IN THE DISTRICT COURT
AT MANUKAU

CRI-2016-092-2787
[2016] NZDC 21266

WORKSAFE NEW ZEALAND
Prosecutor

v

TOTALLY RIGGING LIMITED
Defendant

Hearing:	16 September 2016
Appearances:	C O'Brien for the Prosecutor M Anderson for Defendant
Judgment:	2 November 2016

DECISION OF JUDGE C S BLACKIE ON SENTENCING

Background

[1] The defendant has pleaded guilty to a charge that on or about 14 September 2015, it being an employer, failed to take practical steps to ensure the safety of its employee, namely Kane Peter Rose, while at work, in that it failed to take all practical steps to ensure that he was not exposed to the hazard of a fall from heights while carrying out structural steel installation work.

[2] The charge having been laid under ss 6 and 50(1)(a) of the Health and Safety in Employment Act 1992 is liable, on conviction, to a fine not exceeding $250,000.

[3] According to the summary of facts, the Roman Catholic Bishop of Auckland (RCB) owns and operates St Anne's School in Manukau. Aspec Construction Ltd

were contracted by RCB in respect of the construction of 26 new classrooms. Aspec Construction contracted the structural steel component of the work to J R Slecht Ltd and, in turn, J R Slecht Ltd contracted the installation of the structural steel components to Totally Rigging Ltd, the defendant company, in particular affixing purlins to beams.

[4] Totally Rigging Ltd employed Kane Rose. Mr Rose had been working for the defendant as a construction worker for approximately seven years before the incident.

[5] Totally Rigging usually erects steel purlins, using an elevated platform with employees wearing a full arrest harness and using an emergency absorber fixed to an anchor point. This is standard industry practice.

[6] On 14 September 2015, Mr Rose commenced work at approximately 7.30 am. Between 7.30 and 9.00 am, Totally Rigging employees had erected multiple purlins over a bay and a half of the construction site, off ladders. At approximately 9.00 am, Mr Rose was working off a ladder, attempting to bolt a purlin to a steel beam at a height of approximately 4m. The weight of the purlin that he was working on was supported by a crane. His task was simply to fix the bolts in order to secure the purlin to the steel beam. As a result of unexpected movement of the purlin, Mr Rose lost his balance and fell onto the concrete floor below.

[7] The ladder was not secured by tying it on to the steel beam and had missing rubber feet. This created the risk of slipping, even though it was being held at the base by another worker.

[8] Although Mr Rose was wearing a harness when he fell he had not secured it to an anchor point, so it provided no fall protection. Mr Rose told Worksafe that he was about to attach the harness when the tension shifted on the purlin. It was his usual practice to work with the harness attached. Apparently, Mr Rose, from his position on the ladder, could not reach over to the other side of the purlin in order to put the nut in place and, therefore, undid his harness to re-adjust.

[9] It is one of the fundamental rules of ladder-work that three points of contact be maintained with the ladder. However, the task of bolting the purlins in place requires two hands. The ability of Mr Rose to support himself on the ladder was, therefore, significantly reduced. Further, although Mr Rose was wearing a full arrest harness with an emergency absorber, that type of harness was entirely ineffective when working at a height of less than 6.1m. That is because the emergency absorbing device requires a fall in excess of 6.1m in order to deploy. Mr Rose should have been wearing a work-positioning harness, with a work-positioning lanyard that could support his weight and hold him in the working position, thereby prevent a fall.

[10] As a result of the fall, Mr Rose sustained two broken arms and was not cleared to return to work until 22 March 2016, six months after the accident.

Legal issues

[11] The leading case on the approach to sentencing in respect of health and safety prosecutions as far as the 1992 legislation is concerned is that of *Department of Labour v Hanham & Philp Contractors Ltd,* HC Christchurch, CRI-2008-409-000002, 18 December 2008. The approach to sentencing for an offender under s 50 of the Health and Safety in Employment Act is summarised at [80]:

(a) Both s 51 HSE and the Sentencing Act are relevant to the sentencing process.

(b) The sentencing process involves three main steps:

  (i) Assessing the amount of reparations;

  (ii) Fixing the amount of the fine;

  (iii) Making an overall assessment of the proportionality and appropriateness of the total imposition of reparation and the fine.

(c) Given that reparation and fines serve discrete statutory purposes, both should ordinarily be imposed. This is, however, subject to the fact that when there is a lack of financial capacity restricting the ability to pay both, the payment of reparation takes priority.

(d) The first steps is, therefore, to fix reparation. This includes consideration of the statutory framework, taking into account an offer of amends and the financial capacity of the offender.

(e) The second step is to fix the amount of the fine following the methodology established in *Taueki*. This involves fixing a starting point on the basis of the culpability for the offending and then adjusting the starting point upwards or downwards for aggravating or mitigating circumstances relating to the offender.

(f) It is suggested that the starting point should generally be fixed according to the culpability as follows:

(i)	Low culpability	A fine of up to $50,000
(ii)	Medium culpability	A fine of between $50,000 and $100,000
(iii)	High culpability	A fine of between $100,000 and $175,000

Assessing the Quantum of Reparation

[12] The prosecutor makes reference to s 32(1) of the Sentencing Act, which provides:

> 32 Sentence of Reparation
>
> (1) A court may impose a sentence of reparation if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer -
>
> (a) Loss of or damage to property; or
>
> (b) Emotional harm; or
>
> (c) Loss or damage consequential on any emotional or physical harm or loss of or damage to, property.

[13] It is submitted that Mr Rose sustained serious physical injuries, he was hospitalised for 12 days and underwent two surgeries and extensive physiotherapy. He continues to the present time to suffer significant pain, cannot straighten his right arm and lost strength in both hands.

[14] Reference is also made to Mr Rose's victim impact statement as evidence of the significant emotional harm he has suffered as a result of the fall in September 2015. In particular, he refers to:

(a) His sleep having been affected, he cannot sleep on his side because of the pain.

(b) He used to play rugby but remains unable to return to playing as he is fearful it would cause another injury to his arms. He cannot pass a rugby ball properly.

(c) Previously, he was actively involved in boxing but is no longer able to participate.

(d) He acknowledges a change in his behaviour. Prior to the incident, he used to be outgoing but is now comparatively quiet and reserved.

(e) He feels shame and embarrassment in that he has had to be cared for by his mother and sister, who assisted with daily tasks such as eating, showering and using the bathroom.

[15] The prosecution submit that an emotional harm reparation in the vicinity of $20,000 would be appropriate to reflect the level of harm Mr Rose has suffered.

[16] The prosecution acknowledges that fixing an award for emotional harm is an intuitive exercise: *Big Tuff Pallets Ltd v Department of Labour*, HC Auckland, CRI-2008-404-000322, 5 February 2009 at [19]. The prosecution makes reference to a number of cases where reparation awards of between $10,000 and $30,000 have been made – those cases involving falls from heights:

MBIE v KLS Roofing Limited [2014] NZDC 9

The victim was fitting roofing on a residential home with no fall protection. He fell from the roof and sustained a fractured collarbone, right shoulder blade, right wrist and two ribs on his right side. He spent six days in hospital.

Reparation of $10,000 was awarded.

Department of Labour v Hanham & Philp (supra)

Inadequate construction of a temporary scaffold. Victim fell 2.5m to the ground and suffered a dislocated shoulder and bruising to his face. He

underwent two operations and had extensive physiotherapy. Returned to work after 12 months. Reparation of $12,000 was awarded, reflecting $10,000 for emotional harm and $1,950 for lost wages.

WorkSafe v Southern Aggregates Ltd [2015] NZDC 18871, 17 September 2015

Machinery operator in a quarry fell from a platform 1.47 metres above the ground. He was a 61 year old and suffered a fractured skull, concussion, brain haemorrhage and bruised hip. He returned to work after seven months. Reparation of $20,000 was awarded, together with $1,118 economic loss.

WorkSafe v Waikato Institute of Technology - CRI-2014-019-005332, DC Hamilton, 10 November 2014

Student fell from high ropes course approximately 10 metres above the ground. The 19 year old victim suffered fractured pelvis, fractured right elbow, required stitches in his wrist, spent several days in hospital, four weeks in a wheelchair and had a heavily scarred arm. Reparation of $30,000 were awarded

Assessing Quantum of Reparation – Defence Submissions

[17] For the defendant, Mr Anderson accepted that there should be an appropriate award for reparation and the defendant may well have made payment prior to sentencing but for the fact that it might trigger a cancellation of ACC payments.

[18] For the defence, reference was also made to a number of cases along similar lines to those referred to by the prosecutor. As an initial benchmark, Mr Anderson submitted that the present case was more consistent with *Ministry of Business Innovation and Employment v Greenway Developments Ltd* CRI-2013-070-004160 [2014] NZHSE 1, 30 January 2013. In that case, a contractor fell from a height of 3m while erecting trusses. He suffered from a fractured jaw and wrist, concussion and bruising and was awarded $5,000 in reparation. However, counsel acknowledges that Mr Rose's injuries are more serious but not to the same extent as contended by the prosecutor. He considered that a reparation award in the vicinity of $15,000 would be appropriate, plus a further allowance for shortfall on wages of $2,112.90, giving a total figure of $17,000.

Reparation to be Paid

[19] In setting an emotional harm reparation, reference to other cases help to some extent but each case must be considered on its own unique set of facts and circumstances.

[20] In my view, having read the comprehensive victim impact statement that has been produced, there can be no doubt that Mr Rose suffered extensively, not only from the physical injuries but, more particularly, the emotional harm that arose as a result of those injuries. Having to rely on his sister and his mother for his day-to-day personal needs would, for a 22 year old man, result in both embarrassment and loss of dignity. Whereas the injuries may have healed to a point that he is able to resume a normal working life, as far as his recreational activities are concerned he is destined to suffer a loss of enjoyment long into the future.

[21] In the ultimate analysis, the difference between the prosecution and the defence is comparatively minor.

[22] I consider that an appropriate award for reparation should be the sum of $20,000, inclusive of economic loss. I order accordingly.

Assessment of Fine

Prosecution Submissions

[23] The prosecution submit that culpability lies at the high end of the medium band, ie $50,000 to $100,000, by way of fine. The following factors are identified:

(a) *Operative acts or omissions – the practical steps*:

(i) The defendant failed to take four practical steps that were available:

1. To ensure that employees used appropriate working at height equipment for the task of erecting steel purlins, in accordance with industry good practice and the hierarchy of controls identified in the Act;

2. To have ensured that ladders were in safe working condition;

3. To have ensured the ladder was tied-off; and

4. To have ensured that the harness was suitable in respect of fall protection for the work being undertaken.

(ii) The defendant, by its plea, has accepted that it failed to take these practical steps.

(b) *The nature and seriousness of the risk of harm occurring as well as the realised risk:*

(i) The risk of harm is very serious and could have been fatal. The actual harm to Mr Rose was serious.

(c) *Degree of departure from industrial standards, the current state of knowledge about the nature and severity of harm, and the means to mitigate the risk of its occurrence:*

(i) The prosecutor submits that the defendant was well below the expected standard of the construction industry.

(d) *Obviousness of hazard:*

(i) The hazard of falling from height is inherently obvious and the defendant knew of the hazard in the event of such a fall.

(e) *The availability, cost and effectiveness of the means necessary to avoid the hazard:*

(i) The controls required were not complicated to implement and the costs associated with theses controls are negligible when weighed against the risk of serious harm.

(f) *Current state of knowledge of risks and the nature and severity of the harm which would result*:

(i) There was in existence sufficient literature and guidance available to the defendant on the risk, nature and severity of the harm that was caused and the controls available to avoid or mitigate that risk. The defendant's failure marked a significant departure from the relevant industry standard and practice.

[24] By way of illustration and to assist the Court in setting a starting point, the prosecutor referred to a number of decisions:

(a) *Department of Labour v Eziform Roofing Products Limited* [2013] NZHC 1526

In that case the victim fell 5.5m off the roof. There were no safety measures in place. The victim suffered multiple fractures to his lower right leg and left foot, severely fractured his right knee, suffered two shattered vertebrae and spinal cord damage. He had to undergo 16 hours of surgery and suffered a permanent limp, bladder and bowel control difficulties. On appeal, the High Court increased the District Court starting point to $100,000.

(b) *Health and Safety Inspector v Titirangi Scaffolding Limited* DC Waitakere, CRN 13090500274, 11 July 2013

The scaffold plank had not been secured against horizontal displacement, uplift, movement or creep. The victim fell 5m to the ground, suffering a fractured shoulder, bruising to her face, neck, back and abdomen, requiring hospitilisation for two days. The Court adopetd a starting point of $80,000.

(c) *Department of Labour v Hanham & Philp Contractors Limited* [2008] 6 NZELR 79 (HC)

The construction of temporary scaffold was inadequate, resulting in the victim falling 2.5m, suffering a dislocated shoulder, lacerations and bruising to his face and body. On appeal, the Court found the culpability to be high and a starting point of $125,000 was adopted.

(d) *Worksafe NZ v Livefirm Construction Limited* DC North Shore, CRI-2014-044-000645, 20 May 2014

The victim fell from the top floor of a retirement home, when he was installing purlins on trusses. There wa no effective fall protection in place. The employee suffered a fractured humerus, clavicle, three fracture ribs and significant head injury. He required surgery and suffered ongoing amnesia and headaches.

A starting point of $100,000 was adopted.

(e) *Health and Safety Inspector v Iscaff Limited* DC Porirua CRN-120-915-007, 2 May 2013

The scaffolding included a guard rail which was not safely installed. The rail gave way and the victim fell 2m to the ground, fracturing his vertebrae. The Court considered the hazard arising from unsafe scaffolding was an obvious one and the fall from height had potential for serious injury. The culpability was considered to fall within the middle of the medium band and a starting point of $75,000 was adopted.

[25] For the purposes of the current case, the prosecutor acknowledges that the defendant did have some systems in place and, therefore, its culpability cannot be considered as high as in *Eziform Roofing Products* and in *Livefirm Constructions Limited.* In those cases, the defendants had no safety measures in place.

[26] The primary failure on the part of the defendant was the fact that it took no steps to delay the job or to engage in further discussions about the use of a scissors lift platform. The reason that the scissors lift platform had been rejected was that the head contractor, Aspect Construction, objected to the use of such a platform on the newly-laid concrete. The use of a ladder was a less than satisfactory option, as the worker was required to use both hands to do up the bolts when securing the purlin to the beam. Further, his safety harness was entirely inadequate. The prosecution submits a starting point of $80,000 as appropriate.

[27] There are no aggravating factors. As to mitigating factors, the prosecution accepts that the defendant co-operated with the investigation and has no previous convictions. However, it does not have an entirely favourable safety record and has been the subject of previous engagement with Worksafe New Zealand with regard to the hazard of a fall from height. It is accepted, however, that a discount of 15% for mitigating factors could be allowed, together with a full discount of 25% for the defendant's guilty plea.

Fine – Defence Submission

[28] Although the summary of facts outlined earlier in this decision were admitted by the defendant, defence counsel place before the Court a number of further factor issues by way of assistance:

(a) The defendant company was incorporated in 1998. The present employees total nine full-time employees and is managed by its sole director, Andrew Bhiny.

(b) Mr Scott Povey, the Foreman, had been employed by the company for over 15 years and was present when the incident occurred.

(c) Totally Rigging has no adverse health and safety history prior to this accident. The staff are trained to the required standards for riggers and provided with suitable equipment to task.

(d) Kane Rose had completed an 18 month trainee programme with Totally Rigging and had been employed by the company as a rigger since 2011. He has all the necessary experience and qualifications to work as a rigger and was considered competent at his required tasks.

(e) Although a scaffold could have been provided for Mr Rose, for a number of reasons a decision was made to use a ladder to complete the task. Mr Rose climbed the ladder, a purlin was lowered without instruction and the purlin's weight destabilised Mr Rose, causing him to fall to the concrete below.

(f) The steps that were not followed amounted to a minimal departure from normal practice. A preliminary site visit had occurred to identify all potential hazards, employees were required to attend an on-site induction with Aspec, the company contractor and, then, a health and safety procedural review occurred. Totally Rigging drafted a task analysis work sheet, outlining the methodology for completing the steel erection on the site.

[29] After work commenced, Totally Rigging continued to monitor their employees' compliance with its health and safety processes by requiring their employees to attend weekly meetings, where health and safety issues were discussed, actively communicating with the Foreman, Mr Povey, to discuss the employees' safety and ensure the worksite was regularly monitored and inspected by Mr Povey, as Foreman and also Aspec.

[30] Following the accident, Totally Rigging has modified its operations and has taken steps to update its health and safety processes, making the use of mobile scaffolding compulsory for tasks involving working at heights, purchasing a new ladder that complies with relevant guidelines, re-inspecting all old equipment to ensure compliance with relevant standards and reminding employees of expectations to follow health and safety procedures on-site. It has purchased a new positioning harness, which is suitable for all variations of height.

[31] Mr Anderson submitted that using the guidelines set out in *Hanham & Philp* for an assessment of culpability, the starting point should be at the high end of the lower band, a fine between $45,000 and $55,000. Counsel submitted that the inappropriate working at height equipment was a minimal departure from what should have been expected. Totally Rigging was prepared to supply a scissors platform, however this was refused by Aspec. Similarly, a mobile scaffold was also refused. As Totally Rigging were under intense pressure from Aspec to proceed with the contract, they used the ladder. This may well have been a poor decision but it did not represent a systemic failure.

[32] It was anticipated that the ladder would be appropriately tied-off. Mr Rose indicated he intended to tie the ladder off and, on that basis, Mr Anderson submitted that there is little more than could have been done to ensure Mr Rose took the required steps and, therefore, the culpability of Totally Rigging should fall at the lower end of the spectrum.

[33] Although Totally Rigging admits that it failed to provide Mr Rose with a suitable harness, the harness as worn by Mr Rose contained a shock lanyard which could have been adjusted to soften the effect of a fall at various heights. As Mr Rose chose not to attach his harness, it meant that any protection that might have been offered was lost.

[34] The crane also contributed to the incident. The crane operator had 30 years experience and Totally Rigging dogman, Mr Povey, was a fully qualified rigger with significant experience in slinging loads. The crane operator and Mr Povey had spoken only 15 minutes prior to the accident as to the importance of complying with

the lift plan. However, the crane operator deviated from the plan, which contributed towards Mr Rose's fall.

[35] The defendant's offending, Mr Anderson submitted, was not as a result of wilful omissions or a lax approach but rather a small decision made by employees on a particular day which diverted from the company's health and safety protocols.

[36] With respect to the availability, cost and effectiveness of the means necessary to avoid the harm, defence counsel noted that the practical means of minimising risk of harm to Mr Rose were provided by a ladder which could be tied-off and a harness. Neither of these measures were adequately put in place by Mr Rose on this particular occasion.

[37] Mr Anderson referred to a number of cases and sought to distinguish those relied upon by the prosecution. He contended that the degree of failure to implement safety proceedings for any of its work sites and the broader neglect and failure to provide any training in fall arrest or fall restraint systems was far more serious in *Department of Labour v Eziform Roofing Products Ltd* as was the case with Totally Rigging. Similarly, in *Worksafe NZ v Livefirm Construction Ltd,* the company failed to provide any means of fall protection and, therefore, that case should not be regarded as an appropriate guideline for the present prosecution.

[38] Mr Anderson contended that the decision of the *Ministry of Business Innovation and Employment v Greenway Developments Ltd*, being a case where the breaches included a company's failure to provide scaffolding or any form of fall protection, was an example of a more appropriate starting point – a fine of $50,000. Similarly, *Department of Labour v City Aerials Ltd,* where an employee fell six metres of a roof while installing a satellite dish.

[39] Defence counsel submits that there being no aggravating features, the defendant should be entitled to a discount to reflect good character and lack of previous convictions, full co-operation and remedial steps, genuine remorse and its offer in respect of reparation. These discounts, together with a further 25% discount

for the guilty plea, should give a combined discount of 35% from the initial starting point. In counsel's submission, the ultimate fine should be in the vicinity of $32,500.

Discussion

[40] In setting the starting point, it is important to note that Courts have continually refused to diminish the employers' culpability due to employees' actions, see *Department of Labour v Eziform Roofing Products Ltd* [2013] NZHC 1526; *Department of Labour v Hanham & Philp Contractors Ltd* [2009] 9 NZELC 93, 095 (HC); and *Department of Labour v Street Smart Ltd*, 9200805 NZELR 603 (8).

[41] In a case such as this, while one can acknowledge Totally Rigging Ltd was under intense pressure from Aspec and one can readily raise issues as to their role, in particular in relation to the absence of a scissors platform or scaffolding, in sentencing Totally Rigging Ltd focus must remain on their culpability.

[42] Following the approach of *Hanham & Philp Contractors Ltd* at [54], and having regard to the submissions of both prosecution and defence, I am of the view:.

(a) *The identification of the operative acts or omissions at issue – this will usually involve the clear identification of the "practicable steps" which the Court finds to be reasonable for the defendant to have taken.*

In their guilty plea, as identified by the prosecutor, the defendant accepted that it failed to take practical steps as set out at [32(a)]. Again, although one can have sympathy for Totally Rigging Limited's position, given the intense pressure from Aspec, through their guilty plea they have accepted their role in the offending and their culpability must be seen as a reflection.

(b) *An assessment of the nature and seriousness of the risk of harm occurring as well as the realised risk:*

The harm suffered by Mr Rose was serious. As has been illustrated by other cases earlier referred to, a fall off a ladder or any fall from a height involves the risk of serious harm. Indeed, it can be fatal. While not wanting to minimise the harm suffered by Mr Rose, he may have been fortunate not to have suffered even more serious injury.

(c) *The degree of departure from standards prevailing in the relevant industry:*

Counsel for the defendant has submitted the degree of departure from industry standards was minimal, especially when considering they were prepared to provide a scissors platform but were directed not to use it by Aspec. Further, they were not allowed to use scaffolding. Counsel for the defendant refers to a number of other health and safety practices that were in place. In my view, although this is not a case where there was a total absence of a safety plan by opting to use a ladder, the defendant placed Mr Rose at a greater risk of injury on account of:

(i) The ladder not being secured to the beam.

(ii) Mr Rose was required to work with both hands.

(iii) The safety harness provided was not fit for purpose.

(iv) The ladder itself was not fit for purpose.

(v) There was inevitably a risk of error in the co-ordination between the work Foreman and the crane operator.

(d) *The obviousness of the hazard:*

The hazard of falling from a ladder speaks for itself.

(e) *The availability, cost and effectiveness of the means necessary to avoid the hazard:*

Counsel for the defendant submitted that the means necessary to avoid the hazards were, in effect, in place. However, Mr Rose did not utilise them. As I have already noted, the victim's role in an accident does not mitigate to any great extent the employer's responsibility.

(f) *The current state of knowledge of the risks and the nature and severity of the harm that could result:*

The prosecutor referred to the significant amount of literature and guidance that are available to those involved at work taking place at a height. In the light of that knowledge, the risk of harm that could occur would be obvious.

(g) *The current state of knowledge of the means available to avoid the hazard or mitigate the risk of its occurrence:*

> As acknowledged by the defendant, the use of a scissors platform or scaffolding would have mitigated the risk. Having chosen to adopt the use of a ladder as an alternative, it is not really open to the defendant to refer to the means in place that Mr Rose did not utilise.

[43] The prosecution submits that the culpability of the defendant falls within the medium band and covers a fine between $50,000 and $100,000. Certainly, a starting point of $100,000 was considered appropriate by the Court in Eziform Roofing Products Ltd but in that case there was no safety plan in place. In *Department of Labour v Waitakere Contractors Ltd*, DC Auckland, CRN 0010-004-022538, 2 June 2011, the defendant company pleaded guilty to a number of charges, including a charge under s 50(1)(a), failing to take all practical steps to ensure the safety of its contracts. The victims engaged in spouting replacement work. Staff were working on a ladder about 5m off the ground. The victim fell from the ladder and suffered serious injuries similar to those in the current case. The defendant company had no safety plan in place at all, just telling the contractors that if they felt unsafe, arrangements could be made to provide scaffolding. No requests were made. The Judge adopted a starting point of $60,000. There are two other similar cases.

[44] In *Ministry of Business Innovation and Employment v Berger Heating Limited*, DC Christchurch, CRI-2012-009-014260, 2 May 2013, the victim had to use a ladder to access a roof. The ladder was not tied-off. The victim fell 5m and was injured. A starting point of $90,000 was adopted by a way of fine, given the obvious ways to reduce the risk and the serious risk of harm.

[45] In *Worksafe New Zealand v Grieve* [2016] NZDC 9739, the victim fell from the ladder after the ladder slipped beneath him. He was working 2.8m from the ground. He suffered serious head injury. It was found the ladder was not tied-off, nor was it fit for purpose. The starting point adopted was $50,000.

[46] No case is exactly identical. The starting points vary having regard to individual circumstances. However, in my view, this case must fit squarely within the middle band having regard to the facts that I have already identified and also the fact that the use of a ladder was adopted not for a one-off gaining access to a position at a height but for an on-going major construction operation. It was unfortunate that

the defendant was not more insistent with Aspec as to the use of the scissors platform or scaffolding. It took the risk of adopting what could only be regarded as the least preferable option, ie the use of a ladder. I find the appropriate starting to be a fine of $70,000.

[47] There being little dispute as to the mitigating factors, I consider that the defendant should be entitled to a 15% initial reduction as submitted by Mr Anderson from the starting point, and a further 25% reduction for its immediate guilty plea. I set the ultimate fine at $45,000.

[48] There remains the need to make an overall assessment as the appropriateness of the total financial penalty that is to be imposed. No submissions were addressed as to the necessity to make any further adjustment, save for the defendant seeking time for the fine to be paid. He sought a staged basis, with three instalment payments. However, as the ultimate fine may be considered somewhat higher than defence counsel anticipated, I am prepared to direct five monthly instalment payments.

Conclusion

[49] The defendant having been convicted:

(a) It is fined the sum of $45,000 (payable by way of five monthly instalments).

(b) It is ordered to pay reparations totalling $20,000.

(c) It is to pay Court costs of $130.

C S Blackie
District Court Judge