IN THE DISTRICT COURT
AT WAITAKERE

CRI-2014-090-000081

MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT
Informant

v

INDUSTRIAL PROCESSORS LIMITED
Defendant

Date of hearing: 8 August 2014
Date of sentencing indication given: 21 October 2014
Date of sentence: 24 November 2014

Appearances: S Carr for the Informant
D Neutze for the Defendant

SENTENCING DECISION OF JUDGE L TREMEWAN

Background to these proceedings

[1] The defendant company Industrial Processors Ltd ("the defendant") is charged with two offences laid in the alternative, pursuant to s 49(2) and s 50(1)(a) of the Health and Safety in Employment Act 1992 ("the Act"). These charges laid relate to s 6 of the Act, which imposes a general duty on an employer to take all practicable steps to ensure the safety of employees while at work.

[2] The defendant sought a sentencing indication pursuant to s 60 Criminal Procedure Act 2011, enquiring what sentence would likely be imposed if the defendant pleaded guilty to the more serious of the two charges laid, being the charge under s 49(2) of the Act. The Prosecution indicated that, in the event that that charge is resolved by way of a conviction and disposition, the alternative charge laid under s 50(1)(a) would be withdrawn. For the record, it is noted that the defendant had already intimated a guilty plea on that lesser charge.

[3] On 21 October 2014, a sentencing indication was given in open court. Following an adjournment for five working days (pursuant to s 64 Criminal Procedure Act 2011), the defendant has subsequently advised through its counsel Mr Neutze, that the indication is accepted and that a guilty should be entered in respect to the lead charge. Mrs Carr, for the Prosecution has subsequently advised that on disposition of the lead charge, the alternatively laid charge should be withdrawn.

[4] What now follows is the formal decision, together with reasons for the decision, as earlier foreshadowed in the indication hearing.

[5] The charge laid pursuant to s 49(2) alleges that on 19 July 2013, the defendant being an employer did, knowing that the failure to take any action was reasonably likely to cause serious harm to another person, failed to take all practical steps to ensure the safety of an employee, namely Taia Toloa Milo, while at work, in that it did fail to take all practicable steps to ensure that Mr Milo was not harmed while operating a piece of machinery known as Bag House No. 1 Hopper ("the hopper"). In terms of penalty, the maximum fine available is not to exceed $500,000 in respect of this charge.

[6] It is noted that the lesser charge, laid under s 50(1)(a) carries a maximum available fine not exceeding $250,000. The essential difference between the two charges is that the lesser charge does not require it to be demonstrated that the defendant knew that the failure to take action was reasonably likely to cause harm; simply failing to take all practical steps (to ensure the safety of the employee against harm while operating the piece of machinery) is sufficient for that charge to be made out.

The incident giving rise to the proceedings

[7] The defendant operates a business at 70 Waitakere Road, Waitakere. The small business currently employs 11 employees on rotating shifts. One of those workers is the injured employee Mr Milo, who suffered an accident while at work on 19 July 2013. He had worked for the company since December 2012.

[8] The defendant's production process involves drying, crushing, screening and packaging perlite ore, a pumice based material used in the construction, horticulture and agriculture industries. The perlite (in the form of dust or powder) is fed into collection hoppers and then bagged. The dust is expelled into each bag by the action of an electrically powered rotary valve mounted inside the neck or chute of a hopper.

[9] The operator attaches a bag around the neck, at the base of the hopper, and once it is full, the bag is replaced with an empty one. When this is done, the rotary valve at the bottom of the hopper must be switched off to prevent dust being expelled into the surrounding atmosphere.

[10] At about 10:55 am on 19 July 2013, Mr Milo was seriously injured when his hand came into contact with the valve while it was still rotating under power.

[11] Mr Milo was changing a bag on the hopper. He pulled the bag down off the neck/base of the hopper without turning off the power to the valve. He describes the product as mounting up and said he was 'sweeping' the product away with his right hand, flattening it out to make it even. As he put his hand inside the hopper to keep it clear of any build-up of material, the tip of his right thumb got caught by the unguarded rotating valve situated up inside the neck of the hopper.

[12] Mr Milo suffered serious harm in the accident through the amputation of the tip of his right thumb at the IP joint from the thumbnail upwards. He was off work recovering from the injury until early September 2013.

[13] The informant's investigation revealed that to prevent an operator's hand being trapped or entangled in the valve while it was rotating and exposed, a mesh guard had previously been fitted over the aperture in the neck of the hopper below the valve, but it had been removed about six weeks before the incident. The removal of the mesh guard was approved by the defendant's management as it was considered that the guard had caused or contributed to blockages in the flow of dust out of the hopper into the bag. When that happened, the plant had to be stopped to clear the blockage. There had also been issues with dust being blown back through

the plant's exhaust into the outside air, which had previously caused the defendant's neighbours to complain.

[14] Mr Milo had been instructed to turn off the power to the rotary valve before removing a bag but he had not done so when the accident occurred. The position of the valve is not visible from above, where an operator stands. Mr Milo said he had not appreciated how close the valve was to the neck of the hopper up into which he had put his hand.

[15] The informant's investigation also found at the defendant's premises another hopper with an unguarded valve and also one that was guarded, but ineffectually, as it was possible to extend fingers through the guard and touch the valve.

[16] Before Mr Milo's accident, the defendant had been prosecuted in relation to another work place accident which occurred on 26 April 2012, for failing to effectively guard machinery so as to prevent an employee from becoming trapped in moving parts and suffering serious harm as a result[1]. The employee in relation to that incident, Mr Kwansah, suffered a laceration and tendon injury to his little finger when it came into contact with the transmission parts of a conveyor belt on the chip plant.

[17] The Prosecutor now accepts that the incident involving Mr Kwansah occurred at a different part of the factory and in different circumstances to the incident involving Mr Milo.

[18] In relation to that earlier incident, Mr Kwansah had been operating the chip plant when a conveyor belt stopped feeding a blender. The moving v-belt was guarded at the front and the top. The employee attempted to "flip" the v-belt to restart the conveyor by bending back the guard to gain access to the v-belt. That action caused there to be contact between his hand and the transmission parts of the machine. The defendant should have securely fenced the transmission machinery to

[1] Ministry of Business, Innovation & Employment DC Waitakere, Cri-2012-090-007036, 26 July 2013, Judge O'Driscoll

prevent access to the "in running nip" created by the v-belt and pulley on the chip plant, and developed a safe lock-out procedure.

[19] In relation to that accident, the defendant pleaded guilty to a charge under s 6 and s 50(1)(a) of the Act and was convicted and fined $28,750 in a decision delivered on 26 July 2013, the case having been argued before the Court on 13 July 2013. These dates are obviously after Mr Milo's accident (by days only), although the defendant was obviously already aware of Mr Kwansah's earlier accident as well as the proceedings which followed, albeit that final judgement in relation to those proceedings did not occur until after Mr Milo's accident.

[20] In relation to the present prosecution, the Director and Manager of the defendant, Mathew Malaghan, admitted to the informant's inspector that he had full knowledge of the previous prosecution and had been involved in that case. Mr Malaghan said that he was familiar with the primary objective of machine guarding, being the protection of machine operators from the hazard of moving parts.

[21] The Prosecution outlined in submissions that Mr Malaghan had told the prosecuting inspector that he had known of the decision to remove the guard from the hopper a few weeks before Mr Milo's accident and that he thought it was a safe and good decision that would resolve the potential for a dust discharge caused by the build-up of perlite. He knew that failing to take action by guarding dangerous parts of the plant and keeping guarding installed was likely to cause harm to a plant operator. His knowledge is imputed to the defendant.

[22] The guard over the hopper was replaced three days after Mr Milo's accident. Since then the defendant had found that the hopper mouth needs to be cleared periodically when material builds up and causes problems with production. The company has looked at ways of controlling the temperature inside the plant to keep the moisture content of the perlite low and minimise build-up.

[23] In relation to these proceedings, the informant submits that the defendant, knowing that the failure to take any action to guard moving parts of the plant or

machinery likely to cause serious harm to another person, failed to take the following practicable steps:

(1) Left in place the fixed guard which had been fitted on the hopper to isolate the hazard of the rotating valve;

(2) If necessary to gain frequent access to the area of the valve so as to clear obstructions, installed an interlocking guarding system that shut off power to the valve before the guard was able to be opened by any person.

Victim Impact Statement

[24] No victim impact statement has been furnished by Mr Milo in this case, apparently because he does not wish to submit one. It can be inferred in this case that the relationship between the company and Mr Milo is a good one and it is noted that he has remained working at the company.

The Law

[25] In relation to a sentencing indication in a case such as this, the Court is required to adopt the three-step approach discussed in the guideline judgment of the full Court of the High Court in *Department of Labour v Hanham & Philp Contractors Ltd*.[2] That case reviewed the principles established by *Department of Labour v de Spa and Co Ltd*,[3] reinforcing the proactive, preventative approach required by the Act to promote the prevention of harm to all persons at work, in a place of work, or in the vicinity of a place of work, and setting out a principled approach to sentencing. The full Court in *Hanham & Philp Contractors* also recognised that a substantial uplift in existing levels of fines was needed to reflect the five-fold increase in maximum fines introduced in 2003.

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[2] (2009) 9 NZELC 93,095.
[3] [1994] 1 ERNZ 339

[26] While the *Hanham & Philp Contractors* decision was focused on a charge under s 50 of the Act, the principles enunciated are as applicable to a prosecution under s 49 of the Act.

[27] The first main step of the three-step approach to be adopted requires the Court to assess and fix the quantum of reparation payable to the victim. It involves consideration of the statutory framework, taking into account any offer of amends and the financial capacity of the offender.

[28] The second main step involves the fixing of the fine, which requires the establishment of the starting point in terms of the three bands of culpability, as set out in para [57] of *Hanham & Philp Contractors.* There, starting points should be fixed according to the following scale:

Low culpability:	a fine of up to $50,000.
Medium culpability:	a fine of between $50,000 and $100,000.
High culpability:	a fine of between $100,000 and $175,000 (but still allowing for even greater fines in an appropriate case, up to the maximum available of $250,000).

[29] To reiterate, the available fines under a s 49 prosecution are twice that of a s 50 prosecution, from which it is reasonable to extrapolate that the band levels as set out above might still be of assistance but with the relevant figures being doubled.

[30] The starting point once reached, should then be adjusted for any relevant aggravating and mitigating factors relating to the offender. An adjustment must then be made for the payment of reparation, and consideration given to the financial capacity of the offender in fixing the fine.

[31] The third main step is to assess whether the overall burden of reparation and fine is proportionate and appropriate.

Purposes and principles of sentencing

[32] In terms of the purposes of sentencing, as set out in s 7 of the Sentencing Act 2002, the Court considers that the following matters are relevant.

[33] The defendant should be held accountable for the harm done, and there should be promoted in the defendant company a sense of responsibility for and an acknowledgment of the harm done. The interests of the victim should be provided for and reparation provided for the harm caused by the offending.

[34] In terms of the relevant principles of sentencing, pursuant to s 8 of the Sentencing Act 2002, there is a need for the Court to consider the gravity of the offending. The Court should also impose a sentence which is generally consistent with other like cases, however noting again that the case must turn on its own particular facts. Again, there is also a need to consider the effect of the offending on the victim.

Step 1: Reparation

[35] Any accident which causes the loss of part of a hand amounts to serious harm; "Amputation of a body part" is included in the definition of serious harm in Schedule I of the Act.

[36] Mr Milo therefore suffered "serious harm" in the accident through the amputation of the tip of his right thumb at the IP joint from the thumbnail upwards. It is known that he was hospitalised and needed surgery. He was off work for several weeks recovering from the injury until returning to work in early September 2013.

[37] As there is no Victim Impact Statement from Mr Milo, it is difficult to quantify emotional harm, however it is accepted that an injury such as that suffered would have caused pain, discomfort and some distress. Further, as it is a permanent injury, there is some degree of ongoing disfigurement and disability.

[38] There is no evidence as to economic loss suffered.

[39] In *Department of Labour v Indersoll-Rand Architectural Hardware Ltd*[4] the Court dealt with a case concerning a worker whose finger had required surgical amputation to the first joint, following the crushing of the tip of the finger between the tool and the die of a punch and forming press. The worker had chosen not to file a Victim Impact Statement in circumstances generally akin to those in the present case. The court reviewed numerous cases dealing with similar injuries and was also able to make some assumptions about the impact of the injury, in reaching a figure of $5,000 as a reparation award.

[40] In the present case, $5,000 is also regarded as a suitable sum for an award of emotional harm reparation to Mr Milo. It is further noted that the prosecution and defence also submit that such a sum would be appropriate.

Step 2: Fine

[41] It should be noted before moving to consider the issue of a fine, that there are disparate purposes served by the imposition of fines as against reparation. A fine is essentially punitive, whereas reparation is compensatory in nature. The two are regarded as conceptually different, as detailed in the decision of Harrison J in *Police v Ferrier*[5].

[42] When referring to the quantum of fine, the Court must consider the issue of culpability. Reference has already been made to the bands set out in the leading case of *Hanham & Philp Contractors Ltd.* At para [54] the Court set out a number of factors that could be included in the assessment of a defendant company's culpability, though the list is not exhaustive. It is for guidance and different factors will be relevant in different cases. In general terms, however, consideration must be given to the issues of intent, motive, 'foreseeability' and the circumstances which bear on an offender's blameworthiness.

[4] DC Waitakere, CRI-2010-090-6728, 4 April 2011, Judge Tremewan.
[5] HC Auckland, CRI 2003-404-195, 18 November 2003.

The identification of the operative acts or omissions – the practical steps

[43] There were practical steps that could have been taken to ensure the safety of employees such as Mr Milo while operating the hopper. There had been a guard fitted earlier by the defendant, which had been removed. This could have been left in place. If it was necessary to gain access to the area of the rotary valve, an interlocking guard could have been installed to shut power off before the guard could be opened.

[44] For the purposes of this sentencing indication, the Court must accept, in terms of the relevant charge, that the defendant knew that its failure to take all practical steps was reasonably likely to cause serious harm to another person (being its employee).

[45] It is again noted that the defendant had been previously prosecuted for a work place accident. Although that accident was in relation to a different process, and occurred at a different part of the workplace, it also occurred in circumstances where serious harm was caused to a worker due to a failure to effectively guard dangerous machinery parts. To reiterate, this had only occurred a relatively short time before – and the proceedings in relation to the earlier prosecution were ultimately determined the same week as this later work place accident. Further, Mr Malaghan, a director and manager of the defendant company, admitted having full knowledge of the earlier accident and the prosecution that followed.

The nature and seriousness of the risk of harm occurring as well as the realised risk

[46] The harm realised was the amputation of part of Mr Milo's thumb, below the nail, at the first joint. Such injury is defined as serious harm, and would have caused pain and discomfort. As a permanent injury, there is some ongoing disfigurement and disability.

[47] It is, however, fortunate that the injury suffered was not more severe; Mr Milo has returned to his work and the indications are that his life has returned to relative normality.

[48] The Court has the sense that the kind of injury which occurred might well be the expected kind of injury for a person who has placed his thumb or fingers near the unguarded rotating valve situated up inside the neck of the hopper. In other words, while a consequential injury might have been either less or more severe, this injury might not be seen as atypical of what would likely be expected in such a scenario.

[49] However, without seeking to minimise in any way the seriousness of the risk it is accepted that the Court is not dealing with a situation where gravely serious injury was likely indicated.

The obviousness of the hazard

[50] This case concerns an obvious hazard. According to the defendant, just prior to the accident, Mr Milo was told by the operator, Mr Matty, to set up the bulk dust bag to be changed in Baghouse 1 and to be sure to first turn off the rotary valve switch. During the investigation, Mr Matty advised that he had been taught to do this by senior leading hands, and had passed this on to his crew, including Mr Milo.

[51] Mr Milo apparently accepted in his interview in relation to the prosecution enquiry that he knew that the valve should be switched off and saw it as "his mistake" not to have done this before starting to move the bag. This is clearly not an adequate safety measure. The fact that the employees have received such instructions really underscores the existence of an obvious hazard to be avoided.

[52] The fact that the defendant had installed a guard when the hopper was newly acquired is further illustrative of the obviousness of the hazard.

[53] Also obvious was the need for an interlock device installed in the event that access into the hopper was required and the worker failed to isolate the power source.

The degree of departure from industry standards and the current state of knowledge about the means available to mitigate the risk of its occurrence

[54] Guarding from dangerous machinery parts is both commonplace and expected. The danger from the unguarded rotary valve was not a hidden one which had only, for example, been revealed by the accident on 19 July 2013. To reiterate, the defendant had installed a guard on the hopper when it was newly acquired; such actions indicating that the defendant was aware of its obligations to prevent harm to employees and knew that an unguarded rotary valve could cause harm.

[55] There was nothing complex about the plant or its operation that made guarding inherently difficult or impractical. That said, it is accepted that the defendant had encountered difficulties with the guard fitted in that there would be blockages to the hopper base, with ensuring dust complaints from neighbours.

[56] It is noted that the defendant was able to install a guard to the hopper again after the accident.

Assessment as to quantum

[57] The Prosecutor submits that an appropriate starting point for the fine in this case is between $120,000 to $130,000. The defendant submits that this is "plainly excessive" and that a starting point should be "not more than $60,000 to $65,000".

[58] There have been very few cases prosecuted under s 49(2) of the Act since the penalties increased five-fold in 2003. Those that have been are of limited assistance in the present case.

[59] In *Andrew Borrowdale Lightburn v Terra Lana Products Ltd, and Malcolm John Corbett*[6] there had clearly been some significant and unusual procedural difficulties in the case (not caused by the defendants), which appear to have complicated matters. Proceedings had been taken against the defendant company, and also the managing director of the company under s 56 of the Act. The worker

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[6] DC Christchurch CRI 2006-009-015911, 19 December 2007, Judge Callaghan.

lost part of his little and ring fingers on his right hand and sustained soft tissue damage to his right middle and index fingers, when he "inserted his hand into [an] inspection cavity".

[60] The company was described as a relatively small industrial company which was running at a loss. The managing director Mr Corbett was described as a "very caring and conscientious person relating to his staff" who took a "pastoral approach" to his workers. His own wife also died days after the accident. There was medical evidence available suggesting that he had suffered a minor stroke and was suffering extreme stress which, it was suggested, arose from the proceedings. He was also willing to speak to the Canterbury Manufacturers Association about the lessons he had learnt as a result of the prosecution, which the Court took into account as well as the fact that he had a "good record in the community".

[61] In that case, there had also been a previous workplace accident, however the defendant company had been absolved of any wrongdoing in that regard. The reason why the higher penalty charge appears to have been laid was because relevant warnings had already been given to the staff member with the delegated responsibility of dealing with health and safety matters, by a Health and Safety advisor prior to the accident occurring.

[62] It is clear that the financial impecuniousness of the defendants (as an individual and also the company) was a matter which factored largely in the reasoning of the Court. Over $12,000 reparation was, however, paid to the injured worker (split between the defendant company and the managing director). The Court indicated that a starting point fine in the region of $150,000 could well have been justified "leaving aside the personal circumstances of the defendants". Ultimately, in addition to the reparation, the Court ordered the defendant company to pay a fine of $40,000 with costs, with Mr Corbett being discharged without conviction personally, pursuant to s 106 Sentencing Act 2002.

[63] In another prosecution under s 49(2) of the Act, a fine of $225,000 was ordered where the defendant was operating a crane without an inherent safety feature, and a victim was fatally injured and a co-worker seriously injured.

Reparation of $20,000 was ordered after taking into account a significant amount already paid.[7]

[64] A convenient approach in this case in the establishment of the starting point is to refer to the three bands of culpability as set out in para [57] of *Hanham & Philp Contractors,* set out at [27] above.

[65] The Court considers that an appropriate starting point would be near the bottom end of the medium culpability band but with the figures being doubled to account for the higher penalty reflecting the greater culpability in a s 49 (2) charge.

[66] In these circumstances a starting point of $100,000 is warranted.

Adjustment for any aggravating or mitigating features

[67] In terms of aggravating features of the offending, it is noted that upon inspection, the defendant's plant was found by the prosecuting inspector to have dangerous parts unguarded in one part and an ineffective guard in another.

[68] It is also relevant in this case, that there was the previous work place accident on the defendant's site, also involving a failure to adequately guard. However it is apparent that the decision of the Prosecutor to proceed to prosecute the defendant under the more serious charge available pursuant to s 49(2) of the Act, with the significantly increased penalties, was largely motivated by the existence of the previous prosecution.

[69] In other words, it is largely because of that prior workplace accident that the basis for the more serious charge appears to have been well made out. The fact of the prior incident is still an aggravating feature of the case. However, that is in large part reflected already with the charge being pursued – and it would be wrong in the Court's view to further uplift the starting point in this particular case when the

[7] *Fletcher Concrete & Infrastructure Ltd t/a Stresscrete*, DC Papakura CRN 505500763, 29 June 2007, Judge Cadenhead.

starting point is already higher as a result of the more aggravated charge being pursued.

[70] It is further noted that the earlier accident, though similar, was at a different part of the site and in relation to a different piece of plant equipment; had it been exactly the same then this would have been a more seriously aggravating factor.

[71] In making the remarks above, the Court is not saying that it would not uplift a starting point where there has been a previous prosecution merely because the prosecution has sought to proceed with a s 49(2) charge – as each case must be determined on its own facts. There will certainly be cases where it would be appropriate to uplift a starting point on the more serious charge for a past offence.

[72] In this case it is clear that the defendant has been cooperative and has taken these proceedings seriously. Shortly after the accident it took remedial steps by returning the hopper to its guarded state, presumably despite the difficulties which were caused by this guard. Subsequently, considerable effort and expense has been spent on better remedying the situation including use of electronic lock out and the development of a boxing structure underneath.

[73] While the law allows for a separate credit for the demonstration of exceptional remorse, general remorse is not regarded as attracting additional credit as it is seen as inherent in the remorse that might be consistent with the taking of responsibility through the entering of a guilty plea, which attracts its own credit[8] There is no evidence before the Court that there has been a demonstration of exceptional remorse such as would attract a separate credit in this case.

[74] In some cases employees become injured when they have, contrary to an express instruction, deliberately proceeded beyond guarding, ignoring their instructions. This can be a relevant matter in terms of mitigation as was accepted in *Department of Labour v Heinz Wattie Ltd*.[9]

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[8] *Hessell v R* [2010] NZSC 135.

[9] Hastings DC, CRI- 2009-020-2694, 25 November 2009, Judge Watson.

[75] The fact that the employee in this case appears to have ignored instructions has a minor degree of relevance by way of mitigation, although as noted earlier, the fact that the employer knew to give the instructions also relates to the obviousness of the risk, which is a matter which makes the offending more serious. The employee should not have been placed in the position he was. However, the court accepts that this is not an egregious case where, for example, the employer was plainly indifferent to the risks or wilful in exposing workers to a blatantly obvious and serious, or even life-threatening hazard.

Step 3: Proportional and appropriate fine and reparation

[76] No allowances are sought in this case for issues relating to insurance cover.

[77] The court considers the following as the appropriate formulations to be made in this case, from the starting point of a $100,000 fine and taking into account a figure of $5,000 for reparation.

[78] In this particular case there will be no uplift for the aggravating features of the previous workplace accident and the investigation having discovered other matters also to be remedied, since the combination of circumstances led to the more serious charge being laid, with the exposure to the significantly higher penalties.

[79] However, as mentioned earlier, this should not be regarded as indicative of how similar issues might be dealt with in other cases.

[80] From the starting point fine, 5% is deducted for the reparation payment to be made, and 10% for mitigating matters outlined, reducing the starting point to $85,000.

[81] From the revised starting point, the full 25% credit for early guilty plea is indicated, of $21,250. This brings the revised figure to $63,750.

[82] In terms of financial capacity, the Court must consider s 40(2) of the Sentencing Act 2002, which requires the Court to take into account the financial capacity of the defendant. The requirement of 'clear evidence of financial

impecuniosity' was endorsed by the High Court in *Department of Labour v Eziform Roofing Products Ltd.*[10]

[83] There is sufficient evidence before the Court for a finding to be made that this small company is trading at a loss and has been for the past three years. It has been "propped up" by an Australian sister company. Its financial difficulties have largely been due to the high New Zealand dollar which has impacted on the defendant's business, which is primarily export-based.

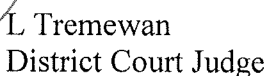
[84] In *Department of Labour v Lincoln Bakery Ltd*,[11] the Court considered the difficulties of a small business "struggling to make ends meet", noting that while bringing home the message of workplace safety was important, it would be counterproductive if the penalties imposed were such that the very existence of the business and the employment opportunities offered to the workers were placed at risk. In that case there was a 33% reduction in the fine due to the financial circumstances of the defendant company. A similar reduction is suitable in this case.

[85] The court will impose a $40,000 fine (with a direction to the Fines Registrar to allow the defendant to continue paying off fines at the existing rate).

Conclusion

[86] To conclude, there will be a conviction now entered on the s 49(2) charge, with the remaining charge withdrawn by leave, with the sentence imposed as follows:

Reparation – $5,000.00
Fine – $40,000.00
Court costs – $130.00



L Tremewan
District Court Judge

[10] [2013] NZHC 1526, Duffy J
[11] DC Waitakere CRI 2012-090-1980, 19 September 2012, Judge Tremewan.