



The Occupational Health and Safety Tribunal Confirms Due Diligence as a Defence to a Finding of Accumulation of Snow and Ice

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In *Macdonald Cartier International Airport Authority*, 2015 OHSTC 5, an employee was injured after being struck by a baggage cart when it slid over ice and snow. This led to an initial finding by the Health and Safety Officer of a violation of section 125(1)(p) of the *Canada Labour Code* and subsection 2.14(1) of the *Canada Occupational Health and Safety Regulations* and a direction to comply against the Macdonald Cartier International Airport Authority (“the Airport”) for allowing an accumulation of ice and snow.

On Appeal, the Airport successfully argued that it exercised due diligence in its snow removal operations and the direction issued by the Health and Safety Officer was rescinded. Although the Appeals Officer noted that the defence of due diligence under subsection 148(4) of the *Code* did not strictly apply because the Health and Safety Officer only issued a direction and no charges were laid, the Appeal Officer nevertheless considered all of the circumstances in setting aside the initial direction, noting that literal compliance with the statute would render compliance nearly impossible.

This decision also confirms established jurisprudence where directions have been rescinded when an employer is kept unaware of a potential contravention. Having recognized the excellent snow removal operations in place at the Airport, the Appeals Officer ultimately placed the blame on the airline itself for failing to bring the snow/ice issue in the area of the accident to the Airport’s attention earlier in the day. The direction was rescinded because the Airport had not received a service request for snow or ice removal and had fully respected its winter maintenance procedures.

This case serves as an example to employers’ of the importance of record keeping in the Occupational Health and Safety context. Through excellent record keeping the Airport was able to show that it had an industry leading snow removal operation in place from a policy and procedure perspective, and furthermore, that those policies and procedures were actually followed in practice.

Most importantly in the circumstances of this case, the Airport was able to produce records for service requests for particular snow or ice removal issues made by airlines, and show that no request had been made to address an issue in the area where the accident took place.

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