



PRIME CONTRACTOR OBLIGATIONS

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In December 2005, a worker employed by a contractor installing a new sewer service within municipal roadway was fatally injured by the collapse of the open trench in which the work was being constructed. The service installation was planned to service a condominium development being constructed on the developer's adjacent lands and was required by the municipality as a condition of the approval of the development.

WorkSafeBC determined that the municipality had failed to discharge its statutory obligations for occupational health and safety on worksites and levied significant administrative fines. A 2008 review of the earlier WorkSafeBC orders in respect of this incident demonstrate WorkSafeBC's approach to allocating responsibilities under the prime contractor provisions of the *Workers Compensation Act* ('Act') and provide a sobering reminder to all local governments to ensure that their obligations under this Act are fully and appropriately discharged.

Section 115 of the Act creates a duty on employers to ensure the health and safety of all workers, whether they work for the employer or not, at all workplaces where that employer's work is being carried out. Most development projects are likely to involve the developer's construction of off-site servicing within municipal road allowances. Although such works are occasioned by a private development, WorkSafeBC characterizes such activities as being within a municipal workplace because the work is being conducted on the municipality's infrastructure.

The owner of a workplace is deemed to be the prime contractor unless one is designated by written agreement.

Section 118 of the Act requires that one party coordinate the activities of employers, workers and other persons at the multiple-employer workplace relating to occupational health and safety. The owner is deemed to be the prime contractor unless one is designated through a written agreement. However, merely using a written agreement to offload such obligations without meaningful participation in the process as an owner and employer may not be sufficient. If the owner enters into more than one agreement that purports to create a prime contractor for the same period of time, neither agreement is effective and the owner is considered to be the prime contractor.

In addition to contractual delegation of its obligations, a municipality should consider (among others), disclosing to the prime contractor any material information regarding hazardous or unsafe conditions of the workplace and requesting from the prime contractor, any information to assess and confirm the prime contractor's compliance with the *Workers Compensation Act*.

Municipalities should also consider the breadth of indemnities contained in development and service contracts with developers to ensure that indemnity provisions provide recovery of any administrative fines or penalties that may be imposed by WorkSafeBC.