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***R v Greater Sudbury (City)* – The Decision and Its Practical Implications**

Part 2 – Panel Discussion

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Agenda



Brief Summary of the Case

- Facts
- SCC Decision

Brief Summary of Key Takeaways

- Employers
- Owners
- Consultants
- Contractors/Constructors
- Subcontractors

Panel Discussion

R v. Sudbury: Facts and Charges

- The City of Sudbury (the “City”) contracted with Interpaving Limited (“Interpaving”) to repair a watermain in the downtown area of the City
- Interpaving assumed control over the entire project as a “constructor” of the project
- Interpaving was responsible for supervising/directing the work and workers
- The City sent its own employees to the site to perform quality control inspection to ensure that the work was properly performed before paying progress payments to Interpaving
- The City employees did not perform any construction work or direct/supervise any workers on the site

R v. Sudbury: Facts and Charges

- An Interpaving employee (not the City's own employee) was reversing a Caterpillar grader at the project site
- There was no fencing or road signaler present at the site as required by O Reg 213/91
- A pedestrian who was attempting to cross the street within the site was fatally struck by the reversing grader



| ***R v. Sudbury: Facts and Charges***

The Ministry of Labour (the “Ministry”) investigated and charged the City as an employer of the project

Relevant charges include:

- failing as an employer, to provide a signaler in assisting the grader operator (required by s. s. 104(2) of O Reg 213/91)
- failing as an employer, to ensure that a fence was erected between the public way and the work site (required by s. 65 of O Reg 213/91)

Issues in Dispute for *R v. Sudbury*

Issues *Not* in Dispute:



- The City was an “owner” of the lands where the project was ongoing
- Interpaving was a “constructor” who undertook the project for the City

Issues in Dispute:



- Is the City an “employer”?
- Did the City breach its duties as an employer (by failing to ensure that a fence was erected and signalers were present)?
- If the City breached its duties as an employer, did it act with due diligence?

R v. Sudbury: Ontario Court of Appeal (Second Appeal Court)



The Ministry appealed the ONSC decision, maintaining a position that the City was an employer on the site because it had its own quality control inspectors on the site

Is the City an “employer”?

- **Yes:**
 - The City can be an employer by: (1) employing a worker on the site, and (2) by entering into a contract for the services of a worker
 - Because the City employed quality control inspectors as workers on the site, it was an “employer” on the site

Did the City breach its duties as an employer?

- **Yes**, the City was liable as an employer for failing to erect the fence and having signalers present

If the City breached its duties as an employer, did it act with due diligence?

- **TBD:** The ONCA sent the case back to the ONSC and directed the ONSC to address the City’s due diligence

R v. Sudbury: What Now?

SCC issued a split decision (4-4), thus Sudbury's appeal of ONCA decision dismissed

The ONCA decision stands:

- Is the City an "employer"?: **Yes**
- Did the City breach its duties as an employer?: **Yes**
- If the City breached its duties as an employer, did it act with due diligence?:
To be determined by the ONSC

Case will be sent back to ONSC - it will decide whether Sudbury acted with due diligence

ONCA decision is currently binding in Ontario (and only in Ontario)

Split SCC decision is not binding, but will likely be persuasive across Canada

Key Takeaways – Employers

- **You will be an employer if you:**
 1. Hire a contractor to perform construction work; and/or
 2. Send your own employee(s) to a construction site
- Owners, contractors, subcontractors and consultants are employers
 - This includes consultants that are sole practitioners!

| Key Takeaways – Owners

- **As an Owner employer you have the obligation to:**
 - ❑ Hire properly qualified constructor
 - ❑ Monitor and enforce implementation of appropriate occupational health and safety management plan (“**OHSMP**”)

| Key Takeaways – Consultants

- **As a Consultant employer you have obligation to:**
 - ❑ Confirm proper training of your employees at a construction site
 - ❑ Confirm implementation of appropriate OHSMP

Key Takeaways – Contractors/Constructors

- **Nothing has changed – your obligations as Constructor remain the same**
- Obligations and liability exposure for your project partners (esp. owners and consultants) has changed
 - Added obligations for OHSMP implementation
 - Full nature and extent of these obligations is uncertain
 - May see more detailed and/or onerous H&S terms in contracts
 - Increased exposure when MOL lays charges?

Key Takeaways – Subcontractors

- **Your obligations largely remain the same**
 - You are still an employer
 - You are still responsible for:
 - safe performance of your own work
 - complying with constructor's OHSMP
- Increased exposure when MOL lays charges?
- May see more detailed and/or onerous H&S terms in contracts

| Industry Panelists

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