How to Avoid Being Prosecuted for OHS Violations

A revealing glimpse into what OHS prosecutors look for when considering charges for workplace injuries and fatalities was offered at the recent Alberta Health & Safety Conference and Trade Fair in Edmonton.

Brian Caruk, acting Chief Crown for Regulatory Prosecutions for Alberta Justice, says OHS prosecutors only need to prove that a company violated the Occupational Health and Safety Act, regardless of whether the breach was unintentional or not.

“It’s not enough to set out rules for your workers, because you have to enforce them too,” he told his audience. “You are not showing due diligence if you are just going through the motions. You need to explain to your workers why rules exist and what the risks are of not following the rules. Make sure they understand. It’s in everyone’s best interests,” says Caruk.

One risky road for supervisors to follow involves sending safety training materials home for workers to read and sign off on. That’s because some workers aren’t strong readers and may not comprehend the material. A worker’s signature may mean nothing.

Caruk says the courts are increasingly looking at the issue of foreseeability—which means going beyond whether a negative event was not only imaginable, but that there was some reasonable prospect that it could occur. Companies that ignore worker warnings about unsafe conditions or fail to act on near misses won’t have anywhere to hide if serious injuries or fatalities occur.

Following a serious workplace incident, OHS prosecutors will delve deeply into a company’s policies and procedures and training records to ensure that the employer has taken all reasonable and practicable steps to ensure its workers’ health and safety.

Caruk says supervisors need to keep careful records of who has

received training, what that training entailed and the dates on which it took place.

It’s vital to ensure that hazards and means of avoiding or minimizing those hazards are clearly spelled out to workers. Caruk spoke about a case where, clearly, that didn’t happen.

An explosion occurred when flammable vapors were sucked into a running engine. The employer claimed it had a rule stating that vehicles had to be kept at least seven meters away from flammable vapors and it produced a diagram from its safety manual which it said explained the rule.

The problem, says Caruk, was that the diagram was vague on the point, referring to several different distances.

He stressed the importance of ensuring that workers follow OHS rules and that those who do not are disciplined. Again, it’s vital to document what disciplinary actions were taken on specific dates.

Caruk also recommends that supervisors check references for new hires to ensure that they actually possess the qualifications they claim to have.