

A Two-Way Street: Owners May Be Liable for Health & Safety Compliance as "Employers" Under the OHSA

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KEY TAKEAWAY: Owners are considered “employers” under the OHSA and therefore, subject to discharging their “due diligence” obligation, may be found liable for ensuring compliance with health and safety requirements during the lifespan of a Project, even if they designate the role of “constructor” to a contractor.

Application to Your Organization

Occupational Health and Safety Act

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1. How they evaluate and assess a prospective contractor’s experience and expertise with respect to health and safety for a project;
2. Whether their construction contract sufficiently allocates risk for health and safety to the “constructor” under the OHSA; and
3. How to mitigate against costs, expenses and other damages that may arise if it is determined that the owner is liable for breaching its duties under the OHSA as an employer, and in particular where the contractor is the party who has maintained control of the project site.

What Happened?

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Question(s) Considered by the Court?

What Did the Court Say?

OHSA

- the owner's degree of control over the workplace or the workers;
- whether the owner delegated control to the constructor in an effort to overcome its own lack of skill, knowledge or expertise to complete the project in compliance with the regulations;
- whether the owner took steps to evaluate the constructor's ability to ensure compliance with the regulations before deciding to contract for its services; and
- whether the owner effectively monitored and supervised the constructor's work on the project to ensure that the prescriptions in the regulation were carried out in the workplace.⁵

OHSA

Learn More

- *R v Greater Sudbury (City)*, 2023 SCC 28
- *Ontario (Labour) v Sudbury (City)*, 2021 ONCA 252
- *R. v. Greater Sudbury (City)*, 2019 ONSC 3285

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¹ RSO 1190, c O.1 (OHSA).

² *R v Greater Sudbury (City)*, 2023 SCC 28 (*R v. Greater Sudbury*).

³ O.Reg 213/91.

⁴ *R. v. Greater Sudbury (City)*, 2019 ONSC 3285.

⁵ *R v. Greater Sudbury* at para 61.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.