



Acoustical Association Ontario

Volume 9 Issue 12 December 2014

Provincial in scope ...

Provincial in outlook

OGCA Rejects Need for Third Party Verification



The Ontario General Contractors Association (OGCA) has written an open letter to the Minister of Labour (MOL) and to the Ontario Legislature to “address the problem of Third Party Safety Verification” and “to request that immediate action be taken to accredited employers who meet the standards for health and safety excellence via programs such as COR (Certificate of Recognition).” OGCA has come out against third party safety verification companies, mostly from the U.S., who attempt to consolidate and validate health, safety and regulatory compliance documentation, by taking over the administrative process for the owners of construction projects in Ontario. OGCA maintains that these unregulated companies do not verify the programs that are delivered, leaving “owners and contractors with the mistaken belief that they meet or exceed their legal health and safety obligations.” They also point out that existing programs such as COR are available in this province and do verify, to provincial standards, that contractors are in full compliance.

The validation process used by these third party firms is very detailed and complex requiring firms to provide reams of documentation for safety programs, training programs, insurance, workers' compensation, incident statistics and past performance. This adds additional costs in both the fees charged to participate in their programs and in the additional costs to administer them. Costs, that are passed on to the owners who, OGCA maintains “inCORrectly assume that they are downloading risk in that these services are somehow relieving them of their obligations to ensure that their projects and workplaces are operating safely”.

However, the OGCA argues that this approach is flawed because “these firms do not do onsite audits or inspections like the MOL and Infrastructure Health & Safety Association (IHSA), they have no idea if the paper they collect is actually being implemented. They may attend a firm’s office, but not to ensure compliance with the Safety programs, but to show firms how to organize their paper reporting to match their systems.” Laws in this province make owners responsible for health and safety notwithstanding the language of a contract or who they contract out the responsibility to or that they have gathered the paper work. For this reason, the OGCA supports the implementation of a single standard in the province under IHSA and therefore is promoting the COR program, a national program endorsed by participating members of the Canadian Federation of Construction Safety Associations, including the IHSA. COR is based on a comprehensive audit of the employer's health and safety management system. It covers all the elements of such a system, including interviews, documentation review and observation techniques. By achieving COR, contractors are able to demonstrate that their health and safety management system has been developed, implemented and evaluated on an annual basis through comprehensive internal and external audits.

HAPPY HOLIDAYS



Saying thank you is a daily requirement for all of us, but I often feel that these two simple words of gratitude fall short of expressing the true appreciation that I feel towards those who help me share the power of a wish throughout the year. However, this is the time of year that I must stop and say that it is indeed time to express my deepest thanks. Therefore, allow me this opportunity to sincerely Thank You all for your support and help during my first year as President of AAO. May the holiday season fill you and yours with the warmest joys of the season. Happy Holidays to all.

Robert Troup

President

The Mathews Dinsdale Minute



Is your due diligence up to par? Recent acquittals secured by Cheryl Edwards and Jeremy Warning of Mathews Dinsdale for a general contractor and a plumbing specialty subcontractor underline the importance of doing your due diligence.

First the facts. A structural subcontractor was moving an outrigger platform at the 23rd story of a building. A piece of pipe fell all the way down and fatally injured a supervisor who was standing in the hoisting area while visiting the site. The structural subcontractor plead guilty to one charge. The GC and the plumbing contractor plead not guilty to a charge of failing to ensure that pipe materials were removed or stored to prevent a hazard. This was, in essence, a housekeeping charge. The GC also faced other charges.

The evidence was that materials were stored in a manner consistent with industry practice; there was a perimeter fence around the entire 23rd floor to contain loose material; the area was not a high traffic area and the pipe would not have rolled off on its own without the application of significant force. The Court concluded this was not a hazardous situation as required for the charge. The Court also found that leaving pipe laying flat for use the next day was not a housekeeping issue and did not create a risk of rolling.

Also very important was that a safety consultant had attended regularly at the site and created ongoing written reports of site inspections. An inspection the last work day before the accident specifically examined housekeeping and indicated that removal of debris and storage of materials was ongoing and acceptable.

Ultimately, the Court acquitted, finding that foreseeability was an important element to be considered as part of the due diligence assessment. The issue of foreseeability, in what was a freak accident, combined with the extensive due diligence, resulted in the acquittals.

It is always difficult, in the rush of all your work, to maintain your due diligence. But accidents can happen at any moment and that due diligence may be the difference between a conviction and acquittal. It is essential that you always make the time and space to have all of your due diligence covered.

