

Occupational Health & Safety: Cranes and Construction

Mark E. Geiger
416.593.3926
mgeiger@blaney.com

Melanie I. Francis
416.597.4895
mifrancis@blaney.com



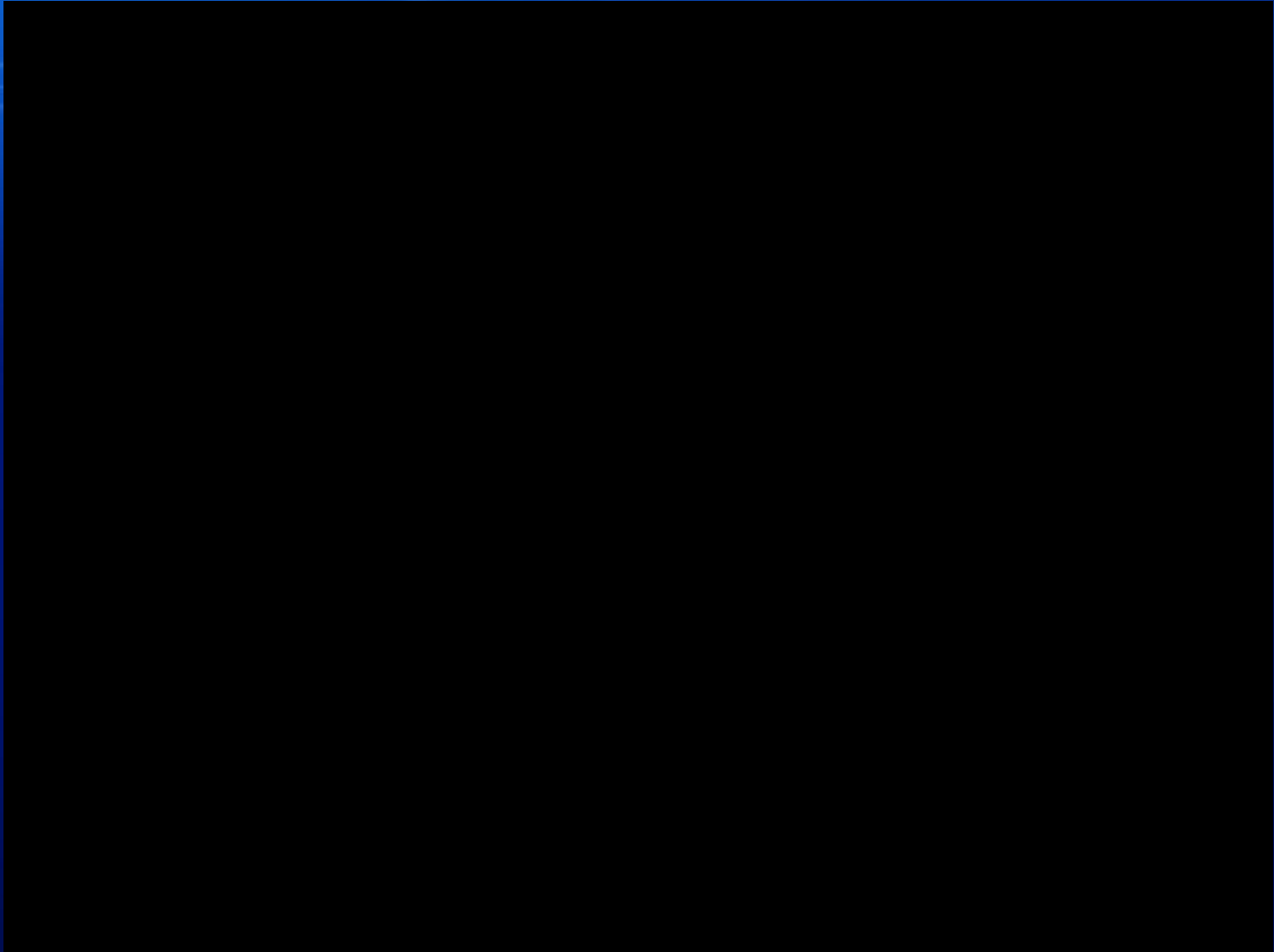


Blaney
McMurtry
BARRISTERS & SOLICITORS LLP

Miller Park

- Home of the Brewers
- Site of the “Big Blue” crane accident
- 3 killed





Occupational Health & Safety Act

- Sets out general duties as well as specific requirements through comprehensive regulations
- Shared responsibility
- If there is an accident, the investigation/prosecution will not focus solely on the crane operator

Constructor

- 23(1) Duties of constructor - A constructor shall ensure, on a project undertaken by the constructor that,
 - (a) the measures and procedures prescribed by this Act and the regulations are carried out on the project;
 - (b) every employer and every worker performing work on the project complies with this Act and the regulations; and
 - (c) the health and safety of workers on the project is protected

Employer

- 25(1) Duties of employers - An employer shall ensure that,
 - (a) the equipment, materials and protective devices as prescribed are provided;
 - (b) the equipment, materials and protective devices provided by the employer are maintained in good condition;
 - (c) the measures and procedures prescribed are carried out in the workplace;
 - (d) the equipment, materials and protective devices provided by the employer are used as prescribed; and
 - (e) a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it

Employer Cont.

- 25(2) - specific duties
 - (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;
 - (c) when appointing a supervisor appoint a competent person
 - (h) take every precaution reasonable in the circumstances for the protection of a worker

Supervisor

- 27(1) Duties of supervisor - A supervisor shall ensure that a worker,
 - (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
 - (b) uses or wears the equipment, protective devices or clothing that the worker's employer requires to be used or worn

Supervisor Cont.

- 27(2) - Additional duties
 - (a) advise 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 the protection of the worker; and
 - (c) take every precaution reasonable in the circumstances for the protection of a worker

Workers

- 28(1) - A worker shall,
 - (a) work in compliance with the provisions of this Act and the regulations;
 - (b) use or wear the equipment, protective devices or clothing that the worker's employer requires to be used or worn;
 - (c) report to his or her employer or supervisor the absence or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another worker; and
 - (d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows

Workers Cont.

- 28(2) - No worker shall,
 - (a) remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device...
 - (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker, or
 - (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct

Suppliers

- 31(1) Duties of Suppliers - Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a workplace shall ensure,
 - (a) that the machine, device, tool or equipment is in good condition;
 - (b) that the machine, device, tool or equipment complies with this Act and the regulations; and
 - (c) if it is the person's responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition

Suppliers Cont.

- 31(2) - Architects and engineers - An architect as defined in the *Architects Act*, and a professional engineer as defined in the *Professional Engineers Act*, contravenes this Act if, as a result of his or her advice that is given or his or her certification required under this Act that is made negligently or incompetently, a worker is injured

Regulations

- Construction Projects O. Reg. 213/91
 - Protective Clothing, Equipment and Devices → s. 21-27
 - General requirements → s. 31-34 (31 in particular)
 - Housekeeping → s. 35-51
 - Equipment → s.93-116 (s. 93 and 94 in particular)
 - Cranes, Hoisting and Rigging: General → s. 150 - 156
 - Includes specific rules for owner of crane or hoisting device
 - Cranes, Hoisting and Rigging: Tower Cranes → s. 157 - 165
 - Cables, Slings, Rigging → s. 168-180

Regulations Cont.

- Industrial Establishments O. Reg. 851
 - Material Handling → s. 45 - 66
 - Maintenance and Repairs → s. 72-78
 - Protective Equipment → s. 79-86

Examples

- Case Study #1
 - Workers pouring concrete from platform struck when boom of crane fell on them
 - 1 dead, 1 non-critical injury
 - Employer convicted under 25(1)(c)
 - Regulation 93(2)(a) - No vehicle, machine, tool, or equipment shall be used when it is defective or hazardous
 - Fine for employer = \$220,000
 - Crane operator fine = \$7,000

■ Case Study #2

- Industrial context
- Worker fell 7.6m from catwalk on overhead mobile crane when another worker activated the crane
- Fatality
- Employer convicted under 25(1)(c)
- Regulation s.85 (fall arrest)
- Fine = \$125,000

■ Case Study #3

- Worker struck by hook block of crane (600lb) when boom collapsed; angle indicator not working; load rating plate incorrect; load exceeded by 70%
- Critical head injury
- Employer convicted under 25(2)(h)
- Worker convicted under 28(1)(a)
- Regulation 151(1) (max load)
- Employer fined \$90,000
- Worker fined \$10,000

■ Case Study #4

- Crane contacted overhead line; signaller and operator, both employed by a subcontractor; both electrocuted
- Fatality
- Constructor convicted under 23(1)(a)
- Regulation s.44 (warning sign)
- Fine for constructor = \$150,000

Cranes = Diverse Safety Considerations

- Capacity and load
- Fall arrest and other protective gear
- Maintenance of equipment
- Training and supervision
- Lock out procedures
- Proper set up

An Accident - Now What?

- Secure site
- Notify Emergency Personnel if necessary
- Notify MOL
- Contact legal counsel and/or trained investigator
- Conduct investigation that includes as applicable: photographs, measurements, witness statements, retention of expert (i.e. soil testing), collection of documentation

OHSA Prosecution

- Remember, OHSA = strict liability
- Crown must prove beyond a reasonable doubt the action or lack of action by the defendant
- Onus then shifts to defendant
- Defendant must establish due diligence defence on a balance of probabilities
- Meaning, it is more probable than not that the defendant took every reasonable precaution in the circumstances

How Do We Establish the Defence?

- *Cooper Construction, Kenaiden* - 2 key cases
 - Diligent and Proactive Directing Mind of the Corporation
 - Comprehensive Health and Safety Policy
 - Competent, well-trained Supervisor
 - Use of outside safety consultant
 - Establishment of Committees and health and safety representatives as set out in the Act
 - How selected?
 - Certified?
 - Proper site inspections
 - Document, document, document

Compliance with the Act

- A Key Element to Establishing Due Diligence
- Important Aspects
 - JHSC
 - Training
 - Health and Safety Policy
 - Workplace Violence and Harassment Policy
- Regulations
 - More detailed requirements
 - Having the proper committees, training, processes in place will help keep you in compliance with regs

Certification of JHSC Members

- This responsibility for certification and training have shifted from the WSIB to the Chief Prevention Officer (CPO)
- The CPO certifies members once they complete the Parts 1 and 2 of mandatory training: Basic Certification and Workplace-Specific Hazard Training
- MOL has approved list of Basic Certification Providers:
http://www.labour.gov.on.ca/english/hs/cert_providers.php
- Hazard Training can be through Health and Safety Ontario, the Workers Health and Safety Centre, other health and safety professionals, or through in-house training

Certification Cont.

- Basic Certification - provides an overall knowledge of health and safety that applies to all workplaces
- Workplace-Specific Hazard Training - focuses on significant hazards in your workplace, how to assess those hazards and ways to control and/or eliminate them
- Complete a Workplace-Specific Hazard Training Confirmation to MOL form (3189A)

Supervisor Training

- Report from Expert Advisory Panel after Metron accident
- Increased importance placed on training for those in supervisory positions
- Draft supervisor workbook and employer guide released by MOL in May, 2012
- No regulation yet to make provision of program mandatory, but one is expected

Any Questions?

Contact us @:

Mark E. Geiger
416.593.3926
mgeiger@blaney.com

Melanie I. Francis
416.597.4895
mifrancis@blaney.com