

## Provincial Offences Under Ontario's OHS Act: Lessons from Technicore Underground

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The recent conviction of a construction company's senior officer demonstrates that liability under the *Occupational Health and Safety Act* ("OHS Act") is not limited to corporations. Supervisors have a personal duty to "take every precaution reasonable in the circumstances," and failures in oversight—even omissions rather than active misconduct—can result in significant penalties.

In Ontario, OHS Act establishes a comprehensive framework of duties designed to protect workers from unsafe conditions. Provincial offences under the OHS Act arise when workplace stakeholders such as employers, constructors, directors, officers, supervisors, workers, or suppliers fail to comply with their obligations under OHS Act, usually following a workplace incident. These offences can range from inadequate training and missing safety equipment to failures in supervision, hazard assessment, or emergency preparedness.

Prosecutions for OHS Act offences are typically commenced by the Ministry of Labour under the OHS Act. Convictions can result in substantial fines and, for individuals, possible imprisonment. In high-risk situations involving such things as construction, tunnelling, and municipal infrastructure, courts have increasingly emphasized that OHS Act duties are not mere formalities. They are essential safeguards designed to ensure that every worker returns home safely at the end of the day.

### **The Technicore Underground Inc. Decision**

In the recent sentencing decision of *R. v. Technicore Underground Inc., 2026 ONCJ 60*, the Court considered the principles of the OHS Act following a workplace fatality that occurred on December 2, 2022, during the Burnhamthorpe Water Project in Mississauga. This was an extensive underground municipal infrastructure project involving live watermains and deep chambers. The worker in this case was tragically killed after a valve rupture caused the sudden flooding of an underground chamber approximately 20.9 meters below ground.

The evidence established significant safety deficiencies, including:

- No proper Field Level Hazard Assessment for deep confined-space work,
- Absence of a formally appointed supervisor on site,
- Inadequate rescue and retrieval equipment,
- Lack of effective communication devices for subterranean work,
- Insufficient emergency rescue training for workers relating to deep, confined or flooded environments; and
- Failure to adhere to Technicore's own internal safety policies.

The Employer, Technicore Underground Inc., a major tunnelling contractor, was charged under Section 220(b) of the *Criminal Code* for criminal negligence causing death. Technicore pleaded guilty and was fined \$225,000 under the *Criminal Code*. A \$67,500 victim fine surcharge was also imposed pursuant to the *Provincial Offences Act*. As part of the joint submission, the court also issued a stand-alone Restitution Order directing Technicore to make restitution of

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\$200,000 to the deceased's wife.

The Supervisor, who was a senior officer of the corporate defendant, was charged under the OHSA for failing as a supervisor to take every reasonable precaution for a worker's protection. The Supervisor was fined \$50,000 personally, plus the victim fine surcharge of \$12,500 pursuant to the *Provincial Offices Act*.

The sentence considered a variety of aggravating factors, including the fatality, foreseeable hazards, and prior safety failures. The sentence also considered mitigating factors, such as the guilty pleas and extensive post-offence safety reforms.

### **Why This Case is Important**

There are several key takeaways from this case, which we summarize as follows:

- Liability under s. 27(2)(c) of the OHSA is not limited to corporations. Failures in oversight—even omissions rather than active misconduct—can result in significant penalties.
- Serious safety lapses in high-risk environments can support a charge of criminal negligence causing death. The court highlighted the systemic nature of the failures—lack of planning, equipment, supervision, and training—emphasizing that large organizations must maintain robust, proactive safety systems.
- The substantial restitution order reflects a growing judicial recognition of the profound and lifelong effects of workplace fatalities on families. It reinforces the importance of victim-centered justice and may influence how future joint submissions in OHSA-related deaths are structured.
- Applying *Anthony-Cook*, the Court reaffirmed that joint submissions facilitate efficiency, fairness, and predictability, particularly in technically complex workplace-fatality cases requiring lengthy trials. This reinforces their value in resolving OHSA matters including those OHSA matters that also have criminal negligence charges.
- The case sends a clear message that confined-space work, hydraulic environments, and deep-chamber operations require meticulous risk analysis and robust emergency planning. Inadequate rescue mechanisms and communication systems can turn foreseeable hazards into fatal incidents.

It is important that employers recognize the risks in their workplaces and take steps to proactively address them. Simple steps such as reviewing and updating their health and safety policies and making their Joint Health and Safety Committee a priority can make a significant difference. Additionally, a thorough risk assessment, robust mitigation plans, and ongoing job-specific training for workers and supervisors is critical. Taking these steps will not only help to establish a due diligence defense but will also help to eliminate injuries and demonstrate a commitment to safety in your workplace.

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