ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR IDENTIFYING PARTICULARS OF WITNESS(ES)/VICTIM(S)/CONNECTED PERSON(S) PURSUANT TO S 202 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [INSERT NUMBER]. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html

IN THE DISTRICT COURT
AT TAURANGA

I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA

CRI-2024-070-002294
[2025] NZDC 5282

WORKSAFE NEW ZEALAND

v

BALLANCE AGRI-NUTRIENTS LIMITED

Hearing:	17 December 2024
Submissions:	19 & 20 December 2024
Appearances:	S Backhouse for WorkSafe New Zealand B Harris for the Defendant
Judgment:	18 March 2025

RESERVED DECISION OF JUDGE J P GEOGHEGAN

Background

[1] The defendant, Ballance Agri-Nutrients Ltd ("Ballance") appears for sentencing having pleaded guilty to one charge of contravening ss 36(1)(a), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015 ("the Act"). The maximum penalty for such an offence is a fine not exceeding $1.5 million.

[2] Ballance operates a business manufacturing, supplying and selling fertiliser together with providing associated advice. This sentencing relates to the Mount Maunganui work site, which is one of three operated by Ballance in New Zealand. It produces super phosphate which is the most common fertiliser in the country.

[3] The charge which Ballance faces relates to the death of a Ballance employee Mr Wesley Tomich on 22 July 2023 at the Mount Maunganui site. Mr Tomich was employed by Ballance as a service centre operator with his primary role being to maintain and operate plant and machinery at the Mount Maunganui site. It also included keeping all areas clean and free from hazards. Mr Tomich had been working for Ballance for seven months at the time of the incident which forms the basis of the charge.

[4] The production of super phosphate involves large volumes of fertiliser being stored in piles and then transported down a production line by loaders using a hopper and conveyor belt system. These are very large items of plant and machinery, with the hoppers, which are called "Johnsons", weighing approximately four to five tonnes when empty. The site where the incident occurred contains a total of six "main" conveyor belts. Three of those belts are between 250 to 300 metres in length. All belts run in the same direction with the distance between them varying from 270 to 690 millimetres. The belts run at a speed of 1.7 metres per second.

[5] In order to process the superphosphate, loaders obtain product from a store pile and then unload the product into the Johnsons which then funnel the product onto a transfer conveyor which in turn drops the product onto the main conveyor belts. The transfer conveyor belts run at right angles from the bottom of the Johnsons across the

main conveyor belts. Ultimately, the product is then stored in one of 52 bays where it hardens before it is despatched.

[6] On the day of the incident, Mr Tomich and five other employees were tasked to clean under the conveyor belts, a task which included scraping old product off the ground and around the belts using shovels and an air wand. Old debris was removed by way of a running conveyor belt.

[7] The conveyor belt which was running was known as "belt number two". While undertaking his duties, Mr Tomich attempted to step over that belt but lost his footing and fell onto the belt and was then dragged under the metal frame of a transfer conveyor of a Johnson.

[8] Immediate steps were taken to bring the conveyor to a halt by way of an adjacent emergency stop bottom, however there was a delay between activation of the bottom and the belt coming to a halt. When the belt stopped Mr Tomich was trapped underneath the transport conveyor.

[9] While a workmate of Mr Tomich held his head and body to prevent him from being dragged further by the conveyor Mr Tomich was pinned underneath the Johnson for some six minutes before the arrival of an ambulance. He died from the injuries he sustained, the summary of facts recording the likely cause of death as traumatic asphyxia. Mr Tomich had been crushed by the Johnson and the injuries he suffered were fatal. He was 37 years old.

[10] The summary of facts records that in 2015, Ballance sought a risk assessment of its sites by machinery safety experts. That included an assessment of the conveyor belts. That assessment identified the risk of entanglement on a belt during inspection by a maintenance team, when the conveyer belts were running. That risk was realised in this case. It identified other hazards such as a crush hazard on the loaders, a lack of or non-compliant guarding in a separate area from that where this incident occurred, and a lack of emergency stop devices within easy access of the operator stations. That lack of access was an issue in this incident.

[11] As a result of that report, Ballance engaged the Beca Group to translate and review the risk assessment. That was done in 2022. Beca referred to the entanglement hazard in the cleaning and maintenance of belt number two. In respect of the Johnsons, the same hazard was identified, and the report also referred to non-compliant guarding.

[12] The charge faced by Ballance is that the company failed in its duty to ensure the health and safety of workers cleaning the conveyor belt and that, in particular it was reasonably practicable for Ballance to have provided, maintained and trained workers on an effective safe system for cleaning and maintaining the system and to have monitored compliance with that system. Additionally, Ballance should have ensured that the conveyor system was fitted with effective guarding and emergency stop services in accordance with appropriate industry guidance and standards.

The Law

[13] Section 151(2) of the Health and Safety at Work Act 2015, sets out specific sentencing criteria for the courts to follow. The criteria to be applied are that the Court must apply the Sentencing Act 2002 and must have particular regard to:

(a) Sections 7 to 10 of that Act.

(b) The purpose of the Health and Safety at Work Act.

(c) The risk of and the potential for illness, injury or death that could have occurred.

(d) Whether death, serious injury or serious illness occurred or could reasonably have been expected to have occurred.

(e) The safety record of the person (including without limitation, any warning, infringement notice, or improvement notice issued to the person or enforceable undertaking agreed to by the person) to the extent that it shows whether any aggravating factor is present.

(f) The degree of departure from prevailing standards in the person's sector or industry as an aggravating factor.

(g) The person's financial capacity or ability to pay any fine to the extent that is has the effect of increasing the amount of the fine.

[14] The purpose of the Act is set out in s 3 and includes s 3(1)(a) which provides:

> Protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant.

[15] Section 3(2) provides:

> In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.

[16] I am also required to have regard, as previously referred to, to the provisions of the Sentencing Act and in this case, it is submitted by WorkSafe that the most relevant purposes of sentencing in respect of this matter are:

(a) Holding the defendant accountable for the harm done by the offending.

(b) Promoting in the defendant a sense of responsibility for that harm.

(c) Providing for the interests of the victim.

(d) Denouncing the conduct in which the defendant was involved.

(e) Deterrence both in relation to the defendant and more generally.

[17] As to the principles set out in s 8 it is submitted on behalf of WorkSafe that the following principles are applicable:

(a) The gravity of the offending, including the degree of culpability.

(b) The seriousness of the type of offence as indicated by the maximum prescribed penalty.

(c) The effects of the offending on the victim.

[18] The current Act replaced the earlier Health and Safety Act 1992. The approach to sentencing under that Act was set out in a guideline judgment, *Department of Labour v Hanham & Philp Contractors Ltd* which was a full decision of the High Court.[1] A further guideline decision, *Stumpmaster v WorkSafe New Zealand* now sets out the approach to sentencing under the Health and Safety at Work Act 2015.[2] Essentially however, the sentencing methodology remains the same as under the previous Act. A four-step approach is required. Namely:

(a) Assess the amount of reparation.

(b) Fix the amount of the fine by reference first to the guideline bands and then having regard to aggravating and mitigating factors.

(c) To determine what further orders under s 152 to 158 of the Act are required.

(d) To make an overall assessment of the proportionality and appropriateness of the sanctions imposed by the first three steps.

[19] Reparation is compensatory in nature, and it is designed to recompense and individual or family for loss, harm or damage resulting from the offending. That must be fixed with regard to the relevant parts of the Sentencing Act with particular regard to s 32. It will include taking account of any offer of amends and the financial capacity of an offender, which is a relevant issue in this matter. The authorities have reiterated the obvious point that reparation for emotional harm is an intuitive exercise with its quantification a finite calculation. In *Big Tuff Pallets Ltd v Department of Labour* Harrison J stated:[3]

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[1] *Department of Labour v Hanham & Philp Contractors Lid* (2008) 6 NZELR 79
[2] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.
[3] *Big Tuff Pallets Ltd v Department of Labour* (2009) 7 NZELR 322 at [19].

> The judicial objective is to strike a figure which is just in all the circumstances and which in this context compensates for actual harm arising from the offence in the form of anguish, distress, and mental suffering. The nature of the injury is or may be relevant to the extent that it causes physical and mental suffering or incapacity whether short-term or long-term.

[20] *Stumpmaster* makes it clear that reparation may be imposed in relation to loss or damage to property, emotional harm and relevant consequential loss and damage.

[21] In this case, the victims are the victim's parents and two sisters. Each have provided a victim impact statement which speaks to the profound sense of loss which they have experienced as a result of the death of their son and brother. That sense of loss was palpable during the sentencing process. While the loss is immeasurable, the Court is tasked with ruling on an appropriate level of reparation.

[22] I acknowledge that for Mr Tomich's grieving family such reparation could never adequately address the loss that they have suffered. Frankly, no legal remedy is capable of doing that. As in all cases of this type, the family has had to cope with the unspeakable tragedy of being told that they will never see their son, brother and uncle alive again. I acknowledge their anger, their anguish and their distress. Victim impact statements speak volumes of the impact on them of the loss which they have suffered.

[23] As a result of his employment, Mr Tomich automatically became eligible for life insurance cover which has hopefully been of assistance to his family. Other payments have also been made by Ballance. In September 2023, Ballance paid $60,000 to the victim's family in recognition of the emotional harm suffered. At the time of this sentencing Ballance had paid a total of $77,000 to the family.

[24] Although I understand from what I have read, that the family were not happy with the manner of payment of the sum of $60,000, the fact that these payments have been made promptly after the accident are, I accept, a genuine attempt by Ballance to do the right thing and are worthy of recognition in accordance with the High Court judgment in *Stumpmaster*.

[25] I also acknowledge the attendance of a number of representatives of Ballance at a restorative justice conference on 12 November 2024. No doubt that was a difficult

meeting for everyone. In that regard, I note that several of the Ballance employees who attended that conference were present at Ballance on the day of the incident. I have no doubt that they too, will have been impacted by what occurred that day.

[26] The first task for the Court is to calculate the appropriate amount of reparation in this case. In this regard, reparation falls into the categories of consequential loss and emotional harm.

[27] It will be of cold comfort to the family of Mr Tomich to hear that the level of culpability of a defendant does not impact on the quantum of reparation required to recognise emotional harm done to the victim. Culpability is a factor for consideration in determining the level of fines. This has been clearly stated in previous authorities such as *Stumpmaster* and *Ocean Fisheries Ltd v Maritime NZ Ltd.*[4] I make this point because one of the victim impact statements referred to the need for the amount of reparation to be large enough to set a precedent to other companies in New Zealand to compromise on safety. While I understand the sentiment involved in that statement, to follow that approach would be wrong in law.

[28] In this case the prosecution responsibly acknowledged that the High Court judgment in *Oceania Gold (NZ) Ltd & Works v WorkSafe NZ*[5] is authority for the proposition that in fixing any reparation the Court in that case was required to take into account the defendant's approach to the offending and the measures taken by it to make compensation. In that case direct payments of $200,000 had been paid by *Oceania* and a further $450,000 by way of an employer provided insurance policy. Both payments were held to be relevant when considering reparation. Given their nature however they were only relevant when considering consequential loss.

[29] The calculation of reparation is necessarily a fraught process, however what is clear is the following:

(a) The material before me provided by WorkSafe establishes a consequential loss suffered by Mr Tomich's parents of $102,000. That

[4] [2021] NZHC 2083.
[5] [2019] NZHC 365.

figure has been arrived at by calculations undertaken by an accountant for the parents' partnership and further examined by an accountant engaged by WorkSafe. The estimate is based on the period from 27 July 2003 (the date of the incident) to today. It is the income which Mr Tomich's parents would have earned but for the inability to earn that income arising from Mr Tomich death. It is unnecessary for me to go into any detail in respect of that matter and why that loss has arisen. Suffice it to say that no issue has been taken with the proposition that the inability of Mr Tomich's father to work is attributed directly to his son's death.

(b) The sum of $287,202.86 was paid to Mr Tomich's family. That sum comprises $77,000 direct from Ballance and $210,202.86 being the proceeds of the employee scheme life insurance policy owned by Ballance. The information before me indicates that these payments have been made to Mr Tomich's parents. No issue has been taken with the fact that the payments have been made to them as opposed to Mr Tomich's sisters. There is no suggestion that there should be further consideration of payments to Mr Tomich's sisters as opposed to his parents. With reference to that insurance policy no issue seems to be taken with Mr Harris' submission that the policy was a corporate life insurance policy, and that the deceased did not pay any premium payments in respect of the policy or have any premiums deducted from his wages. This is a significant benefit to employees at the direct cost of the employer.

(c) Given those payments it is clear that any consequential loss has been well and truly met, and an order for consequential loss would therefore be inappropriate.

[30] Looking at the issue of emotional harm, that issue was examined in *Oceania,* where Venning J observed that while each case will necessarily depend on its own facts, recent awards in the District Court have been in the range of $75,000 to $110,000 in the case of fatal accidents.

[31] Counsel in this case agree that an appropriate award for emotional harm would be the sum of $130,000. Ms Backhouse has referred to the judgments in *WorkSafe v Vehicle Inspection Ltd*[6], *WorkSafe NZ Ltd v Higgins Contractors Ltd*[7], *WorkSafe NZ v Ports of Auckland Ltd*[8] and *WorkSafe v Coryston Ltd and Dairy Holdings Ltd*[9], all involving awards of between $110,000 and $130,000 for emotional harm. Taking those authorities into account, I accept that, all other things being equal, an appropriate award would be the sum of $130,000.

[32] In *Oceania,* unlike this case the victim had a dependent family consisting of a partner and a dependent child. Reparation was calculated applying the methodology from schedule 1 of the Accident Compensation Act with a conclusion that the statutory shortfall of lost earnings would be $121,275.36. As referred to earlier, *Oceania* had already made directs payments to the victim's family of $200,000 and a further $450,000 was paid by way of an employer provided insurance policy. Venning J concluded that taking account of the insurance and voluntary payments made by *Oceania* as against the shortfall in Accident Compensation payments, the reparation order of $350,000 made in the District Court was excessive. The order for reparation of $350,000 was set aside. Venning J also observed that while the insurance payment was made by a third party insurer, *Oceania* had put the cover of a substantial sum in place. He concluded that having regard to the compensation of $200,000 paid to the family together with the other measures including the insurance policy to make good the harm (economic loss), no further order for reparation was required.

[33] I had invited counsel to make additional submissions addressing the issue and in particular counsels' submissions as to the Court's approach to calculation of emotional harm in circumstances where payments received by the family appear to have exceeded the consequential loss by $185,000. That led to a rather unusual situation where submissions were filed not only by counsel for WorkSafe and Ballance but also by counsel who was instructed by the family in respect of the issue of release of the victim impact statements to the media and as to the issue of the insurance policy and its proceeds. Counsel for WorkSafe and Ballance had the opportunity to address

[6] [2021] NZDC 3036.
[7] [2020] NZDC 17036.
[8] [2020] NZDC 25308.
[9] [2021] NZDC 15994.

these submissions and accordingly while counsel for the family, Ms Haszard, made no formal appearance at the sentencing hearing, I propose to take into account the memorandum filed by her on behalf of Mr Tomich's family.

[34] Ms Haszard referred to her instructions to bring the Court's attention to clause 8 of appendix A to Mr Tomich's employment agreement, which set out his remuneration and benefits. Clause 8(b) recorded additional benefits as Group Life, critical illness and income protection insurance, medical insurance and employer Kiwisaver contributions. Ms Haszard submitted that Mr Tomich's family were concerned that given that insurance protection was part of Mr Tomich remuneration and employee benefits at the time of his death, in effect, payments made under the relevant insurance policy were essentially met by Mr Tomich. Premiums were part of his overall remuneration and employment benefits, as opposed to a general blanket insurance for all Ballance employees or a specific policy held by Ballance.

[35] Unsurprisingly, no submissions were received by WorkSafe on this issue. However, for Ballance, Mr Harris referred to his previous submissions which had included the provision of a letter from Mercer Marsh Benefits that Ballance held a Group Life insurance policy which was insured with AIA and that Ballance is the policy owner and is responsible for the full payment of premiums on behalf of each member. The letter also confirmed that all eligible staff members were automatically enrolled in the plan upon the commencement of their employment with Ballance. As the appointed broker, Mercer Marsh Benefits adhered to the instructions of the policy owner, Ballance, regarding the allocation of the insurance payment.

[36] Having considered the material before me, there is no proper basis for concluding that the insurance proceeds cannot or should not be taken into account when considering the steps taken by Ballance in respect of reparation (which encompasses emotional harm) and accordingly the payments made directly by Ballance or through the proceeds of the insurance policy exceed the consequential loss and what would otherwise be an appropriate award for emotional harm of $130,000, by just over $50,000.

[37] Given that is the case, I decline to make any further award for consequential loss or emotional harm. However, I record the submission of Mr Harris that on 15 September 2023, Ballance had written to Mr Tomich's family and had made a lump sum offer of $50,000. The letter recorded that the offer was:

> Intended simply to recognise the impossible, immediate, emotional harm resulting from Wesley's death. We trust you will see this as a gesture of both assistance and our sincere regret for what unfolded. We take this opportunity, once again, to stress out sense of loss for you by way of this letter.

[38] Mr Harris confirmed that that offer was "still on the table". The offer had not been accepted by the family when it was made, and the victim impact statements shed some light on why that was so.

[39] The fact that the offer was still on the table does not mean that it should form part of any formal award in this sentencing process, in circumstances where I am satisfied that what has been paid by Ballance is in excess of what would otherwise have been the subject of an award by this court. I consider that it is appropriate simply to record the offer and I trust that there will be a further discussion between the parties regarding that issue.

[40] Turning to the appropriate level of fine, four guidance bands are set out in the *Stumpmaster* judgment. It is not suggested by either counsel that this is a case falling in the low culpability band or the level of very high culpability. WorkSafe submit that a starting point of $750,000 to $800,000 is appropriate. In support of that submission Ms Backhouse cited the cases of *WorkSafe v Home Grown Juice Company Ltd*[10]*, WorkSafe v Kiwi Lumber (Masterton) Ltd*[11]*, WorkSafe NZ v Easton Agricultural Ltd.*[12] All cases involved similar workplace deaths. Ms Backhouse submitted that this was a case where Ballance's conduct departed significantly from industry standards and that the risks arising from exposure to moving parts of machinery are well known. The hazard had been previously identified on two separate occasions and by two different independent experts, the most recent a year before the incident. The cost of developing and implementing appropriate controls to manage the risks with cleaning

[10] [2019] NZDC 16605.
[11] [2020] NZDC 19117.
[12] [2018] NZDC 2003,

the conveyor system was not grossly disproportionate when weighed against the likelihood and risk of harm. Ms Backhouse accepted that there were no aggravating features warranting an uplift and submitted that a discount of 45% was available for Ballance's early guilty plea (25%) reparation if ordered (5%), cooperation with the investigation (5%) and remorse (5%).

[41] It is acknowledged that since this incident Ballance has installed compliant guarding and track keys on gates which constitute significantly upgraded safety features.

[42] For Ballance, Mr Harris submits that the starting point for a fine is $600,000 which would be at the upper end of the medium band referred to in *Stumpmaster* or the lower end of the higher band.

[43] Mr Harris pointed to the extensive trading history and safety record of Ballance across decades. He submits that Ballance does not accept that the offending here was obvious, in breach of typical "industry standards" or that Ballance had failed to implement any guarding which had been recommended.

[44] Here Ballance contends that there was a systems failure around the risk management processes and administrative controls or standard operating procedure which permitted workers to remain near operating conveyors at the end of the cleaning process.

[45] In terms of mitigating factors Mr Harris submitted that Ballance's cooperation should attract an allowance of five to 10%, the payment of reparation an allowance of 10% and remedial steps taken by Ballance an additional 5% which render an adjusted fine between $275,000 and $325,000 as appropriate.

[46] As to the starting point for a fine I accept the submission for WorkSafe that this comes within the guideline band for high culpability set out in *Stumpmaster*. As acknowledged by the guilty plea, Ballance failed to provide, maintain, train workers on compliance with an effective safe system of work for cleaning and maintenance of the conveyor system, including developing and implementing an effective standard

operating procedure for this task. Ballance also failed to ensure that the conveyor system was fitted with effective guarding and emergency stop services. I accept the submission that the victim's death was a direct result of cleaning the conveyor without effective guarding, without appropriate locations for the emergency stop switch and without effective instructions to workers on how to perform their task safely. The standard operating procedure was defective and allowed the conveyor belt to be energised to assist in removing the final debris that was on the floor. It would appear that a practice developed where, despite Ballance's Standard Operating Procedure ("SOP") providing that workers were never to clean between belts 1 and 2 unless they were were isolated, it was considered acceptable for belt 2 to be in operation while cleaning between belts 2 and 3 because the distance between them was greater. The SOP did not have warnings or instructions stating not to step over an energised conveyor belt. Ballance accepts that that warning should have been in the SOP.

[47] Workers interviewed, stated that climbing over the conveyors while they were running was normal practice, although it appears that there was acknowledgement that that was not meant to occur.

[48] It is clear that the independent risk assessment undertaken in 2015 and 2022 regarding the conveyor system identified non-compliant guarding or no guarding.

[49] For Ballance, Mr Harris submitted that Ballance identifies the operative failure as being a systems failure around the risk management process and administrative controls which permitted workers to remain near operating conveyors at the end of the cleaning process. Mr Harris submitted that a breach of regulation 17 of the Health and Safety Employment Regulations 1995 was perhaps the primary failure of Ballance, as opposed to any absent guarding.

[50] Regulation 17 requires every employer to ensure that where the cleaning of any machinery while the whole or part of the machinery is moving may cause harm to any employee, machinery is not to be cleaned until every part of it has been secured against movement and every control device has been secured in operative position by the use of locks or lockout procedures and where it is essential to the procedure for cleaning that the whole or part of the machinery remains in motion during cleaning

that a procedure is established carrying out of the cleaning in a safe manner and that that procedure must ensure at least that no employee has not been adequately trained should carry out the cleaning whereas it is essential that a part of the machinery remains moving only that part shall be set in motion. Mr Harris submits that in this case there were isolation processes in place.

[51] Mr Harris also submitted that the expert reports obtained did not identify any specific heightened risks around the cleaning process and/or the adequacy of guarding or the energisation of conveyors during the cleaning process. In addition, the reports identified every risk throughout the acidulation and then production processes to identify heightened areas of risk especially around guarding.

[52] It is accepted that Ballance, since the death of Mr Tomich, has undertaken very significant steps at a significant cost.

[53] Having considered the material filed I consider that the primary failure on the part of Ballance was to permit the cleaning of the area around the belts while belt 2 was in motion. Taken together with a Standard Operating Procedure which appears to have been observed in the breach, I adopt a starting point for a fine at $700,000.

[54] I accept that there should be allowances of 5% for remorse and 25% for an early guilty plea. I consider allowances of 5% (each) for cooperation and reparation to be appropriate. While I accept that Ballance was cooperative with the WorkSafe investigation that cooperation in itself does not warrant a greater allowance. Equally in terms of reparation, while I accept Ballance has clearly acted appropriately and responsibly after the death of Mr Tomich (although I accept Mr Tomich's family will not agree with that view) that does not warrant an allowance of greater than 5%.

[55] Accordingly, the defendant Ballance Agri-Nutrients Limited is fined the sum of $420,000.

[56] For the reasons referred to earlier I decline to make any order for payment of consequential loss or emotional harm.

[57] An order was made on 13 September 2024, suppressing Mr Tolich's name and address. Continuation of that order is not sought and the order lapses accordingly.

[58] At the hearing an application was made by NZME for release of the summary of facts and victim impact statements. Submissions have been filed in respect of that issue. The position of Mr Tomich's family was advised through the submissions of Ms Backhouse for Worksafe. Ms Backhouse confirmed that each victim consented to their impact statement to be provided to NZME on the basis that certain redactions were made. Copies of the redacted statements were provided.

[59] Additionally, Mr Tomich's sisters [redacted] Tomich seek final orders suppressing their names although they are happy to be identified as Mr Tomich's sisters. That application is made on the basis that it would cause them undue hardship to have their names referred to in the media and it may lead to the identification of Ms [redacted] children.

[60] Having read of the effect of Mr Tomich's death on his immediate family and having observed that anguish during the sentencing hearing I am satisfied that the grounds for such orders under s 202(2)(a) Criminal Procedure Act, are made out.

[61] Mr Tomich's parents do not seek name suppression but seek redaction of their statements as advised.

[62] The position of Ballance is that it supports whatever publication and suppression orders were sought by the family. It does not oppose the redactions sought.

[63] For Ballance, Mr Harris submitted that it would be appropriate to redact the names of individuals employed by Ballance, with particular reference to the Chief Executive Officer who was referred to in the statement of [redacted]. I accept that the names of any employees of Ballance, with the exception of the Chief Executive Officer, should be redacted, as no useful purpose could be served by reference to them. The Chief Executive however falls into a separate category as he held a position of responsibility regarding the implementation of health and safety in the Ballance workplace.

[64] Pursuant to s 27 of the Victims' Rights Act 2002 I have the power to direct that all or any part of a victim impact statement not be disclosed or distributed, either generally or to a specified person.

[65] There is agreement that Ballance pay Worksafe New Zealand's costs in the sum of $2166.60.

[66] Accordingly, I make the following orders:

(a) Ballance is fined the sum of $420,000.00.

(b) Ballance is ordered to pay Worksafe New Zealand's costs in the sum of $2166.60.

(c) Final suppression order suppressing the names of Mr Tomich's sisters, [redacted].

(d) Directing the release of the summary of facts and redacted victim impact statements as per paragraphs [58] and [63] of this judgment, to NZME.

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Judge JP Geoghegan
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 18/03/2025