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John specializes in employment, labour and workplace law. His practice ranges from litigation in many different forums to consultations regarding contracts for all levels of employees and related workplace policies. Employer clients of the firm retain John to advise them with respect to progressive discipline issues, fiduciary obligations, restrictive covenants and terminations.

Q Following a workplace accident the Ontario Ministry of Labour laid charges against our company under the Ontario Occupational Health & Safety Act ("the OHSA"). Crown counsel has told management that, if the court convicts the company under the OHSA, the Ministry will ask the court to impose a more severe sentence, including a larger fine than usual, because the company has previous convictions under other provincial statutes. Can the Ministry do this? Will the court consider the prosecutor's request?

A The answer is yes to both questions. This was the experience of J.R. Contracting Property Services Ltd., a company engaged in garbage removal and hauling. In March 2014 the Ontario Court of Justice convicted one of their supervisors for failing to train an employee in the use of fall protection equipment and for failing to supply such equipment at a job site. The employee was tossing loose shingles from the roof of a one-storey bungalow toward a bin, he slipped and fell onto a walkway. His injury resulted in permanent paralysis of his lower body. The supervisor had not previously been convicted of an offence under the OHSA. However, she had prior convictions in respect of offences under another Ontario statute, the Environmental Protection Act. In the earlier case the court had sentenced the supervisor to intermittent prison terms and imposed fines, of which \$50,000 remained unpaid. In the later OHSA case the prosecutor argued that the supervisor's previous convictions and unpaid fines justified a stronger penalty than usual for reasons of specific and general deterrence.

The Justice of the Peace agreed. She sentenced the supervisor to 45 days imprisonment to be served continuously and fined the company \$75,000.00, plus the victim fine surcharge (another \$18,750.00). The JP used the Regulatory Modernization Act ("the RMA"), a little known Ontario statute, to guide her in the sentencing phase of the case against J.R. Contracting Services. The RMA authorizes provincial government ministries to collect and use certain types of information about "organizations," including information about a company's prior convictions and penalties, and to share the information with one another. The JP in the J.R. Contracting Property Services case accepted the prosecutor's submission and considered the supervisor's prior convictions under the Environmental Protection Act to be an aggravating factor when she sentenced the supervisor. The JP concluded that the supervisor had a total lack of respect for the safety of the company's employees.

What are the implications? The RMA means that companies that are subject to multiple regulatory statutes may be more vulnerable to increased liability and may face greater penalties for repeated violations. Finally, companies may experience more negative publicity as a result of their non-compliance with provincial law.



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