

Site Owner Who Hires Constructor May Still Be Liable as 'Employer'

written by Tina Tsonis | January 2, 2024



The most important OHS case in recent years calls into question so-called constructor/prime contractor arrangements that companies have relied on for decades to guard against liability for violations at projects where companies of multiple employers work. The case arose from the tragic death of a pedestrian struck by a road grader while crossing an intersection at a municipal construction site. Controversially, the Ontario top court ruled that the city could be charged as an employer for an OHS violation (failing to ensure that a signaler was in place) even though it had hired a constructor to oversee the work. In a split decision, the Canadian Supreme Court agreed that a project owner can be liable as an employer even if it's not the constructor in control of the project. **Result:** The city would have to answer the charge and prove that it showed due diligence to comply [[R. v. Greater Sudbury \(City\)](#), 2023 SCC 28 (CanLII), November 10, 2023].