



FIELD LAW

# Occupational Health and Safety

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## RARE ALBERTA OHS ACQUITTAL

Area of Coverage - [Occupational Health and Safety](#)

On July 2, 2009, the Provincial Court of Alberta acquitted a Calgary construction company of three charges under the Occupational Health and Safety Act. The decision is significant, as acquittals are exceedingly rare in OHS cases. Field Law lawyers Steve Eichler and Laura Buckingham represented the accused company.

The company was charged after an experienced heavy-duty mechanic was caught by a hydraulic mechanism underneath a piece of earthmoving equipment.

First, the company was charged with failing to ensure, as far as reasonably practicable, the safety of a worker. The Court found the accident itself was proof that the company failed to ensure the safety of the mechanic. The case therefore turned on whether the employer had done what was reasonably practicable to ensure safety. The Court noted the many steps the company had taken:

- Hiring: the company hired a qualified and experienced mechanic who had already taken many safety courses;
- Training: the company provided a general safety orientation and further written information;
- Manuals: the company provided a general safety manual and service manuals for all equipment, which included specific warnings; and
- Supervision: the mechanic regularly met with his supervisor, and had monthly reviews of his performance, including evaluation of safety.

The Court found the specific accident was not foreseeable. As the company had been diligent in addressing foreseeable risks, it was not guilty of the charge.

The company was also acquitted of two specific offences under the Occupational Health and Safety Code.

The decision is a reminder of the importance of comprehensive and up-to-date safety procedures. An employer must be diligent about identifying and addressing safety issues in the workplace, and consider safety in all aspects of employment and operations. Ideally, a strong safety program prevents accidents. But if an accident occurs, an employer will want to know, and be able to demonstrate, that it did everything possible to protect its workers.

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