

OK to Charge Constructor as “Employer” for OHS Violation, Says Top Court



A case with major liability implications for companies that act as ‘constructors’ at multi-employer work sites began tragically when a road grader at a construction site struck and killed a pedestrian crossing the intersection. The Crown charged the city with failure, as both an employer and the constructor of the site, with failing to ensure that a signaler was in place. The lower court found that the city was neither an employer nor a constructor and dismissed the charges. But the Ontario Court of Appeal reversed. In contracting with the companies that carried out the work and deploying its own inspectors to oversee it, the city was ‘virtually in the position of an insurer who must’ ensure compliance with all OHS requirements before the work begins, reasoned the high Court. So, the case would have to go back down to trial to determine whether the city exercised due diligence [*Ontario (Labour) v. Sudbury (City)*, 2021 ONCA 252 (CanLII), April 23, 2021].