

ONTARIO SUPERIOR COURT SETS TEST FOR DIRECTED VERDICT OF ACQUITTAL IN OCCUPATIONAL HEALTH & SAFETY CASE

R. v. Timminco Ltd.

Facts

A hydraulic press operator was killed after he became caught in an unguarded press carriage beam. The unguarded opening was located at the rear of the machine, and the evidence did not reveal why the worker was at the rear of the press at the time of the accident. The employer was charged with failing to adequately guard an exposed moving part contrary to section 25(1)(c) of the *Occupational Health and Safety Act* and section 185(1) of Regulation 854. Following the close of the crown's case, the defendant made a motion for a directed verdict of acquittal. In granting the motion, the trial judge concluded that the 'tragic, simple fact of death' is insufficient evidence of an offence, and that there was no evidence upon which a properly instructed jury could base a conviction. The trial judge also concluded that there was an insufficient 'factual threshold for a trier of fact to determine whether there is a rational explanation for the accident.' The charges against the employer were dismissed.

Ontario Superior Court Of Justice

The Crown appealed the decision of the trial judge to the Ontario Superior Court of Justice. Mr. Justice Belch reviewed the evidence and concluded that the employer had knowledge that the hydraulic press machine constituted a hazard. In particular, the employer was aware that 'employees had access to an unguarded machine from the rear' regardless of whether it was part of their assigned duties. Mr. Justice Belch concluded that the evidence before the trial judge disclosed the following essential elements of the charge:

- (a) The crown press was a machine with a moving part.
- (b) The drawings for the crown press showed a guard screen.
- (c) The machine arrived and was installed without a screen.
- (d) There may be tacit acceptance by the company of their crown press operators working at the rear of the machine.
- (e) There was a box of flux in the vicinity of the press to extinguish fires from oil leaks, some of these were described at trial as occurring behind the machine.
- (f) There were efforts of the Health and Safety Committee to have the warning chains at the rear of the crown press kept in place.
- (g) The agreed statement of facts acknowledged that the defendant was an employer and the deceased an employee who died from injuries sustained in a workplace accident.
- (h) There was no dispute about the location of the deceased's body and the location of the moving beam and post.

The court held that to defeat a motion for a directed verdict of acquittal, it is sufficient for the Crown to prove that 'an employee was injured by a moving part in a machine of the employer's

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premises.' The manner of death is not a necessary element of the offence. Mr. Justice Belch was satisfied that at the conclusion of the Crown's case there was sufficient direct and circumstantial evidence upon which a conviction could be based. The appeal was therefore allowed and a new trial ordered.