Case Name:

R. v. Hi-Tec Security and Investigations Ltd.

Between
Her Majesty the Queen, and
Hi-Tec Security and Investigations Ltd.

[2004] O.J. No. 779

68 W.C.B. (2d) 584

Court File Nos. Sault Ste. Marie 01-614, 0190, 1206 and 27240

Ontario Court of Justice

W. Cohen J.

Heard: November 4, 2003.
Judgment: February 17, 2004.

(94 paras.)

Trade regulation -- Services, licensing and regulation -- Offences, particular offences -- Carrying on trade without a licence -- Criminal law -- Corporations -- Criminal liability, absolute and strict liability offences -- Criminal liability, directing mind or will -- Criminal liability, defences.

Appeal by the Crown from a verdict of acquittal of Hi-Tec Security on 10 counts of employing unlicensed security guards. The charges were brought pursuant to the Private Investigations and Security Guards Act, and related to 10 employees working for Hi-Tec throughout Ontario in 2001. As part of a purchase of Hi-Tec in 1998, the new owners retained the former owner and manager as consultants, to ensure that Hi-Tec's managers were familiar with the requirements of the Act. Police investigated as a result of complaints by Hi-Tec's competitors that it was employing unlicensed guards. The evidence established that Verrault, the general manager, was responsible for ensuring that the employees were duly licensed under the Act. He admitted that he had not sent in the completed applications, and that the owners of Hi-Tec were unaware that the employees had not been licensed. Verrault was confronted by the owners and resigned in 2002. Immediately upon finding out that the guards were not licensed, Hi-Tec removed them from service until their applications were approved and they were licensed. Following a six-day trial, the justice of the peace dismissed the charges on the grounds that Hi-Tec had made out the defence of due diligence. She found that by keeping on the former owner and manager, Hi-Tec had taken reasonable steps to ensure compliance with the Act. The Crown argued that the justice erred in applying the defence of due diligence where she had found that Hi-Tec's general manager was the directing mind of the company. The Crown alternately argued that, even if the defence of due diligence was open to Hi-Tec, the justice erred in finding that it had been made out on the facts.

HELD: Appeal dismissed. The justice had correctly applied the test for establishing the due diligence defence for this strict liability offence. She found that Hi-Tec was not responsible for Verrault's actions, because it had not encouraged or authorized them. Due diligence had been established in the hiring of experienced personnel to handle the licensing process; Hi-Tec had been entitled to rely on Verrault to carry out the licensing as was expected of him. Verrault had sabotaged the company, but Hi-Tec had not been negligent in relying on him.

Statutes, Regulations and Rules Cited:

Private Investigations and Security Guards Act, R.S.O. 1990, c. P-25, ss. 5(1), 5(2), 5(2)(a), 5(2)(b), 5(2)(c), 5(3), 5(4), 32(1), 32(1)(a), 32(1)(b), 32(1)(c).

Counsel:

B. Whitehead, for the Crown.
P. Cassan, for the defendant(s).

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1 **W. COHEN J.**:-- This is an appeal from the Judgment of Justice of the Peace Forth relating to a finding of not guilty on ten counts under section 5(4) and section 32(1)(c) of the Private Investigations and Security Guards Act, R.S.O. 1990, c. P.25 and the amendments thereto.

2 In the cause of this appeal, there are several matters that are in the forefront.

3 The applicable sections of the Private Investigations and Security Guards Act are set out below:

> 5(1) Every applicant for a licence to engaged in the business of providing private investigators or security guards shall apply to the Registrar for the licence and the licences for each branch office and each employee who is a private investigator or security guard, if any, upon the prescribed form which shall be accompanied by the prescribed fees and a bond in the prescribed amount and form.
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> (2) The bond shall be,
>
> (a) a personal bond accompanied by collateral security,
> (b) a bond of an insurer licensed under the Insurance Act to write surety and fidelity insurance; or
> (c) a bond of a guarantor, other than an insurer referred to in clause (b), accompanied by collateral security. R.S.O. 1990, c. P.25, s. 5(2); 1997, c. 19, s. 40.
>
> (3) The collateral security shall be negotiable securities of the classes prescribed by the regulations, not less in value than the sum secured by the bond, and shall be deposited with the Treasurer of Ontario.
> (4) No person engaged in the business of providing private investigators or security guards shall employ as a private investigator or security guard a person who is not the holder of a licence. R.S.O. 1990, c. P.25, s. 5(3,4).

And section 32:

32.(1) Every person who,

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
(b) fails to comply with any order, direction or other requirement made under this Act or the regulations; or
(c) contravenes any provision of this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than one year, or to both.

4 Because of the timeframes involved in each of the ten counts they are set out as follows:

(a) Hi-Tec Security and Investigations Limited was charged between the dates June 28, 2001 and December 15, 2001, at the City of London, Ontario in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Stanislaus Fernandes, contrary to section 5(4) of the Act.
(b) Hi-Tech Security and Investigations Limited was charged between July 23, 2001 and November 4, 2001 in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Bonnie Collings, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.
(c) Hi-Tech Security and Investigations Limited was charged between the dates of October 20, 2001 and October 23, 2001, at the City of Sudbury, Ontario in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Rene Fortin, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.
(d) Hi-Tech Security and Investigations Limited is further charged between the dates of August 17, 2001 and November 13, 2001, at the City of Thunder Bay, Ontario in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issues under the provisions of the Private Investigators and Security Guards Act, namely William McNeill, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.
(e) The defendant company was further charged between September 25, 2001 and December 12, 2001, in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issues under the provisions of the Private Investigators and Security Guards Act, namely Roy Richardson, contrary to section 5(4) of the said Act, and did thereby commit an offence

under section 32(1)(c) of the said Act.

(f) Hi-Tec Security and Investigations Limited was charged between August 31, 2001 and January 24, 2002, at the City of Brantford, Ontario in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Bill Roesch, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.

(g) The company was further charged between the dates of August 31, 2001 and January 24, 2002, in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Wayne Poulton, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.

(h) Hi-Tec Security and Investigations Limited was charged between the dates of August 31, 2001 and January 24, 2002, at Brantford, Ontario in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Jim Buck, contrary to section 5(4) of the said Act, and thereby did commit an offence under section 32(1)(c) of the said Act.

(i) Further, Hi-Tec Security and Investigations Limited was charged between the dates of August 31, 2001 and January 24, 2002 in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Helen Hines, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.

(j) Lastly, Hi-Tec Security and Investigations Limited is charged between the dates of August 31, 2001 and January 20, 2002, in the said Region and elsewhere in the Province of Ontario, being a person engaged in the business of providing private investigators and security guards, unlawfully did employ as a security guard a person who was not the holder of a licence issued under the provisions of the Private Investigators and Security Guards Act, namely Ralph Toutin, contrary to section 5(4) of the said Act, and did thereby commit an offence under section 32(1)(c) of the said Act.

5 The Ministry appeals the decision of the Justice of the Peace on the following grounds:

(1) The Justice of the Peace erred in law when she found the defence of due diligence to be available to the corporate defendant after having made a finding that Dave Verreault, the General Manager of the corporate defendant, was a directing mind of the corporation.

(2) In the alternative should this Honourable Court find that the defence of due diligence was available to the corporate defendant, the Justice of the Peace erred in fact and law in finding that the corporate defendant exercised due diligence.

(3) Such further and other grounds as counsel may advise and this Honourable Court may permit.

6 As a preamble, it must be set out that there was on agreement between counsel for the Crown and counsel for the defence to amalgamate all the charges from the various locations in the Province of Ontario to constitute one trial in

Sault Ste. Marie.

7 There was also a consensus as to an agreed statement of facts on all counts as follows:

(1) Counts relating to London, Ontario - Hi-Tec Security and Investigations Limited is a business incorporated pursuant to the laws of the Province of Ontario with its head office at 308 Korah Road, Sault Ste. Marie. Hi-Tec is in the business of providing security guard and private investigator services throughout Ontario from its head office in Sault Ste. Marie.

(2) Employment of Stanislaus Fernandes at the Robarts School for the Deaf -- on or about June 28, 2001 to December 15, 2001, Hi-Tec did employ Stanislaus Fernandes as a security guard at 1090 Highbury Avenue in London, Ontario, said premises being known as the Robarts School for the Deaf. Between June 28, 2001 and December 15, 2001, Stanislaus Fernandes was not licensed to work as a security guard in the Province of Ontario. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all materials times hereto, Dave Verreault was the general manager of Hi-Tec. The owners of Hi-Tec, George and Susan Koprash, became aware of the problem with Stanislaus Fernandes on or about November 20, 2001. Stanislaus Fernandes did receive his licence on December 17, 2001. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(3) Employment of Bonnie Collings at the Robarts School for the Deaf -- between June 28, 2001 and November 4, 2001, Hi-Tec did employ Bonnie Collings as a security guard at 1090 Highbury Avenue, London, Ontario, said premises being known as the Robarts School for the Deaf. Between June 28, 2001 and November 4, 2001, Bonnie Collings was not licensed to work as a security guard in the Province of Ontario. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. The owners of Hi-Tec, George and Susan Koprash, became aware of the problem with Bonnie Collings on or about November 2001. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(4) Charges relating to Sudbury, Ontario - Hi-Tec Security and Investigations Limited is a business incorporated pursuant to the laws of the Province of Ontario with its head office at 308 Korah Road, Sault Ste. Marie, Ontario. Hi-Tec is in the business of providing security guard and private investigator services throughout Ontario from its head office in Sault Ste. Marie.

(5) Employment of Rene Fortin at the Sudbury Regional Hospital, between October 20, 2001 and October 23, 2001, Hi-Tec did employ Rene Fortin for three shifts as a security guard trainee at 41 Ramsay Lake Road, Sudbury, Ontario, said premises being known as the Sudbury Regional Hospital. During these three shifts, Mr. Fortin was in full uniform and was working alone to ensure the security of the hospital area. Another guard was on site at the Cancer Centre. These guards were in radio contact with each other. Between October 20, 2001 and October 23, 2001, Rene Fortin was not licensed to work as a security guard in the Province of Ontario. On October 24, 2001, Rene Fortin received a security guard licence. Ten other properly licensed security guards in the employ of Hi-Tec were stationed at the Sudbury General Hospital. Hi-Tec employed Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was general manager of Hi-Tec. The owner of Hi-Tec, George and Susan Koprash

became aware of the problem with Rene Fortin on or about April 12, 2002. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(6) Charges relating to Thunder Bay, Ontario - Hi-Tec Security and Investigations Limited is a business incorporated pursuant to the laws of the Province of Ontario with its head office at 208 Korah Road, Sault Ste. Marie, Ontario. Hi-Tec is in the business of providing security guard and private investigator services throughout Ontario from its head office in Sault Ste. Marie.

(7) Employment of William McNeill at the Thunder Bay Charity Casino -- on or about August 17, 2001 to November 13, 2001, Hi-Tec did employ William McNeill as a security guard at 50-S Cumberland Street South, Thunder Bay, Ontario, said premises being known as the Thunder Bay Charity Casino. Between August 17, 2001 and November 13, 2001, William McNeill was not a licensed security guard. In November 2001, William McNeill received his security guard licence. Six other properly licensed security guards in the employ of Hi-Tec were stationed at the Thunder Bay Charity Casino. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. The owners of Hi-Tec, George and Susan Koprash, became aware of the problem with William McNeill on or about November 2001. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(8) Employment of Roy Richardson at Thunder Bay Charity Casino -- on or about September 25, 2001 to December 12, 2001, Hi-Tec did employ Roy Richardson as a security guard at 50-S Cumberland Street South, Thunder Bay, Ontario, said premises being known as the Thunder Bay Charity Casino. Between September 25, 2001 and December 12, 2001, Roy Richardson was not licensed to work as a security guard in the Province of Ontario. Six other properly licensed security guards in the employ of Hi-Tec were stationed at the Thunder Bay Charity Casino. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tee, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. The owners of Hi-Tec, George and Susan Koprash, became aware of the problem with Roy Richardson on or about November 2001. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(9) Charges relating to Brantford, Ontario -- Hi-Tec Security and Investigations Limited is a business incorporated pursuant to the laws of the Province of Ontario with its head office at 308 Korah Road, Sault Ste. Marie, Ontario. Hi-Tec is in the business of providing security guard and private investigator services throughout Ontario from its head office in Sault Ste. Marie.

(10) Employment of William Roesch at the Brantford Charity Casino -- between November 9, 2000 to present, Hi-Tec did employ William Roesch as a security guard at the Brantford Charity Casino, 40 Icomm Drive, Brantford, Ontario, said premises being known as the Brantford Charity Casino. On November 9, 2000, William Roesch received a security guard licence. On August 31, 2001, the licence for William Roesch expired and the renewal was not received until January 30, 2002. Between August 31, 2001 and January 24, 2002, William Roesch was not licensed to work as a security guard in the Province of Ontario. Eight to nine other properly licensed security guards in the employ of Hi-Tec were stationed at the Brantford Charity Casino. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(11) Employment of Wayne Poulton at the Branford Charity Casino -- between November 8, 2000 to present, Hi-Tec did employ Wayne Poulton as a security guard at the Brantford Charity Casino, 40 Icomm Drive, Brantford, Ontario, said premises being known as the Brantford Charity Casino. On November 8, 2000, Wayne Poulton received a security guard licence. On August 31, 2001, the licence for Wayne Poulton expired and the renewal was not received until January 30, 2002. Between August 31, 2001 and January 24, 2002, Wayne Poulton was not licensed to work as a security guard in the Province of Ontario. Eight to nine other properly licensed security guards in the employ of Hi-Tec were stationed at the Brantford Charity Casino. Hi-Tec employed Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(12) Employment of James Buck at the Brantford Charity Casino -- between May 14, 2001 to present, Hi-Tec did employ James Buck as a security guard at the Brantford Charity Casino, 40 Icomm Drive, Brantford, Ontario, said premises being known as the Brantford Charity Casino. On May 17, 2001, James Buck received a security guard licence. On August 31, 2001, the licence for James Buck expired and the renewal was not received until January 30, 2002. Between August 31, 2001 and January 30, 2002, James Buck was not licensed to work as a security guard in the Province of Ontario. Eight to nine other properly licensed security guards in the employ of Hi-Tec were stationed at the Brantford Charity Casino. Hi-Tec employed Mr. Dave Verreault as a general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(13) Employment of Ralph Toutin at the Brantford Charity Casino -- between November 10, 2002 and January 20, 2002, Hi-Tec did employ Ralph Toutin as a security guard at the Brantford Charity Casino, 40 Icomm Drive, Brantford, Ontario, said premises being known as Brantford Charity Casino. On November 28, 2000, Ralph Toutin received his security guard licence. On August 31, 2001, the licence for Ralph Toutin expired and the renewal was not received until January 30, 2002. Between August 31, 2001 and January 30, 2002, Ralph Toutin was not licensed to work as a security guard in the Province of Ontario. Eight to nine other properly licensed security guards in the employ of Hi-Tec were stationed at the Brantford Charity Casino. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tec, whose responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general manager of Hi-Tec. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

(14) Employment of Helen Hines at the Brantford Charity Casino -- between July 13, 2001 to present, Hi-Tec did employ Helen Hines as a security guard at the Branford Charity Casino, 40 Icomm Drive, Brantford, Ontario, said premises being known as Brantford Charity Casino. On June 29, 2001, Helen Hines received her security guard licence. On August 31, 2001, the licence for Helen Hines expired and the renewal was not received until January 30, 2002. Between August 31, 2001 and January 30, 2002, Helen Hines was not licensed to work as a security guard in the Province of Ontario. Eight to nine other properly licensed secularity guards in the employ of Hi-Tec were stationed at the Brantford Charity Casino. Hi-Tec employed Mr. Dave Verreault as general manager for Hi-Tec, who responsibility it was to ensure all security guards in the employ of Hi-Tec were properly licensed. At all material times hereto, Dave Verreault was the general

> manager of Hi-Tec. Dave Verreault's employment with Hi-Tec was terminated on or about January 31, 2002.

8 The respondent corporate entity Hi-Tec Security and Investigations Limited was originally owned by Geoff Tyrrel and was transferred to George Koprash and Susan Koprash on the 31st day of July, 1998.

9 Because of the Ministry concern and policies relating to having experienced personnel involved in the security business, they had arranged that Dave Verreault, who had approximately 12 years experience working for Mr. Tyrrel, would stay on as a manger (eventually a general manager) in charge of the security and private investigation part of this expanding business.

10 On the 31st day of July, 1998, Mr. Koprash sent a letter to the Ministry as follows:

> "As of July 31, 1998, the ownership of Hi-Tec Security and Investigations will change hands from its present owner, Geoff Tyrrel, to the new owners, George and Susan Koprash. The acting president will by myself, George Koprash, and the secretary-treasurer will be Susan. Hi-Tec's operations manager, Mr. Dave Verreault, will be retained at his present position, and the former owner, Geoff Tyrrel, will also be retained for a twelve-month period. Both of these individuals have a dual security guard, private investigator licence. Both Susan and I feel confident that this new business will operate and flourish smoothly under the direction that we both have over 12 years' experience in our present service company. Presently and for the past 12 years, we have owned and operated Koprash Investments Inc. operating as Sunlite Floor Cleaners. We presently have custodial contracts in Sault Ste. Marie, Sudbury, North Bay, Timmins, Elliot Lake and employ approximately 125 people. Our present annual sale with Sunlit is over $2 million. We are confident that with the help of Hi-Tec's present management we can quickly adapt and learn all required information in order to serve our customers. If you have any questions or require any further information, please do not hesitate to call."

11 The Koprash family had a very successful commercial cleaning business, encompassing the Province of Ontario with approximately 600 employees as at January 2003, and after taking over Hi-Tec Security, with 60 employees, became involved in the armoured car business, again having a general manager in charge of that operation.

12 Mr. Koprash and Mr. Tyrrel were friends and often travelled together, and upon being advised by Mr. Tyrrel that the business was for sale, he negotiated the purchase of Hi-Tec Security Limited. An offer was tendered and accepted by the owner.

13 Based on the transcript of the trial, including the intensive examination in-chief and cross-examination of Mr. Koprash, it seems that the offer to purchase Hi-Tec Security and Investigations Limited was conditional upon the Ministry accepting the fact that they had someone with experience in the investigation and security field to assist the Koprashes in their new endeavour.

14 The offer apparently also set out (it was not tendered as an exhibit) that Mr. Tyrrel, the former owner, would be retained as an unpaid advisor for 12 months to assist them in the event of any unusual situation that may occur.

15 The Ministry apparently would not allow the transfer of the licence to Mr. and Mrs. Koprash unless they had someone (not necessarily Mr. Verreault) who was familiar with the provisions of the Act in a management capacity or at least in the capacity of a supervisor.

16 At this stage I must set out this trial last for approximately six days before Justice of the Peace Forth, eventually with substantial submissions and then one day before myself for submissions with the transcripts, compendium and caselaw filed in advance.

17 The law on point is quite clear and Justice of the Peace Forth has quite clearly set it out in the course of her judgment and set out R. v. City of Sault Ste. Marie (1978), 40 C.C.C. (2d) 353 (S.C.C.) as the leading case relating to strict liability. In this particular instant, Mr. Verreault was the general manager of the corporate entity and was responsible for all matters saving developing new contracts. At the same time he was responsible for the preparation, receipt and tenders to the Ministry of Public Safety and Security of all documentation surrounding applicants for either security officers or private investigators and the forwarding of funds to the Ministry and the applications for renewal. These are standard applications and are sent to the Ministry as a norm, not as an exception.

18 In the course of the testimony it was evident that he did not have the authority responsibility of "not sending the documentation to the Ministry".

19 When the Koprashes made the application to receive the consent of the Ministry for the purchase of Hi-Tec Securities Limited they attached a resume of Dave Verreault which is set out as Appendix A hereto. [Editor's note: Appendix A was not attached to the copy received from the Court and therefore is not included in the judgment.] This deals with his background inclusive of his employment for many years with Hi-Tec Security and Investigations Limited. He spent 12 years working for Hi-Tec Security and Investigations Limited prior to the purchase by Mr. and Mrs. Koprash.

20 The appeal before this court is the result of a six day trial and a decision by Justice of the Peace Forth dismissing all counts against Hi-Tec Security and Investigations Limited.

21 One of the main witnesses for the Crown was Detective Constable Tatasciore, who had been sequestered from the Ontario Provincial Police to take over a new position as Detective Constable with the Ministry of Public Safety and Security in the Province of Ontario dealing with private investigations and security guards.

22 He brought to the court's attention several important factors:

(1) Most complaints relating to an unlicensed security guard from competitors in the security business.

(2) When a security company is successful in a bid for an existing contract, they must offer the existing security personnel the right to work in the same place for the new corporate entity if the individual security officer wishes to continue the employment.

(3) If the security guard's license is not renewed in accordance with the prescribed legislation which is mandated by the Ministry of the Solicitor General, a new application must be made with the necessary documentation.

(4) A security guard may work for three days unlicensed without uniform and without billing the client but a private investigator could not.

23 Detective Constable Tatasciore had received complaints from various competitors in Thunder Bay, Sault Ste. Marie, London, Sudbury and other places where there were security personnel working for Hi-Tec without the necessary licenses. He eventually arrived in Sault Ste. Marie on December 28, 2001 with no advance notice to talk to Mr. and Mrs. Koprash. They were on vacation, and as such he spoke to Mr. Verreault, the general manager.

24 He attended at the offices of Hi-Tec Security on April 12, 2002 and served Susan and George Koprash with four summons relating to the charges before this court.

25 Detective Constable Tatasciore continued his investigation, meeting with Dave Verreault and David Johnson, another employee of Hi-Tec Investments.

26 The trial was rampant with hearsay and conjecture, especially the evidence of Detective Constable Tatasciore.

27 At the same time, during the course of the cross-examination by Mr. Cassan of Detective Constable Tatasciore a very important comment was made by the witness which is set out at page 98 and 99 of the Volume I of the transcript of the trial:

> MR. CASSAN: Q. And why is it that if Dave Verreault told you that he was taking responsibility for all of this, and had the conversations with you where he told you that he had the applications, how does that make a company a disgrace?
>
> A. Because the company is ultimately responsible for the running of the - its business.
>
> Q. Right.
>
> A. And there's accountability there that wasn't had.
>
> Q. Right. And what steps did you take to notify the Koprashes of the problems with Dave Verreault?
>
> A. None. I'm not going to do the work for them.

28 It was noted also at page 103 of the first transcript, comments made by Detective Constable Tatasciore in re-examination:

> Q. Going back to your evidence with respect to a company requiring a -- someone with security experience, to your Knowledge did Hi-Tec meet that criteria?
>
> A. Yes.
>
> Q. Could you explain for the court how?
>
> A. Well, on the submission from Hi-Tec they submitted the name of the previous owner to remain with the company for 12 years (sic) based on his experience.
>
> THE COURT: Twelve years?
>
> A. Or 12 months.
>
> THE COURT: Yes.
>
> A. Based on his experience and the fact that the company would keep him on for 12 months, that was an indication that this company would be getting somebody to help them through the first year of learning this business, coupled with Dave Verreault's experience in the security field. So those two put together satisfied the deputy registrar that this company would meet the requirements of operating this company.

29 Obviously Detective Constable Tatasciore was speaking for the Ministry of Public Safety and Security, in their acceptance of Mr. Tyrrel and Dave Verreault to assist Mr. and Mrs. Koprash in their new endeavour.

30 David Johnson was a witness called for the prosecution. He was working for Loomis Armoured Car Services, a division of the business owed by George and Susan Koprash. David Verreault was his immediate supervisor. After six months of working for Mr. and Mrs. Koprash his duties changed, to the extent that he was on-call for both companies until he left.

31 In the course of the cross-examination of Mr. Johnson by Mr. Cassan at page 139 and 140 of the transcript he states as follows:

Q. Okay. Do you know -- Dave Verreault was the general manager at Hi-Tec, correct?

A. Right.

Q. What were his responsibilities?

A. Well, as -- as far I know, the payroll, oversee the hiring and the firing, the discipline, training and all government stuff like the -- the security guard applications.

Q. On that point, who in Hi-Tec was responsible for the licensing?

A. It was Dave that looked after that.

Q. And was he by himself on that?

A. Pretty much. I guess all he did was whenever he needed the money figures like to -- to send in the guard licences because they weren't a flat fee for the whole year, they were broken up. He would just tell Susan, I guess, what -- what he needed for cheques ...

Q. Right.

A. ... and then have the cheques processed and sent out.

32 His evidence sets out that Dave Verreault was responsible for the licensing of the guards.

33 In the course of Mr. Verreault's testimony, he set out that he had been working for Hi-Tec Security for approximately 15 years, the last three and a half to four years with George and Susan Koprash.

34 When he started with Mr. Tyrell he was a security guard. When the business was sold to Mr. Koprash he was supervisor of operations. Under the Koprash ownership he was the manager, with perhaps 150 to 200 employees as security officers. He set this at page 163 of Volume I of the transcript and I quote:

> The next duty I put down was licensing. I was responsible for licensing of security guards in Sault Ste. Marie and all the other cities in -- in the company. And that involved hiring packages, getting all the information, sending the information off to the licensing bureau, and then getting the return of that. And then seeing what happens with that, and if anything is missing to try and follow up and make sure that licenses are issues properly in accordance with the rules and regulations.

35 His evidence sets out clearly that David Verreault was responsible for the licensing of the security guards.

36 He outlined all his responsibilities, his concerns, the difficulties that he sustained when he was on call. He also gave a detailed summary of his duties, scheduling, hiring, releasing people, et cetera and management training procedures. He acknowledged that licensing of the guards was one of the most important parts of his management duties, and he explained the difficulties relating to incorrect documentation -- missing photographs, et cetera.

37 He had never told George or Susan Koprash there was a difficulty with licensing until the arrival of Detective Constable Tatasciore in Sault Ste. Marie in 2001. The first time Susan and George Koprash were notified that there was a serious licensing situation was when they came back from vacation in January 2002.

38 In the second year of the ownership, Detective Constable Tatasciore came to the company because there was an issue re licensing. There was an office discussion as to how to stop it involving Detective Constable Tatasciore, the Koprashes and Dave Verreault.

39 During the first week of January 2002, the licensing issue had surfaced again, and as a result of this Mr. Verreault was asked to resign or be fired.

40 David Verreault was involved in the Evelyn Massolin case in Sudbury. She was hired to do loss prevention in Sudbury and needed a private investigator's licence.

41 In September 2001, she gave the licence application to Mr. Verreault. She called Mr. Verreault every week to ascertain why the licence had not been finalized and the employment commenced. He apparently told her that she was missing information on her application and that it had not been sent in.

42 The client was concerned and called George Koprash. There were certain conversations and discussions between Mr. Koprash and Mr. Verreault relating to the number of letters that had to accompany this particular application.

43 On December 11, Mr. Koprash became involved because of calls from Evelyn Massolin and his clients to the extent that he called the Ministry. They had no recollection of any application having been sent in. The application was actually found in Mr. Verreault's desk, along with other unsubmitted licence applications, specifically for the security guards relating to the charges in London and Thunder Bay.

44 Many of the applications that had not been processed were found under the hanging file hidden under a piece of wood in his desk drawer. Mr. Verreault had difficulty in explaining the place of location and the reason for the placement.

45 Mr. Verreault set out that he had the applications, knew that these persons were not licensed, allowed them to work and did not tell the Koprashes about the situation.

46 He acknowledged that he was an expert in the security guard and private investigators business and his expertise was necessary for the purpose of the Koprashes receiving the licence. It need not be him but the expertise was necessary. He also set out that the signing authority for the licence applications or licence renewals was with Susan Koprash, George Koprash and the general manager himself, Dave Verreault.

47 Susan Koprash gave evidence in the course of the trial and set out that Dave Verreault came highly recommended and appraised the court then that one of the conditions of purchasing the company was that they retain Mr. Verreault as their manager. She eventually changed the title to "general manager". He was in charge of Hi-Tec Securities Limited.

48 After the first meeting with Detective Constable Tatasciore she verbally reprimanded Mr. Verreault, and he told her this would never happen again and that he would develop a better system. He appraised her this was a mistake.

49 She set out the number of guards employed by the corporate entity toward the end of Mr. Verreault's employment would be 150, with district supervisors in each city. She also set out that the work done by the guard applicant would be 90 percent of the total timeframe necessary for the production of the final draft to be sent to the Ministry in Toronto. Physically, it should take only a few moments to sign the necessary documentation, have a cheque drawn and move forward. This was not a huge operation.

50 Evelyn Massolin's application fiasco came forward. They found the missing documentation on Mr. Verreault's credenza in his office, mixed up with a bunch of papers. The application had never been sent in to the Ministry.

51 During the initial contact with Evelyn Massolin and during the conversation with Mr. Verreault he would tell her or tell someone in the office that the documentation was at the Ministry and that they were very slow or that they had changed their system and would take a little longer to perfect the application.

52 Once the Koprashes realized that the Evelyn Massolin application had not been sent in, it was sent and the licence was returned confirmed within a week.

53 When they found they difficulties surrounding the missing applications they discussed this at length with Mr. Verreault and eventually went through Mr. Verreault's desk and found the licence applications that were never sent. These were completed license applications. They were found hidden underneath hanging folders. These documents, based on her evidence, should have been sent to the Ministry months before. These were found in January 2002. Once it was discovered that they had investigators and security guards working without a licence, they were pulled off the job instantly until the guards were properly licensed.

54 Mrs. Koprash's evidence in the course of her examination in-chief at page 326 of the transcript is very dramatic:

> MR. CASSAN: Q. So Ms. Koprash, can you tell us after you found out about these -- these -- these licences that were -- perhaps to refresh your memory I'll provide you with the Exhibits Eleven through Twenty-two. When you found these documents, what did you do with them? What was your next step?
>
> A. My next step was -- the following day, was to confront Dave Verreault with everything that I had found. And when I came in, I had asked him a few questions. And the first question I had asked him was, "Do we have any unlicensed guards?" And his answer was, "Absolutely not." And I said, "Okay, and have all the ..." -- my second question was, "Have all the licence renewals gone in the summer before in August and have they all been processed?" And he said, "Oh yes. That was done last summer."
>
> THE COURT: Just one moment, please. The second question you asked him was?
>
> A. Had he sent in all the licence renewals and had they been processed the summer before?
>
> MR. CASSAN: Q. And what was the answer that you received?
>
> A. His answer was absolutely yes, that he had done that, and they had all been processed.
>
> Q. So then what happened?
>
> A. Then I took this pile of documents that I had found which were the renewal applications and some licence applications and went over to his desk, and I plopped them right on his desk in front of him. And that's when I accused him of lying to me. And a look of shock came across his face, and he asked me where I found them. And at this point, this gave me the perfect opportunity to physically show him all his little nooks and crannies and hiding spots where I had found these.
>
> Q. Okay. And what did you tell him about where they were found?

A. What did I tell him?

Q. Yeah. Did you go through ...

A. I told him that they were hidden under these -- these hanging files. I had asked him how he could do such a thing. And I was upset, and I told him how -- I asked him how he could lie right to my face. I became very angry. I was very upset. He just sat at his desk, in his chair, and just shrugged his shoulders. Didn't say anything. And at this point my frustration level was peaking. I became angrier with him. He then just sat there.

And I asked him a question that I wanted an answer to, and he didn't answer. And I asked him if he deliberately tired to sabotage my company. And he didn't answer me. He just sat there, shrugged his shoulders. The whole time that I was fuming, he didn't say anything. He didn't give me any kind of response. He didn't give me a reason. He didn't even give me a lame excuse as to how this could have happened. So I became quite frustrated. My voice was very raised. I was shouting at him to levels that I don't think I've ever heard myself shout. As a matter of fact, Marie Rathbone heard me and her office is on the second floor quite a distance from my office. My door was shut when I was discussing this with him.

55 Mr. Verreault resigned on the 31st of January, 2002.

56 Mrs. Koprash set out that they had assigned the licensing responsibilities to Dave Verreault. He never had the authority to make the decision not to send in the licence renewals. The system first starts with the guards filling out the licence application. The guards would give the application to the supervisor who would review the application with the employee, ensuring that all the information is filled, ensuring that all the necessary documentation was attached with it -- photographs, et cetera, with a $30 fee, and then have this sent to the main office to be checked and signed by Dave Verreault. The policy was that no guard would be working without a licence. They must be licensed, both security guards and private investigators. This was discussed with Mr. Verreault and acknowledged by him.

57 Mrs. Koprash acknowledges that she has had no prior experience in the security business, and that is the reason it was necessary to have some person with prior experience involved in the operation of the company. Simply put, Mr. Verreault, the general manager, was responsible to ensure there were no unlicensed guards working anywhere without a licence.

58 She also explained during the course of cross-examination that Geoff Tyrrel was purely a consultant, unpaid for 12 months, strictly for the purpose of assistance if deemed necessary, for his expertise.

59 She admitted that when the current charges were laid, the ones presently before the court, she still had no idea of the licensing positions. She appraised the court then that she had a management team with duties assigned to them. She was very adamant that Mr. Verreault did not have the authority to make the decision to not send the licenses.

60 During the course of her cross-examination she appraised the court that after Mr. Verreault had left, it took her only a few moments to process each licence application, one afternoon to learn his duties with respect to licensing and prepare the packaging to send to the Ministry.

61 Lynn Bishop gave evidence as to being involved in the situation surrounding Ms. Massolin and assisting Susan Koprash in searching Mr. Verreault's desk for the licences and anything else that may be surfacing. She verifies the fact that the missing licences were found flat on the bottom of the drawer with a piece of wood on top, hidden underneath all the hanging folders. She told the court that Dave Verreault told her that all the licence renewals for Hi-Tec had been sent into Ministry.

62 Kim McMillan took over as the general manager for Hi-Tec Securities as of March 2002, and basically his responsibilities took place after these charges were laid.

63 The building that Hi-Tec Securities and Sunlite Cleaners were located on the main floor of a two-storey, 45 foot building on Korah Road in the City of Sault Ste. Marie with a divider wall down the centre, Sunlite being on one side, Hi-Tec on the other. In the back area, there is a coffee area, lunch room with a general meeting area in the back. It was not an office tower.

64 George Koprash appraised the court that he had very little to do with Hi-Tec other than visiting clientele and that when he purchased the company, he was assured that Mr. Verreault had all the systems in place that made the day-to-day operation run smoothly. He had seen Mr. Verreault running this company for several years.

65 There was meeting with Detective Constable Tatasciore on or about the 18th of May, 2000. He identified himself and said that he was up in the Sault investigating a complaint from one of our competitors and said, "This happens all the time." That would be the Bijowski situation who was working without a licence for approximately seven or eight days. They are allowed to utilize only three days training and can't be put to work on a primary basis until they have the licence. It was clarified immediately.

66 Another matter surfaced and Mr. Koprash was in conversation with Mr. Verreault about the circumstances surrounding the Massolin incident. The allegation is that Mr. Verreault said the application had been sent three months ago to the Ministry in Toronto. Mr. Koprash set out that Mr. Verreault told him that the Ministry needed three letters which were sent and the Ministry of Public Safety and Security was lying to him. In fact, they had no record of Evelyn Massolin's application. They never received it.

67 It was conceded by both parties that Dave Verreault was the general manager of the corporate entity. This was set out in the decision of Justice of the Peace as follows:

> It is also conceded by the defendant company that one Dave Verreault was the general manager of Hi-Tec and that it was his responsibility to ensure all security guards in the employ of Hi-Tec were properly licensed.

68 The learned Justice of the Peace correctly set out that these are strict liability offences within the realm of R. v. Sault Ste. Marie, [1978] 2 S.C.R. 1299. It sets out:

> The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

69 The Justice of the Peace's decision goes on further and sets out:

> The crown submits that Dave Verreault was a directing mind of the company. I find from the evidence that he was an employee in a supervisory capacity. In fact, he was the general manager. The court finds that he was not an officer of the company, nor did he develop corporate policy, but he was responsible for the hiring of guards. He was in charge of licensing and licensing renewals. He was heavily relied upon in this aspect of his duties.

70 I look for guidance and take direction from the decision of the Supreme Court of Canada, Stein et al. v. the Ship "Kathy K. et al. (1975), 62 D.L.R. (3d) 1. I quote the headnote because it is direct and most clear:

> "Although findings of fact made at trial are not immutable, they are not to be reversed by the appellate Court unless it can be established that the trial Judge made some palpable and

> overriding error which affected his assessment of the facts. While the appellate Court is seized with the duty of re-examining the evidence in order to be satisfied that no such error occurred, it is not a part of its function to substitute its assessment of the balance of probability for the findings of the Judge who presided at the trial.

71 On the evidence that has been tendered, I am satisfied that she has made the correct decision on that point.

72 I am sitting as an appellate Justice concerned with the evidence tendered during the trial, the law on point, the findings and decision of the learned trial Justice of the Peace. I am not re-trying the trial.

73 I am concerned only with the evidence and procedures that took place before the information was sworn to and endorsed, not that which took place thereafter.

74 The actions that may have been taken after this particular instant would have no reflection on the carriage of due diligence.

75 I quote from the decision of the Ontario Court of Appeal, R. v. Safety-Kleen Canada Inc. (1997), 32 O.R. (3d) 493 at pp. 501-502 (Ont. C.A.):

> An employer must show that a system was in place to prevent the prohibited act from occurring and that reasonable steps had been taken to ensure the effective operation of that system. The trial judge addressed the question of due diligence in her reasons. She said in part:
>
>> I cannot accept the defence of due diligence on behalf of the company. Certainly the court does not look for perfection, but it is necessary that there appears to be a sense of compliance to the regulations by the company. The company had put their drivers in a position of a self-reporting situation. They had delegated to their drivers a degree of trust to comply with the regulations. Nevertheless, it is still their responsibility to ensure strict compliance. They cannot delegate and then close their eyes to non-compliance. There are not sufficient safety guards within their system to check for this type of irregularity in completion of such an important document.

76 In the course of her decision Justice Forth set out this comment:

> As soon as the Koprashes became aware that Dave Verreault was not carrying out his duties as expected, (referring to the Evelyn Massolin matter) they took immediate action. Their response of shock and surprise supports their position that they had no idea that there were licences that had not been renewed. They did not know because Dave Verreault, their general manager and most trusted employee, lied to them. He did everything in his power to control what he could, from intercepting mail, hiding files, keeping vital information from the owners and blaming others for the delay of the renewals.

77 Susan and George Koprash purchased Hi-Tec Security, a corporate entity that dealt with surety guards and private investigators. When they took it over they knew nothing about the necessities of licensing and the various procedures necessary.

78 When they were charged, they still didn't have any basic knowledge or understanding of the licensing procedure.

79 The Ministry had mandated that they have someone in the organization who was familiar with the licensing procedures and could handle this simple mundane clerical task.

80 David Verreault had been with Hi-Tec Security for approximately twelve years. He was the logical person, especially since they had sent his resume to the Ministry as a condition to purchase Hi-Tec Securities from the former owner. He was not a labourer or a truck driver or a clerical assistant. He was an expert in the security field, recommended by the prior owner, accepted by the Ministry and retained by the new owners of Hi-Tec Security to carry the function that he had been performing for years.

81 Mr. Whitehead has presented to me several cases relating to due diligence which I would like to refer to.

82 R. v. Wholesale Travel Group, [1991] 3 S.C.R. 154 (S.C.C.) at page 40:

> Regulation is absolutely essential for our protection and well being as individuals, and for the effective functioning of society. It is properly present throughout our lives. The more complex the activity, the greater the need for and the greater our reliance upon regulation and its enforcement. For example, most people would have no idea what regulations are required for air transport or how they should be enforced. Of necessity, society relies on government regulation for its safety.

83 R. v. 33rd Street N.E. Bingo Association, [2001] A.J. No. 1285 (Alta. Prov. Ct.) (Q.L.) at paragraph 12:

> On the whole of the evidence the Bingo Barn did not have a sufficient system in place to ensure compliance with The Tobacco Act. The system directed at the prohibition concerning the sale of cigarettes to minors was minimal, consisting of verbal instruction with no written materials or any procedures in place to check whether the system was effective. There was no written notification given to employees conveying their obligations under the law, nor any formal written communications concerning the consequences to the employer and employee for failure to comply with The Tobacco Act. The potential for uneven training of staff and the consequential contravention of the Act was very real.

84 R. v. Gold Range Investments Ltd., [1995] N.W.T.R. 269 (N.W.T.C.A.) at paragraph 9:

> In our opinion, the trial judge correctly articulated the due diligence test. He applied it to the evidence before him and found as a fact that the Applicant had not exercised due diligence in complying with section 98(3). He found that the presence of underage patrons on the premises was a "significant" problem and, at least by implication, that the system employed by the Appellant was either not adequate to deal with it or that the Appellant's employees chronically failed to implement the system. He did not suggest any specific deficiencies or possible changes in the system then in place, thereby indicating a standard of care which the Appellant failed to meet. We do not believe he was obliged to do so. De Weerdt J. was likewise under no duty to define a precise standard of care and he did not err in law in failing to do so. The Appellant had the burden of showing due diligence. The Reasons for Judgment of de Weerdt take no issue with the reasonableness of the trial judge's finding that the Appellant failed to show a standard of conduct commensurate with due diligence. In our view, he was correct in accepting the verdicts as reasonable in view of the evidence. There was evidence that the system had failed on more than one occasion and there was therefore some evidence to support the conclusion that the Appellant had not taken reasonable care to ensure compliance with the statute.

85 Both counsel have referenced me to R. v. Napanee (Town), [1990] O.J. No. 731 (Ont. Prov. Off. Ct.) (Q.L.). Obviously in the mind of Mr. and Mrs. Koprash, they had put the necessary controls in place, especially after the Bijowski matter, as Mrs. Koprash set out, spot checking and consultation with Mr. Verreault for approximately six months.

86 While their system may not have been the best, it apparently had worked well for the prior management for many years and for themselves for a short time.

87 We can't forget the finding of Justice of the Peace Forth that the cheques had been made out in favour of the Ministry for the renewals, sent to the Ministry but no documentation accompanied the cheques:

> The evidence before the court is that the cheques for these renewals had been made out by Susan Koprash to cover the cost of renewals, but that the applications themselves were not forwarded by Verreault.

88 The prime factor in this case is not carelessness, negligence, human error or stupidity. Human error may be expected. Of course the defendant in this case has the burden to show due diligence on the balance of probabilities. This case is fact driven.

89 Simply because of the bizarre actions of David Verreault, the most trusted employee/general manager of Hi-Tec Securities, these charges are before the court.

90 This was not done on a momentary or a singular instant. This occupation became a habit, to the extent that when he was questioned by his employer, Mr. Koprash, he said that the Government of Ontario was lying.

91 Irrespective of how many controls are in place, the world's greatest countries and the largest commercial and industrial corporations are often held hostage by the acts of a saboteur in the course of sabotage. The definition of sabotage taken from the Oxford Dictionary is as follows:

> Sabotage -- n. Deliberate destruction of machinery, damaging of plant, manufacture of faulty product, etc., by dissatisfied or disaffected workmen, or by enemy agents in war-time. v.t. Commit sabotage on; destroy, render useless.

92 Their trust in Mr. Verreault was properly founded but negated by his conduct.

93 In my opinion this is not a case of negligence, or carelessness or lack of attention. This is a case of sabotage from within. This may not be an exception, but in my opinion it is a defence under these most unusual circumstances.

94 I am dismissing the appeal. There will be no order as to costs.

W. COHEN J.

cp/e/nc/qw/qlrme/qlkjg