

OHS Compliance Briefing: Have You Prepared Your Staff for an OHS Inspection?



SCENARIO

A worker sorting bricks on a conveyor tries to fix a jammed machine belt and gets sucked into a dehacker machine. An MOL inspector responding to the incident issues a stop work order and demands safety meeting minutes, a written description of the incident and a sketch of the dehacker machine. These are materials that the inspector isn't allowed to access without a warrant. But the worker designated to represent the company during the inspection doesn't realize this and hands over everything the inspector asks for. The MOL charges the company with OHS violations and uses the materials the rep handed over to the inspector as evidence [[R. v. Canada Brick Ltd.](#)].

THE PROBLEM

OHS laws require employers to cooperate with and refrain from obstructing government inspectors who show up at your site. But cooperation doesn't necessarily mean giving inspectors anything and everything they request. Companies being inspected have rights, too, including the right not to provide certain materials without a warrant. But that protection goes out the window if the workers and others representing you during an inspection provide the materials without asking to see the inspector's warrant. Result: Information that you could and should have been able to protect gets disclosed and becomes the basis of charges that may have never been laid otherwise. The company in the *Canada Brick* case learned this lesson the hard way.

THE EXPLANATION

OHS inspectors have a right to conduct warrantless searches after work-related incidents. But once the cause of the incident is fixed, they need a search warrant before they can investigate further—especially if they’re considering charging your company or an individual with an OHS violation. ‘Inspectors can’t use their routine inspection powers to obtain company documents if they believe that an offence has occurred,’ explains a Toronto OHS lawyer. The MOL inspector in the *Canada Brick* case never told the rep that charges might be laid against the company. And he never told any of the workers interviewed of their right to have a lawyer or management representative present. To make matters worse, no one, not even the company’s safety rep, thought to ask the inspector to get a warrant or ask about the possibility of OHS charges.

THE SOLUTION

Cases like this show why it’s important to train managers and workers how to respond when OHS inspectors show up at the workplace. To protect the company’s rights, you must make sure that every person who may have dealings with an inspector knows:

Who to alert: Instruct front desk and other workers that an OHS inspector is likely to encounter upon first arriving who to contact before letting the inspector in. Explanation: Before the actual inspection begins, the inspector must meet with one or more company reps to explain the purpose and scope of the inspection. Be sure you designate somebody to exercise that responsibility and that front desk personnel who that person is. You should probably also immediately notify legal counsel when OHS inspectors show up.

What to ask for: Instruct the company rep to ask inspectors if they’re conducting an inspection or an investigation seeking evidence for use in a potential OHS protection. Explain that

while a search warrant isn't generally necessary for a simple inspection, it likely is for an investigation, particularly if the cause of an incident has been determined and corrected.

What to say: Of course, company reps must cooperate with OHS inspectors'even if they show up for a non-routine inspection without a warrant. But somebody also needs to be on the ball and ask for a warrant if the inspector demands documents or access to workers and company officials. You need to talk to a lawyer about how to respond. For example, it may be advisable to state that you believe a warrant is necessary but give the documents to the inspector to avoid obstruction charges. A detailed record should be made of what was handed over. If the inspector uses it to lay charges against your company, you may be able to get them thrown out.

What their rights are: If an inspector interviews your workers (or other company officials), make sure they understand that they can have a lawyer or company rep present. This is an important right because it protects your company and lets you know what the inspector may use in a subsequent prosecution, giving you time to prepare your response.

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