

# Brief Senior Management: The Duty to Protect Visitors to the Workplace



A retired engineer went to the site of a construction project near his home to speak to the workers about the work they were doing and methods they were using. As he was leaving, he fell through an uncovered stairwell opening and was in a coma for six days. When he emerged from the coma, he was left with lingering serious health problems. The contractor in charge of the site where the injury occurred was hit with four safety violations. A Nova Scotia court convicted the contractor on all counts, ruling that it had a duty to protect the engineer while he was at the worksite. The court fined the contractor \$10,000 and ordered it to implement a safety audit's recommendations costing \$30,200 [*R. v. Tricell Construction Ltd.*].

## THE PROBLEM

Workers aren't the only people in the workplace that companies have a duty to protect. Companies must also protect visitors, such as contractors, deliverymen and even government safety inspectors. Obviously, a company's energies will be focused primarily on ensuring the safety of its own workers, who are typically more at risk than visitors. But companies can't simply ignore their duty to visitors. The *Tricell* case is an example of the consequences companies can suffer when they fail to take reasonable steps to protect visitors to the workplace.

## THE EXPLANATION

The duty to protect visitors to the workplace comes from three places:

**Occupier's liability laws.** Most jurisdictions have so-called 'occupier's liability' laws that impose a duty on the owners or users of property to take reasonable care, under the circumstances, to see that visitors are reasonably safe on the property.

**OHS laws.** The OHS laws may require employers to protect not only workers, but also other people in the workplace, such as visitors. For example, Nova Scotia's *OHS Regulations* states that where a project may cause a hazard to a pedestrian or 'other person at or near the workplace,' the employer must take 'adequate precautions' to ensure the safety of that pedestrian or other person.

**C-45.** The *Criminal Code* as amended by C-45 requires persons who control work to take 'reasonable steps' to protect individuals affected by the work. This duty covers not only workers but also visitors. Thus, a company or its officials can be liable for criminal negligence if a visitor is killed or seriously injured as a result of a workplace incident that occurred as a result of their 'wanton and reckless indifference' to safety.

Visitors also tend to be especially vulnerable. Workers have a leg up because, presumably, they've been properly trained on the hazards in the workplace and the company's safety rules and emergency procedures. Visitors, in contrast, typically walk into a workplace completely ignorant of the dangers they may encounter and unprepared to avoid those dangers. They probably don't have the necessary information and tools to protect themselves. That's why it's not appropriate for the company to simply make visitors responsible for their own safety.

Companies must be proactive and take steps to protect visitors to the workplace. But the company has to take only *reasonable* steps to protect them. In other words, those steps should be proportional to the risks visitors will face in the workplace. For example, visitors shouldn't be handling hazardous substances when they visit your site. So it's not necessary to give visitors the same WHMIS training you give workers. But requiring visitors to a construction site to wear hardhats at all times is a reasonable step.

The engineer in the *Tricell* case wasn't working on the construction project. He was simply there as an interested bystander. But construction sites are dangerous and the engineer didn't stop by, ask a few questions and leave—he was at the site for about *two hours*. And the longer he stayed, the more likely he was to get hurt. In addition, the engineer wasn't observing the work from the ground; he had climbed to the third floor of the building, which was more dangerous than the ground. And although there was a sign at the site that said 'authorized personnel only,' no one ever asked him to leave. *Bottom line:* The contractor did nothing to ensure the engineer's safety—and both it and the engineer paid the price.

## THE LESSON

Ensuring the safety of the company's workers is challenging. Protecting visitors to the workplace can be even more challenging. Many aspects of the company's OHS system that protect workers will also serve to protect visitors. However, there are additional steps that senior management must ensure the company takes to protect individuals who visit the workplace. Ideally, you should ensure that the company has a written visitor safety policy—and that workers and supervisors comply with that policy, which should:

- Require visitors to sign in and out;
- Limit visitor access to especially hazardous areas of the workplace;
- Assign a company representative to escort visitors;
- Inform visitors of the hazards in the workplace and emergency procedures;
- Require visitors to wear PPE, such as hardhats, if appropriate; and
- Set rules of conduct for visitors, such as don't touch the equipment, no smoking and stay out of restricted areas.

## SHOW YOUR LAWYER

*R. v. Tricell Construction Ltd.*, [2008] NSPC 31 (CanLII), June 11, 2008