

# Meeting Obligations under the OSHA When Hiring Contractors

Ryan Conlin and Frank Portman  
**Stringer LLP**

[rconlin@stringerllp.com](mailto:rconlin@stringerllp.com)

[fportman@stringerllp.com](mailto:fportman@stringerllp.com)

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# Using Contracts in Ontario to comply with the OHSA

- Responsibilities under the OHSA
- Avoiding issues
  - ❖ Avoiding accidents
  - ❖ Avoiding liability
- Strategies
  - ❖ Contractor selection
  - ❖ Using contracts
  - ❖ Ongoing compliance
  - ❖ Real-world issues

# Liability under the OHSA

- Established through legislation
  - ❖ Constructor (construction)/licensee (logging)
  - ❖ Employer
  - ❖ Supervisor
  - ❖ Worker
  - ❖ Owner
  - ❖ Supplier
  - ❖ Engineer/Architect
  - ❖ Director/Officer

# Party Responsibilities

- Joint, concurrent and separate
- Very limited room for “finger-pointing” defence
  - ❖ Multiple parties may be liable for the same breach
- Employer is broader than direct contract
  - ❖ *R. v. Wyssen*
  - ❖ *R. v. Enbridge*

# Multiparty Prosecutions

- Orders against any party
- Prosecutions can have multiple defendants
- Common in construction prosecutions
- No need to have actual act by representative
  - failure is enough
- Different than criminal prosecutions

# Who to look to

- Companies doing work at your premises
  - Building services providers
  - Contractors
  - Temporary employees
  - Students
- Owners and contractors at premises where you work
- Locations where your employees work

# Goals for Contracting Employers/Owners/Constructors

## ➤ Substantive

- ❖ Reducing likelihood of accidents
- ❖ Improving efficiency
- ❖ Ensuring compliance

## ➤ Legal/procedural

- ❖ Maintaining desired level of responsibility
- ❖ Meeting substantive requirements of Regulations
- ❖ Maintaining due diligence defence

# But how?

- Identify needs and relevant considerations
- Secure the right contract and contractor
- Monitor diligently
- Ensure compliance



# Identify Needs

- Determine what regulation applies
  - Construction
  - Industrial
  - Mining
  - Other (healthcare)
- All reasonable precautions – individualized workplace assessment
- Different regulations and responsibilities
- Potential for hazardous substances

# Construction or Maintenance

## ➤ Why?

- ❖ Constructor
- ❖ Paperwork requirements
- ❖ Substantive requirements
- ❖ Note: OSHA and trades requirements can be different

## ➤ How? – *St Mary's Cement*

- ❖ Is it a project?
- ❖ Scope of project?
- ❖ Addition/install/new or refurbish?
- ❖ Logic

# Selecting the Right Contractor

- Experience
  - ❖ References
  - ❖ Similar project types (industrial vs residential, etc)
- Expertise
  - ❖ Safety policies
  - ❖ Specialized knowledge
- Working relationship

# Constructing the Contract

- Ensure that responsibilities are explicit
- Identify liaisons/responsible persons for OHS
- Dictate responsibility for subcontractors
- Dictate your presence on the site – and limit it if required
- Policy review and contractor guarantee
- Training – who's responsible?

# Policy Review

## ➤ Substantive

- Set out specific provisions of Regs
- Fill in the gaps
- Remember general duty
- Set out reporting responsibilities
- Stop work
- Harassment and violence
- Responsibility for subs

# Ongoing Relationships

- Keep an eye but give space
  - Bringing attention to oversights
  - Avoiding dictating
- BUT
  - Extreme circumstances might warrant intervention
- Knowledge of hazard \* indifference may = criminal

- *R v. Kazenelson*

# Working at Other Premises

- Contractual language setting out responsibilities of parties
- Ensure proper training
  - May need site specific
- Ensure employees can report problems
  - To owner
  - To you
- Responsibility for equipment

# Employment Contracts

- Consider explicitly stating requirement for OHS compliance
  - ❖ Different for supervisors vs workers
- If hire has pre-existing skills, have them endorse them in contract
- Make substantive requirements (PPE, policy review, training) clear
- Just cause at common law if breach of OHSA
  - ❖ Probably not ESA



# Conclusion

- Delineate responsibility
- Ensure compliance
- Goldilocks rule - involvement needs to be just right
  - Not too little
  - Not too much
- Reliance on others – with eyes wide open