

# Is General Contractor Liable for Subcontractor's Safety Violations?



## SITUATION

Homeowners hire a contractor to perform renovations but he can't perform chimney repairs. The agreement between the contractor and the homeowners doesn't include the chimney repairs and the contractor isn't paid to provide those repairs. But the contractor agrees to act as the general contractor for the renovations and to help the homeowners find someone to do the chimney work. He provides the homeowners with three candidates. The homeowners select one of suggested subcontractors and hire him to fix the chimney. The contractor agrees to receive payment from the homeowner and transfer it to the subcontractor. The contractor shows the subcontractor around the site and agrees to let him use some of the existing scaffolding the contractor built for his own repairs. An OHS inspector visits and finds safety violations related to the chimney repair work, concerning fall protection, improperly erected scaffolding and lack of a safe work plan or hazard assessment. Two of the subcontractor's workers are onsite at the time and refer to the contractor as their boss. So the inspector issues a compliance order to the contractor for the safety violations. But the contractor claims the subcontractor was responsible for these violations.

## QUESTION

**Is the contractor the appropriate recipient of the compliance order'**

- A. Yes, because he's the general contractor for the project, he let the subcontractor use his scaffolding and he controlled the worksite.
- B. Yes, because the subcontractor's workers said he was their boss.
- C. No, because he didn't contract to perform the chimney repairs.
- D. No, because the contractor didn't select or hire the subcontractor'the homeowners did.

## ANSWER

- A. Because the contractor controlled the renovation site as general contractor

and provided the scaffolding used in the chimney repairs, it was appropriate for him to be issued the compliance order.

## EXPLANATION

This hypothetical is based on a Nova Scotia labour board determination that upheld compliance orders issued to a general contractor for safety violations related to chimney work despite the fact that the general contractor wasn't handling the chimney repairs. The board explained that although he merely recommended some potential subcontractors to handle the chimney repair, he retained control of the worksite as general contractor. The board cited the *OHS Act's* internal responsibility system that's intended to impose broad responsibility and prevent parties from placing responsibility for safety on others. The board found sufficient evidence to connect the contractor to the subcontractor's chimney repair work because he assumed general contractor duties, his scaffolding was used for such work and the subcontractor's workers considered him their boss or supervisor. Although his role was limited with regard to the chimney work, the board found he *did* have a role and it wasn't gratuitous. Thus, it was appropriate for the compliance order to be issued to the general contractor.

## WHY THE WRONG ANSWERS ARE WRONG

**B is wrong** because the label the parties give to the relationship isn't the sole determinative factor in creating responsibility under the OHS laws. Rather, it's all of the facts and circumstances that determine the relationship and the responsibilities with regard to general contractor roles and safety responsibilities. Here, the contractor assumed the role of *general contractor*, who's typically in charge of the overall construction project. He also provided equipment used in the chimney repair work and that equipment was in violation of the OHS laws. And he had oversight and control of the worksite. Those factors in addition to the fact that the workers considered the general contractor to be their boss justify the imposition of responsibility for the safety violations on the contractor in this case.

**C is wrong** because a general contractor may have an obligation to the safety of all workers on his worksite, regardless of whether they're working on a task he'd contracted to perform. Under the OHS laws, a general contractor (often called a prime contractor or constructor) usually has a general duty to ensure the health and safety of people in or near the worksite. Here, even though the general contractor didn't contract to perform the specific tasks related to the chimney repair work, which was the focus of the compliance orders, that work was part of the larger home renovation for which he was general contractor, and was performed at the same time at the same site and utilizing some of the same equipment used in the general contractor's work. So as general contractor for all the renovation work, including the chimney repairs, he had a duty to ensure the safety of even that work he wasn't specifically performing.

**D is wrong** because the fact that the homeowners rather than the general contractor selected the subcontractor to perform the chimney repairs doesn't change the general contractor's responsibility to provide a safe worksite. As discussed above, a general contractor has an obligation to ensure the safety at the worksite and thus is primarily responsible for ensuring compliance with the OHS laws at that site. Thus, here, the general contractor can't absolve himself

of responsibility for the safety of workers at the site merely by saying they weren't his employees and he didn't select this subcontractor. Note, however, that the homeowners themselves could have some responsibility under occupier's liability laws, which impose some duty on property owners to protect the safety of 'employees' or others from hazardous conditions on their property.

#### **SHOW YOUR LAWYER**

*Haince v. Director of Occupational Health and Safety*, [2016] NSLB 28 (CanLII), Feb. 8, 2016