Due Diligence Defence as to Guardrail-Related Violations Rejected



At a construction site, an OHS inspector saw an opening in the floor that didn’t have guardrails. He also saw a worker working near this opening, who was wearing a fall protection harness but his rope was too slack. As a result, the prime contractor was issued administrative penalties totalling $1,000, which it appealed. The Labour Board upheld the penalties. An inspector doesn’t have to wait until a worker had actually fallen or was actually at risk of falling to issue an order. Here, the unprotected opening posed a foreseeable risk to the nearby worker. The prime contractor had overall charge of safety on the project. And although it had a safety manual and an on-site safety officer who did daily site inspections, and trained workers, the Board rejected its due diligence defence. For example, guardrails had been in place around the opening but were taken down’and there was no evidence as to why or when that happened [*Southwest Construction Management Limited (Re)*, [2016] NSLB 129 (CanLII), April 14, 2016].