

**Motion Requesting the Province of Ontario to Amend the Occupational Health and Safety Act to clarify the definition of “employer” to exclude owners that have contracted with a Constructor for a Project**

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Moved by: Councillor Mulcahy

Seconded by: Councillor Crawford

Whereas in 2015 the City of Greater Sudbury (“Sudbury”) entered into a contract with a contractor to complete a project in its downtown core;

And whereas, the contract provided that the contractor would be the constructor for the project as that term is defined in the Occupational Health and Safety Act (the “Act”);

And whereas, an employee of the constructor operating a grader on the project struck and killed a pedestrian;

And whereas, Sudbury was charged with offences under the Act as the constructor and the employer;

And whereas, after being acquitted at trial and on appeal, the Ontario Court of Appeal, in a decision issued on April 23, 2021, found Sudbury to be liable for contraventions of the Construction Regulations as an employer as it employed quality control inspectors to monitor the quality of work on the project from time-to-time;

And whereas, the Supreme Court of Canada, in a decision issued on November 10, 2023, was evenly divided 4-4 on the issue resulting in the dismissal of Sudbury’s appeal;

And whereas, the consequence of this decision is that municipalities in Ontario, as well as all other owners of property in the province, who wish to undertake construction, are subject to being charged and convicted as an employer for offences in relation to project sites for which they have no control and have, in accordance with the Act, contracted with an entity to assume oversight and authority over the work on such site as the constructor;

And whereas, the potential of an owner being charged as an employer as that term is defined in the Act in circumstances where it has engaged a constructor disregards and renders meaningless the owner-constructor provisions contained in the Act and presents an unacceptable level of increased risk and confusion for owners and contractors throughout the province;

And whereas, The Regional Municipality of Durham believes that the safety of workers is paramount however the safety of workers on construction projects in Ontario is not increased by placing liability on parties that do not have control of and are not responsible for the conduct of the work on such sites;

Now therefore be it resolved:

1. That the Council of The Regional Municipality of Durham requests that the province amend the Occupational Health and Safety Act to clarify the definition of “employer” to exclude owners that have contracted with a constructor for a project; and
2. That this resolution be provided to the Honourable Doug Ford, Premier of Ontario, the Honourable David Piccini, Minister of Labour, Immigration, Training and Skills Development, the Honourable Paul Calandra, Minister of Municipal Affairs and Housing, the Association of Municipalities of Ontario, the Federation of Northern Ontario Municipalities, Mayors and Regional Chairs of Ontario, the Council of Ontario Construction Associations, the Ontario Chamber of Commerce and all Greater Toronto Area municipalities.