EDITORIAL NOTE: NO SUPPRESSION APPLIED.

IN THE DISTRICT COURT
AT QUEENSTOWN

CRI-2015-059-377
[2016] NZDC 9452

WORKSAFE NEW ZEALAND
Prosecutor

v

DELTA UTILITY SERVICES LIMITED
Defendant

Hearing: 16 May 2016

Appearances: S Backhouse for the Prosecutor
D Robinson for the Defendant

Judgment: 30 May 2016

JUDGMENT OF JUDGE C L COOK
[AS TO QUANTUM OF FINE AND REPARATION]

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[1] The defendant has pleaded guilty to one charge brought by WorkSafe New Zealand under sections 6 and 50(1)(a) of the Health and Safety in Employment Act 1992.

[2] I have read the written submission of counsel prior to Court and heard helpful submissions on the day. The victim, Mr Moore, read his victim impact statement at Court.

[3] The relevant sections are s 6 and 50(1)(a) of the Health and Safety in Employment Act 1992.

6 Employers to ensure safety of employees

Every employer shall take all practicable steps to ensure the safety of employees while at work; and in particular shall take all practicable steps to-

(b) provide and maintain for employees a safe working environment; and

(c) provide and maintain for employees while they are at work, facilities for their safety and health; and

(d) ensure that plant used by any employee at work is so arranged, designed, made, and maintained that it is safe for the employee to use; and

(e) ensure that while at work employees are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working, or use of things –

(i) in their place of work; or

(ii) near their place of work and under the employer's control; and

(f) develop procedures for dealing with emergencies that may arise while employees are at work.

…

50 Other offences

(1) Every person commits an offence and is liable on conviction to a fine not exceeding $250,000, who fails to comply with the requirements of-

(a) a provision of part 2 other than s 16(3); or

…

Summary of facts

[4] The facts in this case are pursuant to the agreed summary of facts for the purposes of sentencing. Delta Utility Services Limited ("Delta") is the asset manager, operator, maintenance provider and distribution network which carries electricity from the national grid to consumers in Dunedin and Central Otago.

[5] Mr Vincent Moore commenced employment with the defendant in July 2002. He had been employed as a line mechanic for approximately seven years' prior to the incident.

[6] On 24 November 2014, landowners in Cardrona Valley Road were in the process of having the overhead lines on the property replaced with underground cables which would run from a new meter situated approximately six metres from the base of the pole. The final stage required to complete the process was to connect the new underground cable running from the new meter into the existing overhead lines at the top of the pole.

[7] Mr Moore was required to complete a service connection at the said property. He had a work authority form which was to be used by linesmen to record the work that they are going to do (numbers are used to identify the task) and prompts for linesmen to consider control measures. He also had a tailgate session record sheet which is to be filled out by a team leader to describe the roles of team members on site and their responsibilities. It also includes a hazard identification table to be filled out and a non-exhaustive list of hazards to consider. Such hazards include electrical hazards and work at height. It notes the hazard should be eliminated, isolated, minimised or controlled, in accordance with the Delta hazard control sheets. The method of control for identified hazards is to be documented.

[8] Mr Moore did not fill out these forms prior to undertaking the task. He noted his work authority number on his clipboard as he thought he had left his work authority book at home. He understood this was permissible (however, the defendant maintains this was not). He also called the work authority in to the Delta control room.

[9] On his arrival at the site, Mr Moore checked the pole for stability and used gloves and a ladder to undertake the work. Any hazard assessment on his arrival at site was not documented and did not comply with the defendant's requirement. He met the electrician on site and ran a new underground cable up the pole. He then erected his ladder on the northeast side of the pole but did not tie the ladder to the pole.

[10] He ascended the ladder, attached himself to the top of the pole with the pole-strap, and put on his gloves. He then mounted a fuse carrier on the top cross-arm and connected the phase wire of the new underground cable into it. He did not install the fuse into the carrier that would energise the cable. The neutral wire was required to be connected on the other side of the cross-arm, just out of arm's reach from where it was positioned. He pushed the neutral wire to the other side of the cross-arm, and identified that the set of lines coming off the lower cross-arm feeding the cottage could potentially be in his way while he connected the neutral wire.

[11] It was Mr Moore's understanding that the power feeding the cottage lines was coming from the lines on the top cross-arm, via a fuse mounted on the lower cross-arm. He removed this fuse on the lower cross-arm, believing he was disconnecting the power to the cottage lines.

[12] However, this was, in fact, a fuse for the underground cable that fed the house. Removing the fuse had no effect on the top lines or the cottage lines, which remained live throughout.

[13] Mr Moore did not carry out any test to ensure the cottage lines were de-energised.

[14] Mr Moore then came down the ladder and re-positioned it on the southwest (opposite) side of the pole to complete the neutral connection. He did not tie the ladder to the pole. He ascended the ladder, but did not connect his pole strap or put on his gloves, helmet or arc-rated jacket. He then started to connect the neutral wire to the main wire, by way of a parallel groove clamp. This required the use of an adjustable crescent.

[15] As Mr Moore was attempting to tighten the clamp with the crescent, he made contact between the neutral line at the neutral connector and the phase line of the cottage line which he believed he had de-energised.

[16] The consequential arc and flash caused Mr Moore to fall from the ladder to the ground, approximately six metres below. As a result of the fall, he suffered compound tibia and fibia fractures to his left leg, and A fractured L2 lumbar vertebrae. He was helicoptered to Dunedin Hospital and received treatment for his injuries.

[17] The hazard associated with working with live electricity is well recognised and has potential to cause serious harm. The particular hazard involved in this incident was exposure to low voltage electricity, which had not been eliminated prior to working on the power lines.

[18] The defendant had identified and assessed the hazard of exposure to electricity in written policies known as hazard control sheets. It had awarded the hazard ratings with a category of "If a significiant hazard exists, a high level of care is necessary".

[19] The defendant assessed electricity to be a significant hazard. The defendant's health and safety policy generally required any significant hazard to be eliminated where practicable. None of the defendant's policies specifically required the hazard of low voltage electricity to be eliminated and the defendant did not have any written procedures setting out how employees should eliminate the hazards prior to carrying out work.

[20] Sections 8 to 10 of the Health and Safety in Employment Act 1992 outline a hierarchy of controls that must be used when a significant hazard has been identified. The hierarchy consists of three steps – eliminate, isolate, or minimise the hazard.

[21] As an employer, the defendant was obliged to take all practical steps to ensure the safety of its employees while at work, pursuant to s 6 of the Health and Safety in Employment Act 1992. The practical step the defendant could have taken in discharging its legal obligation was to have an effective policy in place for the control of the hazard of exposure to low voltage electricity, which included requiring

elimination as the primary control in accordance with s 8 of the Health and Safety in Employment Act 1992, and Regulation 101 Electricity (Safety) Regulations 2010.

[22] The defendant has cooperated with WorkSafe New Zealand throughout the investigation of this incident.

[23] Both counsel agree that the approach to sentencing under s 50 of the Act is summarised in the leading case of *Department of Labour v Hanham & Philp Contractors Ltd & Ors*[1], a decision of the full Court of the High Court. That case sets out[2] that the approach to sentencing should include the following steps:

(1) Assessing the amount of reparation.

(2) Assessing the amount of the fine.

(3) Making an overall assessment of the proportionality and appropriateness of the total imposition of reparation and the fine.

STEP ONE: Assessing quantum of reparation

[24] Section 32(1)(b) of the Sentencing Act 2002 provides:

> **32 Sentence of reparation**
>
> (1) A court may impose a sentence of reparation if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer—
>
> (a) loss of or damage to property; or
>
> (b) emotional harm; or
>
> (c) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

[25] The sentence of reparation must be a principle focus and is the first main step in the sentencing process. The sentences of reparation and fine serve distinct and discrete purposes. The assessment of reparation must be made taking into account

[1] *Department of Labour v Hanham & Philp Contractors Ltd & Ors* (2008) 6 NZELR 79 HC.
[2] At paragraph [80].

s 32 of the Sentencing Act, any offer of amends made by the offender, and the offender's financial capacity.

[26] The consequences of the accident for Mr Moore have been substantial. Mr Moore dislocated his left ankle and fractured a lumbar vertebrae in his spine. He was helicoptered to Dunedin Hospital for emergency treatment and underwent surgery for both his spinal and ankle injuries. There have been multiple complications with his ankle which have required further surgeries which have been unsuccessful. The Court has been provided with letters from the specialists which confirm that Mr Moore faces the very real possibility of a below-knee amputation.

[27] Mr Moore has been receiving Accident Compensation since the accident.

[28] Mr Moore sets out in his victim impact statement the devastating effect of the accident on him from an emotional and physical perspective. He says that he used to walk 20 kilometres on a Saturday and would walk to work and back each day, at nine kilometres each way. He also enjoyed playing golf. He says that he cannot now walk 100 metres without needing to stop, due to severe pain in his back and ankle.

[29] Mr Moore has lost self-esteem and self-confidence. He has lost his employment and career, loss of income security, loss of educational work opportunities, loss of his work-based network, purposeful activity, Kiwi Saver and superannuation. He also confirmed the impact of the medication and the surgery on his body.

Submissions for the prosecution

[30] The submissions for the prosecution highlight to the Court the very serious injuries which have been sustained by Mr Moore, both from a physical and an emotional perspective.

[31] The Court's attention is drawn to the difficulty in quantifying emotional harm is discussed in the judgment *Big Tuff Pallets Limited v Department of Labour* [3].

> Fixing an award of emotional harm is an intuitive exercise; its quantification defies finite calculation. The judicial objective is to strike a figure which is just in all the circumstances, and which in this context compensates for actual harm arising from the offence in the form of anguish, distress and mental suffering. The nature of the injury is, or may be, relevant to the extent that it causes physical or mental suffering or incapacity, whether short term or long term.

[32] The prosecution draws the Court's attention to a number of authorities. The first, *The House Movers Rotorua Limited v Ministry of Business, Innovation and Employment* [4] involved a fall from a roof and a fracture of the fibula and tibia of the victim. The victim was off work for some time, and an amount of $40,000 for reparation was ordered.

[33] *WorkSafe New Zealand v Hunter Laminates Nelson* [5], involving a compound fracture, leg almost severed, also received fractures to his right ankle and tibia. Reparation was ordered in the amount of $35,000.

[34] *Department of Labour v Carter Holt Harvey*[6] where the driver of a front end loader lost his leg and an award of $50,000.

[35] *Department of Labour v Brian Crawford Contracting Limited*[7]. An employee lost his right leg, his left leg was cut, and reparation of $50,000 was awarded.

[36] The prosecution's position is that with amputation being a real possibility and with the additional impact that this uncertain prognosis has had on Mr Moore, it is submitted that an award of $50,000 for emotional harm is appropriate.

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[3] *Big Tuff Pallets Limited v Department of Labour* CRI-2008-404-000322, 5 February 2009.
[4] *The House Movers (Rotorua) Limited v Ministry of Business, Innovation and Employment* [2014] NZHC 1208 per Keane J.
[5] *WorkSafe New Zealand v Hunter Laminates Nelson,* DC Nelson, CRI-2014-042-000957 per Judge Zohrab.
[6] *Department of Labour v Carter Holt Harvey* DC Whangarei, CRI-2012-088-001679, 9 October 2012 per Judge Maude.
[7] *Department of Labour v Brian Crawford Contracting Limited,* DC New Plymouth, CRI-2012-043-006601 per Judge Roberts.

[37] The prosecution also submit that consequential loss prior and post-sentencing is appropriate. That claim is based upon the amended s 32(5) of the Sentencing Act 2002, which provides for reparation for financial loss where the loss is the difference between the victim's full earnings and the proportion of the usual earnings received under ACC payments.

[38] The prosecution's position is that there is a shortfall of payments between 4 May 2015 and 19 April 2016 of $13,767.87. They claim the shortfall from 24 November 2014 to the date of sentencing of 19 April 2016 is $14,600 and the prosecutor submits that is an appropriate amount for Mr Moore to be compensated.

[39] Further, the prosecution submits it is appropriate for the Court to award a top-up from ACC on an ongoing basis. Whilst it is unclear for how long Mr Moore will received ACC payments, his surgeon is of the view that his work options in the long term will be limited as a result of his ongoing treatment. A top-up is sought in the amount of $218.98 per week.

Submissions for the defendant

[40] The defendant's position is that in this case the victim's actions broke the chain of causation at the point in time where, either, he failed to test to ensure the line was de-energised; or immediately after the arc and the flash.

[41] As to the former, it was the failure to test the conductor which had been de-energised by the removal of the fuse that caused the accident. Had the conductor been tested and been revealed to be live, he would have taken other steps to eliminate the hazard. As to the latter, the resultant fall was caused by the victim's failure to adhere to work-at-height policies, which required the use of the fall restraint. The injury, therefore, cannot be caused by the defendant's breach.

[42] Therefore the defendant's culpability and liability for reparation "must be solely based on the absence of the procedure addressing low voltage work which caused either, (a) potential exposure to low voltage (if the chain of causation was

broken by the employee's failure to test the particular conductor) or (b) exposure to low voltage.

[43] They submit that the fall from height resulted from (at least) the victim's recklessness and/or non-compliance with numerous safety requirements, and that the harm was not a foreseeable consequence of the hazard to which the employee was exposed, given the breaches outlined.

[44] The defendants have drawn the Court's attention to the judgment of *R v Donaldson & Chapman*[8] where the Court has noted that "concepts of remoteness, materiality and intervening act (*novus actus interveniens)* can be resorted to in different factual situations".

[45] In addressing that argument specifically to the two claims for reparation, firstly the claim for economic loss, the defendant's position that neither past nor future claims for economic loss is sustainable as, (a) the chain of causation was broken by the victims own acts; and (b) the victim was justifiably dismissed for serious misconduct following the incident. The contractual relationship between the parties was terminated at that point. Because of that, the defendant can have no further liability in respect of a victim for economic loss.

[46] In regard to the emotional harm quantification, the defendant's position is that a survey of emotional harm award in cases where there is spinal or other serious fractures, reveals a general range of $12,500 to $25,000. It is inappropriate for the Court to proceed on the basis of an amputation in the present case, as it is a possibility only, and that any reparation award must be reduced to reflect the substantial employee contribution in this instance.

[47] The defence rely on the decision of *Department of Labour v Downer EDI Works Limited* [9].

Discussion of reparation

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[8] *R v Donaldson & Chapman* (CA 227,233/06, 2/10/10) at [36].
[9] *Department of Labour v Downer EDI Works Limited*, DC Wellington, CRN 07085500548, 8 June 2009 per Judge Broadmore.

[48] In a health and safety context, the relevant provision of the Health and Safety at Work Act 2015 is s 151 which states:

> **151 Sentencing criteria**
>
> (1) This section applies when a court is determining how to sentence or otherwise deal with an offender convicted of an offence under section 47, 48, or 49.
>
> (2) The court must apply the Sentencing Act 2002 and must have particular regard to—
>
> (a) sections 7 to 10 of that Act; and
>
> (b) the purpose of this Act; and
>
> (c) the risk of, and the potential for, illness, injury, or death that could have occurred; and
>
> (d) whether death, serious injury, or serious illness occurred or could reasonably have been expected to have occurred; and
>
> (e) the safety record of the person (including, without limitation, any warning, infringement notice, or improvement notice issued to the person or enforceable undertaking agreed to by the person) to the extent that it shows whether any aggravating factor is present; and
>
> (f) the degree of departure from prevailing standards in the person's sector or industry as an aggravating factor; and
>
> (g) the person's financial capacity or ability to pay any fine to the extent that it has the effect of increasing the amount of the fine.

[49] The prosecution's position is that the wording in s 32 "by means of an offence" means that the chain of causation has not been broken. Their argument is that but for the lack of policy imposed to eliminate hazards, the accident would not have occurred. The prosecution draws the Court's attention to the guilty plea, and that the arc flash was the cause of the fall.

[50] The submissions were that the claim for accident compensation is not contingent on employment status, the loss has been suffered despite the employment status, and that if that test were to be approved by the Court, it would provide an incentive for employers to terminate employment to avoid a liability for ongoing payments.

[51] The defence response to that was that the accident was caused by a lack of testing whether the line had been de-energised, and a lack of harness to ensure that Mr Moore would not have fallen. In this case, the harm was the fall; and the fall was the substantial cause; that the "but for" test does not apply; that the causation has been broken by Mr Moore's own acts, and that the employment was terminated for serious misconduct. Therefore, it would be unjustified to provide any remedy at law.

Conclusion - reparation

[52] In the decision of *Department of Labour v Rogers Earthmoving Limited* [10] Judge Gittos quoted a passage from Adams on Criminal Law (Sentencing) in determining the causal link at SA32.02:

> The sentence of reparation may be imposed only where a person has suffered loss, damage, or emotional harm "through or by means of the offence". The word "through" requires a direct connection between the offence and the damage or harm, while the expression "by means of" contemplates a less direct association. Whilst some regard to common law principles of causation is appropriate in determining whether the statutory test is met, the matter should be approached in a broad, common sense way in the light of the compensatory purpose of the provision, and resort to refined causation arguments is not to be encouraged: *R v Donaldson* 2/10/06 CA 227/06; CA 233/06. The issue is whether a reasonable person should have foreseen the kind of loss, damage, or harm which occurred as a result of the offence: *Wilson v Police* 13/2/95, Gallen J, HC Napier AP60/94.

[53] In this case, I agree that the causation argument is relevant and that it does apply in reference to "through the offence". However, "by means of the offence" is less clear. I accept the prosecution argument that if there had been a policy in place to eliminate the hazard as the primary control, then regardless of the failures of Mr Moore, the accident may not have happened. I adopt the approach taken by His Honour Judge Broadmore in the judgment of *Department of Labour v Downer EDI Works Limited* where the Judge states at paragraph [39] in his discussion about the issue of the victim's own responsibility for his injuries:

> I do not consider that it is appropriate to treat this issue as calling for an apportionment of reparation, along the lines of a percentage reduction of damages for contributory negligence under the old common law … In the circumstances, I think that any possible fault on Mr Wilson's part should be

[10] *Department of Labour v Rogers Earthmoving Limited* DC Auckland, CRI-2008-004-6668, 22 June 2009 per Judge Gittos.

> reflected simply in a conservative rather than liberal approach to the assessment of reparation.

[54] Accordingly, I adopt that approach for the purposes of ascertaining the reparation in these circumstances. Therefore, dealing with the emotional loss and the need to be consistent with other decisions around this area. It is a difficult and distasteful step to try and put a monetary figure on a loss of enjoyment of life and the emotional harm caused, which is accepted to be substantial and longstanding for Mr Moore. I agree that $50,000 is too high and whilst there is clearly a risk of amputation, it is just that. I agree that the decisions provided by the defence also put a figure of $50,000 in line with incidents where there has been a death caused.

[55] I note in the schedule provided that there is a $35,000 reparation to a seriously injured worker whose injuries would limit him throughout the remainder of his life – *Department of Labour v Ferrier Woolscours (Canterbury) Ltd* [11].

[56] There was an amount of $25,000 against two defendants for injuries including brain injury which is described as destroying the quality of the employee's life – *Department of Labour v Bitumen Supplies Limited* [12].

[57] Taking into consideration the amounts of the awards made, the age of the cases compared to, but approaching this matter on a conservative basis consistent with my conclusions, I have come to a view that an amount of $35,000 in reparation is appropriate in this case.

[58] Dealing now with the prosecution claim for consequential loss prior to and post sentencing, the prosecution claim an amount being the difference between Mr Moore's ACC payments and his usual salary. That is based on two periods, first, between 4 May 2015 and 19 April 2016 which has resulted in a shortfall of $13,767.87; then to sentencing in the amount of $14,600.

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[11] *Department of Labour v Ferrier Woolscours (Canterbury) Ltd,* DC Timaru CRN 3076510072, 29 November 2004.

[12] *Department of Labour v Bitumen Supplies Limited,* DC New Plymouth, CRN 304300640-1, 17 September 2003 per Judge Bidois.

[59] Further, they claim consequential loss following sentencing, being a claim for a top-up amount of $218.98 per week on an ongoing basis.

[60] The defence position is that neither claim for economic loss is sustainable due to the chain of causation being broken by the victim's own acts and the victim was justifiably dismissed for serious misconduct following the incident. Therefore the contractual relationship between the parties was terminated at that point. Because of that, the defendant can have no further liability for economic loss.

[61] I accept this argument in part, but I do not accept the argument of the defendant that, effectively, they shoulder no blame for the loss of earnings as a result of the accident. Accordingly, I will base the issue of quantum on a conservative basis and I do take into consideration that the employment relationship has been terminated. Therefore, I accept that some compensation should be made for lost wages, but not on an ongoing basis post-sentencing.

[62] Therefore, any claim for compensation will not be future based, but a shortfall payment of $14,600 is ordered.

STEP TWO: Assessing quantum of fine

[63] The assessment of the starting point for the fine involves assessment of culpability within the following scale per *Hanham & Philp*:

- Low culpability, fine up to $50,000;

- Medium culpability, fine between $50,000 and $100,000;

- High culpability, fine between $100,000 and $175,000;

- Extreme high culpability, fine greater than $175,000.

[64] The factors relevant to the assessment of culpability are, per *Hanham & Philp* at [54]:

> Identification of the operative acts or omissions at issue. This will usually involve a clear identification of the "practicable steps" which the Court finds it was reasonable for the offender to have taken in terms of s 2 of the Act.
>
> An assessment of the nature and the seriousness of the risk of harm occurring, as well as the realised risk.
>
> The degree of departure from standards prevailing in the relevant industry.
>
> The obviousness of the hazard.
>
> The availability, cost and effectiveness of the means necessary to avoid the hazard.
>
> The current state of knowledge of the risks and of the nature and severity of the harm which could result.
>
> The current state of knowledge of the means available to avoid the hazard or mitigate the risks of its occurrence.

[65] The prosecution submits a starting point of $80,000. They come to that from the position that the defendant should have taken, and put in place, an effective policy for the control of the hazard of low voltage electricity which included requiring elimination as the primary control.

[66] Further, the prosecution submit the victim's conduct cannot minimise an offender's culpability in terms of sentence. They say that the risk was well known and that the defendant departed from industry standards. The hazard of working with live electricity is obvious and well known.

[67] Due to those factors, the prosecution's starting point is based on *WorkSafe New Zealand v Electrix Limited*[13] of $65,000, however it is submitted that the defendant here is more culpable than in *Electrix* in that *Electrix'* employees were considered to be well trained and that company had received an award for health and safety.

[68] The prosecution then concludes that the defendant's culpability falls towards the upper end of medium culpability band, at a starting point of $80,000.

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[13] *WorkSafe New Zealand v Electrix Limited,* DC North Shore, CRI-2014-044-004650, 7 May 2015, per Judge Hinton.

[69] The defendant's position is that they accept they failed in the manner stated in the summary of facts. The failure was an absence of a specific procedure requiring elimination as the primary control. However, the defendant has set out, both in submissions and in an affidavit from Mr Matthew Ballard, general manager of capability and risk for the defendant, the details of the nature of the health and safety structure within the company, and details of their policies around minimising risk, and training which is provided to staff members. Specifically, the victim – from the evidence of the defendant – was provided with extensive training.

[70] There was dispute between the parties about what, in fact, the industry standards were. There is an absence of evidence one way or another and the Court is unable to reach a determination on that point.

[71] The defendant's position is that they contend a starting point of $65,000 to reflect the level of culpability.

[72] The defendant's position is that the suggestion that the defendant is more culpable than in the *Electrix* case is without evidential foundation or merit. All of the defendant's staff are highly trained and well qualified.

[73] On my reading, I agree that there was a clear history of training and clear processes for the mitigation of risk which were not followed by the victim.

[74] I do not agree that there is any evidence to suggest that the defendant company's employees were less well trained than those of the *Electrix* employees.

[75] I have also considered the case of *Department of Labour v The Lines Company* [14].

[76] I have reached the view that an appropriate starting point for the fine is in the amount of $70,000, taking into consideration the facts here and the above two decisions.

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[14] *Department of Labour v The Lines Company* DC Wellington, 22 April 2010, CRI-2009-073-000487 per Judge Kelly.

STEP THREE: Adjustments and overall assessment

[77] The prosecution submits there should be an uplift of five percent due to a previous conviction. There are differing approaches to this matter. I am attracted to the approach taken in *Department of Labour v Fulton Hogan Limited*[15], where Judge O'Driscoll held that prior matters were of no relevance unless the current matter bears some similarity to the prior matter. I agree. It seems to me to be a commonsense approach in considering an uplift, and in this case the previous matter is not relevant to this matter. Accordingly, I decline to apply an uplift.

[78] I agree that a discount of 15 percent to recognise reparation is appropriate.

[79] I do not agree that a full 25 percent discount for a guilty plea is appropriate. I accept that the guilty plea was entered after WorkSafe disclosed its expert evidence. However, prior to that they entered a not guilty plea and the matter was set down for trial. If there was an issue, a remand without plea may have been sought, and an indication that these issues were trying to be worked through with the prosecution, but that did not occur. Accordingly, a 20 percent discount is appropriate.

[80] I agree that a discount of 30 percent to take into consideration any remedial action that has been undertaken and the cooperation is appropriate. I reach that amount on a 'broad brush' approach, taking into consideration the other decisions and the approaches taken.

Conclusion – quantum of fine.

[81] Therefore, from the starting point of $70,000, after deduction of 30 percent for mitigating factors and a further 20 percent for a guilty plea, that means there is an end point for the fine in the amount of $35,000.

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[15] *Department of Labour v Fulton Hogan Ltd* DC Dunedin, CRN 1018500001, 21 June 2011 per Judge O'Driscoll.

Result

[82] To summarise, I order the following:

i. As to reparation, the defendant is ordered to pay reparation to the victim in the amount of $35,000.

ii. As to consequential loss, I direct the defendant make a shortfall payment of $14,600 to the victim.

iii. As to fine, the defendant is fined the sum of $35,000.

C L Cook
District Court Judge