

SCOTTISH HAZARDS CAMPAIGN GROUP

Legal Remedies Seminar

FRIDAY, 30 MARCH 2007 @ 2PM
UNISON Glasgow City Council Branch
18 Albion Street, Glasgow

1. CIVIL & CRIMINAL LAW
2. CIVIL LAW AND ITS USE TO DATE
 - 1) Compensation
 - 2) Procedural mechanisms: Summons and sums claimed
3. OTHER ASPECTS OF CIVIL LAW
 - 1) Implementation
 - 2) Prevention
 - 3) Interim prevention
 - 4) Procedural mechanisms
 - a. Petition
 - b. Suspension interdict
 - c. Specific implement
 - d. Declarator
4. HEALTH & SAFETY LEGISLATION
 - 1) Management of Health & Safety at Work Regulations 1999
 - Provision and Use of Work Equipment Regulations 1998
 - Personal Protective Equipment Regulations 2002
 - Manual Handling Operations Regulations 1992
 - Workplace (Health, Safety & Welfare) Regulations 1992
 - 2) Control of Substances Hazardous to Health Regulations 2002
 - 3) Court of Session Act 1998 (Section 45(b)) viz:-

“(b) order the specific performance of any statutory duty, under such conditions and penalties (including fine and imprisonment, whether consistent with the enactment concerned) in the event of the order not being implemented as to the court see proper”

Walker on Civil Remedies:-

“It would seem an appropriate mode of compelling performance of eg a statutory duty to make provision for safety, health or welfare of employees, at the instance of an employee, independently of the powers of the factory inspectorate to prosecute for contravention, and of the right of an employee to claim damages if he is injured by failure to make the necessary provision. Title to sue would be confined to person having an interest, particularly employees. Outsiders could not sue. It is questionable if a trade union could.

It is hard to resist the conclusion that this remedy is insufficiently well known, and not sufficiently employed.”

5. SPECIFIC DIFFICULTY IN MANAGEMENT OF HEALTH & SAFETY AT WORK REGULATIONS

- 1) Regulation 15 of 1992 Regulations and re-stated in Regulation 22 of 1999 Regulations viz:-

“22. Exclusion of Civil Liability
Breach of a duty imposed by these Regulations shall not confer a right of action in any civil proceedings.”

European Commission of the UK Authority
Breach of Article 4 and principle of effectiveness

The Management of Health & Safety at Work and Fire Precautions (Workplace Amendment) Amendment 2003

Regulation 6 viz:-

“For Regulation 22 there shall be substituted the following Regulation:-

“Restriction of civil liability for breach of statutory duty
22. Breach of the duty imposed on an employer by these Regulations shall not confer a right of action in any civil proceedings insofar as that duty applies for the protection of persons not in his employment.””

6. “REASONABLY PRACTICABLE”

Advocate General Opinion

Judgment awaited

7. POTENTIAL OBSTACLE?

Section 47(2) of the Health & Safety at Work Act etc 1984 viz:-

“(2) Breach of duty imposed by Health & Safety Regulations
..... shall, insofar as it causes damage, be actionable except
insofar as the Regulations provide otherwise”

See commentary in Redgrave (Third Edition)

- (a) Would not preclude the lodging of civil proceedings for an injunction to restrain existing breach though it is not at that moment causing damage or likely to cause damage in the future.
- (b) Logically irrelevant whether the breach had caused damage already or not.
- (c) In relation to Regulation intended to implement European Directives a requirement which provided an effective remedy would necessarily mean that the remedy of injunction should not be excluded.

8. IS IT NOW TIME? - see Redgraves

“It is significant that the use of injunctions has been rare in the field of Health & Safety at Work, even in negligence where there can be no question but that the remedy is available”.

9. OTHER ISSUES/DEVELOPMENTS CIVIL/CRIMINAL LAW INTERFACE

- 1) Investigation of deaths
- 2) Fatal Accidents and Sudden Deaths Inquiries Acts 1971
- 3) Article 2 of the European Convention of Human Rights
- 4) Cases in the context of prisons and NHS
- 5) In a work context the case of Pereira Henriques –v- Luxembourg ECtHR 9 May 2006 considered a case in which a building labourer had been killed during the stabilisation of a building, when a wall collapsed. The prosecuting authorities were giving consideration to prosecuting the relevant managers of the private

companies involved. The Health and Safety Authority recommended that an expert report be obtained regarding the facts leading to the collapse of the wall. In giving judgment in favour of the applicants, the Court held that the procedural requirements of Article 2 applied even to industrial accidents, where the circumstances of the death appeared to raise a health and safety issue. The Court considered that the prosecutor's office had prevented the clarification of certain grey areas in the case that had remained following the preliminary investigation by deciding not to accept the proposal of the ITM (Health and Safety) inspector to obtain an expert's report. The prosecution could not therefore be regarded as having ensured that the cause of death was established and that those responsible were held to account. In the Court's view, it had been particularly important for the prosecutor's office to conduct a thorough investigation, since it must have known that the deceased's family would be unable to take any independent action to seek explanations from the contractors as to their actions and omissions. In the whole circumstances the Court concluded that the such investigation as had been carried out by the State authorities had not been "effective" in this case and had indeed been vitiated by the decision on the part of the public prosecutor's office not to investigate the matter further. The Court therefore held that there had been a violation of Article 2 ECHR under its procedural head.

10. INVESTIGATIONS OF DEATHS, DELAYS AND INADEQUACY

- 1) Failure to prosecute
- 2) Inquiry
- 3) Judicial Review

11. CIVIL JUSTICE REVIEW ISSUES

12. CORPORATE CULPABLE HOMICIDE

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