

Excavations: CNEST Inspector's Estimate Not Enough to Prove Trench Violation



A CNEST inspector cited a sewer repair contractor for not shoring up the walls of an excavation of more than 1.2 metres. The contractor argued that the trench was less than 1.2 metres and that shoring wasn't required under the part of the OHS regulations exempting excavations with slopes of less than 45 degrees and that don't pose a danger of sliding and brought an expert to testify that the exemption applied. The Court of Québec ruled that the inspector didn't meet CNEST's burden of proving the violation beyond a reasonable doubt and dismissed the charge. The evidence showed that the inspector didn't actually use a measuring instrument and that his determination of the trench's depth was just an estimate. In addition, the expert's testimony proved that the trench was safe without shoring [[CNEST c. Sintra inc.](#), 2022 QCCQ 146 (CanLII), January 17, 2022].