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ANNOTATED OCCUPATIONAL HEALTH AND SAFETY ACT

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What's New in this Update:

- Of note amongst the new annotations are the following:
  - *Ontario (Ministry of Labour) v. New Mex Canada Inc.*, 2019 ONCA 30, in which the Court of Appeal for Ontario provided a detailed analysis of the principles in sentencing corporations and individuals for violations of the *Occupational Health and Safety Act* and regulatory offences. The Court's findings included:
    - that moral blameworthiness is a factor to be considered in arriving at a just penalty;
    - the principle of restraint, applied in criminal law such that a period of incarceration is only imposed if a lesser penalty would be insufficient, must be applied with contextual sensitivity in the regulatory sphere. That context, with

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general deterrence as the paramount sentencing consideration and custodial terms that are, typically, short in comparison to criminal matters, means that general deterrence should not be undercut by over-emphasizing rehabilitation or specific deterrence;
    - the hardship of paying a fine is not a proper basis for imprisonment; and
    - the principle of parity sentencing applies such that similar penalties should be imposed on similarly situated offenders in similar cases.

- *OPSEU Local 234 v. Ministry Community Safety Correctional Services Vanier Centre For Women*, 2019 CanLII 14451 (Ont. L.R.B.), where the Board may have revised its position on its ability to address appeals against orders that are filed more than 30 days after the order was issued. In this case the Board held that, because of the purposes and objects of the OHSA, the Legislature did not intend the 30 day time limit for appeals to be mandatory. Rather, the 30 day period is directory and the Board can, in its discretion, permit appeals to be filed beyond 30 days. The "negative or inconvenient consequences of finding the time limit [...] to be absolute and rigid far outweigh the consequences of the Board exercising its discretion to determine whether or not to allow a late appeal to proceed".
- *R. v. Daybar Industries Limited* (February 12, 2019), Santos J.P. (Ont. C.J.), in which the defence of due diligence failed where a supervisor had acted contrary to both his training and workplace policy. The fact that the injured worker was a trusted supervisor did not absolve the employer of its responsibility to ensure the supervisor was following safety standards. To the contrary, the fact that the injured worker was a supervisor actually raises the standard that the employer must meet to establish due diligence.