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Date: April 24, 2024

Resolution 2024-26: Amendment – Occupational Health and Safety Action – Clarify the Definition of “Employer”

Background:

WHEREAS in 2015 the City of Greater Sudbury (the "City") entered into a contract with a contractor experienced in road construction projects to complete a project on Elgin Street in the City's 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 the City 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 the city 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 dismissal of the City'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 offenses in relation to project sites for which they have no control and have, in accordance with the Act, contracted with an entity to assume plenary 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 disregard 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 through the province; and

WHEREAS the City believes that the safety of workers is paramount however the safety of workers on the 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.

Recommendation:

NOW THEREFORE BE IT RESOLVED THAT NOMA 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.

Moved By: Lisa Teeple, Councillor of Emo

Seconded By: Alex Crane, Councillor of O’Connor

CARRIED



President