



# What's New in HR Law

## Update: The Supreme Court of Canada Denies Motion for Re-Hearing in *R v. Greater Sudbury*

February 20, 2024 | By Jeremy Cooney

A recent decision of the Supreme Court of Canada has effectively confirmed that the definition of “employer” under Ontario’s *Occupational Health and Safety Act* (“*OHSA*”) includes project stakeholders, even if they have minimal involvement in the day-to-day operations of the workplace/jobsite.

### Background Facts

Last fall, the Supreme Court of Canada released its much anticipated decision in *R v. Greater Sudbury (City)*, [2023 SCC 28](#) (“*Sudbury*”), a decision which broadly interprets the definition of “employer” under the *OHSA*. Post-*Sudbury*, construction project stakeholders with minimal involvement in the day-to-day operations of the workplace may now be liable under the *OHSA*. For more information on this key decision, see our previous update: [The Role of Control: Supreme Court Confirms Definition of “Employer” under the OHSA](#).

### Bottom Line

Following the initial decision’s release, the City applied for a motion to have the Supreme Court of Canada re-hear the appeal, a rarely used and rarely successful process. The City sought a re-hearing because the original appeal was heard before 8 Supreme Court judges, and the judges were split 4-4 on the key issue of whether stakeholders are subject to employers’ obligations under the *OHSA* even when

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they do not control workers or the workplace. The City argued a re-hearing before a full complement of 9 judges would break the deadlock and provide much needed clarity on stakeholders' obligations and potential liability under the *OHSA*.

The Supreme Court dismissed the motion without reasons in an order issued February 15, 2024, confirming its initial decision.

The case will now return to the Ontario Superior Court of Justice to determine whether the City can establish a due diligence defence.

## Check the Box

The health and safety obligations (and potential liability) of construction project stakeholders remain far from certain and will need to be clarified by future case law. However, stakeholders are at risk of liability under the *OHSA*. In order to protect themselves, stakeholders can ensure the companies with whom they contract have appropriate health and safety policies and systems in place. Stakeholders can also minimize risk by maintaining a degree of supervision over worksites to ensure that all health and safety protocols are being followed.

## Need More Information?

For more information or assistance with workplace safety issues, contact [Jeremy Cooney](mailto:jcooney@filion.on.ca) at [jcooney@filion.on.ca](mailto:jcooney@filion.on.ca) or your [regular lawyer](#) at the firm.

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