

‘Dying for Work’ – Workplace Safety and Corporate Liability

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Police announced late last year that they would not be bringing charges in the death of the 115 people killed in the collapse of the CTV Building during the February 2011 Christchurch earthquake. Key to that decision was that, under section 162 of the Crimes Act, no one can be held criminally responsible for the killing of another more than a year and a day after its cause. Owing to the fact the building was designed and constructed in the mid-1980s and collapsed around twenty-five years later, in the words of the Deputy Solicitor-General, the law was likely to be a “complete bar” to prosecuting the two engineers who designed the building.

Although the current public and political exchange over increasing penalties for breaches of employers’ duty of care resulting in death may appear on its face to be a knee-jerk reaction to recent tragic events including the collapse of the CTV Building, the Pike River Mine disaster three months earlier, and the rising number of fatalities in the forestry industry, this debate is in fact not new. For that matter, nearly 30 years have passed since the Crimes Consultative Committee suggested the government ditch the “year-and-a-day” law. In the meantime, several other countries, including the UK, Canada, and most Australian states, have dropped similar restrictions.

In New Zealand, Justice Minister Andrew Little has now committed to repeal the “year-and-a-day” law as part of the Crimes Amendment Bill, which is currently in Selected Committee, having had its First Reading earlier this year. Nonetheless, despite this law change, it will still be the case that only individuals can be charged with manslaughter in New Zealand. Hence, while repeal of Section 162 of the Crimes Act is a necessary step in that direction, it does not in itself open the door to extending criminal liability to corporations in cases of negligence leading to a death.

That will take further legislation along the lines of the UK’s *Corporate Manslaughter and Corporate Homicide Act 2007*. That law sets out that an organisation is guilty of manslaughter, “if the way in which its activities are managed or organised causes a person’s death.” Conviction carries an unlimited fine, and courts can order companies to take out adverts publicising the fact they have been convicted. Introducing an offence of ‘corporate manslaughter’ in New Zealand, as it has in the UK, would enable a prosecutor to charge a company or other ‘legal person’ with manslaughter. It allows a company or group of people acting as a single entity to be punished for conduct resulting in at least one fatality.

It took a series of workplace tragedies and various government inquiries, both similar to what has taken place in New Zealand over the past decade, before the British Parliament felt compelled to act. Prior to enactment of the UK law, although companies could be prosecuted for a range of health and safety offences, it was nigh impossible for an organisation’s executives to be held responsible for any death caused by a gross breach of their duty of care towards employees and others. Organisations *could* in principle face the same manslaughter charges as individuals, but the prosecution would have to demonstrate that a senior individual within it

was personally guilty of gross negligence manslaughter. This, in fact, is the status quo in New Zealand.

Following the police's announcement late last year that they would not be seeking to prosecute anyone over the collapse of the CTV Building, Justice Minister Andrew Little proclaimed that the Government was looking at introducing a corporate manslaughter law. Bill English, leader of the opposition at the time, declared his willingness to work with the Government to find a solution to what he described as a 'large-scale tragedy' that should be subject to legal liability. In fact, under the previous Government, Justice Minister Amy Adams recommended that a corporate manslaughter offence be added to the Health and Safety Reform Bill, and Labour MP Damien O'Connor advanced a private member's bill which would have amended the Crimes Act 1961 to include corporate manslaughter.

So, it seems there would be little opposition to the Government enacting legislation to make corporate manslaughter an offence in New Zealand. Eight months into the current legislative session, however, the Government has yet to act. The *Health and Safety at Work Act 2015* did, in fact, substantially increase the penalties organisations face for failing to maintain appropriate standards. The law imposes a maximum fine of \$3 million and a term of up to 5 years' imprisonment, if they fail to comply with their individual obligations. Notwithstanding this, a workplace death will only be sufficiently serious to result in a manslaughter conviction, with notably much higher maximum penalties, when an identifiable individual is found to have caused the death by way of an unlawful act or omission that amounted to a major departure from the standard of care expected.

When the Select Committee reported back to Parliament on the Health and Safety Reform Bill in 2015, it identified the increased penalties available under the new law as being sufficient to ensure that New Zealand employers would meet their duty of care and that a corporate manslaughter offence was, therefore, unnecessary. Hence, there is still no serious criminal sanction for work-related death at the hands of corporations.

Nevertheless, a charge of corporate manslaughter could recognise and punish serious organisational failings without necessarily having to identify an individual who was largely to blame for the death. Creation of the offence of corporate manslaughter holds organisations and executives at the highest level accountable for deaths resultant of management failings. Introduction of the offence will bridge the culpability gap between manslaughter and breaches of health and safety legislation.

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Stephen was also interviewed on this issue on [TV1 News](#) on May 26, 2018.