

## Case In Point

# Ontario Court of Justice Dismisses OHSA Charges Where Worker's Unauthorized Act Led to Injury

**Date:** September 3, 2015

In a recent decision, [R. v. ABS Machining Inc.](#), the Ontario Court of Justice dismissed *Occupational Health and Safety Act* ("OHSA") charges against an employer where the injured worker's unexpected and unauthorized act led to his injury.

The decision confirms that employers can succeed in defending charges on the basis of due diligence when workers act in unforeseen ways. Employers will not necessarily be held responsible for their workers' conduct if they have made reasonable efforts to prevent foreseeable injuries. The Court also provides helpful comments that it is not reasonable to require supervision of workers at all moments, for all things, and that an inspector's failure to issue a stop work order may be relevant. With sound safety measures and procedures in place, employers can increase their chances of defending against OHSA charges laid against them, and avoiding the ensuing penalties.

In this case the worker, who was not responsible for rotating a large piece of equipment, used an overhead crane to rotate a large spindle that weighed about 10,000 pounds. When he used improper equipment to do so, the spindle fell off its stand and onto his foot, which had to be amputated. The Ministry of Labour charged the employer with failing to ensure that the spindle was moved safely and failing to properly train the injured worker.

The Court concluded that the injured worker's supervisor had not instructed him to rotate the spindle. It also concluded that a reasonable employer could not have foreseen that the injured worker would rotate the spindle on his own and do it in the manner that he did, for the following reasons:

- there was no evidence that a junior employee had ever previously tried to move a large piece of equipment like the spindle before;
- there was a protocol in place which the injured worker acknowledged that he understood;
- the way in which the worker rotated the spindle was contrary to his training; and
- the worker attempted to rotate the spindle even though someone in his role would never be responsible for such work.

The injured worker conceded that he had failed to follow his training. Evidence of the worker's training and protocols the employer had in place was key to the due diligence defence.

The Court concluded that the employer had established due diligence: it took every reasonable precaution in the circumstances, and could not have anticipated that the injured worker would rotate the spindle. The OSHA charges were dismissed.