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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. Quinton Steel (Wellington) Ltd.* 2017 ONCA 1006, which examined the relationship between hazard or subject specific regulations and the general duty clause. The Ontario Court of Appeal overturned the trial and first level appellate decisions in which the Company was acquitted of a charge alleging the failure to take the reasonable precaution of erecting guardrails around a raised wood platform. The duty to take every precaution reasonable "is not varied or limited by the existence of specific regulations". This provision sets "a standard, rather than a rule, the requirements of which are tailored to suit particular circumstances." This reasonableness standard "does not give rise to intolerable uncertainty". The Court of Appeal determined that the

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trial Court erred in failing to adjudicate the charge as laid and ordered a new trial. Compliance with regulations does not necessarily mean compliance with s. 25(2)(h). "There may be cases in which more is required-in which additional safety precautions tailored to fit the distinctive nature of a workplace are reasonably required by s. 25(2)(h) in order to protect workers."

- *Fernandez v. City of Mississauga*, 2017 CanLII 70603 (Ont. L.R.B.), which potentially softens the 30-day time limit for appeals against an inspector's order. The applicant had delivered the appeal to the responding parties but had not filed it with the Board, the Board held that it could relieve against the inadvertence of not filing the appeal, within the meaning of the Board's rules, in time. The Board "can determine that the actions taken by the applicant within the 30 days set out in the statute constitutes an "appeal" if the Board considers it advisable to relieve against the strict application of the elements that constitute the word "file" as it is defined in the Board's Rules".
- *Bill 177, Stronger, Fairer Ontario Act (Budget Measures), 2017*, 2nd Sess., 41st Leg., which made significant changes to key provisions of the *Occupational Health and Safety Act*, that became effective on December 14, 2017. The changes include:

  (a) Amending section 66 of the Act to increase the maximum monetary penalties to a corporation from $500,000 to $1,500,000 and against an individual from $25,000 to $100,000;

  (b) Amending the limitation period for a prosecution under section 69 to include a discoverability aspect such that the 12-month limitation period may not start to run until the date that an inspector becomes aware of the offence; and

  (c) A new notification requirement was inserted into section 25 of the Act which requires an employer, that does not own the workplace, to notify the Ministry of Labour of a structural inadequacy identified by a joint health and safety committee or health and safety representative.

- *R. v. Canada (Royal Canadian Mounted Police)*, [2017] N.B.J. No. 312 (N.B. Prov. Ct.), in which the RCMP was found to have breached the "general duty" provision of the *Canada Labour Code* by failing to provide appropriate use of force equipment. Three police officers were killed and two others wounded by an assailant armed with high powered rifles. The RCMP had prior knowledge

that their weapons needed upgrading and that there would be a serious safety risk in dealing with a heavily armed opponent. New carbines were being provided. However, the "rollout" took too long and the interim strategy to mitigate the danger was inadequate. No carbines were available in Moncton, where the shootings took place. "A real concern for the health and safety of front line members responding to active shooter events would have seen a rollout of the patrol carbine prioritized and not left to the vagrancies of funding."