

## Contractor found guilty of manslaughter

On Sept. 18, Sylvain Fournier (an excavation contractor) was sentenced to 18 months in prison followed by two years of probation after being found guilty of manslaughter under the Criminal Code for having caused a death by means of an “unlawful act.”

### **His unlawful act was not complying with provincial health and safety legislation.**

Fournier had also been found guilty of criminal negligence, however, he was only sentenced for the manslaughter offence, due to a rule against multiple convictions for substantially the same offence. Both manslaughter and criminal negligence carry a maximum penalty of imprisonment for life, meaning sentencing him on one charge did not expose him to a greater or lesser penalty.

In April 2012, Fournier and several employees were replacing a sewer line. This required the excavation of a trench. Tragically, the trench collapsed causing the death of the worker who was in the trench and serious injury to Fournier.

The sentence imposed on Fournier will likely be influential in future cases involving individuals convicted of manslaughter or criminal negligence following a workplace accident. However, the Fournier decision is notable because it is the first of its kind: A person convicted of manslaughter for failing to comply with health and safety legislation. Sentences in subsequent criminal cases, arising from workplace accidents, will likely be measured against the penalty imposed on Fournier.

This unique use of the criminal law to address workplace safety should serve as a reminder that businesses, their management, supervisors, officers and directors, as well as workers, can be prosecuted criminally following a serious workplace accident.

Even though maximum fines for workplace safety contraventions have recently been tripled under the Occupational Health & Safety Act, it is really not just about fines anymore. The Fournier case undoubtedly meant to drive home that the Crown is looking to increase the use of the criminal law tools available to it in order to deal with workplace safety. Such cases are meant to act as a general deterrent.

If those directing how work is done ignore the regulations, they do so at their own peril. If something bad happens – even if it is the first time – they can face more than a six-figure fine. They can also be convicted of serious offences and can go to jail for extended periods of time.

[Click here for the complete article](#)



## Test Yourself

No employer in Ontario may require a worker to wear high heel shoes.

True or False

First Correct answer wins a prize – answer to be published on the web site.

Send your answer by email to: [newsletter@safetyscope.net](mailto:newsletter@safetyscope.net)

## This Months Tip

The MoL enforces the OHSA and applicable regulations. Comply with any orders quickly or you and/or your employer could be in front of a judge. Stop looking for loop holes, you will lose.

Think about it.

## Safetyscope Upcoming courses

Nov 2, 16, 30  
Working at Heights

Nov 9, 23, Dec 7  
Working at Heights Refresher

Nov 12-13 Dec 10-12  
Confined Space Training  
Nov 26,28  
JHSC Part 1 Certification

Nov 6-7  
First Aid  
Nov 22

Competent Supervisor

Contact Us with your training needs [training@safetyscope.net](mailto:training@safetyscope.net)

## Another Blank Inspection Report

A comprehensive workplace inspection program may include daily inspections of equipment, initial startup inspections, walk-arounds of mobile equipment before use, daily and/or weekly supervisor inspections, and weekly and/or monthly departmental inspections.

Can you remember driving to work this morning? How about the last conversation you had with your significant other? There are some things we do on “auto pilot” – without really thinking about them or being totally present in the moment. In some workplaces, the workplace inspections can happen like that. And, in some workplaces, that is the main reason we see a signed off inspection report with no hazards identified by the supervisor, worker and or the JHSC. While a clean inspection is a reasonable goal, a clean report that misses hazards that just weren’t noticed is not the way to get there.

One of the ways to improve your inspections is simply to change something about it. There is a school of thought that says that if you do the inspection the same way every time, you will notice if anything changes. Possibly. But more likely, doing it the same way every time simply allows you to switch to autopilot and walk past hazards what are not glaring, but dangerous nonetheless.

Do you do the inspection at the same time of day each time? Even in a workplace that is limited to one shift, closed on weekends and with a small staff, this can be a problem. Workplaces change during the day – deliveries come and go, maintenance tasks take place, and workers cycle through different tasks as the day passes. If your inspection always starts at 2:00pm, you may be missing some hazards that are only present in the morning. At the very least, changing it up to a 10:00am inspection will prevent an “auto pilot inspection” by simply being different. Then, think about changing the day – in many workplaces, Monday is a very different day than Friday is, and you should inspect on both.

If your workplace operates on more than one shift, during both weekdays and weekends, and has different staffing on different shifts, the simple fact is the workplace is changing significantly during each twenty-four hour period. If you are not occasionally inspecting during other shifts, including weekends, you are missing some hazards. And, for your inspectors, doing an inspection during another shift or on the weekend can show them a side of the workplace they have never seen before. Inspecting a workplace you have never seen before is a sure cure for “auto pilot inspections”.

If your inspection reports are coming back clean, month after month, try mixing up the inspection times. Ask yourself, “Is the goal a clean inspection report every month, or an inspection that finds all of the hazards?” There are other ways to break the grip of the “auto pilot inspection”, but varying the inspection time is great way to start.

## MOL Provincial initiatives 2018-19 Are you ready?

Construction	IRS	June 1, 2018 – March 31, 2019
Industrial	IRS – newly registered small businesses	April 1, 2018 – March 31, 2019
Mining	IRS – occupational disease prevention	April 1, 2018 – March 31, 2019
	Electrical/mechanical – mine hoist plants	April 1, 2018 – March 31, 2019

### Health care initiatives IRS - workplace violence prevention

Phase 1: compliance support and prevention education	April 1, 2018 – March 31, 2019
Phase 2: compliance and enforcement	July 1, 2018 – March 31, 2019
Health care high hazards	April 1 – June 30, 2018

IRS – long-term care/retirement homes, IRS workplace violence, needle safety – primary care (family health teams, community health centres), workplace violence – hospitals

## **In the Courts**      [Click for more Information](#)



### **October 25, 2018 Give and Go Prepared Foods Corporation fined \$60,000**

A worker operating the sugar-sifting machine reached down and into the machine to move icing sugar towards the auger. The worker made contact with the auger, receiving injuries. At the time of the incident, the sugar-sifting machine was not equipped with a guard to prevent access to the rotating auger.

Section 25(1)(c) of the Occupational Health and Safety Act requires that an employer shall ensure the measures and procedures prescribed are carried out in the workplace.

Section 24 of the Industrial Establishments Regulation requires that, where a machine has an exposed moving part that may endanger the safety of any worker, the machine shall be equipped with and guarded by a guard or other device that prevents access to the moving part.

### **October 18, 2018 GMJ Electric Inc., fined \$110,000 Fall From Ladder**

Two workers were tying and labelling electrical wiring in the ceiling of a renovated office area. One worker was working from a 10-foot stepladder and reaching into an area above the grid of a dropped ceiling. The worker fell from the ladder to the floor, suffering permanent injuries.

GMJ Electric was convicted of failing, as an employer, to provide information, instruction and supervision to a worker to protect the health or safety of the worker, contrary to section 25(2)(a) of the OHSA, and failing to ensure the measures and procedures prescribed by section 125(1) of Reg. 213 were carried out a project, contrary to section 25(1)(c) of the OHSA. Specifically, this involved failing to ensure that a scaffold was provided for a worker.

A supervisor was also convicted of failing to ensure that a worker works in the manner and with the protective devices, measures and procedures prescribed by section 125(1) of the Construction Projects Regulation contrary to section 27(1)(a) of the Occupational Health and Safety Act.

### **October 18, 2018: K-G Spray-Pak Inc., a fined \$75,000 Conveyor injury**

A worker who was on a work placement through Sheridan College was assigned to a task on a conveyor. The worker's hair became caught in a rotating return shaft on the underside of the conveyor and the worker suffered injuries.

Section 25(1)(c) of the OHSA requires an employer shall ensure the prescribed measures and procedures are complied with. Section 75 of the Reg. 851 states that "a part of a machine, transmission machinery, device or thing shall be cleaned, oiled, adjusted, repaired or have maintenance work performed on it only when (a) motion that may endanger a worker has stopped; and (b) any part that has been stopped and that may subsequently move and endanger a worker has been blocked to prevent its movement."

### **October 16, 2018 Vollmer Inc., fined Fatal Fall Results in \$150,000 Fine Fall Hazard**

A worker was killed after falling through a skylight in a building that was having new electrical equipment installed.

Although the skylights still had all of their covers on them, there were no guardrails, protective coverings or other means of fall protection installed or implemented to protect workers from the danger of falling through the skylights on the roof of the project.

Reg 213 requires that workers use and be trained in the use of a fall protection system when working at heights (Section 26.2(1.1)).

## The WSIB Unfunded Liability – Gone

For the past two decades the WSIB’s unfunded liability has caused workers to wonder if their workplace injury and illness insurance would be there for them in the future, and employers to wonder just how high the premiums would have to go to ensure the WSIB could move forward on a fully funded basis. In 2011 the liability reached an all-time high of \$ 14.2 billion, prompting the province to legislate a timetable calling for the elimination of the liability by 2027.

In September the WSIB announced that it had eliminated the unfunded liability, almost ten years ahead of schedule. There is, of course, a number of different views on how this has been accomplished – those senior in the WSIB point to good management, cost control and improving workplace health and safety, while some labour groups suggest reduced claims approval played a significant role – but everyone can agree on what one of the outcomes will be.

Without having to set aside money to reduce the liability, the 2019 average premium rate will decrease, compared to the 2018 rate, by 29.8%. The average premium rate will drop from \$2.35 to \$ 1.65, which is estimated to leave an additional \$ 1.45 billion in the economy of Ontario. If you haven’t checked already, the 2019 premium rates can be found on the WSIB website.

## MOL Blitzes

### Industrial

Oct 1 – Nov 23 - Health and safety in warehouses and “big box” retail

February 1 – March 29, 2019 - Machine guarding

### Mining: Mobile equipment

Oct 2 - Nov 30 - Phase 2: Ministry of Labour enforcement campaign

## Safetyscope is a OWWCO Training Provider

These courses meet the criteria in subsection 29(4) of O.Reg. 128, Certification of Drinking Water System Operators and Water Quality Analysts. On Completion of training all participants will receive a certificate of completion with corresponding CEU Value.

1. Working at Heights	.7 CEU
2. WHMIS 2015	.4 CEU
3. TDG	.4 CEU
4. Working in Confined Spaces Rescue Level	2.8 CEU
5. Confined Spaces Attendant Non Entry	1.3 CEU
6. Confined Spaces Advanced Awareness	.7 CEU
7. Confined Spaces Attendant Refresher	.7 CEU
8. Confined Spaces Rescue Refresher	.7 CEU
9. Standard First Aid	1.4 CEU
10. Self Contained Breathing Apparatus	.4 CEU
11. Spill Response	.7 CEU
12. Trenching Hazards	.4 CEU



## Safetyscope is a TSSA Approved Training Provider

Safetyscope is an approved training provider for CH-02 construction heaters under 4000,000 btu and tiger torch under the TSSA Authorization Number 000287944.