ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE FAMILY MEMBERS OF THE VICTIM.

IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

CRI-2024-085-000869
[2025] NZDC 8265

WORKSAFE NEW ZEALAND
Prosecutor

v

PROWASH WELLINGTON LIMITED
Defendant

Hearing:	15 April 2025
Appearances:	K Sagaga for the Prosecutor T Cunningham for the Defendant
Judgment:	15 April 2025

NOTES OF JUDGE T J WARBURTON ON SENTENCING

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[1] The defendant company, ProWash Wellington Limited, appears for sentencing today, having pleaded guilty to a charge of being in breach of the Health and Safety at Work Act 2015, ss 48(1) and (2)(b) and s 36(1)(a). The penalty is a fine not exceeding $1,500,000.

[2] The specific charge relates to work that was carried out on a roof of a commercial building on Taranaki Street, Wellington. ProWash Wellington Limited was engaged to clean the recently installed roof. Before commencing the job, the defendant was to undertake a preliminary test of the cleaning product to confirm

whether it was effective. It was this testing of the product that the defendant was undertaking on the day of the accident.

[3] The specific charge against the defendant is that being a person conducting a business they had a duty to ensure as far as reasonably practicable the health and safety of its workers including the victim, Joshua Bowles, while they were at work carrying out the work on the Taranaki Street building's roof and it failed to comply with that duty and exposed its workers to a risk of death or serious injury from a fall from height. Specifically, ProWash Wellington Limited failed to:

(a) Have an effective risk assessment of the work including the risk presented by working in wet weather conditions on a new iron roof.

(b) Ensure work was not done on the roof beyond the access scaffold until appropriate controls were in place, for example effective edge protection or a harness system.

(c) Include provision of effective and consistent training and supervision that was necessary to protect workers from a fall from height.

Summary of facts

[4] According to the summary of facts, at the time of the incident the defendant's director and one worker, Joshua Bowles, were carrying out work, including product testing, on a roof.

[5] Mr Bowles had commenced work for the defendant on 17 February 2023. On 19 April 2023 Mr Snow and Mr Bowles arrived onsite between 8.30am and 9 am in their vehicle. There was intermittent rain in Wellington City throughout the morning. Just before 9 am, Mr Snow was given the authorisation code to access the scaffold combination lock by GNS by text message. Mr Snow advised WorkSafe at interview that he did not notice the red unsafe scaffold tag fixed to the access scaffold entrance of the access scaffold, but he did see the barrier across the entrance. Mr Snow had been given the access code by text message and had been told by GNS the day before

that the scaffold was safe to use, and everything was put in place ready for the defendant to attend the job site.

[6] Mr Snow and Mr Bowles climbed underneath the physical barriers and accessed the roof. Given that they were only to be testing the product that day, Mr Snow planned to work only within the area of the edge protection scaffolding. He gave instructions to Mr Bowles not to go outside that area of the roof. Neither of them were wearing personal protective equipment other than a hi vis work jumper. They were not wearing harnesses or hardhats.

[7] Mr Bowles and Mr Snow worked on the roof applying the cleaning product Autoglym Magma, a type of car wheel polish with a rag. Mr Bowles stated that he was first shown by Mr Snow what he needed to do on the roof. They were testing the product by cleaning off surface rust.

[8] Mr Snow remained within the ambit of the scaffold the entire time he was on the roof. Mr Bowles was instructed to do the same. Mr Bowles was also tasked with setting up hoses and bringing equipment including harnesses and hardhats up the access scaffold to Mr Snow on the roof. Mr Bowles also brought up the cleaning product as well as lances and nozzles. Mr Bowles came and went from the roof on a couple of occasions, leaving the site to go across to the supermarket across the road.

[9] At approximately 12 pm Mr Bowles fell from the roof onto the asphalt below. Mr Snow has stated he was not aware at the time of the accident that Mr Bowles was near the edge of the roof. He last saw him 10 to 15 minutes prior to the incident.

[10] Mr Bowles was found by a member of the public lying face down on the Hopper Street service lane. This man alerted Mr Snow who immediately went down from the roof to Mr Bowles' aid. Two further Capital City Motors workers were alerted to the incident and all three protected Mr Bowles from getting wet whilst the ambulance was called.

[11] Mr Bowles was taken to Wellington Hospital and admitted to the intensive care unit. He suffered multiple, significant injuries including but not limited to a traumatic

brain injury, clavicle fractures, extensive skull and facial bone fractures, dental injury, rib fractures, neck and femur fractures.

[12] The risk in this case was working at height of approximately six metres in wet weather conditions on a new Colorsteel roof that was only partially edge protected by scaffolding. Mr Bowles was exposed to the risk. He went beyond the area of the scaffolding. A fall from height is the most serious hazard associated with roof work. The likelihood of the hazard of a fall from height occurring was probable in these circumstances but only where a worker moved beyond the area that was edge protected by the scaffolding as occurred in this instant. The most credible consequence of the hazard of a fall from this height onto asphalt below occurring is severe including death or serious injury.

Victim Impact Statements

[13] In terms of the victim impact statements, both Joshua Bowles and his wife [redacted] have had their statements read out in court today and I want to acknowledge their presence in court today and the struggles they have endured in the last two years.

[14] Their victim impact statements describe the emotional harm caused by the defendant's offending. It is clear from the victim impact statements that the emotional harm that this incident has had on the family is significant. Mr Bowles suffers ongoing fatigue and pain. He is confined to using walking aides for short distances or a wheelchair for long distances. Six months following the incident, Joshua was an inpatient at four different hospitals, the furthest one in Christchurch. During these stays he would feel extremely homesick being so far away from his family. He missed important milestones for his children, including their birthdays. One daughter underwent major surgery two days after the incident, and he could not be there to support her.

[15] Before the incident, Mr Bowles was a hands-on dad taking the children to school and picking them up, playing with them and taking them for walks. He was also an outdoors enthusiast and enjoyed playing sport, running, four-wheel driving, hunting and bush walks. These everyday tasks now require an enormous effort due to

the restrictions in his movement because of the pain. Job seeking is difficult as his previous work experience is of a physical nature. He now needs a role that is sedentary, due to his injuries.

[16] Mr Bowles describes the physical and emotional struggles he suffers on a daily basis. He feels disappointed in himself and avoids talking to people about the incident. This results in anger and at times taking his frustrations out on his family. He lives with regret for putting this burden on his family.

[17] [redacted]

Sentencing under the HWSA

[18] There are specific sentencing criteria which must be considered when sentencing under the HWSA. These are contained in s 15 of the Act. They include the need to have particular regard to the risk of and potential for illness, injury or death that could have occurred from the event. Whether those things could have been reasonably expected to have occurred, the safety record of the defendant, the degree of departure from prevailing industry standards and the defendant's financial capacity. These matters are in addition to ss 7 and 8 of the Sentencing Act 2002 and the sentencing purposes in s 3 of the Health and Safety at Work Act.

[19] The guideline judgment regarding Health and Safety at Work Act sentencing is the High Court decision in *Stumpmaster v WorkSafe New Zealand*.[1] That case determined that there were four steps required:

(a) To assess the amount of reparation.

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

(c) To determine whether further orders under the Act are required.

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

[20] *Stumpmaster* set out four guideline bands for fixing the quantum of fine:

(a) Low culpability: up to $250,000.

(b) Medium culpability: $250,000 to $600,000.

(c) High culpability: $600,000 to $1,000,000.

(d) Very high culpability: in excess of $1,000,000.

Submissions

[21] I have received submissions for the prosecution and for ProWash Wellington Limited. I am grateful to both counsel for the detailed and careful analysis that they have undertaken in their submissions.

[22] WorkSafe submits the following sentencing outcomes are proportionate and appropriate:

[1] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.

(a) Reparation in the sum of around $60,000 for emotional harm caused to Joshua Bowles.

(b) Reparation for consequential loss to top up the compensation paid by ACC being $17,456.

(c) A finding that the defendant's culpability falls within the medium culpability band and that the starting point for a fine is in the range between $550,000 and $600,000.

(d) From the starting point, the defendant is entitled to discounts totalling 35 per cent.

(e) This results in an adjusted end fine in the range between $357,500 and $390,000. Taking into account the financial incapacity of the defendant, the final fine should be reduced to $100,000 payable over five years.

(f) An order the defendant pays WorkSafe's costs in the sum of $8,528.93.

[23] A suppression order is sought for the victim's family member's names, identifying details and information contained in the victim impact statements.

[24] WorkSafe also seeks an order that the summary of facts may be released on request with appropriate redactions made for any suppression orders.

[25] For ProWash Wellington Limited, it is submitted:

(a) The defendant does not oppose the sum sought by the prosecutor for emotional harm and consequential loss.

(b) A starting point of $350,000 is appropriate taking all factors into account.

(c) The defendant has provided an affidavit from its accountant confirming it is not in a financial position to meet what would otherwise be an appropriate fine.

(d) The defendant opposes the prosecutor's costs for the external accountant.

Reparation

[26] In relation to reparation, WorkSafe has referred to a number of cases where the victim suffered similar injuries and were awarded reparation for emotional harm.

[27] In *WorkSafe New Zealand v 360Group Limited*, the victim, a painter, fell through a clearlite roof at a school site, suffering serious injury including a fracture to his lumbar spine.[2] He could no longer work and relied on ACC. He was awarded $40,000 with consequential loss of $17,625 for an ACC top up.

[28] In *WorkSafe New Zealand v TPL Access Limited*, a roofer fell 3.6 metres onto a concrete floor and suffered serious injury.[3] He did not fully recover for over a year. He was awarded $39,000 and consequential loss of $3,954 for an ACC top up.

[29] Finally, *WorkSafe New Zealand v KB Project Management Limited* where the victim fell 1.5 metres to the ground from a makeshift temporary platform.[4] He sustained fractures on his right ankle and lower leg which required numerous surgeries. Two years after the incident, surgeons had to fuse his ankle. He was awarded $45,000.

[30] It is clear that Mr Bowles and his family have been significantly impacted by the defendant's offending. Mr Bowles is no longer able to move without walking aides or a wheelchair. It has impacted every aspect of his life and the lives of his wife and children.

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[2] *WorkSafe New Zealand v 360Group Limited* [2022] NZDC 26076.
[3] *WorkSafe New Zealand v TPL Access Limited* [2022] NZDC 20075.
[4] *WorkSafe New Zealand v KB Project Management Limited* [2022] NZDC 21224.

[31] The defendant does not oppose the amount sought in reparation and I accept that the economic climate has changed since 2022, when the previous decisions were made.

[32] Accordingly I consider an award of $60,000 is appropriate for emotional harm with an additional $17,456 for consequential loss.

Fine

[33] I now turn to consider the appropriate fine, by reference to the guideline bands.

[34] Counsel have referred me to a number of cases. These include *WorkSafe New Zealand v Chunda Limited* where the victim fell three metres on a building site sustaining lifechanging injuries.[5] The defendant failed to ensure an adequate risk assessment was carried out, failed to provide a safe work environment, use its own hazard register and failed to train and instruct its workers on health and safety when working at height. The Court adopted a starting point of $550,000 which is at the high end of the medium culpability band.

[35] WorkSafe submits a starting point of between $550,000 and $600,000 is appropriate in this case. Unlike *Chunda*, in this case health and safety policies and risk hazard control processes were absent.

[36] Counsel for the defendant submits that its culpability is lower than in *Chunda* because the fall protection was not in place in that case at the time of the accident and the victim suffered permanent paralysis.

[37] Counsel for the defendant referred to three other cases. *WorkSafe New Zealand v Create and Construct* where a worker stepped off a roof and fell on the ground sustaining serious injuries.[6] The defendant was sentenced on the same charge as the current case. It had ordered steel scaffolding edge protection which had not arrived at

[5] *WorkSafe New Zealand V Chunda Limited* [2023] NZDC 4626.
[6] *WorkSafe New Zealand v Create and Construct* [2023] NZDC 26962.

the time of the accident. The defendant had not identified the risk of a fall and how workers were to be informed of it. The Court arrived at a starting point of $300,000.

[38] WorkSafe submits the height was half in that case of what occurred in this case and they had also undertaken a risk assessment.

[39] In *WorkSafe New Zealand v 360Group Limited*, *Shakthi Construction Company*, the victim fell through a clearlite roof on a school.[7] There was no edge protection or coverings and a starting point of $400,000 was adopted.

[40] Finally, in *WorkSafe New Zealand v Ironhide Roofing Limited* the defendant was engaged to replace a section of a roof on a wall store.[8] The victim was only 14 years old and fell eight metres through a skylight. In that case the height of the fall was greater, and the age of the victim was a factor in the decision. There was also a lack of clear instructions. The starting point of $500,000 to $600,000 was considered appropriate. In terms of offending, *WorkSafe New Zealand v Ironhide* is the most similar on the facts.

[41] Having considered the caselaw, I consider the following factors in this case are relevant. They are that the height was a six-metre fall which resulted in Mr Bowles suffering serious injury. The hazard of working on a new roof in wet conditions was obvious and should have been identified. Other contractors working on the site had the appropriate risk assessment. The workers had safety harnesses but were not wearing them at the relevant time and Mr Bowles had had no training on using them or height training.

[42] I also accept that there was some edge protection in place and there were instructions to stay within that area.

[43] As noted earlier I consider the case of *WorkSafe New Zealand v Ironhide* to be the most similar. Having considered the facts and relevant caselaw, I consider this

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[7] *WorkSafe New Zealand v 360Group Limited* [2022] NZDC 26076.
[8] *WorkSafe New Zealand v Ironhide Roofing Limited* [2022] NZDC 17423.

case falls within the medium band of culpability and a starting point of $500,000 is appropriate.

[44] There are no aggravating features that apply to this offending and the prosecutor accepts that there are a number of mitigating factors. The following mitigating factors are present:

(a) The defendant cooperated with the investigation which justifies a five per cent discount.

(b) Reparation to be paid if ordered, also a five per cent discount.

(c) An early guilty plea, 25 per cent discount.

[45] The defendant seeks a further discount for a prior good health and safety record. I note the company has been in operation since April 2022. The accident happened only one year after the company started business. Photographs on their website showed roof cleaning without appropriate safety constraints. I do not consider a discount for a good health and safety record has been sufficiently established here.

[46] I accept a 35 per cent discount in total which would reduce the fine by $175,000, resulting in a fine of $325,000.

Costs

[47] In relation to costs, WorkSafe seeks 50 per cent of its legal costs and the full costs of an external accountant, totalling $8,528.93.

[48] The defendant accepts the costs of WorkSafe but disputes an award of costs for the instruction of an external accountant, relying on *WorkSafe New Zealand v Handley Industries 2022 Limited*.[9]

[9] *WorkSafe New Zealand v Handley Industries 2022 Limited* [2025] NZDC 3891

[49] The defendant says it provided all relevant details as to its financial capacity. There is no requirement for WorkSafe to provide an accountant's affidavit in reply when the information has been provided and there are no questions as to the accountant's qualifications and objectivity.

[50] Unlike *Handley*, in this case the accountant for WorkSafe provided additional information for the calculation of the ACC top up for the victim which was not opposed by the defendant. This was in addition to providing advice as to whether an annual instalment of fines repayment could be extended beyond the two-year period indicated in the affidavit of Ms Rooney for the defendant. Given the additional assistance provided by WorkSafe's external accountant, the costs in my view for that advice are just and reasonable.

[51] Accordingly, I order costs of $8,528.93 to be paid by the defendant.

Overall Proportionality

[52] The final step requires an assessment of the proportionality and appropriateness of the sanctions imposed. Any sentence imposed must be proportionate to the circumstances of the offending and the offender. This involves assessing the defendant's ability to pay and whether an adjustment is required to reflect the defendant's financial capacity.

[53] The defendant has provided details of its financial capacity which WorkSafe does not dispute. Ms Rooney, the defendant's accountant, has considered the defendant's accounts. The company is highly leveraged with a low cashflow position. It has minimal financial capacity to pay a fine. Any payment of a fine of $20,000 per annum is equal to forecast profits in the next two years.

[54] I have considered the evidence and, as a result, given the limited financial capacity of the defendant to pay a fine, the amount of a reparation ordered directly to the victim, and the importance of keeping the company and its employees in business, as well as looking at caselaw already cited in this decision, I order a fine of $40,000 to be paid in two instalments of $20,000 over the next two years.

Suppression Order

[55] A suppression order is sought for the victim's family members. Their identifying details and information contained in the victim's wife's victim impact statement.

[56] The suppression order is granted on the basis that publication would cause undue hardship to the victim's family and there is no countervailing public interest in the publication of these details.

[57] In addition, I have ordered that the defendant's accountant's affidavit is suppressed on the basis of commercial sensitivity.

[58] Finally, I order the summary of facts can be released with appropriate redactions made in relation to the suppression order.

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Judge WJ Warburton
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 06/05/2025