

**NEWSBLAST**  
**May 21, 2009**

**Stock Room Costs Retailer Injured Worker, Conviction, \$50,000 Fine and Bad Press**

The cost of not having a ‘health and safety culture’ can be devastating to a business. Despite this, many retailers do not consider their operations to bear significant health and safety risks. However as one retailer recently learned - the hard way - there are risks and they come with a cost. In the case of Guess? Canada Corporation that cost was \$50,000 when one of its workers was injured in a stock room.

***The Guess? Experience***

On May 12 2009 Guess? Canada Corporation (“Guess”) pleaded guilty to one charge under the *Occupational Health and Safety Act* (“*OHSA*”) after a worker was injured in the stock room of its flagship store in downtown Toronto. The plea resulted in a conviction, a fine of \$50,000 and a 25% victim fine surcharge.

The facts are not unique and could arise in any retail store. A worker was in the stock room putting a box on top of the storage racks. To reach the top shelf the worker stood on an eight foot tall A-frame ladder. Although tall enough, the ladder was not wide enough for the stock room resulting in it not locking safely into place. The ladder tipped over and the worker fell to the ground. The worker was knocked unconsciousness and suffered back injuries as a result of the fall.

***The Occupational Health and Safety Act***

The *OHSA* requires all employers to, at a minimum, take every reasonable precaution to protect the health and safety of workers. Integral to this obligation is an understanding of the *OHSA*’s various Regulations which set out specific measures with which an employer must comply. Guess pleaded guilty to a contravention of section 45(a) of the Industrial Regulations of the *OHSA* which reads as follows:

- 45.** Material, articles or things,
- (a) required to be lifted, carried or moved, shall be lifted, carried or moved in such a way and with such precautions and safeguards, including protective clothing, guards or other precautions as will ensure that the lifting, carrying or moving of the material, articles or things does not endanger the safety of any worker;

While not specifically stated, section 45(a) captures the need to lift, move or carry stock and merchandise in a way that does not jeopardize the health or safety of retail staff.

### ***A Good Reminder...or Three***

The Guess decision is a stark reminder of *OHS*A's application to retail operations. Specifically, it is a reminder of the necessity that every retailer have and nurture a "health & safety" culture including ensuring that every manager and every employee understands and appreciates the following:

- That the *OHS*A applies to retail operations despite the fact that the *OHS*A does not specifically use the word "retail".
- The contents of the Industrial Regulations of the *OHS*A and how those Regulations apply to the workplace.
- The importance of maintaining appropriate health and safety standards in the retail workplace.

At the very least, every retailer should ask itself the following questions. If the answer to any question is "no" or "not always", now is the time to take appropriate action:

- Does my organization have a health and safety representative or a joint health and safety committee?
- Is there a health and safety policy in place?
- Do employees receive training regarding how to perform their jobs safely?
- Is that training documented?
- Are health and safety rules consistently enforced?
- Are stock rooms and storage rooms organized in a way that allows workers to reach merchandise safely and in compliance with the *OHS*A?

To learn more and/or for assistance evaluating, creating, maintaining and/or enforcing appropriate health and safety standards in your workplace, please contact Sherrard Kuzz at 416.603.0700 or through our 24 emergency line which is always answered by one of our lawyers: 416.420.0738

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