SCC File No. 39754

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

CORPORATION OF THE CITY OF GREATER SUDBURY

APPELLANT
(Respondent)

AND:

MINISTRY OF THE ATTORNEY GENERAL (MINISTRY OF LABOUR, TRAINING AND SKILLS DEVELOPMENT)

RESPONDENT
(Appellant)

AND:

WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA, RETAIL COUNCIL OF CANADA, REGIONAL MUNICIPALITY OF YORK, REGIONAL MUNICIPALITY OF PEEL, REGIONAL MUNICIPALITY OF DURHAM, REGIONAL MUNICIPALITY OF HALTON, REGIONAL MUNICIPALITY OF WATERLOO, AND REGIONAL MUNICIPALITY OF NIAGARA

INTERVENERS

FACTUM OF THE INTERVENER WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PARTS I AND II - OVERVIEW AND STATEMENT OF POSITION

[1] Across Canada, occupational health and safety ("**OHS**") legislation creates workplace safety obligations for various parties in order to ensure the safety of workers. Some case law concerning the applicability of these obligations conflates the definition of the relevant workplace party with the application of a particular section of legislation and with the due diligence defense. This conflation, which occurred in this case, obscures the specific questions that OHS legislation requires us to ask, which in turn results in unpredictable and unprincipled enforcement of OHS legislation.

[2] The Workers' Compensation Board of British Columbia ("**WCBBC**") submits that the proper approach to the interpretation and application of OHS legislation is to ask the following four questions:

1. Does the party fall within the definition of the entity, for example "employer", set out in the charging section of the OHS legislation?
2. Does the particular obligation created by the OHS legislation apply to that party?
3. If yes, did the party breach that obligation? and
4. If so, did the party exercise due diligence?

[3] When answering these questions, the broad purposive approach to the interpretation of OHS legislation laid out in *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*[1] ought to be applied.

PART III - STATEMENT OF ARGUMENT

A. Question One – Is the Party Named in the Charging Section?

[4] The first question to ask is whether a party meets the general definition of the entity to which the relevant OHS legislation applies. In this case, s. 25(1)(c) of Ontario's *Occupational Health and Safety Act*[2] applies to an "employer". "Employer" is a defined term under s. 1(1) of

[1] 2018 SCC 22 [*West Fraser*].
[2] RSO 1990, c O.1 [*OHSA*].

OHSA. Where a party directly employs one or more persons, they fall under the *OHSA* s. 1(1) definition of "employer".[3]

[5] OHS legislation across Canada defines "employer" in slightly different ways,[4] but it is not controversial that a person or company directly hiring a worker to carry out work for them is an "employer" for the purposes of OHS legislation.

B. Separating Question One and Question Two

[6] The definition of a workplace party must be separated from the question of whether the workplace party is subject to a particular OHS obligation. The central question in this case – whether s. 25(1)(c) of *OHSA* applies to the Appellant – encompasses much more than just the definition of "employer". *OHSA* s. 25(1)(c) states:

> An employer shall ensure that…
> (c) the measures and procedures prescribed are carried out in the workplace…

[7] This section assigns an obligation ("shall ensure that the measures and procedures prescribed are carried out") to a workplace party (the "employer") in relation to a specific location (the "workplace"). As discussed below, the party, the obligation, and the location, as well as how those elements interact, are all part of determining whether the section applies in a given circumstance.

[8] In the case before this Court, the question of whether *OHSA* s. 25(1)(c) applies has been conflated with the *OHSA* s. 1(1) definition of "employer". The result of this conflation has been a lack of clarity in decision-making that has multiplied, rather than reduced, the disagreements between the parties as this case has progressed.

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[3] The definition of "employer" under *OHSA* also includes those who contract for the services of a worker, but that second branch of the definition is not at issue in this case.

[4] See for example, *Workers Compensation Act*, RSBC 2019, c 1, s. 1 "employer" [*BC WCA*]; *Occupational Health and Safety Act*, SA 2020, c O-2.2, s. 1(k) [*AB OHSA*]; *The Saskatchewan Employment Act*, SS 2013, c S-15.1, s. 2-1(g) [*SKEA*]; *Occupational Health and Safety Act*, SNS 1996, c 7, s. 3(p); *Occupational Health and Safety Act*, RSY 2002, c 159, s. 1 "employer" [*YK OHSA*]; *Workers' Compensation Act*, SNWT 2007, c 21, s. 8 [*NWT WCA*]; and *Canada Labour Code*, RSC 1985, c l-2, s. 3(1) "employer" [*Canada Labour Code*].

[9] The *Trial Decision*[5] found that "The City was clearly not an Employer. The City was not supervising the work. The City was not directing the work."[6] However, *OHSA*'s s.1(1) definition of "employer" does not require any consideration of supervision or direction of particular work.

[10] In stating that the Appellant was not an "employer" for these reasons, the *Trial Decision* was more accurately making a finding that *OHSA* s. 25(1)(c) did not apply to the Appellant. This, however, is not what the *Trial Decision* stated, nor what the *Superior Court Decision*[7] stated in upholding the *Trial Decision*.

[11] The *Appeal Decision*[8] found that the *Superior Court Decision* was wrong to conclude that the Appellant was not an "employer", but the Court of Appeal was considering the s. 1(1) definition of "employer" as opposed to the application of *OHSA* s. 25(1)(c).[9] The *Appeal Decision* applied the s. 1(1) definition and assumed that *OHSA* s. 25(1)(c) applied in the circumstances without further consideration.[10]

[12] This failure to separate the definition of "employer" from the applicability of *OHSA* s. 25(1)(c) is also clear in the facta provided by the parties. Both center on the meaning of "employer" and neither factum directly addresses *OHSA* s. 25(1)(c). Instead, both parties frame the issue as whether or not the Appellant is responsible for workplace safety as an "employer" without specifying whether they are seeking a particular interpretation of the s. 1(1) definition of "employer" or of s. 25(1)(c) of *OHSA*.[11]

[13] To the extent that either party is suggesting that the *OHSA* s. 1(1) definition of "employer" is at issue in this case, the WCBBC says that this is incorrect. It is an uncontroversial principle of statutory interpretation that a defined term has the same meaning throughout an act.[12] "Employer" is a defined term and has the same meaning throughout *OHSA*.

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[5] *Ontario (Ministry of Labour) v. City of Greater Sudbury* (August 31, 2018), Sudbury 4011-999-16-5534-02 (Ont CJ) [*Trial Decision*]
[6] *Ibid*, para 86.
[7] *R v. Greater Sudbury (City)*, 2019 ONSC 3285, paras 33 - 34 [*Superior Court Decision*].
[8] *Ontario (Labour) v. Sudbury (City)*, 2021 ONCA 252 [*Appeal Decision*].
[9] *Ibid*, paras 8 - 17.
[10] *Ibid*.
[11] Appellant Factum, para 29; Respondent Factum, para 17.
[12] *Ewert v. Canada*, [2018] 2 SCR 165, para 113.

[14] If this Court were to read any requirements into the *OHSA* s. 1(1) definition of "employer", those requirements would have to follow the meaning of "employer" throughout *OHSA* rather than being limited to an interpretation of *OHSA* s. 25(1)(c). For example, *OHSA* s. 50(1) creates a bar against employers carrying out reprisals against workers for raising safety concerns. If, as suggested in the *Trial Decision*, supervision of work was required in order for a party to be an "employer", then the application of *OHSA* s. 50(1) would be limited by that requirement without any consideration of the specific purpose of, and legislative intent behind, that section.

[15] The failure to separate the s. 1(1) definition of "employer" from the application of a particular charging section has, in fact, already led to problematic decisions in Ontario case law. In *Ontario (Ministry of Labour) v. Pioneer Construction*,[13] the Ontario Court of Appeal considered the liability of an employer under *OHSA* s. 25(1)(a) and 25(2)(a). Those sections require an employer to ensure that required health and safety devices and information are provided to workers.

[16] In finding the employer liable under those charging sections, the Court identified the issue as whether the defendant was the "employer" of the injured worker, and found that "Pioneer became the employer of Mr. Carr when he was working in a workplace controlled by Pioneer providing services to Pioneer."[14] Consideration of the location of work and provision of services clearly imports requirements relevant to s. 25(1)(a) and 25(2)(a) into the meaning of "employer".

[17] In *R v. Marina Harbour Systems*,[15] the Superior Court considered whether the defendant was liable under *OHSA* s. 25(1)(c). The Court in *Marina* improperly identified the issue as "Who is the employer" and, relying on *Pioneer*, considers whether the defendant was the "employer" of the injured worker. This was an improper consideration as the immediate employer of the injured worker is not relevant to *OHSA* s. 25(1)(c), which instead requires a consideration of the employer / workplace relationship.[16]

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[13] (2006), 79 OR (3d) 641 (ONCA) [*Pioneer*].
[14] *Ibid*, para 19.
[15] [2008] OJ No. 4950 (ONSC) [*Marina*].
[16] *R v. Structform International Ltd.*, [1992] OJ No. 1711 (ONSC), para 17 [*Structform*].

[18] The conflation of charging section requirements with the definition of "employer" in *Pioneer* resulted in what was effectively a context specific definition of "employer". This error then led the Court in *Marina* to rely on that context specific definition as though it was a general definition of "employer", which resulted in a poorly reasoned decision.

[19] The separation of the *OHSA* s. 1(1) definition of "employer" from the application of *OHSA* s. 25(1)(c) avoids any unprincipled limitation on the application of OHS obligations and properly focuses legislative interpretation on the specific clause at issue. This approach has been endorsed by the B.C. Court of Appeal in *Petro-Canada v. British Columbia (Workers' Compensation Board)*:[17]

> …the statute uses the word "employer" in a consistent manner. Petro-Canada, as a company that has numerous workers under contract in British Columbia, obviously meets the definition of "employer" in s. 1 of the *Act*. Nothing in s. 115 compels the adoption of a narrower definition of "employer" than that dictated by ss. 1 and 106.[18]

[20] As recently decided by the Provincial Court of Nova Scotia in *R v. Halifax Port Authority*,[19] it is the specific elements of the legislation that should limit the application of an obligation, and not the underlying general definitions:

> I accept that a broad interpretation of "work place" has the potential to result in absurdities…However, it is only the starting point for a court's analysis. As a court works through the legislation, there are safeguards or elements imposed at each stage that offer an opportunity to interpret and restrict that broad language to avoid absurdity.[20]

[21] Interpretations that place limits on a general definition create problems for front line regulators. As set out above, OHS legislation across Canada relies on similar general definitions of "employer"[21] and, as such, case law that narrows the general definition of "employer" in one province may have unintended consequences for the definition of employer in other provinces.

[22] However, an approach focused on a particular provision in a particular OHS statute appropriately centers on the specific legislative environment of each case and avoids decisions

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[17] 2009 BCCA 396.
[18] *Ibid*, para 45.
[19] 2022 NSPC 13 [*Halifax*].
[20] *Ibid*, para 130.
[21] See note 4 above.

that could impact the definition of "employer" or the approach to "employer" obligations more widely in a manner that may hinder front line regulators across the country.

C. Question Two – Does the Particular Obligation Apply Based on the Approach set out in *West Fraser*?

[23] Once the definition of "employer" is separated from the applicability of the particular OHS obligation at issue, the question turns to the appropriate interpretation and application of that specific obligation. WCBBC says that this Court, in *West Fraser*, conducted an appropriate broad purposive analysis and the approach reflected in *West Fraser* ought to be followed.

[24] In *West Fraser*, a central issue was whether the application of s. 196(1) of the former *Workers Compensation Act*[22] to the appellant, West Fraser Mills Ltd., was patently unreasonable. While the particular interpretive exercise applied to s. 196(1) of the *Former BC WCA* is not relevant here, *West Fraser* does set out several general interpretive principles that apply to all OHS legislation:

1. Broad interpretation of OHS legislation best furthers the statutory goal of promoting workplace health and safety and deterring future accidents;[23]
2. Workplace parties should be held responsible in an overlapping and cooperative way to reflect the reality that maintaining workplace safety is a complex exercise involving shared responsibilities; and[24]
3. When conducting the exercise of statutory interpretation, the specific wording of the legislation must be considered to determine the relationship that the legislature intends to address (for example, the employer / worker relationship, or the employer / workplace relationship).[25]

[25] This approach – which focuses on broad interpretation to protect workers, overlapping roles, and a consideration of the specific relationship that the legislation is addressing – is what many well-reasoned decisions already employ.[26]

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[22] RSBC 1996, c 492 [*Former BC WCA*].
[23] *West Fraser*, *supra* note 1, para 43.
[24] *West Fraser*, *supra* note 1, para 44.
[25] *West Fraser*, *supra* note 1, para 45.
[26] See for example, *R v. J. Stoller Construction Ltd.* (1986), 1986 CarswellOnt 3654 (Ont PC), para 22 [*Stoller*]; *R v. Stelco Inc.*, [1989] OJ No. 3122 (Ont CJ), para 28 [*Stelco*]; *Structform*, *supra* note 16, para 17; *R. v. Iroquois Falls Hydro-Electric Commission (2001)*, 2001 CarswellOnt 10725 (Ont CJ), paras 24 – 26; *R v. Grant Forest Products Inc.*, [2002] OJ No.

[26] In *Blue Mountain Resorts Limited v. Den Bok et al.*,[27] the Court of Appeal of Ontario correctly identified the central issue as whether s. 51(1) of *OHSA*, which sets out reporting requirements for "employers", applied to the appellant in that case. The Court found that s. 51(1) addresses an employer / workplace relationship, but only applies where there is some reasonable nexus between the hazard giving rise to the injury and a realistic risk to worker safety.

[27] This Court, in *Canada Post Corp. v. Canadian Union of Postal Workers*,[28] has reinforced the approach to interpretation of OHS statutes set out in *West Fraser*. Like *West Fraser* and *Blue Mountain, Canada Post* focused on the specific wording of, and legislative intent behind, the particular OHS obligation at issue. Relying on *West Fraser*, this Court underscored the importance of considering the text, context, and purpose of the legislation as well as its practical implications when interpreting an OHS obligation.[29]

[28] The importance of affirming the broad approach to the interpretation of OHS legislation taken in *West Fraser* has already been of assistance to front line regulators since that decision. *West Fraser* has been relied on in administrative decisions to uphold broad interpretations of workplace party roles where employers or other parties have argued for a narrower reading.[30]

[29] WCBBC emphasizes that it is arguing for a confirmation of approach to the interpretation of OHS obligations, and not for any particular outcome in this case. To be specific, while determining the legislature's intent in this case may require complex considerations of how s. 1(3) of *OHSA* interacts with s. 25(1)(c), WCBBC takes no position on the merits of that issue.

[30] Further, it is important to note that s. 25(1)(c) requires an employer to ensure that "the measures and procedures prescribed" are carried out. Based on the definition of "prescribed" under *OHSA* s. 1(1), this refers to matters set out in regulations. The specific regulations at issue may be directly relevant to whether or not s. 25(1)(c) applies in the particular case.[31] WCBBC

3372 (Ont CJ), para 50, reversed on other grounds 2003 CarswellOnt 6071, upheld on appeal [2004] OJ No. 2250 (ONCA) [*Grant Forest Products*]; *R v. Enbridge Gas Distribution Inc.*, 2010 ONSC 2013, para 24, leave to appeal denied, 2011 ONCA 13 [*Enbridge*].

[27] 2013 ONCA 75 [*Blue Mountain*].

[28] 2019 SCC 67 [*Canada Post*].

[29] *Ibid*, para 43.

[30] See, for example *A1701571 (Re)* (30 March 2020), online: CanLII (BC WCAT); *20219249 (Re)* (6 November 2020), online: CanLII (NB WCAT).

[31] See for example, *Halifax, supra* note 19, paras 90 – 95.

takes no position on this point in this case. However, as a general matter, courts should be slow to address the practicalities of whether a party had sufficient control or ability to ensure compliance with the particular obligation when determining the applicability of a regulation. As discussed in detail below, these are issues more properly considered in the due diligence defence.

D. Question Three – Did the Party Breach the Obligation?

[31] The specific obligation at issue in this case is to ensure that sections 65 and 104(3) of the *Construction Projects*[32] regulation are carried out. Those sections require that a fence be constructed for protection when a project may endanger a person using a public way,[33] and that operators of vehicles be assisted by signallers when a person could be endangered by the vehicle.[34] The trial judge found that these requirements were not met in this case.[35]

E. Separating Question Two and Question Four

[32] The precautions an employer could reasonably take in respect of a specific hazard in a given situation should be dealt with in the defence of due diligence, and not in the determination of whether the statutory obligation applies. To do otherwise would be to narrow the application of the obligation to a smaller group rather than placing responsibility on a wider group and requiring a party to prove due diligence, which better supports the purposes of OHS legislation.

[33] In Ontario, the importance of the due diligence defence[36] as separate from the broad application of OHS obligations was addressed in *Grant Forest Products.*[37] The Court, while acknowledging that the broad definition of "employer" placed significant obligations on employers, also found that:

> …it does not unfairly deprive owner/contractors of the means to advance successful defences when they have attended diligently to their responsibilities.[38]

[34] *OHSA* s. 66(3) provides that any employer prosecuted for a failure to comply with s. 25(1)(c) may successfully defend themselves by showing that "every precaution reasonable in

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[32] O Reg 213/91.
[33] *Ibid*, s. 65.
[34] *Ibid*, s. 104(3).
[35] *Trial Decision*, *supra* note 5, paras 9, 13 and 15.
[36] As set out at *OHSA*, *supra* note 2, s. 66(3).
[37] *Supra* note 26.
[38] *Grant Forest Products*, *supra* note 26, para 57.

the circumstances was taken". Similar due diligence defences are available in OHS legislation across the country.[39]

[35] Ontario courts have also considered the control a party has over a hazard as part of the due diligence defence. In *Stoller*, the Court found that…

> If there is some reasonable precaution *within his control*, that a "constructor" could have taken …and the "constructor" fails to take that precaution, it will afford him no defence … to say that someone else involved…has a greater and more direct degree of control…If he proves, on a balance of probabilities, that he did all he could that was within his power and his area of control over the project…he will be exonerated. It lies, however, to the defendant to prove this defence.[40]

[36] Other matters considered as part of the due diligence defence include a party's safety procedures,[41] whether or not the issue that arose was foreseeable,[42] and whether the party had a reasonable mistaken belief in a particular set of circumstances.[43]

[37] These due diligence issues have sometimes been improperly conflated with the application of s. 25(1)(c) in Ontario case law. In *Ontario (Ministry of Labour) v. Nor Eng Construction & Engineering Inc. et al.*,[44] the Court considered whether engineers that provided design work but were never at the relevant worksite were "employers" for the purposes of s. 25(1)(c). The Court found that they were not "employers" for reasons that included issues of knowledge and control.[45] As set out above, these are issues properly considered as part of a defence of due diligence.

[38] In later cases, courts have specifically indicated that consideration of due diligence issues – such as control – in establishing whether or not s. 25(1) applies to an "employer" is not the correct approach. In *Enbridge*, the trial decision found that two parties were not employers "for the purposes of s. 25" based on their lack of control over the workplace. This was overturned by the Superior Court:

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[39] See for example *BC WCA*, *supra* note 4, s. 100; *Canada Labour Code*, *supra* note 4, s. 148(4); *NWT WCA*, *supra* note 4, s. 155.
[40] *Stoller*, *supra* note 26, para 22 (underlining added).
[41] *Stelco*, *supra* note 26, paras 35 – 37.
[42] *Stelco*, *supra* note 26, para 38.
[43] *Ontario v. London Excavators & Trucking Ltd.*, [1998] OJ No. 6437 (ONCA), para 19.
[44] 2008 ONCJ 296 [*Nor Eng*].
[45] *Ibid*, paras 88 – 89.

> I believe the trial judge removed Enbridge and PUL too early in the process…
>
> …It might be that their defence of due diligence would be successful ultimately, but by granting a directed verdict, the trial judge prematurely and erroneously removed them from the need to demonstrate it.[46]

[39] Most importantly, the legislature could have chosen to incorporate a requirement for control of a workplace or consideration of what is "reasonably practical" before employer obligations apply rather than leaving it to the due diligence defence, but did not do so in *OHSA*. This can be contrasted with other Canadian OHS legislation that includes the phrase "as far as is reasonably practical" in general employer obligations.[47]

F. Question Four – Does the Party Have a Defence of Due Diligence?

[40] As the due diligence defence is not at issue in this case, it should not be considered.

PARTS IV AND V – COSTS SUBMISSION AND NATURE OF ORDER SOUGHT

[41] WCBBC seeks no costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Vancouver, Province of British Columbia, this 6th day of June, 2022

BEN PARKIN	**JOHANNA GOOSEN**
Counsel for the Workers' Compensation Board	Counsel for the Workers' Compensation Board

[46] *Enbridge*, *supra* note 26, paras 36 – 37.
[47] See for example, *AB OHSA*, *supra* note 4, s. 3(1); *SKEA*, *supra* note 4, s.3-8(a); *YK OHSA*, *supra* note 4, s. 3(1).

PART VI – TABLE OF AUTHORITIES

Authority	Paragraph Reference(s) in Argument
Legislation	
Canada Labour Code, RSC 1985, c l-2	[5] and [34]
Occupational Health and Safety Act, RSO 1990, c O.1	[4]-[6], [8]-[17], [19], [26], [29], [30], [33], [34], and [39]
Occupational Health and Safety Act, RSY 2002, c 159	[5] and [39]
Occupational Health and Safety Act, SA 2020, c O-2.2	[5] and [39]
Occupational Health and Safety Act, SNS 1996, c 7	[5]
The Saskatchewan Employment Act, SS 2013, c S-15.1	[5] and [39]
Workers Compensation Act, RSBC 1996, c 492	[24]
Workers Compensation Act, RSBC 2019, c 1	[5] and [34]
Workers' Compensation Act, SNWT 2007, c 21	[5] and [34]
Regulation	
Construction Projects, O Reg 213/91	[31]

Jurisprudence	
20219249 (Re) (6 November 2020), online: CanLII (NB WCAT)	[28]
A1701571 (Re) (30 March 2020), online: CanLII (BC WCAT)	[28]
Blue Mountain Resorts Limited v. Den Bok et al. 2013 ONCA 75	[26] and [27]
Canada Post Corp. v. Canadian Union of Postal Workers, 2019 SCC 67	[27]
Ewert v. Canada, [2018] 2 SCR 165	[13]
Ontario (Labour) v. Sudbury (City) 2021 ONCA 252	[11]
Ontario (Ministry of Labour) v. City of Greater Sudbury, (August 31, 2018), Sudbury 4011-999-16-5534-02 (Ont CJ) (unreported)	[9], [10], and [31]
Ontario (Ministry of Labour) v. Nor Eng Construction & Engineering Inc. et al., 2008 ONCJ 296	[37]
Ontario (Ministry of Labour) v. Pioneer Construction Inc. (2006), 79 OR (3d) 641 (ONCA)	[15] -[18]
Ontario v. London Excavators & Trucking Ltd., [1998] OJ No. 6437 (ONCA)	[36]
Petro-Canada v. British Columbia (Workers' Compensation Board) 2009 BCCA 396	[18]
R v. Enbridge Gas Distribution Inc., 2010 ONSC 2013, leave to appeal denied, 2011 ONCA 13	[25] and [38]
R v. Grant Forest Products Inc., [2002] OJ No. 3372 (Ont CJ), reversed on other grounds 2003 CarswellOnt 6071, upheld on appeal [2004] OJ No. 2250 (ONCA)	[25] and [33]

R v. Greater Sudbury (City), 2019 ONSC 3285	[10] and [11]
R v. Halifax Port Authority, 2022 NSPC 13	[20] and [30]
R. v. Iroquois Falls Hydro-Electric Commission (2001), 2001 CarswellOnt 10725 (Ont CJ)	[25]
R v. J. Stoller Construction Ltd. (1986), 1986 CarswellOnt 3654 (Ont PC)	[25] and [35]
R v. Marina Harbour Systems, [2008] OJ No. 4950 (ONSC)	[17]-[18]
R v. Structform International Ltd., [1992] OJ No. 1711 (ONSC)	[17] and [25]
R v. Stelco Inc., [1989] OJ No. 3122 (Ont CJ)	[25] and [36]
West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal), 2018 SCC 22	[3], [23]-[24], and [27]-[28]