

SCC DECISION RELEASED: BROADENING OF LIABILITIES UNDER OHSA CONFIRMED

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On November 10, 2023, the Supreme Court of Canada (“SCC”) released its highly-anticipated [decision](#) on *Ontario (Labour) v Sudbury (City)*. On appeal from the Ontario Court of Appeal (“ONCA”), [previously analyzed by McMillan LLP and in a decision that quoted Partner Dave McKechnie](#), the SCC reviewed the intertwined occupational health and safety duties of owners, constructors, and employers on construction sites. In doing so, the SCC let stand the ONCA finding that an owner, even if their role was limited to occasionally having employees on site for quality assurance, has equal responsibility and liability under the *Ontario Occupational Health and Safety Act* (“OHSA”) as the constructor with whom the owner contracted to oversee the project in the first place.

In dismissing the appeal, the SCC explicitly rejected the suggestion that a party must have “control over workers or the workplace” to be an “employer” and thus bear an employer’s duties and responsibilities under the OHSA. Furthermore, the SCC held that “an owner who contracts with a constructor is an employer”, meaning that the City of Sudbury became an “employer” when it contracted with Interpaving Limited, a specialty roadbuilding company, to be the “constructor” on the project. However, the SCC did provide additional analysis and insights on the due diligence defense that an “employer” may raise, and specifically held that “control” may be a relevant factor in that analysis, even if not relevant when determining who is an “employer” under the OHSA.

Signaling a broadening of liabilities under the OHSA as they have been commonly understood, the SCC decision is expected to have a significant impact for all parties on construction projects, and may potentially be used to broaden liabilities in other contexts as well. McMillan will be conducting a deep dive into the decision to provide more guidance to employers on its key takeaways.

While you stay tuned for our analysis, we encourage you to contact members of McMillan’s Employment and Labour Relations Group if you have questions about how the SCC decision may affect your business practices.