

Court declines to quash bid ban imposed by city on paving company

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Facts

Decision

The Ontario court decision in *Interpaving Limited v City of Greater Sudbury* (2018 ONSC 3005 (CanLII)) illustrates the serious business implications that Occupational Health and Safety Act compliance issues or disputes can have on a company.

Facts

The city of Sudbury banned paving company Interpaving from bidding on city contracts for four years on the following grounds:

- Interpaving had sued the city in relation to five city projects or contracts.
- Interpaving violated health and safety legislation.
- Interpaving had "a significant history of abusive behaviour and threatening conduct" towards city employees.

With respect to safety issues, the city noted an incident in 2015 in which a pedestrian was struck and killed by a construction vehicle as she entered a construction zone in which Interpaving was working. The Ministry of Labour issued compliance orders against Interpaving and the city of Sudbury. Interpaving appealed the orders, claiming that the city, rather than Interpaving, was the constructor under the Occupational Health and Safety Act. The city claimed that Interpaving failed to understand its obligations under the act, including its role as constructor, and failed to cooperate with the city on safety matters.

Interpaving asked the court to overturn the bid ban, arguing that the city had not followed a fair process in coming to the decision to impose the ban.

Decision

The majority of the court disagreed. It held that although the city had initially breached its obligation of procedural fairness by not giving Interpaving notice of its intention to debar, its grounds for debarring, a description of the potential penalties or an opportunity to respond, the city had "cured" that breach through its reconsideration and process, which gave Interpaving full opportunity to be heard.

The court stated:

*In the Debarment Letter, the City made reference to 'numerous orders in relation to projects that Interpaving has been involved in for the City... including seven orders in relation to the City's Elgin Street Project issued by the Ministry of Labour'. The reference to OHS orders was also made under the heading 'Poor Contract Performance'. **Contrary to the assertion made by Interpaving, there is nothing unreasonable in the consideration of OHS orders in connection with the quality of Interpaving's contract performance.** (Emphasis added.)*

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Interpaving stated that it employed 200 people in Sudbury and an additional 200 people in the summer. This type of debarment decision by public entities can have a serious effect on businesses. The decision indicates that Interpaving's road paving business is primarily in the city of Sudbury.⁽¹⁾

For further information on this topic please contact [Adrian Miedema](#) at Dentons Canada LLP by telephone (+1 416 863 4511) or email (adrian.miedema@dentons.com). The Dentons Canada LLP website can be accessed at www.dentons.com.

Endnotes

(1) For more information please see www.occupationalhealthandsafetylaw.com.

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