

Prosecutions of Schwing Australia Pty Ltd & Phillip James O'Rourke - Reasons for Decision to discontinue matters

The tragic death of Ben Catanzariti, and injuries to two of his workmates, Cian Ebert and Joel Baines, caused great concern in the community. Arising out of the matter, prosecutions against the abovenamed defendants under the *Work Health and Safety Act 2011* were commenced in the Industrial Court of the ACT. The charges alleged that the defendants had a health and safety duty, and that they had failed to comply with that duty. The defendants pleaded not guilty and the matters had been listed for hearing.

After obtaining additional evidence, the Director of Public Prosecutions has now concluded that there are no reasonable prospects of conviction, and the matters are to be discontinued. Because of the legitimate community interest in the matter, the reasons for that decision are now given.

The death and injuries occurred when bolts holding a slew ring of a Schwing KVM 39 XDS concrete pump owned by Belconnen Concrete Pty Ltd failed during operation of the pump at the Kingston Foreshore on 21st July 2012. This resulted in the collapse of the pump boom. The boom struck Mr Catanzariti, Mr Ebert and Mr Baines. It was alleged that the pump had only recently before the accident been serviced by Schwing Australia Pty Ltd in NSW. The prosecution case as originally pleaded against both defendants was that the slew ring bolts on the pump were incorrectly tightened during the service of the pump. The prosecution alleged that this incorrect tightening led to the failure of the bolts. The prosecution alleged that the incorrect tightening was not detected as the service was not properly checked. This allegation was based on an expert opinion obtained during the investigation which concluded that the bolts failed as they were unevenly tightened.

The prosecutions against both defendants were originally listed for hearing on the 31st August 2015. On 27th August 2015 the hearing of the prosecutions was adjourned at short notice after the defence served upon the DPP an expert report which alleged that the cause of the failure of the bolts was not due to incorrect tightening, but due to a metallurgical phenomenon called hydrogen embrittlement. After that report was received, a separate metallurgical expert was engaged by Worksafe ACT on behalf of the prosecution to comment upon the conflicting expert conclusions. This further expert concluded that the failure of the bolts was due to a metallurgical phenomenon called stress corrosion cracking. Three expert theories thus exist as to the cause of the bolt failure.

In those circumstances, although the prosecution it was anticipated could prove that the defendants owed a health and safety duty, it could not be proved that they had failed to comply with that duty. As a result, the prosecution cannot make the case against either defendant out to the very high criminal standard of "beyond reasonable doubt." The prosecutions have been discontinued.

The office acknowledges that the incident resulted in the tragic death of Mr Catanzariti and caused injuries to two other workers. The death of Mr Catanzariti remains keenly felt. The decision to discontinue the prosecutions was considered carefully and was not taken lightly. Worksafe ACT were consulted and endorse the decision. The Catanzariti family were also consulted. They are understandably distraught.

A coronial inquest into Mr Catanzariti's death remains on foot. For this reason, there will be no further comment from the Office.