

Further Defenses To OSHA Charges: Officially Induced Error



Have you ever wondered if there's a way to defend against Occupational Health and Safety Act (OSHA) charges beyond the usual due diligence defense? It turns out, there is—a little-known and often misunderstood defense called Officially Induced Error (OIE).

Violations of the *Occupational Health and Safety Act (OSHA)* can carry significant ramifications for both businesses and individuals. Moreover, substantive defenses for *OSHA* breaches are quite scarce.

While it is commonly believed that the only substantive defense against established *OSHA* breaches is due diligence, there exists another substantive defense—albeit seldom successful and often misunderstood—known as Officially Induced Error (OIE).

Officially Induced Error

OIE asserts that a defendant, while possibly guilty of an *OSHA* breach, cannot be convicted because an “official” assured them of compliance with the *OSHA* at the time of the breach. Therefore, any breach of the *OSHA* was not technically the defendant's fault.

OIE is frequently conflated in case law with the first step of

the due diligence defense—the mistaken fact defense. This confusion is understandable as both defenses involve the defendant claiming they mistakenly believed they were abiding by the law. However, appellate case law makes it clear that OIE is a distinct defense related to, but separate from, the due diligence analysis.

The court in *Lévis (City) v. Tétreault; Lévis (City) v. 2629-4470 Québec inc.*, 2006 SCC 12 (*Levis*) succinctly outlined OIE as a defense for regulatory offenses. According to *Levis*, for a defendant to succeed with an OIE defense, they must establish:

1. An error of law or of mixed law and fact occurred.
2. The defendant considered the legal consequences of their actions.
3. The advice was obtained from an appropriate official.
4. The advice was reasonable.
5. The advice was erroneous.
6. The defendant relied on the advice in committing the *OHSA* breach.

The courts have embraced this test, emphasizing that the crucial aspect of the analysis is the objective assessment of both the official's advice and the defendant's reliance on said advice.

The court, in *Ontario v. Sunrise Propane Energy Group Inc.*, 2018 ONCA 461 (*Sunrise*) outlined what does not qualify for a valid OIE defense in the context of *OHSA* breaches. *Sunrise* was a case where an Ontario Technical Standards and Safety Authority (TSSA) inspector was on the defendant's worksite for a compliance visit. This visit was after a Director's Public Safety Order (the "Order") being made that truck-to-truck propane transferring was no longer permitted, subject to certain exemptions. The Order was posted to the TSSA website subsequent to the inspector's visit. As the inspector was leaving the worksite, an employee asked the inspector "Can we

continue operating?” to which the inspector replied “Yes.” Approximately a year after the visit, there were a series of explosions at the defendant’s worksite caused by the truck-to-truck propane transfers.

The inspector testified at trial that as he was leaving the defendant’s worksite he responded “Yes” to the worker’s question as it pertained to other propane transfer practices only, not truck-to-truck transfers. Despite this, the court opined that the reliance on the inspectors “Yes” may have been valid to ground an OIE defense. However, the court attacked the continued reliance of the defendant on the inspector’s “Yes” after the Order was posted to the TSSA website. The court said this continued reliance was not reasonable. Notably, there was no follow up by the defendant after the Order was posted, nor any application by the defendant for an exemption from the prohibition on truck-to-truck propane transfers.

Conclusion

OIE can be a potent defense when circumstances warrant its use. In fact, the courts have interpreted OIE as a rare exception to the legal maxim of *Ignorantia Juris non Excusat* (Ignorance of the Law is Not a Defense).

However, *Sunrise* underscores the pivotal principle of OIE—reasonableness. If a defendant intends to defend against *OHS*A breaches based on OIE, they must demonstrate that they reasonably relied on reasonable advice from a recognized official. Interestingly, such reliance may be valid even when accepted informally as an inspector leaves a worksite. Nevertheless, *OHS*A compliance remains the ongoing responsibility of an employer. Therefore, employers must actively seek out information to maintain compliance, or they may find themselves without a defense at all.

Whether ensuring ongoing *OHS*A compliance or assessing grounds

for defending an *OHS*A breach, employers should seek guidance from qualified employment counsel to safeguard their interests by availing themselves of all the legal tools at their disposal.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: [Filip Szadurski](#)

Spring Law