



SEMAPHORE

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Court Case Reveals Need for Stronger H&S Governance

A personally-challenging court case in Nelson, which led to a director of an engineering firm being imprisoned, has underlined that there will only be true and lasting improvement in health and safety (H&S) in New Zealand when there is full buy-in from all levels, including directors, chief executives and management.

That was the conclusion of former Port Nelson chief executive Martin Byrne, who recounted to delegates at the MLAANZ New Zealand Branch conference details of the case which has become a *cause celebre* in H&S law.

Mr Byrne confessed that initially when working at the port soon after taking on the role in 2004, he and older staff members had found H&S requirements frustrating at times, with a higher focus on getting the job done and keeping the customer happy.



Martin Byrne

But the Pike River tragedy in 2010 had a profound effect on him. It was of significant concern that New Zealand ports were averaging one or two fatalities per year, and that overall New Zealand work fatality and injury rates were appalling.

At Port Nelson there was a significant effort made on strengthening the H&S team and ensuring there was a focus at management and board level around potential high-risk incidents and how to mitigate these.

After leaving the port, in January 2021 he was appointed by “Company X” as a consultant to do a review of its business including all aspects of H&S. The company had been charged by WorkSafe relating to an incident on its premises in July 2019 when a young apprentice suffered a hypoxic brain injury.

He had been working in an empty engine room cleaning up grease without breathing apparatus and using a brake cleaner which was not an approved substance for the work. When he failed to appear at “smoko” he was found unconscious and foaming at the mouth.

WorkSafe undertook an investigation and charged Company X with failing to ensure the H&S of its employees by exposing an individual to risk of harm or illness.

Mr Byrne became chief operating officer (COO) of the business in June 2021 and, after a restorative justice meeting with the family, the company pleaded guilty and was fined \$275,000, with \$50,000 in reparations and \$15,000 consequential losses.

With the company showing remorse and making leadership changes, Mr Byrne thought the matter had been brought to an end. However, three days after sentencing, the H&S officer advised him there had been a similar incident only four days before the one for which the company had been charged. An incident report had been filled out on the day but not entered into the company H&S system and had been destroyed with the knowledge of three staff members – the H&S officer included.

Nonetheless, two copies had been kept – one hard copy by the former general manager and one on the phone of the H&S officer.

Mr Byrne spoke to all three company directors, of whom two knew nothing about the earlier incident report until that day, and then sought independent legal advice on what he should do, given it appeared to him a crime had been committed. He conveyed this to the directors.

Two days later, in mid-July and only a matter of weeks after commencing the full-time role as COO, he made the difficult decision to resign and made a protected disclosure to WorkSafe through his lawyer. After an initial investigation, WorkSafe passed the case over to the New Zealand Police.

In December 2021 the Police raided the home of the former general manager and seized the hard copy of the earlier incident report. Police then spoke to the managing director who still denied any earlier incident ever took place.

Formal charges were laid against the managing director and the former H&S officer, who were granted name suppression. This was later lifted and in April 2023 the managing director pleaded guilty to a charge of perverting the course of justice and the former H&S officer to making a false statement.

The managing director was sentenced to 20 months in prison and the former H&S officer to nine months. Both appealed their sentences. That of the managing director was upheld and that of the H&S officer was reduced to home detention.

Mr Byrne listed several learnings from the case. For anyone facing similar circumstances, write everything down. It is important because there can be considerable consequences for personal finances, reputation and mental health.

In his case, he resigned when the criminal activity was unmasked and this impacted on his ability to earn an income. By seeking legal advice and then making a protected disclosure he immediately started incurring significant legal expenses.

Rumours circulated as to why he left the business which he could not answer publicly as the case was under Police investigation. He was slandered by another party. His mental health deteriorated under the pressure and he seriously contemplated taking his own life.

“Let people know you are struggling and seek their support,” he advised delegates.

“Look after your physical health, keep exercising, monitor your nutrition and things like alcohol intake. This is never a quick process – this case took almost two years.”

Turning to learnings for H&S governance in New Zealand, Mr Byrne said composition of boards of directors have a strong focus on financial, legal and strategic planning skillsets, but – with some notable exceptions – there is not the same focus on H&S capabilities.

“The Health and Safety at Work Act 2015 improved director focus to some degree but it could be argued this is slipping back again. How can directors know if a CEO and their team are doing the right things in H&S if they don’t know the right questions to ask?”

Mr Byrne said the only way directors and management will discover the true H&S issues is by dressing down and meeting staff in person, with only one or two directors at most in attendance, preferably with a third-tier leader, so that staff will not be intimidated.

The “good news” ending to the story, he said, was the progress being made by the victims in this event – the worker Brook Palmer and his mother Paula. Mr Palmer’s reputation was attacked time and time again as was his mother and both were abused outside court.

Although Mr Palmer suffered a hypoxic brain injury and may continue to face challenges for years to come, he recently started working again. From the time of his accident in 2019 until recently he was on ACC at 80% of what he earned at the time of the accident when he was being paid apprentice rates. He continues to get treatment, much of which he pays for himself.

He is moving forward.

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