EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT TAURANGA

CRI-2017-070-002671
[2018] NZDC 5274

WORKSAFE NEW ZEALAND
Prosecutor

v

OCEANA GOLD (NEW ZEALAND) LIMITED
Defendant

Hearing: 19 March 2018

Appearances: L Moffitt for the Prosecutor
A Cunninghame for the Defendant

Judgment: 8 May 2018

RESERVED JUDGMENT OF JUDGE T R INGRAM

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[1] On [date deleted] 2016, [the victim], an employee of the defendant company, lost his life in a mining accident. The defendant company pleaded guilty to a single charge of failing to ensure, so far as was reasonably practicable, the health and safety of [the victim], thereby exposing [the victim] to the risk of death arising from a fall from a height.

[2] This is the second case brought before the District Court involving the death of a worker since the coming into force of the Health and Safety Work Act 2015. It raises significant points of principle, and involves issues in respect of which there is little or no appellate authority to assist the Lower Courts in the interpretation of the provisions of the new Act.

[3] The Health and Safety Work Act 2015 was enacted specifically to remedy some perceived legislative defects which came into focus in the aftermath to the Pike River Mine tragedy. The maximum fine for large companies has been vastly increased to $1.5 million. Section 151, which specifies sentencing criteria to be considered by sentencing Courts, now requires the Court to have particular regard to the (defendant's) financial capacity or ability to pay any fine, "… to the extent that it has the effect of increasing the amount of the fine...".

[4] There is no comparable provision in New Zealand law and it squarely raises an issue as to whether or not a wealthy defendant should be sentenced to a higher fine simply because the defendant is wealthy. Other jurisdictions have adopted grid sentencing in this context, with the maximum fine being derived from the defendant company's turnover. That level of sophistication has not yet found its way into New Zealand legislation.

[5] This case also raises reparation issues in a way that rarely arise in the Courts, with the result that counsel were unable to assist me with any authorities dealing directly with the reparation issues arising.

Background circumstances

[6] [The victim] had been employed at this Waihi mine [for more than eight years]. He worked as an operator of a large piece of earth moving equipment known in the mining industry as a "bogger" and which might conveniently be described as a low profile bucket front end loader. It is used to move rock and ore following blasting of the ore body.

[7] It is very common in hard rock mining for a "drive" or "adit" to be excavated horizontally along an ore body, or in the direction of an ore body, with all the winnable portion of the ore body being removed at that level. Subsequently, a lower drive is inserted in the same direction directly or nearly directly below the previous drive, and the process is repeated, sometimes with four or five such drives being driven, one underneath the other, usually about 10 vertical metres apart. The inherent strength of the rock makes the drives safe for heavy equipment to be used in them.

[8] Once a series of drives have been driven in the configuration described, a "stope" is then created by blasting a portion of the 10 or so metres of rock between the shafts containing winnable ore, thereby caving in an overhead portion of the bottom drive, allowing the ore body to be removed. That process is followed with the drives above, one by one, with the result that a stope can be a big, deep hole with one or more drives running into it from the top to the bottom at various levels. This method of underground mining is almost ubiquitous, at least in gold mining, and it is widely used in Australia.

[9] The hazard posed by having a drive ending in a deep hole is obvious, and a hazard which the mining industry has sought for many years to mitigate or eliminate. Some methods used in Australia include building an earth bund a little distance back from where the stope is to be created, providing a physical barrier designed to prevent machinery from being driven into the hole without the operator realising.

[10] On the day he died, [the victim] was tasked with building a rock bund across the top level of an open stope, obviously for the purpose of trying to eliminate the hazard of falling into the stope. The wall and floor of the drive had been marked with

paint to delineate the safe operating area limits. His machine was found at the bottom of the stope, having fallen about 15 metres, leaving him with unsurvivable injuries. The vehicle he was driving was mechanically checked and no defect which could conceivably have caused or contributed to [the victim]'s death was located. It is not possible to determine exactly how or why [the victim]'s vehicle came to be driven into the open stope.

[11] It is clear that [the victim] had uplifted one bucket load of fill material which was intended to be used to construct the bund. [The victim] was not wearing a seat belt, which would indicate that he had got out of his vehicle to unlock the chain barriers to entry to the drive from which his vehicle fell, and it may indicate that he stopped his bogger to inspect the wall and floor markings which had been placed to delineate the safe working area for his vehicle.

[12] The defendant company had only just bought the mine from its previous operator, taking the mine over on 1 July 2017, four weeks prior to [the victim]'s death. In practical terms, the only thing that changed at the takeover was at the most senior mine management level, because the defendant company took the mine on as a going concern, with all the staff and equipment and mining processes and procedures remaining unchanged. The workforce was capable and experienced.

[13] [The victim] had spent his working life in that particular mine. He was a fully qualified equipment operator, and the material before me leaves me satisfied that he was a careful man who took his safety responsibilities seriously, both at work and in his private life.

[14] It was made clear to me at the hearing of this matter that the WorkSafe New Zealand inspectorate regularly attended the mine, about every three months, for mine safety inspections, and no issue had ever been raised by the inspectorate in connection with the risk management process adopted in the mine to deal with the open stope hazard. The previous mine owner had simply adopted the Australian industry practise of building a rock bund to physically prevent people and machinery falling into the stope.

[15] This case is relatively unusual, in that [the victim]'s death arose from his efforts to mitigate or eliminate the identified risk of falling down a stope, the very thing that, unfortunately, caused his death. Accordingly, this is a case where the risk had been identified, assessed, and a practical plan adopted which dealt with the obvious hazard. In adopting the method of building a bund after the blasting of the stope, the defendant was following industry practice and guidelines. This is not a case where there was a breach of an existing standard or guideline.

[16] The defendant pleaded guilty to the charge before the Court on the basis that it had not sufficiently addressed the risks inherent in the steps chosen to mitigate the risk of falling down the stope. In other words, a broad and sufficient risk assessment and remedial action plan was undertaken, but inadequate attention paid to the risks inherent in implementing that action plan.

[17] The risks were significant, but obvious and well known. Forward and side visibility in a low profile front end loader is limited. The usual method of marking safe operating limits of such vehicles involve marking the floor and the walls of the drive or shaft in which the vehicle is operating. Such markings were put in place at the location that [the victim] was working, although the defendant company accepted that the markings could have been clearer.

[18] Practice in the Australian mining industry includes the use of "candy canes" which are reflective poles, sometimes attached to side walls, often to the roof or the floor of the drive, providing enhanced reflectivity and therefore visibility for the bogger operator. Other methods include laser marking of operating limits and the provision of "bollards", which are usually visual but breachable barriers, which rely on their visibility to stop the machinery operator exceeding safe working parameters.

[19] In many Australian mines, stopes are blown from the bottom, with holes for the insertion of blasting powder being drilled into the roof of the drive. That method was not used at the defendant's mine, and instead stopes were blown from the top down. The difference is significant because when blown from the bottom bunds can be created in the upper level drive prior to the blast. But when a stope is blown from

the top, any bund placed close to the proposed excavation limit will be displaced by the force of the explosion.

[20] Following the death of [the victim], the defendant shut the mine for a week, at a cost in excess of one million dollars, for several purposes. Firstly, a number of the mine workers are Māori, and for cultural reasons many were not prepared to work immediately following the death of a colleague. Secondly, management wished to fully explore the chain of events leading to [the victim]'s unfortunate death, and to take all remedial steps open to them to prevent any recurrence. It is worth noting that management shut the whole of the mine, including above ground operations, which could not conceivably have had any implications for below ground working conditions.

[21] After shutting the mine for a week, and carefully reviewing all the information available to it, the defendant came up with a unique and innovative method of preventing any recurrence of the events which led to [the victim]'s death. The method adopted was to pre-drill steel bollards into the floor of the drive, with the bollards being sufficiently robust as to prevent a bogger being driven over them. On the information available to me, that solution is unique, never having been adopted in Australia or New Zealand, or indeed elsewhere, to the knowledge of the mining professionals who have advised the parties.

The defendant

[22] The defendant company is large and has long experience in the mining industry, although not at the site of this particular mine. The company's ability to pay fines, reparations and costs is unquestioned. It has two prior convictions for breaches of the Health and Safety legislation in New Zealand and, accordingly, its record is not perfect.

[23] The absence of financial constraints on the defendant manifested itself in the defendant's response to [the victim]'s death. A substantial sum of money was set aside to assist [the victim]'s family, which included his parents and siblings, his partner of

many years and her [son]. The company has already paid the sum of $200,000 directly to affected family members and further met costs associated with [the victim]'s tangi.

[24] A restorative justice conference was held, which included a number of family members. The conference report is clear and unequivocal in the acknowledgement by the family that the defendant company has assisted them financially and in other ways to the extent possible, and I record my view that this defendant's conduct in dealing with the aftermath of the death of its employee has been exemplary. In my respectful view, no more could be asked of the defendant than that it undertake the steps which it has taken of its own volition to alleviate the deceased's family's suffering by provision of financial and practical resources for immediate access.

[25] In the result, the Court is faced with a responsible and experienced employer, who had only just taken over a mine, with its existing workforce, equipment and safety procedures, who have sent an experienced and capable employee to address a known hazard in a manner which is accepted practise in the mining industry, and in the course of addressing that hazard, the employee was killed by the very hazard he was sent to address.

[26] The defendant company can afford to pay any final reparation ordered by the Court, and although not entitled to the credit attaching to a clean record, it is entitled to credit for other things, including the substantial payments already made to [the victim]'s family in the nature of reparation. Credit must also be given for the invention and implementation of a practical safety improvement which is, to the best of the knowledge of the parties' advisors, a unique and practical means of mitigating or eliminating the hazard which the mining industry generally, both here and overseas, has not been capable of inventing in the 40 or 50 years in which the use of boggers in drive and stope mines has been standard operating procedure.

[27] The key principle relating to the duty of employers is set out at s 30 of the Act. That principle requires employers in the position of the defendant to eliminate risks to health and safety of its employees so far as is reasonably practicable, and to minimise risks that cannot be eliminated. In sentencing offenders, s 151 of the Act requires that

the provisions of the Sentencing Act 2002 be applied and, in particular, the provisions of s 7 to s 10 of the Act.

[28] The Court is also required to have particular regard to the purpose of the Act, the risk of a potential for injury or death, and whether either of those eventualities could reasonably have been expected to have occurred. The Court is further enjoined to have regard to the safety record of the defendant and the degree of departure from prevailing standards in the applicable industry, and finally, under s 151(g), the Court must have particular regard to the defendant's financial capacity to the extent that, "it has the effect of increasing the amount of the fine."

[29] The assessment of the position in this case is straightforward on one level. The defendant's financial ability to meet any fine and any reparation is unquestioned. I accept unreservedly that the defendant company is not motivated to avoid any financial responsibility, and I accept that the defendant company have made a genuine good faith effort to meet each and every obligation on it of every kind, which could fairly be said to arise from [the victim]'s death.

[30] The principles applicable to cases of this kind have in recent years largely been governed by the analysis set out by the High Court in *Department of Labour v Hanham & Philp Contractors Ltd*.[1] It is generally accepted that a four step approach should be taken to assessment of appropriate quanta in cases involving the imposition of fines and reparation.

[31] The first step is to assess reparation. In this case, some life insurance policy put in place by the previous owner of the mine, and also by the defendant, which have resulted in a substantial payment to [the victim]'s next of kin. Secondly, a substantial sum has been paid to the deceased's partner and a further sum set aside for her son.

[32] The Court is now entitled, pursuant to the provisions of the Act, to award reparation for the shortfall between the maximum accident compensation entitlements, and the deceased's lifetime earning capacity.

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1 *Department of Labour v Hanham & Philp Contractors Ltd* (2008) 6 NZELR 79.

[33] In this case the deceased was 27 years of age and earning a salary of $100,000 a year. Absent debilitating injury, he might have been expected to earn an equivalent salary for the rest of his working life.

[34] Actuarial analysis has revealed that the mine's planned life would expire in 2019. An application for appropriate consents has been made covering a further five years, expiring in 2024. High, medium and low earning assumption models were used to calculate [the victim]'s projected lifetime earnings, resulting in assessments of total lost earnings of $3.98m, $3.29m and $1.91m respectively for the three modeled scenarios. After deduction of ACC entitlements and payments already made arising from [the victim]'s death, including insurance policies, the estimated value of net loss of earnings was assessed at $2.77m, 2.08m and $700,000 respectively.

[35] Whilst I accept that the actuarial assessment has been made by an expert, I am not persuaded that the underlying assumptions are uniformly valid. The CPI inflation rate adopted, at 1.7%, rising to 2% in 2047, whilst historically accurate for the period after the accident, depend on an assumption that interest rates and economic growth conditions will remain at current levels over the whole period. In my view that assumption is not reliable, despite being based on Treasury assumptions for Crown accounting valuations. Similarly, the interest rate adopted of 1.4%, a crucial component of the discount rate applicable, cannot in my view be accepted as realistic and reliable for the full projected period.

[36] Further, the short projected life of the mine, even if extended from one to six years, militates against steadily rising earnings over the 36 year period calculated as [the victim]'s projected working life. Health and working capacity assumptions have not been tailored for underground mining. The unavailability of underground gold mining work in New Zealand at any site other than this mine also needs to be reckoned with. If [the victim] sought comparable work overseas, he would need appropriate immigration status, and a number of the underlying economic assumptions made in the analysis would no longer be applicable.

[37] In my view, assessing the matter as best I can, the low assessment, providing an estimated net loss of earnings at $700,000 is over-optimistic. That conclusion is

based at least in part on my knowledge of Waihi and its economy, and hearing a good deal about that subject as a sitting Judge routinely rostered to sit in Waihi. I consider that a figure of $350,000, or half of the low estimate, is a realistic assessment of the net loss of earnings.

[38] The defendant declined to make a formal offer of reparation, other than to say that it wants to make an appropriate reparation payment, leaving the assessment of the appropriate figure entirely in the Court's hands. I accept the actuarial assessment of the payments already made by the defendant and ACC payments yet to come at $1.21m. I find that a further $350,000 reparation should be paid for loss of future earnings so as to address the financial deficit created by [the victim]'s death.

[39] In this case, I can see no reason why a defendant who can afford to pay that sum should not do so, subject to the overall assessment required at a later stage in the assessment process. I consider that further emotional harm reparation is not warranted given the sums already paid.

[40] The next step is to assess the defendant's culpability. The prosecution sought a fine in the order of $1 million to $1.1 million on the basis that this was a case involving death and high culpability. The defendant on the other hand submitted that the proper assessment of culpability should not exceed half the maximum fine, in the range of $750,000 to $800,000.

[41] This case has a number of unusual features. Firstly, the defendant has the ability to pay a fine at the higher end of the available penalty range. Secondly, this is not a case where the defendant has failed to identify the risk which led to its employee's death. Thirdly, it has not breached any existing industry standard or practice. Fourthly, and tellingly, many years of quarterly visits by mines inspectors to this specific mine has entirely failed to identify the defect in mine operating procedures which led to [the victim]'s death. The defendant's culpability arises from its failure to identify and address the risks associated with mitigating or eliminating the identified risk of death or injury by falling into a stope. The self-evident nature of that risk, coupled with the very nature of the task assigned to [the victim], in my view puts the company's culpability at a significantly lower level than those who fail to identify and

address risks, or who run identified risks for financial or other reasons, which is certainly not the case here.

[42] Here, the defendant company had only just taken the mine over and it, understandably, trusted the experience workforce which it accepted as part of the purchase, and it adopted the operating procedures, including safety measures which had routinely passed more than a decade of Worksafe inspections. It had the benefit of a long history of operation of the mine in a safe manner by the previous operator, and the comfort associated with the knowledge that regular work and safety inspections had not identified this or any other identified risk for enhanced ameliorative measures.

[43] In short, although it has a relatively minor prior record of compliance failures, two in the previous decade, it nevertheless had every good reason to expect that the combination of an experienced prior workforce, an experienced prior mine operator who was required to address and ameliorate all mine operational risks, and regular work safety inspections, should have been sufficient to identify and address all identifiable risks.

[44] Accordingly, I am not attracted by the submission advanced by the prosecutor that this is a case where the defendant should be assessed as falling at the high end of culpability. The incidence of death does not by itself elevate this to the level of high culpability, although it is of course a factor to be considered.

[45] In my view, looked at in the round, it is wrong in principle to address culpability solely or largely in terms of the incidence of death or serious injury. Against those factors, it is necessary to account for the longstanding operating practice in the mine without demur from the mines inspectorate, the fact that the deceased was an appropriately trained, skilled and experienced employee engaged in an endeavour to ameliorate the very risk that killed him. Those matters all point to the conclusion that this case is appropriately assessed as one attracting moderate culpability towards the middle or lower end of that range.

[46] A number of District Court Judges have endeavoured to expound various ranges of culpability under the new legislation, by extension from either *Hanham & Philp* or the well-known criminal case of *R v Taueki.*[2] In my view, none of the proposed banding methods are demonstrably superior to the alternatives. I accordingly prefer to express my own view, in relation to this case only.

[47] Acknowledging the risk of death or serious injury, and factoring in the appropriateness of the defendant's methods of identification, assessment, and amelioration of risk of falling down an open stope, I consider that it would be wrong to place the starting point any higher than 50 percent of the maximum fine, the defendant's unquestioned ability to pay notwithstanding. I consider that culpability at levels above 50 percent should be reserved for those who knowingly turn a blind eye, knowingly fail to assess risks, or who set out to treat the health and safety legislation as imposing a licensing fee. None of those criticisms can fairly be levelled at this defendant.

[48] I have not overlooked the amendment to existing law created by s 151(2)(g), and the apparent purpose of that amendment. I do not construe that provision to expressly mandate that those with deep pockets are to be more heavily penalised simply for having deeper pockets than other defendants. Had that been the sole objective, a financial turnover based grid sentencing provision should and would have been enacted. International examples abound, but were not adopted.

[49] In my view, s 151(2)(g) is appropriately read in context with the other sentencing provisions expressly identified in s 151, directing the Court to have regard to the provisions of ss 7, 8, 9 and 10 of the Sentencing Act 2002. S 8 provides;-

In sentencing or otherwise dealing with an offender the court—

(a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and

(b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and

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2 *R v Taueki* [2005] 3 NZLR 372.

(c) must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

(d) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

(e) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and

(f) must take into account any information provided to the court concerning the effect of the offending on the victim; and

(g) must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders set out in section 10A; and

(h) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and

(i) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and

(j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).

[50] Paragraphs (a) to (e) inclusive are not compatible with a sentencing approach in which higher fines are levied on wealthier defendants solely because such defendants have the ability to pay higher fines. On the contrary, these provisions require that the gravity of the offending and the culpability of the offender be assessed by reference to the maximum fine, and inability to pay is expressly recognised as reducing the penalty to be imposed, rather than increasing the fine for wealthier defendants.

[51] The statutory requirements contained in the Sentencing Act 2002 mandating the imposition of fines at a lower level for those of limited means can in one sense be read as a blunt acknowledgement that the Court must endeavour to do justice by ensuring that financial penalties imposed on defendants are tailored to their ability to pay. The obverse contention, that s 151(2)(g) requires that the imposition of a higher

fine simply because a defendant is wealthy, is obviously inherently unjust, unless it is construed as requiring no more than imposition of a fine at the appropriate level of culpability by reference to the maximum fine available, without adjustment by reference to other similar cases where impecuniosity may have previously led to downward adjustment.

[52] In my view, the "effect of increasing the fine" mentioned in s 151 simply requires that the Court take care not to assess penalty by reference to fines imposed on more indigent offenders, when defendants with a greater ability to pay are before the Court. I consider that the mischief addressed by s 15 is appropriately read down to a meaning in which wealthy defendants are assessed as to culpability on their own merits where wealth is not a limiting factor in terms of assessment of financial penalty, and no more than that, in the context of the assessment required by s 151 as whole, including s 8 of the Sentencing Act 2002.

[53] It is appropriate to acknowledge that the increased penalties in the new legislation have been aimed at addressing deficiencies in the prior legislation, with a view to substantially increasing financial penalties in appropriate cases. The impetus for those changes was indubitably the Pike River mining disaster. In the end, however, the interests of justice require that like cases be treated alike, as s 8(e) expressly requires.

[54] I record that my assessment of the defendant's culpability at less than 50 percent of the maximum fine has not been informed in any way by the defendant's ability to pay the fine, which, in my view, is a matter more appropriately addressed at a later step in the assessment process.

[55] In terms of the criteria set out in *Hanham & Philp*, this defendant identified the operative hazard and the risk of death, and it complied with the standards broadly prevailing in the mining industry, both in Australia and New Zealand, in dealing with an obvious hazard. The general inability of the industry as a whole to produce a fail-safe solution to the risk over many decades of mine operation in Australia and New Zealand is unquestioned.

[56] Following [the victim]'s death this defendant successfully identified and implemented an effective risk amelioration or elimination method, which speaks eloquently of the state of knowledge of the risk and the ameliorative steps available to the mining industry as a whole at the time of this accident. The state of knowledge current in the industry at the time of the accident was not such as to allow the prosecutor to point to any existing industry or regulatory mine safety practice which the defendant failed to observe.

[57] The admitted inability of the mines inspectorate to identify the fatal flaw in the risk amelioration assessment, over a long period of years in supervising this specific mine, adds considerable weight to the defence contention that an assessment of high culpability is simply not appropriate. In so saying, I acknowledge that the Act places primary responsibility for hazard identification and amelioration on the employer. But this employer had only taken the mine over a few weeks prior to the accident, and the prosecutor candidly acknowledged that the mines inspectorate accepted that their efforts to ensure the highest possible safety standards over many years of operation in this mine had not been sufficient to identify the problem or propose a solution which would have prevented [the victim]'s death.

[58] The aggravating and mitigating factors have essentially been set out above. The defendant's limited prior record, coupled with its indubitable reliance upon the skill and experience of the workforce already *in situ* when it took the mine over a matter of weeks before [the victim]'s death, the experience of the prior operator, and the long involvement of the mines inspectorate in assessing the mines' safety processes all provide substantial mitigation.

[59] The incidence of death is always an aggravating feature, but, in my view, it is the only aggravating feature of any significance. The defendant's efforts to find a permanent solution to the problem should properly be applauded, rather than identified as being an obvious solution to an obvious problem, in the context of the wider mining industry internationally having failed to identify the solution invented and adopted by the defendant company. I further record, as a substantial mitigating factor, the company's responsible approach in shutting the whole mining operation down for an extended period at a total cost in the order of $1 million for both cultural and safety

reasons. The company is entitled to proper credit for taking immediate and appropriate steps to minimise the financial stress upon those affected by the death of [the victim], for offering to pay reparation, for cooperating with the inspectors, and pleading guilty promptly.

[60] Balancing those matters as best I can, I determine in the exercise of my sentencing discretion that the defendant's culpability is appropriately assessed at $700,000, a little less than half of the maximum fine. There are no aggravating features justifying an increase in that penalty.

[61] Acknowledging the long line of authority holding that there is no direct proportionality between the reparation sum and the appropriate deduction from the fine imposed, I allow a credit of $140,000, or 20%, for the reparation paid and payable, reducing the penalty to $560,000. I allow a further 10% for co-operation with the authorities and the development of a permanent effective solution to a long-standing safety hazard in the mining industry, reducing the penalty to $504,000. I allow a further 25% for guilty plea, remorse and contrition, including shut down costs, thereby reducing the fine to $378,000.

[62] The next step is to consider the overall weight of the penalty and reparation payments. Here the defendant faces "loss of income" reparation in the sum of $350,000, and a fine of $378,000, a total of $728,000, having already paid compensation of $460,00, a total of $1.188m. It has suffered a cost in shutting the mine down in the days following the accident of at least $1m. Adding all those costs together, to produce a total cost of $2.188m, leaves an impression of a very heavy financial burden imposed on a defendant, nearly $700,000 more than the maximum fine.

[63] A significant portion of that cost is however compensatory in nature, and the defendant can afford to meet both the fine and reparation. Balancing those matters against the statutory objective of severe penalties for mismanagement of workplace risks, and reparation as compensation for losses suffered by affected parties, I have come to the conclusion that no further adjustment of the fine or reparation is warranted.

[64] This is an appropriate case for the defendant to pay the costs of prosecution. This is not a case that requires any of the orders specified in s 153 to s 158 of the Act. The defendant is the sole operator of the only hard rock underground gold mine in New Zealand using the drive and stope method of ore body extraction, and it is only too well aware of all the matters addressed in this judgment. This is not a case that requires naming and shaming or further training.

[65] The defendant is accordingly convicted and fined the sum of $378,000, and is ordered to pay reparation for lost earnings in the sum of $350,000. It is ordered to pay costs in the sum of $3672. I invite counsel to confer as to the way the reparation is divided between family members, and if counsel cannot agree, leave is reserved for either party to submit that matter to the Court for further adjudication.

[66] Finally, I record my appreciation of counsel's detailed and thorough submissions and their invaluable help in addressing the issues arising in this case.

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Judge TRI Ingram
District Court Judge

Date of authentication: 08/05/2018
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.