

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

BETWEEN:

DEREK THOMPSON

Plaintiff

and

PCL CONSTRUCTORS INC.
BOB EMMERTSON
MITCH SOETAERT

Defendants

P R O C E E D I N G S

Edmonton, Alberta
October 11, 2013

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2 _____
3 October 11, 2013 Afternoon Session

4
5 The Honourable Court of Queen's Bench
6 Mr. Justice Clackson of Alberta

7
8 No counsel For the Plaintiff
9 B. Schwanak For the Respondent
10 A. Pawlikowski-Brouiaka Court Clerk

11 _____
12

13 **Discussion**

14

15 THE COURT: Thank you. Please be seated. Okay,
16 Mr. Thompson, it's your application, you go ahead.

17

18 MR. THOMPSON: Do you want to go through the application first
19 or the dismissal?

20

21 THE COURT: You go ahead with your application.

22

23 MR. THOMPSON: Okay. Thank you, sir. I thought we were
24 going to go the other way, sir. We will start off with 1303 04301, that's me versus
25 Sterling Crane. There is two matters before you here today, sir, there PCL and Sterling
26 Crane.

27

28 THE COURT: I have read your brief and I have read the brief
29 of the defence.

30

31 MR. THOMPSON: Good, yup, just reading mine here so you are
32 on record.

33

34 THE COURT: While you are on your feet, I would like you to
35 address not only the application you are making before me, but also respond to the
36 application that is being made by the defendants to dismiss your claims.

37

38 MR. THOMPSON: Okay, I thought the rules.

39

40 THE COURT: Do it all at once.

41

- 1 MR. THOMPSON: I thought --
2
- 3 THE COURT: I'm not going to have you popping up and
4 down. You can do it all at once.
5
- 6 MR. THOMPSON: Okay. I thought she had to prove, prove her
7 point that she, that it could be dismissed first and then I would have my turn after that if
8 it went that far that's what I read.
9
- 10 THE COURT: What I'm asking you to do is to tell me about
11 your case.
12
- 13 MR. THOMPSON: M-hm.
- 15 THE COURT: And respond to the information that you have
16 been provided with. There is a copy of her brief. Go ahead please.
17
- 18 MR. THOMPSON: Okay. Again Sterling Crane. I made an
19 application here. I wanted a declaration order be put in place by you, sir, I guess you are
20 the Justice here today that all the Tedano RT hydraulic cranes of the TR and GR series be
21 shut down, as per Part 2, 10, 1 of the *Occupational Health and Safety Code* until the
22 defendants can prove that they are doing required maintenance on these machines, that
23 being bleeding the axil, oscillating lock out cylinders as per safety and maintenance
24 manual that comes with these cranes.
25
- 26 THE COURT: Just let me ask you this.
- 28 MR. THOMPSON: Yes, sir.
- 30 THE COURT: What gives you the right to ask for that relief?
31
- 32 MR. THOMPSON: Pardon me?
33
- 34 THE COURT: What gives you the right to ask for that relief?
35 Suppose I, having read your materials, filed an application before the Court and said you
36 know what judge I want you to shut down these cranes. What right do I have to ask for
37 that?
38
- 39 MR. THOMPSON: The safety of the public.
- 41 THE COURT: You are not champion of the public.

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MR. THOMPSON: I am in this case. I was running that crane. I was running that crane and my personal safety, the workers safety, and the safety of everybody out in that yard, and still the safety of everybody today.

THE COURT: But you are not responsible for the safety out in that yard. It is entirely up to the authorities that regulate this industry.

MR. THOMPSON: Actually no, sir, I will have to disagree with you because the OH and S say I have an obligation as an employee to do certain things and that's that I have to take certain steps to do so many things, and them steps involve getting OH and S in there after. But you know after putting the log book and keep on going. So I have a responsibility and a duty to myself and to other workers. It says that in the OH and S Act, regulations, and the rules, sir. So I have an obligation to that, so under that obligation I feel that it is my obligation, if nobody else is going to do it, that somebody has to protect myself, the workers, and the public, and the environment. This is huge, sir, these cranes could tip over at any time without this maintenance. It is must do maintenance. It says throughout their own manuals and stuff that it has to be done. If nobody is going to do it, if our first line of defence to the occupational health and safety is not, if you are going to fail us then it is up to you to protect the public. You know, it has to be. It has to be the courts who else because I can't go there and tell them. You know, can she? Can anybody else? You are the only one who can make the order to have them do this must-do maintenance. If you would like me to show you the must-do maintenance I think I have got it in my brief at the back there.

THE COURT: Can I interrupt just for a second?

MR. THOMPSON: Yes.

THE COURT: I will try not to interrupt again. I have read your materials, in both applications I have read your materials and I have read the defendant's materials both in response and in support of their application. I have looked at the files. I have looked at the pleadings so I'm pretty familiar with the case. Go ahead.

MR. THOMPSON: Okay. So any ways like I say there, what I was wanting to get -- I guess I can probably get them both one side, PCL and Sterling Crane, they are both crane companies, and are companies that have the cranes and they have the same kind of cranes. So I can probably hit both applications at the same time here if you like, sir.

1 THE COURT:

Sure, yeah, go ahead.

2

3 MR. THOMPSON:

Just a little bit difference, but the bottom line is

4 the cranes are endangering the public's lives, environmentally and everything else. If one
5 of these cranes went down there outside at say this refinery road, they are all over Alberta
6 like that, I'm sure you probably know you have seen them all over. But if this one of
7 these cranes went down over refinery row there and hit an H2S line and the wind was just
8 right, it could wipe out half of Edmonton, sir. This is serious stuff and we need you to
9 protect us. That's why I am here today.

10

11 So as I say in here, yeah, and I wanted the application to do the maintenance and keep
12 doing the maintenance as per the manufacturer's specifications. I asked for him to be find
13 for (indiscernible) machine is numerous administrative laws and then as Bill 6 describes,
14 now they are in effect as of October 1st here, \$100,000 for the first offence and \$500,000
15 for continue; \$30,000 a day for each machine. \$30,000 per day, so we are looking at over
16 a year here now. So it is a substantial time and the money is more like a deterrent, sir, to
17 make sure that they don't jeopardize our lives anymore. It has got to be done here.

18

19 Okay, and again for the grounds for maintenance application for the safety of all workers
20 public and environment here in Alberta.

21

22 Now, I know as the plaintiff this maintenance has not been done on the crane. It has not
23 been. Actually I have been told by the Sterling's mechanic that they are not doing it
24 before and they will not be doing it any time in the future. The only time that they would
25 do is if the danger, a situation happened. The machine is already sagging and it is down
26 to the critical thing. If they didn't get there that day and do it, it could tip that day and it
27 could tip at any possible time. That's the whole thing.

28

29 Now, it says right in here, I have it in here, sir. Sterling Crane here under my affidavit
30 here for Sterling Crane. It has on their own maintenance here, warning and operating
31 instructions for lifting capacities. It says here in paragraph 2, paragraph (indiscernible) 2:

32

33 Construction equipment can be a hazard if improperly operated or
34 maintained. Operation and maintenance of this machine must be
35 in compliance with the information and the operation safety and
36 maintenance manual supplied with this machine.

37

38 Then it goes on if this manual is missing replace it. So in this here ban it tells them
39 under the maintenance, and this is Sterling crane's own, I'm sure you can see the big
40 heading up there, Sterling Crane, this is their own warnings, sir.

41

1 That would be affidavit, Exhibit 'D', sir, that would be axil system maintenance table. So
2 it's shown here that, it says here that it must be done once a month or once every hundred
3 hours. That's how important it is. You know a motor can go up to 5,000 hours now, but
4 if you put that in proportion 100 hours or once a month it means that it is a crucial thing.
5 It has to be done.

6
7 I would just like to go by a few of the things that the operator's manual which is Exhibit
8 'B' and it goes on to say the state the same thing, sir. If the axil that would be paragraph
9 3 of Exhibit 'B'. If the axil oscillate and lock out cylinders contain air, the axil will not
10 be locked completely and the rate of lifting capacity may not be attainable. Bleed the
11 cylinders according to the operation safety and maintenance manual. It tells you
12 throughout the maintenance manual. Like I said before, one of my obligations as an
13 operator is to make sure that I read this book, I understand this book, and I follow this
14 book. So if I have to do this how much more important is it for the owners of these
15 companies to secure the safety of the people?

16
17 That's the TR Tedano, sir. Then if we go to Exhibit 'C' it is just a newer model, it tells
18 you the same thing. I will save you, I will spare you reading it, but it is exactly the same
19 thing. It tells you there. Well, actually it is a little different and I will read it: (As read)

20
21 Hydrolic cranes can be hazardous if improperly operated or
22 maintained. Operation and maintenance of this machine must be
23 in compliance.

24
25 Not maybe, not whenever we get around to it, but must be in compliance with the
26 information in the operation and maintenance manual supplied with the crane. If this
27 manual is missing order a replacement. Again it is must-do maintenance, must-do
28 maintenance. And it's a simple maintenance. It's just a matter of doing it. But if they
29 don't do it that crane is unstable and like I said, it loses capacity, it can flip over. It is a
30 time bomb waiting to happen if somebody doesn't make these guys become responsible.
31 That's why I'm here today, sir, because the only ones I feel that can make them
32 responsible is the courts.

33
34 It sure is not going to be a mechanic. It sure is not going to be anybody. You know
35 these are pretty big players and -- yeah, and here we go here, obligations of employees
36 and workers. Every new employee -- this would be Exhibit 'E'.

37
38 Every employee should ensure as far as is reasonable practical for
39 the employee to do so, the health and safety of workers engaged in
40 the work of that employee.

1 Yeah, the health and safety. So all they have to do is maintain it as properly as it says.
2 The must-do maintenance.

3
4 Here we go on the same, number 2, obligations of the workers.

5
6 (B) that the workers engaged in the work of the employer are
7 aware of their responsibilities and duties under this act, the
8 regulation, and adopted code.

9
10 So that's where I got in here. I have done my due diligence. I have done what I had to
11 do. I have brought it to their attention. I brought it to OH and S. OH and S even failed
12 to do, I put it down as imminent danger. They never sent an officer out there for two
13 weeks. And then I phoned the officer when I tried to get the number and that, and the
14 officer tried to tell him what to look for in the crane, he says, oh, he laughs and he says it
15 doesn't matter I don't know nothing about these any way. So there is a big loop hole out
16 there and there is a big gap in there that's missing. We need the courts, the people down
17 there have to demand the courts protect us because you are the only ones that can. You
18 are the only ones that can put that order of declaration into place and hopefully here
19 today, sir.

20
21 It also goes on to say there at page 2, Section 3(a):

22
23 Take reasonable care to protect the health and the safety of the
24 worker and the workers present while the worker is working.

25
26 Again, that is must-do maintenance. This is all under the *Occupational Health and Safety*
27 *Act*.

28
29 Then it goes on, supplier, I will get into definitions here a bit. Supplier.

30
31 Every supplier shall ensure as far as reasonable and practical to do
32 so that any tool, appliance, or equipment that the supplier supplies
33 is in safe operating conditions.

34
35 So that has to come out there. It is supposed to come out in the safe you know that
36 maintenance must be done, and that maintenance must be maintained as per the manual,
37 sir. I mean it's their own, it's their own manual. They own Tedano, the dealership here
38 and it is their own letterhead. Again, they are under multiple obligations under the Act,
39 sir. I will get to the multiple obligations here in a bit but they are also prime
40 (indiscernible). They weren't prime contractor here, but they, the other one PCL, let me
41 just slide this in here right now, they were the prime contractor.

1
2 So the prime contractor of the work site is the contractor or employer or other person who
3 enters into agreement with the owner of the work site to be prime contractor.
4

5 Okay, so and it goes on the prime contractor 3(3): (As read)
6

7 If the work site is required to have a prime contractor under (1)
8 the prime contractor shall ensure as far as is reasonable and
9 practical to do that this act, the regulations and the adapted code
10 are complied with in respect of the work site.
11

12 Again, that would be the maintenance, the safety of the workers. They have an obligation
13 under the code for the safety of the workers and all they have to do is to do the proper
14 maintenance on it.
15

16 We get into the *Occupational Health and Safety Act*. 3: (As read)
17

18 Existent of imminent danger. No worker shall carry out work on
19 reasonable and probable grounds the worker believes there exists
20 an imminent danger to the health and safety of that worker.
21

22 And that's exactly where I come in. I did my diligence. I followed through and they
23 refused to do the maintenance on this. This is where I'm getting in. I covered my side,
24 my diligence, sir, and I feel that they, as the bigger companies have to too. They are the
25 ones that could be potentially killing thousands of people in Alberta. So I'm just going to
26 carry on here a little, sir.
27

28 Okay, and this section: (As read)
29

30 Imminent danger means in relation to any occupation, a danger
31 that's not normal for the occupation. A danger under which a
32 person engaged in that occupation not carry out the person's work.
33
34

35 Okay, and it goes on here: (As read)
36

37 Worker refuses to carry out work, refuses to operate a tool,
38 appliance or equipment shall as soon as practically notify the
39 workers employed at the work site, the worker's refusal and the
40 reason for the refusal.
41

1 So again, I have done that. They know what's going on. They have had a, and they
2 failed to do an investigation them self which was a contravention under the code too.

3
4 I found out the employer shall investigate and take action to eliminate the imminent
5 danger. So they wouldn't do that. The imminent danger is there. They are telling him in
6 the manual. They are telling you from the manufacturers that this crane (indiscernible)
7 must-do maintenance and it is giving you what it should be doing. It goes on under the
8 Act that the employer should ensure that no workers assigned to use or operate that tool,
9 equipment, or appliance equipment or perform the work at which the worker has made a
10 notification under (3) and of course be telling you that's going on in the log book is the
11 notification. The workers to be signed is not to be exposed to imminent danger or the
12 imminent danger has been eliminated.

13
14 Well, if they are not doing the, if they are not doing the maintenance then the imminent
15 danger has not been eliminated and it is ongoing now. It is imminent danger right now,
16 sir.

17
18 Then here is one of the places they failed here to prepare written record for their workers'
19 notification, investigation, and action taken and give the worker notified a copy of the
20 record described, and that would be in the Statement of Claim and that but today I'm
21 trying to explain to you how important it is, where it is under the Act the regulations and
22 code that they must do this maintenance. They are not doing it. I know OH and S is
23 failing to make them do it. I'm not sure what's that's all about, sir, but again you are our
24 last line of defence in this issue.

25
26 Then we go into offences.

27
28 A person who contravenes this Act, the regulations, or adapted
29 Code or fails to comply with an order under this Act, regulation,
30 adopted code, or with an accepted issue under this act is guilty of
31 an offence and liable.

32
33 You know that's not (indiscernible) but liable, sir, that's why I'm here today. It looks
34 like I have to sue them to get them to do this must-do maintenance. I feel this is sad.

35
36 Then I go on to the code, sir, that's part 66: (As read)

37
38 If the operator of the lifting device has any doubts as to the safety
39 of the workers in the vicinity of the lift, the operator must not
40 move any equipment or load until the operator is assured that the
41 working conditions are safe.

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Well, again, if it is not done then the conditions cannot be deemed safe.

Then we go on to the owners responsibility, part 19, power of mobile equipment of the safety code again, OH and S safety code, sir.

Operator responsibility.

A worker must not operate power mobile equipment unless the worker is trained, authorized by the employer to operate the equipment.

And says, then we go on there 260. Inspection and maintenance.

Employer must ensure that the power equipment is inspected by competent worker for defects and conditions where hazards or may create a hazard.

It goes on to part, back at it to inspection: (As read)

Must be made in accordance with the manufacturer's specifications.

So there we go the manufacturers' specifications says bleed that once a month or every 100 hours. So I mean under the code, or under the Act or under the code it's telling them, it is demanding them to do this, sir, and they're not doing it. They are just, I don't know if it is arrogant or what the right word is but they are endangering our lives and I'm quite, it's quite serious.

It goes on to 263:

If inspection under this section indicates that power equipment is hazardous or potentially hazardous, an employer must ensure that the health and safety of the worker who may be exposed to the hazard is protected immediately.

That's why I wanted. It that's why I put down declaration in the order here today, that they should be shut down. According to the Code, it should be stopped. It should not be exposed to the hazard and protected immediately. If that protection comes from the Court then so be it.

1 And it goes on to say that the mobile equipment does not operate until the defects are
2 repaired or the condition is corrected. So the defect is repaired and the unsafe condition
3 corrected as soon as reasonably practicable. Well, if they are not doing it now for the last
4 year and they haven't done it for the last years, last few years, that's why I felt that it be
5 demanded that they be shut down. That they be made to do this must-do maintenance.
6 Because if you give them the leeway and they do the wrong machines or don't get at it in
7 a timely fashion that potential hazard is there and according to the code we have to stop
8 that.

9
10 It goes on to 10(1): (As read)

11
12 Emergency action required to control or eliminate the hazard as it
13 endangers the health or safety of the workers: (1) any of those
14 workers competent in correcting the condition and the minimum
15 number necessary to correct the condition may be exposed to the
16 hazard.

17
18 Every reasonable effort must be, every reasonable effort must be made to control the
19 hazard while the condition is being corrected. That reasonable effort is shutting down the
20 machines. I think that's a reasonable effort after the, again, I'm going to say arrogance of
21 them not doing the must-do maintenance.

22
23 We go into here part 3 of the code still, sir. It goes on, the employer must ensure that the
24 equipment is sufficient size strength and design, and to perform the function of which it is
25 intended or was designed.

26
27 Well, if it is not being maintained then it is not doing the proper function, performing the
28 proper function that it was designed for. It is under rated. It is instable. So again, the
29 warning lights are on all over.

30
31 The rate of capacity or other limits on the operation of equipment or any part of it are on
32 the supplies described in the manufacturers' specifications are not exceeded.

33
34 Any (indiscernible) this is equipment or supplies it goes on erected, installed,
35 (indiscernible) operate handles and it gets down to the maintain repaired. Again in
36 accordance with the manufacturers' specifications or specifications certified by a
37 professional engineer.

38
39 Again, they go down to 13 manufacturers (indiscernible) engineered specifications. If the
40 code requires anything to be done in accordance with the manufacturers' specifications, an
41 employer may, instead of complying strict with the manufacturers' specifications comply

1 with modified, but that's by a professional engineer.

2

3 So there is nothing in there to have you do that.

4

5 Again then we go on the code part 2 hazard assessment, elimination and control. Again
6 the employer, this is number 7(1): (As read)

7

8 Employer must assess a work site and identify existing or potential
9 hazards before work begins at the site and prior to the construction
10 of a newer site. An employer must be prepare a report of the
11 results of the hazard assessments and methods used to control and
12 eliminate the hazards. An employer must ensure that on the date
13 of the hazard assessment (indiscernible) is recorded.

14

15 Employer must ensure that the hazard assessment is repeated at
16 intervals, when a new work place, when a work place or operation
17 change. A prime contractor must ensure that the employer on a
18 work site is made aware of any existing or potential work site
19 hazards that may affect workers and employers workers. Again
20 hazard (indiscernible) control. If the existing or potential hazard
21 to workers is identified during a hazard assessment an employer
22 must take measures, must take measures in accordance with this
23 section to eliminate the hazards; or if eliminate not practical
24 control the hazards.

25

26 So there is a chance of it tipping over and how would they control it? With the must-do
27 maintenance. It is not a big deal but it is crucial to the function of these cranes, sir.

28

29 Emergency plan of action. Required to control or eliminate a
30 hazard that's dangerous to the health and safety of workers. Only
31 those workers competent to correct the condition and the minimum
32 number necessary to correct the condition may be exposed to the
33 hazard. Every reasonable effort must be made to control the
34 hazard while the condition is being corrected.

35

36 So, you know, this is why I put down immediately, sir. Like I said if OHS fails us, does
37 that make them not guilty? Does that make them not liable? I don't think so, sir. It has
38 to be addressed to the courts at this level.

39

40 (G) this is under the regulations of equipment, sir: (As read)

41

1 An employer must ensure that all equipment used at a work site is
2 maintained in a condition that will not compromise the health and
3 safety of the workers using it or transporting it.

4
5 It spells it out, will safely perform the function for which it is intended or was designed.
6 Is that the (indiscernible) for it's purpose and free of obvious defects.

7
8 So again, it's telling you, must ensure, must ensure that it is all done, sir. So it gets back
9 to, are they under the OS and H law, well, yes, they are on the definitions.

10
11 They are covered under the OH and S laws as a prime contractor --

12
13 THE COURT: Of course they are.

14
15 MR. THOMPSON: Yeah, on multiple obligations.

16
17 THE COURT: Of course they are.

18
19 MR. THOMPSON: Yeah. So they are under here under contractor.

20
21 THE COURT: I don't think there is any argument about it,
22 don't waste your breath on something that's already a given.

23
24 MR. THOMPSON: Okay. Again, there is suppliers, the same thing
25 and they are all under there. Again, a supplier, yeah, so you said they are already under
26 there. So then has obligations to the workers.

27
28 Every employer shall ensure as far as reasonable practical for them
29 to do so, the health and safety of the workers engaged in the work
30 of that employer. The worker is not engaged in the work of that
31 employer at the work site which this work is carried out.

32
33 And again multiple obligations.

34
35 So the thing is they are under the code. They are covered under the code, and it says
36 here a person who (indiscernible) this is 41 other offences, a person who contravenes the
37 acts which they have done they have contravened the act; failed to do a specific thing a
38 breach of duty. The regulation be of the code are with the -- this act is guilty of an
39 offence is liable, liable is different than fined. Before if you look at her brief, sir, it
40 shows that the Justices would set the fine. They would come to court and then the fines
41 would be set by the Justices, sir, so.

1

2 So that's the reasons behind why I put an application in to get these cranes done for a
3 declaration and an order to get these cranes stopped, maintained, and had an order to
4 maintain from here on in, as I think I have more than proved it that this is a must do
5 situation, according to OH and S to code, to by their own standards the Sterling Crane
6 guidelines by the operational manual, by the warning, warning and operational
7 instructions. Everything is pointing to must-do maintenance. And they refuse to do it.

8

9 Like I said, the OH and S has failed to do their job. If somebody robs a bank and the
10 security guard fails to catch him does that guy, is he still not guilty? How about the next
11 time this offence, what happens if the police don't catch him?

12

13 THE COURT: Let's take a simple example.

14

15 MR. THOMPSON: Hey?

16

17 THE COURT: Let's take a simple example. How about you
18 are speeding and you don't get arrested for it, then maybe I should take you to court and
19 sue you for the fine?

20

21 MR. THOMPSON: Well, shouldn't you do something about it? If
22 you keep seeing me speeding everyday.

23

24 THE COURT: Sure. Talk to the police.

25

26 MR. THOMPSON: Huh?

27

28 THE COURT: Talk to the police. That's what they are there
29 for. So talk to OHSA that's what they are there for.

30

31 MR. THOMPSON: Well, yeah.

32

33 THE COURT: If you don't think OHSA is doing their job then
34 your remedy lies against them, right.

35

36 MR. THOMPSON: Still we are looking at the public.

37

38 THE COURT: That's what you told me. You said OHSA is
39 not doing their job.

40

41 MR. THOMPSON: Right.

1
2 THE COURT: So I have got to do it.

3
4 MR. THOMPSON: Right.

5
6 THE COURT: No, that's not the way it works. You make an
7 application to compel OHSa to do their job you don't get to do it for them. You don't
8 have any authority.

9
10 MR. THOMPSON: Well, that's why I brought it towards you
11 though sir. There is a little bit here, if you look at my brief there, back at Tab 9 there it
12 goes on to an OH and S, health and safety regulations, and it goes back in there. It states
13 in there, give me one second I will dig that up. Here we are, sir. Sir, that they were
14 fined because the extent and natural potential harm to the public, pardon me, that's page
15 6. We go down to paragraph 2.

16
17 THE COURT: All right, where am I now?

18
19 MR. THOMPSON: Tab 9.

20
21 MR. THOMPSON: M-hm.

22
23 MR. THOMPSON: Page 6.

24
25 THE COURT: Okay, yup.

26
27 MR. THOMPSON: Okay, and it goes, the amount of the fine will
28 determine, and it gets down there to the actual the potential harm to the public. So to
29 parallel the paramount, next thing the paramount --

30
31 THE COURT: Yeah, but that's a prosecution launched by the
32 authority that has the authority to launch prosecution. That's not somebody who is a
33 private citizen just a member of the community. The judge is dealing with the allegations
34 that that organization made against this, in this case Cottonfelts (phonetic) Ltd., right?

35
36 MR. THOMPSON: Well, still the thing is the gist of it is here.

37
38 THE COURT: It is not about gist. You have got to get it
39 right. You launched this process. You have got to get it right.

40
41 MR. THOMPSON: I think I have, sir. I mean the public's safety it

1 is saying throughout this that, if I go down even a little further it says that the aspect of
2 deterrence could be applicable to the public welfare offences.

3

4 THE COURT: Of course. Of course. Of course it is.

5

6 MR. THOMPSON: Yeah, so if nobody else is --

7

8 THE COURT: You don't get to launch the process I'm trying
9 to explain that to you.

10

11 MR. THOMPSON: Well who gets to launch it then?

12

13 THE COURT: OHS.

14

15 MR. THOMPSON: And if they fail?

16

17 THE COURT: And if they fail to do it then the prosecution
18 service in this province, but in any event, you don't get to take the law into your hands
19 and force compliance with it, anymore than you could force compliance with any other
20 law in this province, even though it didn't affect you. You can't do it.

21

22 MR. THOMPSON: So you are saying something like this has to be
23 launched by the Crown prosecutors?

24

25 THE COURT: Launched by OHSA which would probably
26 engage the Crown prosecution service, yes.

27

28 MR. THOMPSON: You go that way. Well, what we do on the --

29

30 THE COURT: Let's talk, look at the style of cause.

31

32 MR. THOMPSON: Okay.

33

34 THE COURT: The style of cause is the title of a case, what
35 does it say? *R.v. Cottonfelts Ltd.*

36

37 MR. THOMPSON: Right.

38

39 THE COURT: 'R' stands for Regina.

40

41 MR. THOMPSON: Okay.

- 1
- 2 THE COURT: That means *Her Majesty The Queen* in the right
3 of the Province of Ontario in this case.
4
- 5 MR. THOMPSON: Right.
6
- 7 THE COURT: Is the litigant.
8
- 9 MR. THOMPSON: Okay. Not some individual. Not an ordinary
10 citizen. *Her Majesty The Queen* in the right of the Province of Ontario is pursuing
11 Cottonfelts Ltd. she has the right, statutorily and as a matter of law. You don't.
12
- 13 MR. THOMPSON: Even though it says reliable I'm not allowed to,
14 the public is not allowed to sue for the protection of the public then?
15
- 16 THE COURT: Not generally speaking, no, sir.
17
- 18 MR. THOMPSON: Generally speaking gives me that little bit of
19 edge in there.
20
- 21 THE COURT: No, well, then let me snuff that edge right out.
22 No is the answer you don't.
23
- 24 MR. THOMPSON: No exceptions to the rule?
25
- 26 THE COURT: No exceptions whatever.
27
- 28 MR. THOMPSON: And no new rules coming, we had the Rules of
29 Court and everything has to have a beginning.
30
- 31 THE COURT: No, sir. You can't, as a private citizen engage
32 the laws against some other private citizen just because you don't like the way they are
33 acting or you think they have run afoul of the law, that doesn't give you standing in our
34 courts.
35
- 36 MR. THOMPSON: Even in the public interests of safety?
37
- 38 THE COURT: If I don't like the way you are driving and I
39 think you are violating, and I think you are violating one of the traffic laws, I don't get to
40 haul you into court for that. My remedy is to complain to the authorities who do have
41 that power.

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MR. THOMPSON:
what happens?

But what happens when they fail, that's just it,

THE COURT:

If OSHA is not acting in accordance with what you think they ought to be doing then you can try and compel them to act. You can bring applications to try and force them to act. You may be, I don't, I tell you right now you are not likely to be successful but you can do that. Just as a private citizen who makes a complainant about somebody else having been injured by somebody else let's say criminally, I will give you a concrete example.

MR. THOMPSON:

Okay.

THE COURT:

I say you assaulted me in the bar last night. The police say I'm not going to do anything about it. Well, then I have a right to launch a private prosecution, subject to certain rules, against you. I have that right. Okay. You don't have that right under the *Occupational Health & Safety Act* at all period.

MR. THOMPSON:
contravene --

It doesn't say that though. It says if the

THE COURT:

Just because it doesn't say it, doesn't mean you can do it. You can't.

MR. THOMPSON:

That's what I was getting at because it doesn't say that you can't, you know that's why I did it because, you know, I was trying to save some lives here. I think that should take precedence over just about anything. If there is that little room in there for the safety of the people I think we should use it and exercise it today if you can, sir.

THE COURT:

That's not happening today. Go ahead. Is there something else that you wanted to say to me on this subject, because I can tell you right now, as far as I can see you have got no leg to stand on here.

MR. THOMPSON:
and S?

So you are saying this can only go through OH

THE COURT:

That's right. Or a criminal prosecution, I suppose, if prosecution services decides, having received a report from OSHA or OH and S.

1 MR. THOMPSON:

OHS.

2
3 THE COURT: Don't interrupt me.

4
5 MR. THOMPSON: Sorry.

6
7 THE COURT: Occupation Health and Safety, but they choose
8 to act on, then it will be the prosecution service that does it. One or the other but you
9 don't have that right.

10
11 MR. THOMPSON: Does it say somewhere in the law where I don't
12 have that right, sir? I couldn't find that in it.

13
14 THE COURT: I'm not going to give you a legal education
15 here. It is not my job. But if you spent, I mean you are going to engage this process you
16 better know what you are doing and you don't. The bottom line is that there is law, you
17 are going to have to figure it out, but I can tell you where to look. Start with a question
18 of whether you have standing, that's what it is called, standing, constitutional standing.

19
20 MR. THOMPSON: Okay.

21
22 THE COURT: Check it out. It might take you a little while to
23 work but you seem hell bent for leather to do this kind of thing. I suggest you educate
24 yourself a little more fully than you have.

25
26 MR. THOMPSON: Well, yeah, but okay, so, so her, then her, her
27 testimony should be telling me what that is then. You know, her brief or whatever she is
28 doing to try to get this dismissed should be saying that I'm going to the wrong way.

29
30 THE COURT: If you read what she wrote carefully, you will
31 find that that's precisely what she said.

32
33 MR. THOMPSON: Well, she said what you say that I'm not
34 allowed but she is not saying why I'm not allowed. It can't be guess work you have got
35 to say like why do I get this speeding ticket because it says don't go over 100 kilometers
36 an hour.

37
38 THE COURT: Okay. Unless you have got something else that
39 you want to add to your presentation this afternoon, I'm going to call upon her.

40
41 MR. THOMPSON: Okay. I'm good for now then, sir.

1
2 THE COURT: It is not good for now.

3
4 MR. THOMPSON: I can't rebuttal her.

5
6 THE COURT: No, I don't even know that I'm going to ask
7 her to say anything because as far as I can determine there is nothing here to meet. So.

8
9 MR. THOMPSON: Well, in the case of the brief and getting it
10 dismissed they have to prove their side first. That's why I was saying she should have to
11 her sides first under the how or why.

12
13 THE COURT: I have told you the process that I was going to
14 engage in. I told you right upfront that's the process I'm going to use.

15
16 MR. THOMPSON: Okay. Well, I'm feeling the process wasn't
17 right then, sir, it is not working in an even interest.

18
19 **Reasons for Judgment**

20
21 THE COURT: That's too bad if you feel that you have been
22 dealt with unfairly. I have done everything in my power. I have listened to you for 39
23 minutes now on a case that had absolutely no justification for being brought. None. I
24 don't need to hear from you Ms. Schwanak.

25
26 I can't think of a more ill conceived set of actions than these two. Mr. Thompson, you
27 are not the public's champion. We don't want you as the public's champion. We have
28 institutions that are designed to protect us and to enforce our laws. You are not that
29 institution.

30
31 If there are issues here that need to be addressed and it sounds to me like there was an
32 issue at least was an issue that needed to be addressed the proper organization to address
33 it is Occupational Health & Safety. It is up to them. If you don't like the way they
34 handle themselves there may be a remedy available to you to pursue as against them to
35 force them to do something but the procedure that you have chosen is not the right
36 procedure. Indeed it is inexorably bound to fail. There is, in my view, no need for any
37 further reasons than that.

38
39 However, it seems to me that on reflection of and review of the materials that have been
40 provided by the defendants in these two actions, it is plain that the reasoning in those
41 briefs is perfectly appropriate and I adopt the arguments that the defendants made in these

1 two actions as plain and obvious justification for dismissing both of these actions. Both
2 actions stand dismissed summarily.

3

4 Costs?

5

6 MS. SCHWANAK: Good afternoon, sir. Schwanak, first initial A
7 of Reynolds Mirth. As we have been entirely successful in this application we would be
8 entitled to costs under Rule 10.29. As set out in our brief our statements of costs on a
9 higher scale we agreed --

10

11 THE COURT: That's not going to happen.

12

13 MS. SCHWANAK: Okay. Well, we do want to bring up then that
14 there was a formal offer to settle served on the plaintiff, Mr. Thompson, on April 27th by
15 registered mail. Mr. Thompson signed for the formal offer. It offered a discontinuance
16 without costs and he never responded to our offer, so we would suggest that Rule 4.29
17 would be engaged.

18

19 THE COURT: Okay. What do you say to that Mr. Thompson?

20

21 MR. THOMPSON: Well, it sounds like extortion, sir. You never
22 gave me reasons why I shouldn't bring this down or like in the brief or whatever, they are
23 just saying, I felt like it was extortion. It was an extortion move. They were using that
24 Rule to make me back out, to feel intimidated to back out.

25

26 THE COURT: That's exactly what it is designed to do.

27

28 MR. THOMPSON: What does that mean?

29

30 THE COURT: Lawyers use it on each other all the time. If
31 you persist with this silly action I'm going to make a formal offer and if you don't beat
32 that offer, I'm going to double the costs against you. They use it all the time that's what
33 it's there for.

34

35 MR. THOMPSON: Again it is possible double costs but still.

36

37 THE COURT: Oh, no, the reason is there so that we don't
38 have this precious resource wasted like it has been this afternoon.

39

40 MR. THOMPSON: You feel the public safety is wasted? Time is
41 wasted, sir?

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THE COURT:

No, I certainly don't. I do, however, have quite

a --

MR. THOMPSON:

That's good you said that.

THE COURT:

-- a bit more faith than you have in the organizations responsible for ensuring my safety, that in this case is Occupation Health and Safety. You may not agree with me, sir, but that's my attitude. That's my opinion.

What I'm going to do is I'm going to order costs on column 2 inclusive of disbursements to be taxed, and for today's proceeding I would have ordinarily have granted costs in the sum of \$1,000, I will make it \$2,000 to reflect the offer that was not taken up. Thank you.

MS. SCHWANAK:

Thank you, sir.

PROCEEDINGS CONCLUDED

1 Certificate of Record

2

3 I, Audrey Pawlikowski-Brouiaka, certify that this recording is the record made of the
4 evidence in the proceedings in the Court of Queen's Bench held in courtroom 314 at
5 Edmonton, Alberta on the 11th day of October, 2013, and that I was the court official in
6 charge of the sound-recording machine during the proceedings.

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1 **Certificate of Transcript.**

2

3 I, Laurie Stenberg, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript
7 of the contents of the record, and

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9 (b) the Certificate of Record for these Proceedings was included orally on the record and
10 is transcribed in the transcript.

11

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Laurie Stenberg, CSR(A)

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ToC Pages:	1
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