

# Excavation Company's Due Diligence Defence Rejected as to OHS Charges



A truck driver was loading an excavator onto a trailer behind a truck when the excavator slipped off the trailer and fell onto its side. The glass in its cab shattered and he was injured. The excavation company was charged with OHS violations. The court convicted it of failing to ensure the excavator was moved in a safe manner and that the worker wore a seatbelt. It also rejected the company's due diligence defence. The court observed that there appeared to have been a presumption that once oral instructions were conveyed, they would be understood and complied with by workers. But there was no evidence as to how those instructions would be reinforced or enforced or whether any steps were made to ensure that anyone working for the company understood the instructions. And though the company was small, it required a system and process for establishing appropriate written OHS policies and procedures, communicating them, monitoring them and enforcing them in a vigilant manner, concluded the court [*Ontario (Ministry of Labour) v. Anray Ltd.*, [2014] ONCJ 203 (CanLII), April 15, 2014].