

Canada Labour Code
Part II
Occupational Health and Safety

SSI Micro Ltd.
applicant

Decision No. 05-049 (S)
December 6, 2005

Appeals Officer Richard Lafrance heard this request for a stay, on November 21, 2005 and rendered his decision on the same date.

For the applicant

Brian Beresh, Beresh Depoe Cunningham, Agent and Counsel to SSI Micro Ltd.

Jeff Philipp, President/CEO, SSI Micro Ltd.

Health and Safety Officer

Bryan Lloyd, Labour Program, Human Resources and Skills Development Canada
Calgary, Alberta.

- [1] This decision concerns the request for a stay of a direction issued by health and safety officer (HSO) Bryan Lloyd. A teleconference was held on November 21, 2005 with the applicant and the health and safety officer. No other party representing the employees was present. I was informed that this enterprise is not unionized and there is no health and safety committee or representative in the work place.
- [2] The direction issued under paragraph 145(2)(b) of the *Canada Labour Code* (CLC) states that HSO Lloyd considers that the performance of an activity constitutes a danger to the employees while at work. He further directs the employer to take immediate action to correct the conditions that constitute a danger.
- [3] In addition, the HSO also noted the following contraventions with the *Canada Occupational Health and Safety Regulations* (COHSR):

1. SSI Micro Ltd. field operations employees did not observe safe limits of approach to overhead high voltage electrical power lines while erecting a communications tower. 8.5 (7) COHSR
 2. SSI Micro field operations employees were not provided with the necessary supervision, training and instruction while erecting a communications tower. 125.(1)(q) CLC.
 3. SSI Micro field operations employees were not made aware of the known and foreseeable hazards present while erecting a communications tower. 125.(1)(s) CLC
 4. SSI Micro field operations employees were not provided with the necessary personal protective equipment to prevent injury from the hazards present. 12.1 COHSR.
- [4] Counsel for SSI Micro Ltd., B. Beresh, requested a stay of the direction pending the hearing and disposition of the appeal of the decision and the direction issued by the HSO.
- [5] I advised B. Beresh that in the *Metropolitan Stores Ltd.* case¹, the Supreme Court of Canada adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a primary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties suffer greater harm from the granting or refusal of the remedy pending a decision on the merits”.
- [6] I also informed him that there is a fourth test that I take into consideration, and that is: what in the alternative of complying with the direction will the applicant do to protect the health and safety of his employees or any person who could be exposed?
- [7] With regard to the first criterion, B. Beresh indicated that they had a strong case to be heard, that the work was done safely and there is merit for the case to be heard.
- [8] On the second criterion B. Beresh indicated that because of the direction that was issued, some of their clients were refusing to let them carry on with their work and that would cause irreparable harm to the company.
- [9] With regard to the issue of greatest inconvenience, B. Beresh argued again that the direction was stopping them from carrying on with their work and would cause more harm to the company than to the employees.
- [10] Finally, on the fourth test that I pointed out, J. Philipp, indicated that because of the lateness of the season, they would not be putting up any more towers until the spring, as

¹ *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 **Date:** 1987-03-05 – **Docket:** 19609

well, with regard to the installation of other equipment, the employees would receive specific directions on the work to do.

- [11] In addition, B. Beresh indicated that the employees are in possession of the required personal protective equipment and will be required to use it.

- [12] With regard to the first criterion, I find that there is a serious question to be tried as it deals with occupational health and safety of the employees and the fact that there were two fatalities related to this case.
- [13] On the “irreparable harm” test, B. Beresh’s argument that they could not carry on with their work until the case is heard by someone in higher authority is inadmissible. SSI Micro Ltd. can certainly find a way to comply with the direction to protect their employees to the satisfaction of the health and safety officer. The direction issued by the health and safety officer, under the circumstances, is reasonable and in any eventuality will not harm the company but protect the employees.
- [14] On the balance of inconvenience test, I am of the view that the employees risk the greater inconvenience if I grant the stay, as they may not be properly protected.
- [15] Finally, on the fourth test, in fact, the applicants demonstrated that they could meet the requirements of the direction, as they will not be erecting any towers for the time being, therefore meeting the requirement for the first issue of the direction. As for the remainder of the concerns described in the direction it is up to the employer to inform the health and safety officer on how they intend to meet the requirements of the direction.
- [16] Therefore, based on the evidence provided by the applicant and the HSO, the application for a stay is denied.

Richard Lafrance
Appeals Officer