

R v Greater Sudbury:

When are you liable for the safety of other companies' employees?

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R. v. Greater Sudbury (City), 2023 SCC 28

Supreme Court decision

- City of Sudbury contracted with Interpaving to repair watermain at intersection.
- Pedestrian was struck and died. City charged as “employer” under OHSA.
- Parties argued about whether “control” of worksite is factor.
- Supreme Court split 3 ways.

R. v. Greater Sudbury (City), 2024 ONSC 3959

Superior Court decision

- Supreme Court sent “due diligence” question back to Superior Court.
- Superior Court considered SCC’s four-part test:
 1. Did City control workplace and workers?
 2. Did City delegate control to Interpaving?
 3. Did City evaluate constructor?
 4. Did City monitor and supervise constructor?

Tips and managing liabilities

What did we learn?

- Tip #1: implement increased safety measures over those under your control
- Tip #2: delegate control of a project to an experienced, vetted constructor
- Tip #3: principles from *R v Sudbury* may be applied to worksites other than construction sites

Tips and managing liabilities

What did we learn?

- Tip #4: inform constructor of hazards at worksite, and monitor and supervise constructor
- Tip #5: set out in contract exactly what you (the employer) controls and what the contractor controls
- Tip #6: expect broader discretion from the Ministry of Labour with respect to “control”