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THE LEGAL LEADER OF THE PACK

Interview

Gerard Forlin QC is the first lawyer to receive the IIRSM President's Commendation at the Risk Excellence Awards. And with good reason. His skills and legal brain are in demand around the world. Here, he reveals what makes a top barrister in the field of health and safety

“If it goes pear-shaped, you need this guy on speed dial. He is the most demanded workplace, health and safety barrister in the world today.” This is a client describing the expertise of UK-based barrister Gerard Forlin QC and the recent recipient of the IIRSM President's Commendation in last year's Risk Excellence Awards – the first lawyer to receive this prestigious award.

The award recognises Gerard's contribution to the advancement of risk management through his vast legal expertise which, over the past 37 years, has included civil, criminal and commercial litigation as well as consultancy in the areas of health and safety (H&S), corporate governance and manslaughter, disaster, regulatory offences, product liability, bribery and corruption as well as major event planning and crowd safety. He has acted or advised on more than 250 fatality cases, including public inquiries into major UK rail crashes, and acted on some of the most high-profile regulatory and H&S cases in the last 10 years, both in the UK and internationally, including the Grenfell Tower inquiry, Alton Towers, Shoreham Air disaster and the Malaysian Airlines aviation disaster case in Asia.

As a result of this expertise he's in demand around the world and is one of the few UK barristers to have worked in more than 65 countries, standing counsel to numerous PLCs and other organisations, as well as lecturing abroad on behalf of the UK's Foreign, Commonwealth and Development Office, the United Nations and the Association of Southeast Asian Nations (ASEN) on bribery and corruption.

As a specialist H&S lawyer, he is the editor of *Corporate Liability: Work Related Deaths and Criminal Prosecution* and has been busy recently updating the fourth edition, which will

be published this year.

One of reasons for the update of this seminal legal work has been the introduction of the international standard ISO 45001 in 2018, which covers occupational health and safety management systems.

This standard requires organisations to demonstrate they not only have systems in place for identifying, assessing and monitoring H&S risks, but to provide evidence that they are being implemented in order to encourage the development of a strong H&S culture throughout an organisation.

When the new

international standards were being developed, Gerard was advising senior leadership teams around the world that if they did not heed their responsibilities under ISO 45001 then they could end up in court if there was a serious employee injury or fatality on their watch.

Gerard said: “Clause 5 of the standard, titled Leadership and Worker Participation, is of particular importance as it sets out the expectations of the organisation's senior management in taking ownership for the organisation's safety culture.

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A GOOD BARRISTER HAS TO BE A GOOD ORATOR, BE WELL ORGANISED, VERY GOOD AT LISTENING AND HAVE AN EYE FOR DETAIL

organisation has to demonstrate a clear commitment to H&S, taking overall responsibility for keeping their workers safe, as well as integrating the Occupational Health and Safety Management System processes within the organisation.

“Things have ramped things up quite dramatically since the roll out of ISO 45001 and I’m aware of investigators and prosecutors in cases that are asking board directors and senior managers about the extent to which they have or have not followed the guidance given in ISO 45001. They have made it very clear that senior management have a responsibility for their employees in terms of H&S violations and they want evidence from them to prove that they followed the standard.

“For example, in the UK, under the Corporate Manslaughter and Corporate Homicide Act 2007, one of the factors that the judge will direct the jury to look at in court is the H&S culture within an organisation – the focus is not what they said they were doing but what was actually happening on the ground.

“ISO 45001 will increasingly be used by prosecutors in relevant cases. If an accident happens because of non-compliance with an aspect of the standard, and it can be shown that this situation persisted for some time with no intervention, or that a specific person was not disciplined or retrained, then the whole of the senior management team is potentially liable.

“The law is now very clear in H&S cases that the test for directors and senior managers of organisations is all about what they ‘ought’ to have known, rather than what they ‘said’ they knew. It’s an objective, not subjective test.”

This is of particular concern for the international organisations with multiple sites in different countries. All the sites need to adhere to the ISO 45001 standard otherwise the liability for an accident or incident in a subsidiary on the other side of the world may land on the boardroom desk of the parent company.

Gerard added: “ISO 45001 requires global organisations to modernise, harmonise, reorganise and customise their operations wherever they take place. Increasingly, courts and regulators are looking not only at the record of companies or organisations domestically, but also their global track record when considering enforcement and prosecution. For those that don’t take action, then the prosecutors and claimant lawyers could be waiting in the wings.”

In addition to taking H&S-related legal cases, Gerard also advises organisations on legal risk, including running mock court cases with management teams and others, sometimes using actors to make the scenarios as realistic as possible.

He explained: “I enjoy these corporate acting events as it is a very effective way of opening the eyes of management to the risks in their businesses. I’ll explain the context of the scenario and the legal aspects, then we will act out court scenes for a couple of hours and then discuss strategies.

“Often, it’s not just about what someone actually does that causes a risk; it can be what they didn’t do. A lot of these regulatory offences, or corporate manslaughter cases, are triggered by what we lawyers call ‘omission’ when a person fails to act when he or she is actually required to act.

“I’ve done over a hundred of these over the years and they



Gerard has worked on the Grenfell Tower inquiry (above)

are very effective at getting senior people to consider what could happen. I had one chief engineer on a big infrastructure project tell me that what I achieved in two hours he’s been trying to get over to his senior management team for the past 35 years!”

WHAT MAKES A GOOD LAWYER?

So what does Gerard put down to his success over the years representing both plaintiffs and defendants? He said: “Like Thomas Edison, I think it’s 99% perspiration and 1% inspiration, but a good barrister has to be a good orator, be well organised, very good at listening and have an eye for detail. You also need to be intuitive, and social intelligence is important, as the whole process is very much about trying to get your point across to people.”

He says it’s vital that lawyers work both ‘sides of the fence’ for experience and to hone their skills, as he explained: “I find that some of the best defence lawyers are often ex-prosecutors because they have a 360-degree approach to the case; they can understand the point of view of all parties which brings a better breadth of knowledge and helps with tactics.”

Paying attention to the needs of jurors is also very important as Gerard

explained: “In rail and aviation disasters you are often dealing with highly complex information. For example, there was one inquest where the concept of a gearbox was crucial, but I could see that some of the jury were not fully understanding what was being said, so I repeatedly called for it to be explained again. The coroner did not seem particularly happy to be going over the same ground, but a couple of jury members made it clear in court that they were grateful for this clarification.

“It shows you also need to be tenacious and ensure that technical information is broken down to a level that everyone can understand.”

Although Gerard has taken on many high profile legal cases over the years he is reticent to comment on them as many have involved tragedies, but if there was one he was very proud to talk about it would be an appeal he helped win on behalf of Robert Morgan, the train driver convicted of the manslaughter of the five people who died in the Purley train crash in 1989.

Gerard explained: “This has always struck me as being the wrong decision. Mr Morgan was convicted of running a red light which led to the crash and fatalities on the Littlehampton to London Victoria train when it collided with another train. However, in 2007 Anthony Scrivener QC and I brought his case to the appeal court with the help of the solicitors and experts, who gave their time for free, to prove signalling system infrastructure was faulty. This information was not known at the time and we were able to overturn his conviction.

“Although he had spent time in prison, we were able to clear his name which was a huge relief for him having borne the weight on his shoulders for those 18 years.”