

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),  
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF  
WITNESS/VICTIM/CONNECTED PERSON(S) PURSUANT TO S 202  
CRIMINAL PROCEDURE ACT 2011. 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-2022-070-000655  
[2023] NZDC 3655**

**WORKSAFE NEW ZEALAND**  
Prosecutor

v

**ROBIN PHILLIP HORNE  
LORRAINE JOY RUTH HORNE**  
Defendants

Hearing: 21 February 2023

Appearances: T Braden for the Prosecutor  
M King for the Defendants

Judgment: 21 February 2023

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**NOTES OF JUDGE L M BIDOIS ON SENTENCING**

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[1] Robin and Lorraine Horne are partners in Bin Boys Bay of Plenty and each have pleaded guilty to a charge of contravening ss 36 and 48 of the Health and Safety at Work Act 2015.

[2] On 31 March 2021 around 1.30 pm [REDACTED], a worker for Bin Boys, suffered injury at work after a skip bin which he was emptying fell on top of his head

and shoulders crushing his skull causing serious head and brain injuries. Those injuries include a fracture to the right side of his head, the base of his skull had been fractured causing severe swelling, fractures to multiple facial bones and a fracture to the left side of his jaw.

[3] As a PCBU Bin Boys was obliged to ensure so far as reasonably practical [REDACTED] health and safety while at work. Bin Boys failed to ensure that in that it failed to follow its own processes and provide [REDACTED] with readable, understandable information and training, develop and implement an adequate safe system of work and ensure that any lifting equipment that was installed was maintained and used in accordance with best practice.

[4] In relation to this matter I have received written submissions from Ms Braden on behalf of WorkSafe and have heard from her this afternoon. The prosecutor submits that reparation should be awarded to the victim in the tune of \$80,000. In terms of consequential loss there is a record of expenses that have been identified. A starting point for the fine in the order of \$550,000.

[5] Ms Braden accepts that from the starting point the defendants are entitled to discounts for previous good character, co-operation, reparation, remorse and an early guilty plea. She acknowledges that there is discount for remedial steps that are available subject to the evidence being proved. Costs for the regulator has been fixed at a half, which is \$9,748.53.

[6] In terms of approach to sentencing the guideline judgment for sentencing is *Stumpmaster v WorkSafe New Zealand*.<sup>1</sup> In terms of quantum with reparation, reparation may be imposed in relation to loss or damage, emotional harm and relevant consequential loss or damage. In terms of emotional harm reparation the prosecutor says that this has been a life-changing injury for [REDACTED], his wife and family. A number of examples have been provided. The prosecutor submits that an award in the vicinity of \$80,000 is appropriate and with expenses for consequential loss being awarded as well.

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<sup>1</sup> *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.

[7] In terms of the quantum the prosecutor assesses the degree of fault in the medium to high range. In this case the risk of harm was a worker being injured or killed if a raised skip bin was to fall on top of them. Bin Boys were aware of the risk under these circumstances and crushing was recorded as a possible risk with the risk all being high. The defendants conduct departs from industry standards and guidelines. It is obvious that workers could be seriously injured or killed by a falling skip bin. Bin Boys were clearly aware of the risks associated with the equipment that was being used. The hazard could have been avoided by ensuring that workers were properly trained to tip and clear skip bins in a way that did not injure them. It is submitted that in terms of culpability is the middle to upper end of medium culpability band. The starting point of \$550,000 is appropriate and there is recognition for mitigating factors.

[8] In terms of Mr and Mrs Horne, Mr King has filed written submissions and I have heard from him this afternoon. He points out that Bin Boys has pleaded guilty. He states at the outset that Mrs Horne had no role in the business itself and Mr Horne takes full responsibility for the operation of the business and for what happened to [REDACTED]. Bin Boys has read the victim impact statements and unreservedly the seriousness of the injury suffered by [REDACTED] and the ongoing impact that this accident has had on his family and himself and that is recognised. From the moment the accident happened Mr Horne was in touch with [REDACTED] and continued to keep in touch and offer support, that included meeting some financial commitments to the family visiting him and there were some other personal things. But once there was an indication that further contact was not welcome, that ceased. There has been financial contribution.

[9] Bin Boys accepts that in the circumstances of this case an award of \$80,000 is appropriate as sought by the prosecution. It is agreed that there would be an award of \$20,000 in terms of consequential loss.

[10] In terms of the accident Bin Boys engaged the services of an independent expert to assist in improving health and safety systems across its business and those are identified in the written submissions. Bin Boys says its practice has always been to never go under a skip bin, however, it cannot be certain that this was made explicitly

clear to ██████ son during his training and accepts that it should have been. It is accepted that culpability sits in the middle of the medium culpability band that a starting point of \$550,000 is appropriate in the circumstances.

[11] In terms of mitigation they seek a discount for being fully co-operative with WorkSafe. They have got no previous convictions and, therefore, submit they are of good character. It is clear that they have contributed to the community and are of good character and that is important. They are genuinely remorseful and the harm that has caused is genuinely heartfelt and, of course, counsel read a letter of apology to the family and they seek discount for that as well as full discount for the guilty plea. They have taken significant remedial steps and seek a discount of 55 per cent making a final financial penalty of \$247,000.

[12] Bin Boys do not oppose the costs that are sought by the prosecutor. In terms of a fine the Court must take into account the financial capacity of the offender. They have supplied some financial information and submit that they can pay \$50,000 immediately and \$40,000 over the next five years coming to a maximum fine of \$250,000.

[13] WorkSafe have not had an opportunity to do an analysis of the financial reports but at the present time they accept what has been offered by the defendants.

[14] In terms of aggravating features there is the effects that this offending has had on the victim himself and the wider family. Obviously it has been huge. The victim himself has filed a written victim impact statement. I traverse some of that:

As the result of my injuries I have reduced movement in the left side of my body. The muscles in my right eye paralysed. I have tears running constantly. I have hearing loss. I have trouble opening my mouth to speak, to eat, to swallow. I have short-term memory loss and I have suffered severe fatigue. I have ongoing treatment. I have always worked to live. My family, our home together on our land and my hobbies have always been the most important things in my life. Life at home has been a lot different since I got injured at work. I'd go and go and be at it from waking to sleep, but that has all changed now. I can't even manage to do 10 per cent of the lawns. There is this pressure on our relationship. It makes things hard. I look out the window at the block now and all I feel is frustration. That frustration builds up and the people around me cop it. The most upsetting part about all of this is the toll that is on ██████. I can't drive and I used to love driving. There's a good chance I'll never drive again. My world has shrunk considerably. I don't remember

anything from the day of the incident until I woke up in hospital 28 days later. I don't try to remember, I don't want to remember. It's all just dark to me. We aren't going to get our old life back.

[15] His wife, [REDACTED], and his son, [REDACTED], read out their own personal victim impact statements and I acknowledge the courage that they have demonstrated in doing that.

[16] For [REDACTED] she said:

On 31<sup>st</sup> March our lives were changed forever. It breaks my heart to think that Sam was two jobs away from coming home to us that day. For 17 days I sat by my husband's bed for 20 hours a day telling him he was loved and that giving up was not an option. What happened to [REDACTED] at work has brought a whole new level to digging deep for me and our family I don't think words could ever really describe that day or do it justice. Since coming home our months have been filled with rehab appointments and procedure. All he did was go to work, so if I'm honest I am angry. [REDACTED] and I were at a stage in our lives that we were looking forward to having a life again. It's the small things I miss. I feel like I have been holding my breath for the last 22 months since this happened just trying to get through each day and its new mountain of challenges. [REDACTED] needs help with most things now. The buck stops with me. Through no fault of his own he is going to be affected for the rest of his life by what happened to him at work that day and it has made me his caregiver for the rest of his life.

[17] As to [REDACTED] he says:

Hearing the news and seeing my dad was something described as horrified. It has all been one step at a time at the present time. Dad has always been there for me and has been a good father to me and [REDACTED]. He is the definition of hardworking family man, a good man. The man that is sitting inside the house now is not the same man. Watching my family unit that has been built over my life unravel because of this, it's very distressing. I feel utterly powerless to do anything about it. I am angry that this has happened.

[18] There is also a report from Hairini Family Health Centre that documents the injuries that have been sustained.

[19] In terms of mitigating factors there are the pleas of guilty and full credit is given for that. There is co-operation with WorkSafe. There are no prior convictions. There have been contributions to the victim in terms of amends. Remorse has been genuine and that is reflected in the letter and the sentiments that I have heard through counsel. There has been a significant impact on Mr Horne's welfare and that is documented in the reports before the Court.

[20] The defendants wanted to go to restorative justice but recognise the victim's family's rights to not attend and they respect that. There have been remedial steps taken to avoid another tragedy like this happening.

[21] I have to assess the overall seriousness of this matter. I have seen skip bins delivered and picked up regularly over the years, particularly at maraes. They swing through the air, which is always a risk, and to physically tip a bin takes some skill. At times material like wet soil will get stuck and there is a need to physically remove those types of material. On this day something went terribly wrong and [REDACTED] has suffered near-fatal injuries. He now lives a life that is devoid of quality effectively. The failures of the company are detailed in the summary of facts. Given a skip is heavy, crushing is a likely result if something goes wrong. The culpability level is agreed by both the prosecutor and the defendants. I accept that description.

[22] It has been agreed that the start point for a fine is \$550,000. Credits for mitigating factors will be set around 50 to 55 per cent and therefore there will be a fine of \$250,000.

[23] The financial information that I have I accept that to pay \$50,000 immediately with \$40,000 paid over the next five years would equate to \$250,000.

[24] In relation to this matter, on the Robin Phillip Horne charging document, there will be a conviction and fine of \$250,000 together with court costs of \$130. Payment to be made with \$50,000 immediately being paid and \$40,000 per year over five years.

[25] In terms of reparation, it is agreed that that will be \$80,000.

[26] Costs of the prosecution of \$9,748.53 is ordered against Mr Horne.

[27] In terms of Lorraine Horne, she is a partner but effectively it was Mr Horne who operated the business. She will be convicted and discharged.

[28] The financial records and medical records of the defendant company are not to be released except to WorkSafe, who I expect has got copies anyway.

[29] There will be name suppression for the victim.

[30] In terms of the consequential loss, that is \$20,000.

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Judge L Bidois

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 05/03/2023