



## *Executive Director's Report*

### **PROMPT PAYMENT AND TONY DEAN UPDATE**

The Ontario Legislature adjourned on June 9<sup>th</sup> and the next session will start on September 12, 2016.

As some of you may have heard, the Hon. Madeleine Meilleur resigned her position as Attorney General, prior to a Liberal cabinet shuffle. This may impact the release of the Construction Lien Act (CLA) Review depending on how many people get reassigned positions due to the cabinet shuffle and the fact that there is a new minister.

Prompt Payment Ontario (PPO) has contacted the new minister, the Hon. Yasir Naqvi, and the Deputy Minister, Patrick Monahan requesting a meeting with the minister and deputy minister and to have the CLA report released. Pending a response, PPO will be outlining a strategy in the near future to go into the fall session.

In our last newsletter we also indicated that the government announced that responsibility for the Ontario College of Trades' regulatory and administrative oversight has been transferred from the Ministry of Training Colleges and Universities (MTCU) to the Ministry of Labour (MOL).

We are hopeful the transfer of the file to the MOL will signal that the government is ready to move forward with Tony Dean's recommendations. However, there has been no further action by the government.

We will keep you updated regarding both issues as events unfold.

### **MINISTRY OF LABOUR (MOL) UPDATE**

#### **MOL Issues Hazard Alert: Elevating Work Platform Crushing Hazard**

##### **Hazard summary**

Recent incidents investigated by the Ontario Ministry of Labour involved workers on an elevating work platform being trapped or crushed between the work platform or basket and an obstruction like the ceiling or a beam. Some incidents occurred as a result of workers not being aware of their proximity to these hazards or control functions being inadvertently actuated by the worker's body while near the hazard.

##### **Location and sectors**

Workers accessing heights using an elevating work platform at workplaces throughout Ontario.

##### **Identified hazard**

Workers are at risk of being trapped or crushed when operating elevating work platforms. These incidents have involved the operator or other worker being trapped or crushed against fixtures or other obstacles while accessing their work area, or while working at height. Workers have been injured or killed after being trapped or crushed between the railings or control box and obstructions. The incidents could have been prevented by correct planning and preparation, selection of appropriate machinery and proper use.

All workplace parties are to assess risks of trapping and crushing hazards regarding elevating work platforms at their workplace prior to the operation of the equipment. The key to preventing trapping or crushing accidents must be task, equipment and site-specific risk assessment.

Risk assessment should include factors such as travelling to and from the work area, accessing the work, lighting conditions and working at heights.

Elevating work platforms shall be maintained to ensure that the safety factors of the original design are functional, including all controls and safety decals.

Elevating work platform operators are to be trained and familiar with specific equipment and follow the manufacturer's operating instructions.

*Executive Director's Report (continued)*

**Required action**

- All workplace parties are to assess risks of trapping or crushing hazards.
- Employers and supervisors must take the lead in identifying when trapping or crushing risks are present in the work activities they control. Where trapping or crushing risks are present, extra care is needed and all involved must understand what action is required to avoid or reduce the risks involved.
- Emergency controls must be located and tested.
- Ensure that effective rescue procedures have been established should a worker become trapped or crushed.
- Ensure equipment is be maintained as per the manufacturer's instructions.
- Ensure controls and safety devices are operating properly and control decals are legible.
- Particular attention should be given to lighting levels – additional task lighting or personal lighting may be necessary.
- Elevating work platform operators are to be trained and familiar with specific equipment operation and follow manufacturer's operating instructions. Conduct pre-operation inspections as per the manufacturer's operating manual.
- The operator of an elevating work platform must be aware of their position in tight areas. Subject to the findings of the risk assessment, an operator should operate the machine with extra care when working near obstructions.

Operators working alone in restricted areas may be at risk, as others may not be aware of any distress if the worker becomes trapped or crushed. Constant monitoring and/or communication should be considered, as delay for assistance to the worker may prove fatal.



To date, we have had an extremely warm summer and it is just starting.

For this summer, remember WRS.

**UPCOMING JULY 2016 EVENTS**

**MOL Prevention Office - Task Group for Workplace Participation and Supervisors** - July 19, 2016 (Paul Gunning attending)

**UPCOMING Mathews Dinsdale Seminars/Webinars**

Copy the following URL to your browser to register for new sessions or review archived session videos:

<http://www.mathewsdinsdale.com> (see right side)

**OHSA Bill 132 – OHS and Human Resources Implications** - Tuesday, September 13, 2016

**HR Boot Camp** - Wed September 21, 2016

**Due Diligence for Managers and Supervisors** - Wednesday, September 28, 2016

**WSIB Rate Framework** - Tueesday , October 25, 2016

**Claims Management I & II** - Thursday, November 3, 2016

Executive Director's Report (continued)

Remember to mark this date!

AAO's AGM and Conference September 20 to September 22, 2016

Caesars Windsor



If you have any questions, please call me at 519-671-5930.

Paul Gunning  
Executive Director

The Mathews Dinsdale Minute



This month's question is: Can a company require its employees to undergo random drug and alcohol testing?

This question is the subject of ongoing debate in the case law, and that answer has changed many times over the years. Recently the Alberta Court of Queen's Bench released its decision in *Suncor Energy Inc. v Unifor Local 707A* putting its views into the debate. The Court overturned an arbitration award, in which the arbitrator finding that Suncor's policy of randomly testing employees for alcohol and drugs was not justified. In doing so, the Court stated that to justify random testing, Suncor had to satisfy a number of requirements. One of these requirements was to have evidence that there was a "general workplace problem" with drugs and alcohol.

A key take-away of this case is that random testing may be permissible in safety-sensitive workplaces. However, in order to justify it, employers must lay the groundwork. They must collect the necessary evidence of a general workplace problem with drugs and alcohol. They must also first try other means of addressing that problem. For example, employers can institute a comprehensive drug and alcohol policy, train employees on that policy; and provide employees with ways of seeking help through, for example, Employee Assistance programmes, etc. Employers can also consider other forms of testing that are short of random testing. For example, many companies have implemented "reasonable cause" testing, where employees are asked to undergo testing where the employer has a legitimate reason to believe the employee is impaired at work.

Another key take-away from the *Suncor* case is that the statistical evidence of a "general workplace problem" can relate to all employees in the safety-sensitive workplace – not just unionized workers. The statistics can also relate to other individuals on the worksite, like those employed by subcontractors on the same job site. This was one area in which the Court found that the arbitrator had erred, having only considered the statistics relating to employees in the union, and effectively ignored the statistics involving non-union employees.

Ultimately, the Court quashed the arbitrator's decision, and remitted it for a second arbitration in front of a fresh Board of Arbitration. Not surprisingly, the union has announced its intention to appeal the Court's decision.

Currently, random testing is lawful only in very limited circumstances. Precisely how an employer can justify such testing remains the subject of ongoing debate, and employers should therefore tread extremely carefully and seek legal advice prior to implementing such a testing policy.