

DOS & DON'TS: [û] Properly Maintain Machinery & Equipment



Many workplaces use some sort of machinery or equipment. It's important that you have safety rules and procedures for the use of these devices and that you properly train workers on those rules and procedures. But your safety duties as to machinery and equipment don't end there. You also need to ensure that machinery and equipment is properly maintained. For example, you should regularly inspect equipment, clean it, replace worn or broken parts, oil or lubricate moving parts, etc. Failing to properly maintain machinery and equipment can cause it to fail and endanger workers. Poor or inadequate maintenance can also result in OHS violations'and even criminal negligence charges.

That's what happened to a landscaper in Qu bec, who was operating a backhoe. The brakes failed, causing the backhoe to pin a worker against a wall. The worker died from his injuries. As a result, the landscaper was charged with criminal negligence under the *Criminal Code*.

The court noted that the backhoe had been bought in 1976 and hadn't undergone any regular maintenance since then. In fact, an inspection of the backhoe after the incident found that the machine had no braking capacity in the front two wheels, no brake fluid in the reservoir and an all-over braking capacity of less than 30%. In addition, the brake lights, parking brake

and brake pressure gauge weren't functional. And the landscaper admitted that a certified mechanic hadn't inspected the backhoe for at least five years. *Bottom line*: the backhoe had been used for 30 years with essentially no mechanical maintenance.

The court found that the landscaper had clearly breached the duty of care imposed on an employer under Sec. 217.1 of the Code—that is, the duty to take reasonable steps to prevent bodily harm to a worker. As the backhoe's owner, the landscaper had a duty to ensure that the equipment was maintained in a safe condition. The facts establish that the maintenance carried out by the landscaper was poor and, aside from obvious problems, was for all practical purposes non-existent. The court said that, in failing to maintain the equipment, the landscaper 'placed himself in the position of being unaware of the effects of the wear and tear on the vehicle and, as a result, of the risks resulting from that wear and tear,' which recklessly endangered the lives and safety of his workers.

The court concluded that the landscaper had demonstrated 'laxity, even blindness' as to the maintenance of the backhoe. It held that it isn't 'conceivable that a prudent person would use a heavy vehicle for many years without doing at least an annual inspection of the condition of components crucial to its proper functioning.' So the court convicted the landscaper and imposed a conditional sentence of imprisonment of two years less a day [[R. c. Scrocca](#), [2010] QCCQ 8218 (CanLII), Sept. 27, 2010].