

Alberta Court of Appeal Confirms Directors Can Be Personally Liable for Workplace Injuries

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The workers' compensation scheme is designed to provide no-fault compensation to injured workers. Under the workers' compensation scheme, however, workers lose their cause of action against their employer as well as other parties who may have been responsible for the workers' injuries suffered in the course of employment. Despite this, the Alberta Court of Appeal recently confirmed that a director can be personally liable for a workplace accident that resulted in an injury to a worker.

Facts

In *Hall v. Stewart*¹ the defendant was a director of a company called DWS Construction Ltd. (DWS). DWS was retained as a subcontractor to complete work on the construction of a new home. Part of the scope of DWS' work was to install a temporary staircase into the basement of the home. The director of DWS was involved in the work on site. During the construction of the home, the staircase collapsed which resulted in injuries to the workers of another subcontractor. The injured workers were compensated by the Workers' Compensation Board (the Board). The Board then brought a subrogated action against the director of DWS seeking to recover the amounts the Board had paid to the workers.

DWS was an "employer" for the purposes of the *Workers' Compensation Act (Act)* and it had workers' compensation coverage. As DWS was an "employer", DWS and its employees were immune from any claims related to the injuries suffered by the injured workers. Under the *Act*, however, immunity does not apply to the directors of "employers", unless the directors purchase additional coverage. In this case, while the director of DWS had not purchased additional coverage, the director argued that he was immune from liability as any negligent act that was committed by him was within the scope of his duties as an employee of DWS, not as a director.

The Alberta Court of Appeal held that because he was a director of DWS and he participated in the installation of the staircase, he was not covered under the *Act*. The Court of Appeal then identified factors to consider when determining whether a director may be personally liable, which include:

- Whether the negligent act was committed while engaged in the business of the corporation;
- Whether the individual was pursuing any personal interest;
- Whether the director owed a separate and distinct duty of care;
- Whether the conduct was "in the best interests of the company";
- Whether the plaintiff was voluntarily dealing with the corporation or had the corporate relationship imposed on them;
- Whether the tort was "independent";
- The nature of the tort, including whether the tort was intentional; and
- Whether the damage was physical or economic.

In this case, the deciding factor was the nature of the damage: personal injury. The Court of Appeal noted that there have been a number of cases where directors (or other individuals) were personally liable for personal injuries. The Court stated that there was clearly a "duty of care" to avoid injuring co-workers. While the director's actions were not independent of DWS, there was a strong public policy reason to ensure that physically injured plaintiffs are compensated. Further, it followed that the director could not escape personal liability for any personal injuries caused to the workers as a result of a negligent act, even though the director's involvement in the construction of the staircase was a part of the business of the corporation DWS.

Takeaway

This case should be a warning to directors of corporations that they may not be immune from liability for actions committed while engaged in the business of the corporation. In particular, directors may be personally liable for personal injuries caused to a worker if the director was involved in performing the work.

¹ *Hall v Stewart*, 2019 ABCA 98

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