JULY 2025

MCA TORONTO
MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO

SAFETY

UPDATE FROM THE MCA TORONTO SAFETY COMMITTEE

Final Ruling in *R. v. Greater Sudbury* Clarifies Due Diligence for Owners

After six years, the legal saga – *R. vs. Greater Sudbury (City)* – has finally ended. On March 31, the Court of Appeal for Ontario denied the Ministry of Labour, Immigration, Training, and Skills Development (MLITSD)'s motion for leave to appeal, leaving the 2024 Ontario Superior Court of Justice decision upholding a 2018 trial court's finding that the City exercised due diligence, as the final word in the *R vs. Greater Sudbury (City)*.

The Ontario Court of Appeal's decision along with the Supreme Court of Canada's reasoning in *R. vs. Greater Sudbury* (City), 2023 SCC 28, sets out a four-part test for determining whether an owner – who is also deemed an employer under the Occupational Health and Safety Act (OHSA) – has established a due diligence defense. The test is particularly relevant when an owner hires a contractor to perform construction work but retains some obligations under the OSHA R.S.O. 1990, C.0.1.

Why does this matter? For contractors and subcontractors, understanding what the owner expects in terms of health and safety compliance is critical—especially when certification

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MCA TORONTO
MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO

595 Cityview Blvd., Unit 7
Vaughan, ON L4H 3M7
Tel: **(416) 491-9004**
Fax: **(416) 491-9007**
www.mcatoronto.org

OUR VISION IS:
To provide awareness, education and training, creating positive work environments with reduced risk.

OUR MISSION IS:
To improve the health and safety of all members of the Mechanical Contractors Association of Toronto

Ontario

what's new

MINISTRY OF LABOUR, TRAINING AND SKILLS DEVELOPMENT

Major Changes Coming to Ontario's Occupational Health and Safety Enforcement – Are You Ready?

The Ministry of Labour, Immigration, Training and Skills Development (MLITSD) is changing how it enforces the OHSA. Here is what Ontario employers need to know:

The province is moving away from the traditional court-based approach to enforcing the Occupational Health and Safety Act (OHSA). Under the newly proposed *Working for Workers Seven Act, 2025* (Bill 30), the MLITSD will soon have new tools to impose direct financial penalties for non-compliance – without going to court.

Key Enforcement Shift: From POA to Administrative Monetary Penalties (AMPs)

Traditionally, OSHA violations have been prosecuted under the Provincial Offences Act (POA) – often using Part I tickets or Part III summonses, both of which involve court appearances, delays, and considerable resources.

Under Bill 30, Ontario will implement a general AMP regime, allowing the Ministry to issue administrative monetary penalties directly to employers or supervisors for violations. These changes are designed to:

- Speed up enforcement;
- Increase deterrence;
- Allow proactive, field-level compliance action;
- Reduce reliance on lengthy POA prosecutions.

Implementation date to be determined (pending Royal Assent and regulations – expected late 2025 or early 2026).

New Occupational Health and Safety Requirements in 2025

1. Clean and Sanitary Washrooms (effective July 1, 2025)

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Dawn of Administrative Monetary Penalties

In an Occupational Health & Safety Update – *"Coming Soon to an Ontario OHS Inspection Near You: Administrative Monetary Penalties"* [1] – a Charter case was cited in which the workers argued that their rights under Section 7 of the Charter – which protects the right to life, liberty, and security of the person – shielded them from being persuaded to participate in interviews without legal counsel. They effectively asserted a right to remain silent in order to avoid self-incrimination.

The court rejected this argument for several key reasons, including the following:

1. **Purpose of the Interviews:** The court emphasized that interviews under the Occupational Health and Safety Act (OSHA) are **not intended for criminal prosecution**. Instead, they are strictly for occupational safety, injury prevention, and investigation purposes.

2. **Safeguard Against Self-Incrimination:** Section 53(7) of the OHSA explicitly ensures statements collected during these investigations **cannot be used as evidence in subsequent trials or other legal proceedings**, effectively removing the threat of self-incrimination that typically triggers Charter protection.

3. **Established Precedents:** The court referenced earlier judicial decisions, particularly the case of *Ebsworth*, affirming that Occupational Health and Safety officers have the

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standards like COR or ISO are involved. The information below offers a valuable overview of the legal framework of the decision and the impact on contractors.

The Four-Part Due Diligence Test *(as reaffirmed by the Supreme Court of Canada)*

To discharge the duty of due diligence under the OHSA, the owner (as employer) must demonstrate that they took every precaution reasonable in the circumstances, evaluated under these four considerations:

1. Control Over the Workplace or Workers

- Did the owner exercise control over the job site or over the workers performing the work?
- If so, how much? This includes whether the owner was issuing directions or supervising the work.
- Less control may reduce the owner's capacity to act but does not remove responsibility entirely.

2. Delegation Due to Lack of Skill or Knowledge

- Did the owner delegate control to the constructor because they lacked the expertise to manage safety directly?
  - o If so, was this a reasonable and prudent delegation?
- For example, did the owner retain a qualified constructor or third party to manage site safety?

3. Pre-Contract Evaluation of the Constructor

- Did the owner investigate or assess whether the constructor was competent and capable of ensuring compliance with the OHSA and applicable regulations before entering into the contract?
- This could include checking

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Major Changes Coming to Ontario's Occupational Health & Safety Enforcement

Employers must ensure that all workplace washroom facilities are cleaned and maintained to a sanitary standard.

A washroom cleaning record must be kept and made available for inspection.

2. Long-Term Illness Leave Expansion (effective June 19, 2025)

Employees with 13 weeks of continuous employment will now be entitled to up to 27 weeks of unpaid leave for serious medical conditions.

A qualified health practitioner's note is required.

3. Mandatory Pre-Employment Information Disclosure (effective July 1, 2025)

Employers with 25+ employees must now provide new hires with a written statement including:

- Legal / operating name of the employer.
- Contact information.
- Work location.
- Starting wage and pay frequency.
- Hours of work and overtime rules.

What Should Employers Do Now?

To prepare for these updates, we recommend that all employers:

- Review and update their Health & Safety Manual.
- Train supervisors on potential AMP risks and compliance strategies.
- Implement a washroom inspection log.
- Update HR onboarding packages with the mandatory ESA information.
- Review your existing leave policies to align with the new long-term illness entitlements.

For more information, visit the official Ontario Government update website.

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the constructor's safety record, certifications, and site-specific safety plans.

4. **Monitoring and Oversight**
   - Did the owner take reasonable steps to monitor the constructor's work after awarding the contract?
   - For example:
     - Periodic inspections;
     - Reporting or responding to known hazards;
     - Raising compliance concerns (e.g., fencing, signage, safety training);
     - Responding to public complaints about safety.

Examples of Steps an Owner Should Take to Demonstrate Due Diligence

Based on the decision, here are practical actions an owner should undertake to satisfy the above test:

- **During procurement:**
  - Vet the contractor's safety training, WSIB history, COR or IHSA status, and regulatory compliance.
  - Include safety qualifications and incident history as part of bid evaluation.

- **At contract award:**
  - Confirm the constructor's understanding and acceptance of OHSA responsibilities.
  - Require site-specific safety plans and orientation (e.g., NORCAT training as in the case).

- **During execution:**
  - Maintain regular documented communications regarding safety issues.
  - Attend progress meetings; raise and document concerns when deficiencies are observed.
  - Take action if safety violations are reported—issue warnings or require corrective action.
  - Document any monitoring, inspections, or follow-up on complaints.

- **Avoid becoming a "constructor":**
  - Do not exercise too much control over the "means and methods" of the work, or you risk becoming the constructor under OHSA's 1(1).

Key Takeaway

While the owner may not be involved in day-to-day site work, due diligence under the OHSA is not passive. Owners must proactively manage risk through informed selection, appropriate delegation, ongoing monitoring, and timely intervention. The Greater Sudbury case makes it clear that "control" limits the available options, but does not absolve responsibility.

– Ian Bergeron, B.Tech., CET, CRSP, Paralegal, VP Safety and Legal Affairs, Sprint Mechanical Inc.

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Dawn of Administrative Monetary Penalties

jurisdiction to conduct interviews without legal counsel present, a practice deemed legally enforceable and not infringing on Charter rights.

4. **No Absolute Right to Counsel in Administrative Investigations:** Even in criminal contexts, the Supreme Court of Canada in *R. vs. Sinclair* clarified there is no absolute right to have counsel present during investigative questioning. If such a right does not exist in criminal proceedings, it is even less likely to be recognized in regulatory and administrative contexts focused on safety compliance.

Key Conclusion: The court concluded that because the OHSA ensures that compelled statements can't be used to prosecute individuals, there is no significant risk of self-incrimination. Thus, the workers' Charter rights to silence or against self-incrimination were **not triggered** or infringed upon in this regulatory context.

– Ian Bergeron, B.Tech., CET, CRSP, Paralegal, VP Safety and Legal Affairs, Sprint Mechanical Inc.

IHSA.ca
Work Safe for Life

Ask a Construction Expert

The Infrastructure Health and Safety Association (IHSA) has announced the launch of a five-episode series focused on construction health and safety. This initiative is specifically tailored for Ontario construction businesses that have recently registered with the Workplace Safety Insurance Board (WSIB). Participants will gain access to free, valuable foundational information that will help them comply with Ontario workplace health and safety legislation.

IHSA's Deb Moskal and David Dametto leveraged their combined 50+ years of experience in Ontario construction health and safety as they

expertly guide participants through five essential topics:

- Mandatory training.
- Hazard assessment.
- Building your health and safety policy statement and program.
- Competent supervision.
- Preparing for an incident.

Watch the five-episode series here.

CALL FOR INPUT:

Excavating & Waterproofing Safe Practices

IHSA is seeking support for its members as it develops an excavating and waterproofing safe practice guide in collaboration with the Ministry of Labour, Immigration, Training, and Skills Development (MLITSD). In particular, IHSA would appreciate the opportunity to observe and capture images of excavation and waterproofing activities at jobsites. This would allow the association to include updated photographs in the guide to enhance its relevance and clarity. Learn more about how you can support this initiative.

IHSA's Free Guide to Ontario's Construction Health and Safety Laws

The Occupational Health and Safety Act (OHSA) and the Regulation for Construction Projects (O. Reg. 213/91) tell everyone at construction workplaces what they need to do to fulfill their health and safety duties. But the legal language in these documents can be hard to understand.

The IHSA Construction Safety App takes the legislation and provides clear, actionable guidance to help IHSA members achieve compliance on a range of topics—and feel more confident about working safely. Recently, in collaboration with the Canadian Centre for Occupational Health and Safety (CCOHS), IHSA redesigned the app to make it more accessible for users and easier to update as regulations change.

More than 23,000 users have viewed the new version of the app since it was launched in September 2024.

Product Spotlight: Health & Safety Mentorship Program

In high-risk industries, it is essential to support the health and safety of less experienced workers by modeling best practices and building a strong workplace safety culture. IHSA's new Health and Safety Mentorship Program guidance provides a framework for reducing workplace incidents among young or inexperienced workers – by helping you assess and improve mentorship at your workplace. **DOWNLOAD NOW**

MLITSD Compliance Campaigns and Struck-By Awareness Week

IHSA is working closely with the Ministry of Labour, Immigration, Training, and Skills Development (MLITSD) to provide resources and expertise during its 2025-2026 health and safety education and enforcement campaign.

As of April 1, Ministry inspectors began raising awareness of fall and struck-by hazards at single- and multi-family residential construction sites.

Ontario's prevention system uses the term "struck-by" to describe the injuries that occur when workers are hit—or struck—by tools, materials, equipment, or vehicles.

Just like falls, struck-by incidents are a leading cause of injuries and fatalities in the construction, transportation, electrical utilities, and aggregates industries. Struck-by incidents are also preventable.

Employers had a chance to reinforce the need to control struck-by hazards during Struck-By Awareness Week held earlier this year *(April 21 to 25)*. A host of safety talks, best practices and much more were included in **IHSA's Struck-By Prevention Toolkit** which is available by clicking here.

Working Together to Improve Workplace Safety

On May 27, IHSA joined with Workplace Safety and Prevention Services (WSPS) to host the 2025 Partners in Prevention Central Region Conference in Mississauga. More than 400 participants heard from industry experts on topics including conducting root cause analyses, building psychologically supportive workplaces, and balancing safety and business.

Visit IHSA on Instagram for event highlights.

UA LOCAL 46
SUPERIOR PIPING SKILLS SINCE 1890

News Update

The Local 46 Training Department continues to be busy developing and delivering cutting edge training for the members of Local 46, to ensure our partner contractors have the trained personnel in place to execute the contracts that they are entering into.

The total number of programs offered by the Training Department is close to 100, which includes trade associated training, a full slate of both gas and oil training, and green certification programs. The JTAC also offers several American Society of Sanitary Engineer (ASSE) programs, including the ASSE 5000 Cross Connection and Survey program. The training department is currently in the approval process for the ASSE 1200 Water Quality, 22000 Water Treatment Installer and 13000 Plumbing Service programs.

The training department also offers courses in forklift safety, mobile elevated work platforms, and Bobcat operation. By the fall, it anticipates being able to deliver the Workers Health and Safety Centre's 0–8 Ton construction crane training. The department remains committed to ensuring all members complete their Work Ready Training before being dispatched to contractors.

The programs offered are generally free for members, with the exception of certain manuals and exam fees. This is made possible through member contributions of 51 cents per hour to the Training Trust Fund. The JTAC is investing approximately $300,000 annually in new equipment and program enhancements. Currently, the training department is in the process of acquiring a TipTig welding unit and an Orbitalum orbital welding system to complement its existing Liburdi orbital welding equipment. These additions will significantly

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IHSA *Safety Talks* Manual

The IHSA *Safety Talks* cover a wide variety of safety topics for the construction, transportation, and electrical utilities industries. Delivered by supervisors or health and safety representatives, a five-minute safety talk (i.e., tailboard talk) provides a hands-on way to reinforce hazard awareness and injury prevention on the job.

Visit the *Safety Talks* web page to download a free PDF version of each individual talk. The 140 talks included cover the following topics:

- Responsibilities and rights.
- Personal protective equipment (PPE).
- Working at heights.
- Rigging and hoisting.
- Electricity.
- Vehicles and equipment.
- Trenching.
- Confined spaces.
- Techniques and tools.
- Occupational health.

- Ergonomics.
- Workplace violence and harassment – ***NEW.***

Use the *Safety Talks* report form (RF023) to record the subject, attendees, and results of each *Safety Talk* presentation. It serves as documentation that *Safety Talks* have been delivered on site.

Workplace Violence and Harassment Resources

The Occupational Health and Safety Act requires employers in Ontario to assess the risks of workplace violence, and develop policies and programs towards eliminating violence and harassment in their workplaces.

IHSA has developed resources to help employers prepare a workplace violence and harassment policy, and create a program to implement this policy.

Racial discrimination in the workplace is a form of harassment. Racial discrimination is any action, intentional or not, that singles out people based on their race and causes them to be treated differently. IHSA has also developed resources to help employers prevent and deal with incidents of discrimination in the workplace.

Here are some links to IHSA workplace violence and harassment resources:

- Violence and Harassment in the Workplace Toolkit
- Workplace Violence Incident Report
- Workplace Violence and Harassment Safety Talk
- Workplace Violence and Harassment: What Employers Should Know eLearning Program.

The Ministry of Labour, Immigration, Training and Skills Development (MLITSD) also offers a host of resources, including the following:

- Workplace Violence and Workplace Harassment web site.
- Workplace Violence and Harassment: Understanding the Law guidelines.

CCOHS
Canadian Centre for Occupational Health and Safety

Workplace Mental Health Toolkit

BEYOND THE ASSESSMENT:

Creating Mentally Healthy and Safe Workplaces

Do you need practical advice for implementing mental health and safety programs in your organization? Maybe you've used an assessment tool and surveyed workers to gather feedback on the state of their well-being. Now what do you do with the results?

Learning modules provided by the Canadian Centre for Occupational Health and Safety (CCOHS) can help you go beyond the assessment by providing actionable takeaways to create mentally safe and healthy workplaces. Learn how to develop a mental health program, how to address hazards and risks, how to have meaningful conversations with co-workers, and how mental health and other human rights concerns intersect.

Check out the resources here.

WSIB Ontario

WSIB Partnership Helps Businesses Invest in Health & Safety

The Workplace Safety and Insurance Board (WSIB) announced today that it has partnered with the Canadian Centre for Occupational Health and Safety to provide all WSIB-registered businesses free access to the centre's new Business Safety Portal.

The partnership will save WSIB-registered businesses up to $1,700 annually on the Business Safety Portal subscription fee.

"This one's on us and is another way we're helping people to invest in their businesses during these uncertain times," said Jeff Lang, WSIB President and CEO. "Last month we delivered $2 billion in surplus rebates and now with free access to valuable health and safety resources, businesses can better protect their people from a workplace injury."

The Business Safety Portal is an online hub that offers a range of industry-specific and scalable resources, like templates, online courses and practical manuals businesses can use to help make their workplace safer and help them meet their legal obligations.

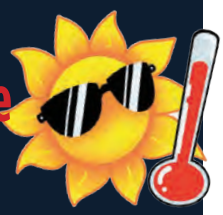
"We created the Business Safety Portal to address the unique health and safety challenges faced by these owners and employers," said Anne Tennier, President and CEO of the Canadian Centre for Occupational Health and Safety. "We're proud to partner with WSIB as they roll out free access to the portal for Ontario businesses. We all share the goal of providing easy access to credible tools and resources that can help keep workplaces and workers safe."

The partnership is part of the WSIB's commitment to help move the needle on workplace health and safety.

To access the Business Safety Portal, businesses can simply log in to their WSIB account at wsib.ca. Businesses can also earn rebates on their WSIB premiums and receive $1,000 every time they create a new health and safety action plan in the Health and Safety Excellence program.

More information about the Business Safety Portal can be found at the Canadian Centre for Occupational Health and Safety's website.

Navigating Temperature Extremes



Construction workers often face the challenge of working in extreme weather conditions, whether it's the intense heat of summer or the bitter cold of winter. Both extremes pose serious health risks—heat stroke is the most severe concern in high temperatures, while hypothermia and frostbite are primary dangers in cold environments. Although there is no legislated maximum temperature limit, occupational health and safety regulations do outline acceptable temperature ranges depending on the work being performed. To help employers manage these risks and protect their workers, the Canadian Centre for Occupational Health and Safety (CCOHS) provides a wide range of guidance and resources tailored to working in extreme weather conditions. Click here for more information.

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UA LOCAL 46
SUPERIOR PIPING SKILLS SINCE 1890
News Update

expand and enhance the welding training programs.

Course registration is a straightforward process. When the registration period opens, members can log onto the Local 46 website and sign up for any course of interest. Enrollment is offered on a first-come, first-served basis, provided the member meets any required prerequisites.

If you have any questions, concerns or comments, please feel free to reach out to me at vincek@ualocal46.org. Your input is the only way we can continue to improve our system.

– Vince Kacaba, Director of Training, UA Local 46 JTAC