that J.R. Contracting Property Services Ltd was acting in the capacity of Mr. Stiff's employer at the time of the accident, and that it failed in its duties under sections 25 and 26, as noted above.

[213] I accept that none of the workers who testified could identify Mr. Rossi, the owner of J.R. Contracting Services Ltd. in court. However, there lack of a personal relationship is only one consideration when assessing their legal relationship. Based on all the evidence that I have heard, J.R. Contracting Property Services Ltd. controlled all the trucks, the bins, the 10-4 telephone equipment, and the location of the office, from which workers were dispatched. At the end of the day, the workers returned all of J.R. Contracting Property Service Ltd.'s business equipment, and were paid in cash, all back at its office. I accept the evidence of Inspector Lomer that the corporation had several trucks registered to it under its CVOR number and licence plates. This corresponds to the observation made by Mr. Stiff, who stated that all the trucks displayed J.R Contracting Property Services Ltd. signs on them. I find that J.R. Contracting Property Services Ltd. had control of the services of the workers, by virtue of the fact that it controlled all of their required equipment necessary to haul garbage, and that the workers received their assignments and payments in cash for their labour from its location at 115 Toryork Drive, Toronto. Moreover, there was no evidence to the contrary.

[214] The evidence heard at this trial has established that all the workers who testified were paid in cash, and that there were no sophisticated management practices in place. Unlike Mr. Richardson and Mr. Robbins, Mr. Stiff did not have an employment agreement in place with J.R. Property Services

Ltd., or any other entity, and that he only worked for cash on an on-call basis. However, I am satisfied, based on all the evidence I have heard, that Mr. Stiff and Mr. Robbins were directed to 45 Meadowvale Road, Toronto, on the date of the accident, in a truck that bore a J.R. Contracting Property Services Ltd. sign, with a C.V.O.R. Number and licence plates registered to that corporation. They had originally reported for work on the morning of the accident at the address from which J.R. Contracting Property Services Ltd. conducted its business, which they customarily did. At this location, 115 Toryork Drive, Toronto, J.R. Contracting Property Services Ltd. had an office, several trucks bearing its name, bins, and a garbage disposal area. Once they reported for work on the day of the accident, they were sent elsewhere to pick up the truck bearing the J.R. Contracting Property Services Ltd. sign, and headed to 45 Meadowvale Road, to perform their labour.

[215] Immediately after Mr. Stiff's accident, Mr. Kraus said that two women came to his home to find out what had happened, but he did not know their names. Mr. Robbins, who was a co-worker of Mr. Stiff and an eyewitness to the accident, testified that "Monica and Kamal" both attended at 45 Meadowvale Road, Toronto, to find out what had happened to Mr. Stiff. I find that "Monica" is Monica Mategari Selonis, who was interviewed by Inspector Lomer, and described herself as a "co-owner" of J.R. Contracting Property Services Ltd. It is significant that during this investigation, she signed a letter dated November 17, 2008, as the "Manager" of this corporation, and gave it back to Inspector Lomer, which was subject to a s.67(1) certificate.

[216] In *Ontario (Ministry of Labour) v. Pioneer Construction Inc.*, 2006 CanLII 15621 (ONCA), at para. 19, the Court of Appeal held:

The reasons in *R. v. Wyssen reflex*, (1992), 10 O.R. (3d) 193 (C.A.), are dispositive of this issue and we see no reason to revisit them. There was no dispute that Pioneer had contracted for Mr. Carr's services through his immediate employer, P.D. Brooks. Just as a contractor who hires the services of a tradesperson through another employer (a sub-contractor) assumes responsibilities as an employer for that tradesperson while that person is working in a workplace under the control of the contractor, so Pioneer became the employer of Mr. Carr when he was working in a workplace controlled by Pioneer providing services to Pioneer. The narrow definition of "employer" advanced by Pioneer is inconsistent with a purposive interpretation of the statute. This ground of appeal also fails.

[217] In their prescient commentary on the above-noted passage from *Ontario (Ministry of Labour) v. Pioneer Construction Inc.*, *supra*, Archibald, Jull and Roach state in their looseleaf, *Regulatory and Corporate Liability: From Due Diligence to Risk Management*, Canada Law Book, Thomson Reuters Canada Limited, Toronto: 2013, at page 3-5:

The Court of Appeal's decision astutely recognizes the business reality that the operator of a site is responsible for the safety of all those working on its site. Any other interpretation would require each contractor to have supervisors on each site, which would not accord with sound business practice and would not promote a uniform safety policy.

[218] In *R. v. Timminco Ltd.*, 2001 CanLII 3494 (ONCA), [2001] 54 O.R. (3d) 21, Mr. Justice Osborne held at para. 22:

The Occupational Health and Safety Act is a public welfare statute. The broad purpose of the statute is to maintain and promote a reasonable level of protection for the health and safety of workers in and about their workplace. It should be interpreted in a manner consistent with its broad purpose.

[219] I also rely upon the ruling of Justice Sharpe in Ontario (*Ministry of Labour*) v. *City of Hamilton*, 2002 CanLII 16893 (ONCA), [2002] 58 O.R. (3d) 37, at para. 16, where he held:

The OHS Act 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.

[220] I am satisfied that it has been proven beyond a reasonable doubt that J.R. Contracting Property Services Ltd. was Mr. Stiff's "employer" within the meaning of the legislation. As a matter of public policy, the purpose and objects of this legislation would be defeated if employers could shirk their legal duties simply by registering their trucks with MTO and ignoring their obligations to their workers by paying them in cash, and only using them on an on-call basis.

[221] I accept the testimony of Mr. Stiff that he had never been trained in the use of fall protection equipment. Further, I accept the evidence of Mr. Stiff and Mr. Robbins, corroborated by Mr. Kraus, that none of them were using any fall protection equipment at the time of the accident.

[222] Further, I accept the testimony of Mr. Robbins that the workers were instructed at a meeting not to go onto a roof, until after this accident had occurred. Thus, the issue is whether or not such after-the-fact conduct supported an inference about a state of mind. See: *R. v. MacKinnon* 1999 CanLII 1723 (ONCA), (1999), 132 C.C.C. (3d) 545 (Ont. C.A.), at p. 552-3. Such evidence is a type of circumstantial evidence. While it should be given no weight in terms of proving culpability, it does support an inference of management's state of mind.

[223] Thus, I find that the charges against J.R. Contracting Property Services Ltd. have each been proven beyond a reasonable doubt.

***Did Mr. Haniff Hinder, Obstruct, Molest or Interfere with an Inspector in the Exercise of His Duties?***

[224] I accept Inspector Lomer's uncontroverted and clear testimony that he made an order, that by December 18, 2008, J.R. Contracting Services Ltd would leave him a message indicating when Mr. Haniff would attend at the MOL to provide Inspector Lomer with information, pursuant to s. 54(1)(h) of the Act.

[225] Mr. Lomer did attend, as required, on December 23, 2008, and provided Inspector Lomer with some telephone records for J.R. Contracting Services Ltd. However, I accept the uncontradicted evidence of Inspector Lomer, set out in full in para. 86, that Mr. Haniff refused to answer any of his questions relating to what Mr. Haniff did after he received a telephone call from Mr. Kraus.

Specifically, Inspector Lomer wanted to know, "...from that point on what he did with that information when Wenzel Kraus called him, whether he took the information and provided it to somebody else or if he directed the workers to go from there. That was not answered."

[226] Subsection 54(1)(h) of the *Act* provides as follows:

**Part VIII**  
**Enforcement**

**Powers of an inspector**

54 (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

(h) make inquiries of any person who is or was in a workplace either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test.

[227] Section 62(1) of the *Act*, which also falls under *Part VIII - Enforcement*, states:

**Obstruction of inspector**

62(1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest, or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations or in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

[228] Specifically, subsection 62(2)(a) of the *Act* creates a positive duty to assist, on "every person" to "furnish all necessary means in the person's power to facilitate any entry, search, inspection, investigation, examination, testing or inquiry by an inspector," in the exercise of his or her powers or the performance of his or her duties under the Act or regulations.

[229] Mr. Haniff admitted to Inspector Lomer that he had taken the initial call from the homeowner, Mr. Kraus. Mr. Haniff's middle name is Joshua, which corresponds to the advertisement to which Mr. Kraus responded, which stated, "call Josh."

[230] Inspector Lomer was clearly conducting a post-accident investigation when he provided Mr. Rossi with the Order indicating that he wanted to know when Mr. Haniff would meet with him. I find that the Order being enforced was lawfully issued, and was not challenged by Mr. Haniff.

[231] Mr. Haniff's refusal to answer any of his questions when they met hindered Inspector Lomer's ability to conduct his investigation, and thwarted his ability to explore undisclosed events and workplace relationships which were relevant to his investigation.

[232] Throughout this trial, Mr. Haniff declined to testify. During closing submissions, he attempted to put forward his views. However, parties may only present evidence which can be tested, and are not permitted to merely tell the court information in closing submissions. Thus, I decline to consider his remarks when making a determination on the merits, see: *Salem v. Kourany*, 2012 ONCA 102, at para. 5.

[233] Thus, I find that the essential elements of the offence have been made out beyond a reasonable doubt against Mr. Haniff, and I am entering a conviction against him as charged.

#### **SUMMARY OF FINDINGS:**

[234] Through the detailed evidence presented at this trial, the Crown has established the causal connections as well as the *actus reus* of each offence. The accident took place at a workplace at which Ms. Lootawan was the supervisor, while the worker was engaged in the work of J.R. Contracting Property Services Ltd. which was his employer. The worker at this workplace was exposed to a fall of more than three metres, without the benefit of any fall protection equipment or training. Mr. Haniff refused to answer any of Inspector Lomer's questions, to which he was entitled in law to an answer.

[235] The defendants did not present any due diligence defence to counter these findings, since they put the Crown to the strict proof of its case.

#### **ORDER:**

[236] For the above-noted reasons, I find that the Crown has proven each count beyond a reasonable doubt. Accordingly, convictions are hereby entered against each of the defendants, on all counts as charged.

Dated at Toronto, this 18<sup>th</sup> day of April, 2013.

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Mary A. Ross Hendriks, J.P.