

# Are Workers on Workers? Comp Guilty of Not Reporting Health Improvements?



Under workers' comp law (Sec. 149(2)) a person who 'willfully fails' to inform the WSIB of a material change of circumstances in connection with their entitlement to benefits can be fined up to \$25K and/or jailed for 6 months. What exactly does 'willfully fails' mean or, in legal terms, what is the *mens rea*, or mental state, required to cross the 'willfully' boundary? A new Court of Appeal ruling tying together 3 separate cases addresses this crucial question:

Situation	Lower Court Rulings	High Court Ruling
Surveillance cameras show a worker getting full loss of earnings for permanent impairment & incapacity to work driving, carrying groceries and doing other physical activities	<u>Trial</u> : Didn't violate 'willfully fails' rule. Worker didn't speak English nor understand the rule. Navigating WSIB website to figure out what 'material change' means is hard enough for a full English speaker without injuries <u>Appeal</u> : Acquittal overturned & new trial ordered	<u>Not guilty</u> . Crown didn't prove worker acted with the <i>mens rea</i> required
Surveillance cameras show a worker getting full loss of earnings & personal care allowance for an assistant for head/brain injuries driving and doing other physical activities independently	<u>Trial</u> : Worker violated 'willfully fails' rule. Since he wasn't in an 'unconscious or dissociative state,' his omission to notify WSIB could be interpreted as willful <u>Appeal</u> : Conviction upheld as reasonable	<u>Conviction set aside &amp; new trial ordered</u> to determine if trial court was right in interpreting omission as willful act
Surveillance cameras show a worker getting benefits for a debilitating chronic pain driving, laying bricks & shingling his roof	<u>Trial</u> : Guilty. The stuff worker was doing was so far beyond his reported capabilities that he just had to know he had improved and should have reported it to WSIB <u>Appeal</u> : Conviction upheld	<u>Conviction set aside &amp; new trial ordered</u> . Neither court addressed whether the worker had the required <i>mens rea</i>

[*Workplace Safety and Insurance Board v. Curtis*, 2018 ONCA 441 (CanLII), May 10, 2018].