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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

SCOTT STEEL LTD. and RON SCOTT

**EXCERPT FROM PROCEEDINGS
REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE D. STEINBERG**

| | |
|--------------------------|----------------------|
| Counsel for the Crown: | R. Kockx |
| Counsel for the Accused: | F. Potts |
| Place of Hearing: | Port Coquitlam, B.C. |
| Date of Hearing: | January 6, 2006 |
| Date of Sentence: | January 6, 2006 |

[1] **THE COURT:** I am not going to reserve and write out another judgment with respect to sentence. I can also tell you that I did not come into court with any particular number in mind and, in fact, was completely unaware of the \$37,000 cap in any event.

[2] I do not, frankly, propose to say an awful lot at the sentencing. I, in various paragraphs, set out the facts and in some of those paragraphs I think use some fairly strong language, deliberately. I think, frankly, the last sentence in paragraph 113 sums up what happened. No one looked, no one inquired, no one was aware and no one supervised, which is a disastrous way to undertake the reconstruction of a complex structure that is about to have rail traffic pass over it.

[3] I have, as well, as I have already indicated, read before court the victim impact statements a number of times. They are very poignant, they are very much to the point. I have turned my mind to whether or not I should read portions of those victim

impact statements into the record. I have decided against that. Some of those statements are more eloquent than others. They are all equally important and are to be equally respected. The reason I am not going to read a few of them into the record is because in my opinion it is inappropriate to highlight one person's grief over another person's grief. They are all equally important and equally relevant. So I could either read them all or read none of them into the record. They are filed, they are part of the open public court record, and anybody that wishes to can have access to them. They all speak of the terrible loss of life, of limb, of sense of family, of hope for the future, of a continuation in the passage of skills from one generation to another, all stemming from no one looking, inquiring, being aware or supervising.

[4] I do not accept the proposition that there is no connection between lack of proper written procedures and the lack of supervisors maintaining their position as supervisors and being aware of the global picture of what was going on. Written procedures on a job such as this are not just meant to provide a basic instruction to the workers as to which bolt to undo and which strut to remove and how to do that. Written instructions, especially on something as complex and inherently as dangerous as this reconstruction, must be written with a view to the fact that the workers are humans, and humans make mistakes. Humans feel pressures, humans suffer from distraction and a host of other human frailties. Recognition of that has to be built into procedures. There has to be a recognition that people make mistakes. It is, therefore, incumbent on the person formulating the procedures to build into those procedures safeguards that are specifically designed to minimize the chance of mistake or neglect.

[5] A proper procedure here would have required the stoppage of work in order to double-check on the state of the bridge before the next step of opening a new bay would commence. It may be that the supervisors would have neglected that step. As I say, human beings make mistakes. But such a procedure would have tended to create the atmosphere on this jobsite where there was not the sort of chaos and time pressures so eloquently described by Mr. Hickey. They only had a limited amount of time to open things up and close it again, because the next train was due to cross. In some sense, too, to slightly misuse a phrase, speed kills. Haste, in this case, and the feeling of time pressure contributed a lot, and there was no countervailing pressure against that sense of time pressure contained in the procedures. That is but one example of where the procedures failed. I have set out some very specific construction details that failed to appear in the procedures in my reasons for judgment at trial.

[6] As has been expressed in many of the other cases any sentence I pass cannot rewrite history. Any sentence I pass will not restore life, will not restore legs, ribs, backs or emotional health. Any sentence I pass can only hope, in some small part, to create an atmosphere in the present and future where other lives will not be lost and other limbs will not be lost. It is for that reason that the case law is very clear that deterrence and denunciation are the key factors in sentence.

[7] I agree with both counsel that a monetary penalty is what is called for here on all counts against both Ron Scott and his corporation. It is also clear that the amount of the fine has to be of an order of magnitude that clearly takes it away from simply the cost of doing business. The amount of the fine in no way represents the value of the lives lost and injuries suffered. I do not propose, as well, to review all of the cases that have been provided. I have read them all. I do think it important, though, to read, as counsel suggested I probably would, the relevant passage from what is still the leading case, *R. v. Cotton Felts Ltd.* from the Ontario Court of Appeal in 1982. Starting in paragraph 18:

Sentencing for this type of offence cannot be achieved by rote or by rule. In every case it is the responsibility of the sentencing judge to impose a fit sentence, taking into account the factors upon which I now propose to comment.

The Occupational Health and Safety Act –

[8] Which is the Ontario equivalent of our *Workers' Compensation Act*.

-- is part of a large family of statutes creating what are known as public welfare offences. The *Act* has a proud place in this group of statutes because its progenitors, the *Factory Acts*, were among the first modern public welfare statutes designed to establish standards of health and safety in the work place. Examples of this type of statute are legion and cover all facets of life ranging from safety and consumer protection to ecological conservation. In our complex interdependent modern society such regulatory statutes are accepted as essential in the public interest. They ensure standards of conduct, performance and reliability by various economic groups and make life tolerable for all. To a very large extent the enforcement of such statutes is achieved by fines imposed on offending corporations. The amount of the fine will be determined by a complex of considerations, including the size of the company involved, the scope of the economic activity in issue, the extent of actual and potential harm to the public, and the maximum penalty prescribed by statute. Above all, the amount of the fine will be determined by the need to enforce regulatory standards by deterrence.

The paramount importance of deterrence in this type of case has been recognized by this Court in a number of recent decisions. An example is provided by *R. v. Hoffman-LaRoche Limited (No.2)*. In that case Mr. Justice Linden imposed a fine of \$50,000 for an offence under the *Combines Investigation Act*, and stated the principles

governing the amount of a fine as follows:

In conclusion, I feel that a fine that is more than nominal, but which is not harsh, would be appropriate in this case. The amount must be substantial and significant so that it will not be viewed as merely a licence for illegality, nor as a mere slap on the wrist. The amount must be one that would be felt by this defendant. It should also serve as a warning to others who might be minded to engage in similar criminal activity that it will be costly for them to do so even if they do not succeed in their illegal aims.

[9] To continue the quote at paragraph 21:

Another example is provided by this Court's decision in *R. v. K-Mart Canada Limited* (1982). In that case the Court increased a fine of \$25,000 to \$100,000 for a company convicted of conspiring to interfere with the formation and operation of a trade union, contrary to the *Labour Relations Act*. In so doing Chief Justice Howland had this to say at p. 332:

In our opinion, the fine imposed did not adequately reflect the gravity of the offence and was an error in principle. The fine must not be tantamount to a licence fee to commit illegal activity, but must be sufficiently substantial to warn others that such illegal activity will not be tolerated.

[10] At paragraph 23:

With reference to these offences, deterrence is not to be taken only in its usual negative connotation of achieving compliance by threat of punishment. Recently my brother Zuber in *R. v. Ramdass*, a judgment pronounced on November 17, 1982, referred to deterrence in a more positive aspect. There he was dealing with a driving offence and he quoted an earlier unreported decision of this Court in *R. v. Roussy*, where the Court stated:

But in a crime of this type the deterrent quality of the sentence must be given paramount consideration, and here I am using the term deterrent in its widest sense. A sentence by emphasizing community disapproval of an act, and branding it as reprehensible has a moral or educative effect, and thereby affects the attitude of the public. One then hopes that a person with an attitude thus conditioned to regard conduct as reprehensible will not likely commit such an act.

This aspect of deterrence is particularly applicable to public welfare offences where it is essential for the proper functioning of our society for citizens at large to expect that basic rules are established and enforced to protect the physical, economic and social welfare of the public.

[11] This theme is dealt with some years later in the Supreme Court of Canada in the case of *R. v. M.(C.A.)*, and I am quoting from the excerpt contained in His Honour Judge Jardine's sentence with respect to *C.A.M.* in this matter. At page 369, paragraph 81 of the *C.A.M.* case, the Supreme Court of Canada wrote:

The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behaviour, judicial sentences should also be imposed in a manner which positively instils the basic set of communal values shared by all Canadians as expressed by the *Criminal Code*.

[12] Now, that was a criminal case, but I think it obvious that the sentiments expressed in that case apply with at least equal force, if not more so when dealing with public welfare statutes such as the *Workers' Compensation Act* and its *Regulations*.

[13] The goal in this particular case is not one of specific deterrence. The goal here is one of denunciation and general deterrence. No person, unless they were completely heartless, could walk away from an event such as the events of October 27th, 1997 where John Marti and Bill Carson died because a bridge was being reconstructed and not be fundamentally shaken to be part of the cause of their deaths. I have no reason to believe that Mr. Scott, if he had to do it all over again on another project and already having some responsibility for the death of two human beings, would not spend considerably more time creating much fuller written instructions. Nobody would want to go through this kind of event twice.

[14] In addition, it would appear that one of the immediate consequences, and frankly, not all that surprising, is that the family business which he took over from his father has been swept out from under him, partially for this reason and partially for other

economic reasons.

[15] I have not been given any reason to believe that Ron Scott has been habitually negligent. There has been placed before me safety literature generated by his company. I have also had placed before me much material that shows that the start of this project at least was done without adequate equipment, and there are, of course, the continuing notes that the CN site supervisor kept in his journal about what was going on.

[16] There is never a time when a project is so important, that time is so short, that corners should be cut at the risk of human life. There is no bridge in the world that is worth the loss of any human's life.

[17] Ron Scott and Scott Steel were responsible for the Scott Steel employees. I have made that, I hope, abundantly clear in my judgment. There may have been an understanding, a working understanding, although certainly not confirmed in writing - in fact, contradicted by the writing of the contract - that there was some concurrent jurisdiction over supervision. That does not diminish one iota the responsibility of Scott Steel to ensure the safety of its workers.

[18] The Crown has urged that I impose the maximum sentence on Ron Scott personally, as well as the maximum sentence for the three counts for which the company was convicted. In my view, dealing firstly with Ron Scott, that would be inappropriate. To accede to the Crown's request would mean that the court lost any ability to be able to differentiate between offenders in terms of their legal and moral culpability. Ron Scott is not the worst offender in the worst possible set of circumstances, and Mr. Potts has set out some of the reasons, which I accept.

[19] There have been, I acknowledge, severe financial consequences already to Mr. Scott in the loss of his company as an effective working entity and his having to travel and remain in the Lower Mainland of British Columbia away from his home in Edmonton for considerable periods of time during the trial of this matter. However, the suggestion that denunciation and deterrence in this matter can be adequately addressed by the imposition of a fine of \$2500 is also a proposition that I do not accept.

[20] Mr. Scott, if you will stand up and come forward, please. With respect to you, there is a fine in the sum of \$15,000 on count 1. As the representative of the corporate defendant, the company is subject to a penalty of \$25,000 on count 1. I note that procedures were developed by yourself and others designated by yourself within the company to develop procedures that were inadequate.

[21] With respect to count 3, which is the failure to brace or otherwise secure the structure, there is a fine of \$30,000 against the corporation.

[22] With respect to count 4, there is a fine of \$15,000 against the corporation.

[23] These are separate offences. They are somewhat interconnected, but there is, for example, a difference between the corporation having proper written procedures in place and the failure to ensure that the bridge was adequately braced. Those are two separate delicts. Clearly, the failure to check for bracing was the most immediate cause of the collapse and that is why it has that penalty. Count 4 is somewhat related to count 3, in that the reason, as I have set out in my judgment in convicting the company, the supervisors failed to check to see that it was braced because they were busy trying to keep the project on schedule and were acting as labourers, not supervisors. At the same time, for that same reason, they were failing to ensure the adequate direction and instruction of the ironworkers. So there is more of a connection between those two events, because everybody was acting as a labourer, not as supervisors and instructors and directors.

[24] So I have kept in mind the totality of the fines. I have adjusted the fines simply with that in mind, to have a significant penalty but also to keep it within an appropriate global range.

[25] There is one other element I think I have to address before I get into time to pay. Your counsel has argued that I have to bear in mind the fact that CN, which is clearly a much larger corporation than Scott Steel ever was, was only fined \$50,000. I am very well aware that the total fine that I have imposed vastly exceeds that and it is imposed on a much smaller financial entity. However, your company and your supervisors I have found were much more directly responsible for ensuring the proper guidance of your own workers. It is for that reason that the penalty is what it is. It reflects the failure of responsibility in that way.

[26] With respect to time to pay, Mr. Potts, I have in mind 60 days on the personal fine?

[27] MR. POTTS: Sixty days in respect of the personal count, Your Honour. In respect of the corporate accounts, there is no prospect whatever of the corporation paying those funds at any point in the immediate future, and I am not quite sure how that needs to be dealt with in terms of time to pay.

[28] THE COURT: Well, at one point I sort of knew, but I do not know if either of you have refreshed this, the procedure to enforcing a fine against --

[29] MR. KOCKX: Civil judgment. I have a copy of the relevant sections, but it comes down to a certificate of judgment registered in Supreme Court if it is not paid.

[30] THE COURT: All right. Well, then, it seems to me the most appropriate thing is to order it payable forthwith and then it will be filed and it will become part and parcel of any ongoing litigation against Peter Kewett (phonetic). Is that not the safest thing to do?

[31] MR. POTTS: Yes, but I would ask that it be payable within 30 days.

[32] THE COURT: The reason being...?

[33] MR. POTTS: So that my client has an opportunity to take instructions -- to provide instructions as to whether he wishes to revisit this issue, and it would save the necessity of applying for a stay.

[34] THE COURT: Revisit the issue of the penalty.

[35] MR. POTTS: Appeal.

[36] THE COURT: Of the...?

[37] MR. POTTS: Sentencing, yes.

[38] THE COURT: Sure. Okay. No, that is fair enough. All right. So it will be payable on or before June the 30th. That is a Friday.

[39] MR. KOCKX: Was there a specific date, then, for the company as -- for Mr. Scott to pay. You said 60 days. Was there a specific date?

[40] THE COURT: Sixty days. The 10th of July.

[41] MR. KOCKX: And could these fines be directed to be paid to the Workers' --

[42] THE COURT: They will, yes, absolutely.

[43] MR. KOCKX: To the Workers' Compensation Board accident fund.

[44] THE COURT: Yes. There will be a direction pursuant to s. 220 that the fine should be paid to the Workers' Compensation Board accident fund.

[45] MR. KOCKX: And I believe in this case the surcharge is simply mandatory.

[46] THE COURT: Yes, they are mandatory, and when he goes and attends at the court registry, I think the documentation will automatically type that out. The same time to pay, then, on the victim fine surcharges.

[47] MR. KOCKX: Thank you, Your Honour.

(EXCERPT CONCLUDED)