

GUIDE TO DEALING WITH THIRD PARTY SAFETY VERIFICATION COMPANIES (TPSVC)

WE BUILD  NTARIO
ONTARIO GENERAL CONTRACTORS ASSOCIATION

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INTRODUCTION

The OGCA and many fellow industry stakeholders oppose the use of TPSVCs.

We have received support from the London & District Construction Association, Grand Valley Construction Association, ECAO, MCAO, the OAA and CEO, and the Toronto Construction Association, among others, including from as far away as British Columbia.

Several owners have contacted us after being approached by these firms, and after meeting with OGCA and IHSA, have determined not to use them, but will look to COR™ as the industry standard for accredited companies.

In meetings and conversations with the Minister of Labour and the Chief Prevention Officer, we are receiving the right messages and they recognize our concerns. They further acknowledge the priority of developing a provincial accreditation standard as quickly as possible.

This is the next logical step from Safety Groups and OGCA strongly supports these efforts as we support COR™, which we believe will easily meet such a Standard.

Many jurisdictions recognize employers who have met high standards for OH&S performance. These employers are accredited by the government and often are incentivized to meet the standard by various means.

One is a market incentive. The Expert advisory Report on OH&S recommended that the province and others give purchasing priority to firms whom have achieved a high standard and have been “certified” top performers. When a large block of buyers of construction or other services mandate Certification, then many companies will decide to achieve and maintain the designation.

Some provinces provide a financial incentive. Alberta for example provides a five % discount on WCB to all COR™ certified firms. The incentive recognizes both reduced insurance risk and off set part of the cost of maintaining certification.

The Ontario Ministry of Labour has committed to begin a policy possibly in 2015 to develop Accreditation Standards in Ontario. In its background analysis it recognizes COR™ as having been developed as a tool specifically for this purpose.

It is expected that COR™ and other recognized tools will be embraced as having met the standard for accreditation in Ontario. It is also expected that a requirement will be an independent audit verifying accreditation has been achieved by an accredited independent organization. As a result most third party audits will not qualify under this criterion. They allow self-audit and reporting and therefore the standard is considered inferior to those that will be required.

OGCA BOARD POSITION

Recommendations to Member Companies Regarding Third Party Safety Verification Companies

The OGCA is recommending that its member companies do not join, or enter into agreements with, any third party safety verification companies (“**Third Party Company**”). If a member company chooses to follow this recommendation, it should carefully follow the recommendations set out below in paragraphs 2 and 3.

1. The rationale for the OGCA’s recommendation is that, in OGCA’s view, Third Party Companies do not provide added value to the procurement or construction process, in light of (i) the limited services they provide and their high charges, and /or (ii) the fact that the OGCA member companies have a higher safety rating than others in the industry or are participating in/or have achieved COR™ certification under the auspices of IHSA. As a result, membership in, or agreement with these Third Party Companies would be likely to increase the price of construction work, without a proportional benefit.
2. OGCA recommends that member companies continue to respond to requests for bids as appropriate, without regard for whether the party requesting bids requires prequalification in the form of membership in, or agreement with, a Third Party Company (a “**Prequalification Requirement**”).
3. OGCA recommends that when responding to a request for bids containing a Prequalification Requirement, if the member company chooses to follow the OGCA’s recommendation not to join or enter into an agreement with a Third Party Company, it should inform the party requesting bids, at the time it submits its bid, of the following:

“[name of member company] has decided to follow the OGCA’s recommendation not to join or enter into agreements with third party safety verification companies.”

One or more other OGCA member companies may also submit bids in a manner consistent with this recommendation of the OGCA.
4. OGCA reminds its member companies that they should have no understanding of the terms of a competitor’s bid and reach no agreement related to such bidding without fully disclosing such to the party requesting bids.

PETITION



To the Hon. Minister of Labour and the Ontario Legislature:

We, as members of the Ontario Construction Industry, request that the Hon. Minister of Labour and the Ontario Legislature address the problem of Third Party Safety Verification. We collectively request that immediate action be taken to accredit employers who meet the standards for health and safety excellence via programs such as COR™.

While there are numerous private, unregulated companies that verify safety compliance, many do not verify that the programs are delivered. As a result, owners and contractors will be left with the mistaken belief that they meet or exceed their legal Health and Safety obligations. Further, programs such as COR™ exist which verify that the contractor is in full compliance.

The Minister of Labour must act immediately to implement the Expert Advisory Panel recommendation #23 to: "Develop an accreditation system that recognizes employers who successfully implement a health and safety management system."

"We do not support the requirements to use Third Party Safety Verification Companies in the Province of Ontario."

*Company Name

*First Name

*Last Name

*Street Address

*City

*Province

*Postal Code

*Email

*Verify Email

Submit My Support

Click Here (PDF) for the formal legal opinion regarding the provision of Third Party Occupational Health & Safety Verification ("Third Party") and the Certificate of Recognition Program ("COR™") and their respective value in complying with the legal duties of workplace parties under the Occupational Health and Safety Act ("OHSA") and Construction Regulations (O. Reg. 213).

WHAT IS COR™

The Certificate of Recognition (COR™) is a well-established, Canada-wide certification program that gives companies a tool for assessing and enhancing their health and safety management system. The purpose of COR™ is to encourage safer workplace behaviour and practices that also lead to improved performance. By achieving COR™ certification, companies are able to demonstrate to buyers that their health and safety management system has been developed, put into practice, and evaluated every year through comprehensive internal and external audits.

IHSA brought COR™ to Ontario in 2011 to raise the standards of injury and illness prevention across the province. Since then, we have seen interest in the program grow immensely, from not only large and small companies, but also from buyers of construction services. Many of these buyers of construction have begun to request COR™ as a requirement for certain jobs.

The fact that large organizations are integrating COR™ into their bidding processes is a boost for health and safety standards in Ontario. As more buyers require COR™, more firms are likely to pursue certification in order to be eligible for those jobs. As a result, safety should improve across the province as more firms become certified. That's exactly what IHSA hoped for when it brought COR™ to Ontario.

Although signing up with COR™ is a commitment of time, money, resources,

and staff, it is also an opportunity to create a safe workplace for employees, to be certified by a nationally recognized program, and to gain acceptance as a quality firm ready to take on any challenge.

The OGCA has made health and safety in the construction industry its highest priority and we have decided that COR™ presents the best opportunity for members to achieve it. It has become established through most of the country as the measure of excellence in construction health and safety. As an established, recognized program, it was much quicker and easier to implement COR™ in Ontario than building a system from the ground up.

At this time, just over 100 firms have achieved the designation and another 300 are registered and working towards full certification. It is expected that when Accreditation is established in Ontario, the number of firms participating will increase substantially. Alberta has over 20 years with the program and has a full set of incentives and as a result, over 10,000 firms have been certified.

The OGCA members who have implemented the program typically report improvements in their accident rate from 30% to 75%.

You can learn more about COR™ and how to get involved by visiting www.ihsa.ca/cor



THIRD PARTY SAFETY VERIFICATION COMPANIES

What is the value?

The Ontario General Contractors Association (OGCA) has been aware of a number of American consulting firms coming to Canada, following many American companies who are investing in Ontario. While we welcome this investment, what is disturbing is a lack of understanding on how the Canadian construction industry works.

From tendering practices to safety, many new firms assume that Canada operates in a manner similar to our U.S. cousins. This, of course, is not true and in fact, Canada has a completely different set of rules well-established by legal precedence.

Canada and Ontario are world leaders in the safety field with mandatory insurance requirements through the [Workplace Safety and Insurance Board](#) (WSIB), enforcement through our Ministry of Labour, and training and verification of safety programs and firms through the [Infrastructure Health and Safety Association](#) (IHSA).

OGCA members in particular have a better lost time injury record than the rest of the industrial, commercial and institutional (ICI) contractors; in fact, almost 40 per cent better. In cooperation with the IHSA, we have launched the Certificate of Recognition (COR™) in Ontario which will match up with the remainder of the country in providing the most comprehensive accreditation of construction contractors and trades anywhere. Our current requirement to be registered with the WSIB, mandatory Canadian developed safety programs, safety group membership and the move to COR™, make any other form of review unnecessary.

We have been approached by several of these companies asking for our support and endorsement to have our members pay additional fees to them to essentially collect paper and issue a report. The OGCA board has unanimously rejected these attempts to endorse such programs. There is, in our opinion, no reason to pay these fees for what is falsely perceived as a risk management system.

THIRD PARTY SAFETY VERIFICATION COMPANIES

Members who have been forced to participate have found no value with these firms and in fact, it has cost them greatly to participate, not just the fees charged to register but the cost to administer the endless paper streams being requested. This is a cost that is passed on to the owners, whether they realize it or not.

What does the owner receive for this service? They 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.

Since these firms do not do onsite audits or inspections like the labour ministry and 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.

Our laws make owners responsible, regardless of how they word their contracts or who they contract out to if an

incident happens. The owner can be held responsible and the fact they can say we gathered the paper will not be a defence.

These firms are not a value-added service and contribute little or nothing to ensuring safe work sites. They do not carry out inspections, develop training, and as mentioned above, it has been our experience that they are more experienced in collecting documentation than being able to interpret it. They have come along to take advantage of owners who do not understand their responsibility for safety and who feel they can save money by contracting it out to these firms. In reality, they are putting themselves at risk.

Owners employing these firms are losing out on bidders, as there are dozens of these firms competing to sign contractors up. Firms cannot afford to join them all, or in some cases, even one, so they don’t bid. One of our largest international firms, which was forced into using such a service,

Members who have been forced to participate have found no value with these firms.

THIRD PARTY SAFETY VERIFICATION COMPANIES

reported they had to hire a full time person to handle the paperwork, then required assistants for that person and in their opinion, saw no value as to why the owner wanted this done. According to their international risk manager, there was no value and he did not believe the owner fully understood what was happening in demanding contractors sign up.

A recent newspaper story reported just such a situation faced by a small contractor being forced out of bidding due to this practice, as they simply could not afford to participate, especially since it is of such little value to the contractor or in fact, the owner.

Organizations which have a significant management responsibility are easy targets for the message these firms promote. But these organizations need to realize that they are part of the safety process. They need to be involved directly and not look at saving money by contracting out this responsibility. They should not buy into the illusion that they can outsource the risk.

In Ontario, we are moving rapidly to adopting COR™. Many major owners now require it as a condition of contract. In our opinion, that is all an owner needs to know — are you enrolled in the COR™ program or have you achieved COR™ status? That is a simple answer and one piece of paper which in no way requires a third party verifier to charge contractors fees to collect it. IHSA administers this program and will provide that confirmation directly to an owner without charge to anyone. Furthermore, they are actively ensuring compliance which these firms do not.

Safety is everyone's responsibility and these third party firms, in our opinion, bring nothing to the safety culture in Ontario. Owners wanting to know more should contact the IHSA, WSIB or OGCA for information and advice on how best to ensure a safe work site and safe contractors.

TYPICAL OWNER CLAUSE

As per pg. 2 of RFP document:

Please be aware that OPG has retained ISN Software Corporation (“ISN”) to assist OPG with the prequalification of contractors and subcontractors, who may provide goods and services to OPG, through ISN’s online contractor information system ISNetworld (www.isnetworld.com). As more particularly described in the RFP Rules, Proposals will only be considered if the Proponent has prequalified through ISNetworld. Proponents should also note that the successful Proponent will be required to cause all subcontractors who may be providing services at an OPG site to be prequalified through ISNetworld.

As per pg. 8 of the RFP document:

17. Entry into Agreement or Negotiations

Each Proposal will constitute an offer by the Proponent to OPG to enter into an Agreement on the terms of that Proposal. After the Closing Date, OPG may interview any proponent and may specifically seek clarification or additional information in any format whatsoever in respect of the Proponent’s Proposal, including seeking clarification or additional information

through ISNetworld. The response received by OPG from a Proponent will, if accepted by OPG, form part of that Proponent’s Proposal. OPG may verify with the Proponent or any third party any information set out in the Proponent’s Proposal, including seeking clarification or additional information through ISNetworld. OPG may check any references of a Proponent in addition to any references submitted in the Proponent’s Proposal. Each Proponent authorizes OPG to make any enquiries about the Proponent, any affiliates of the Proponent and the Proponent’s Proposal respecting the verification of any such information or in respect of any references. If OPG receives information at any time that, in OPG’s view, reveals that earlier information submitted by the Proponent is inaccurate, incomplete or misleading, OPG may, in its sole discretion, re-evaluate the Proponent’s Proposal based on the Criteria and take such other actions as OPG considers appropriate in the circumstances. OPG is not obliged, however, under any circumstances, to seek any clarification or any additional information from any Proponent or any third party. All of the terms of the first paragraph of this section 17 apply despite any other term in these RFP Rules.

HOW TO RESPOND

It is important, as soon as you are aware of such a request being considered or showing up, that you contact OGCA.

We will need as much information as you can provide through a Request for Tender Assistance Form (RFTA available through the office or the website):

- Owner's contact and contact information
- Other bidders
- Closing date
- Copy of any clauses or letters directing you to use a TPSVC

OGCA will:

- Issue letter to owner (Sample in Appendix A)
- Copy other stakeholders such as MCAO and ECAO for support
- Work with IHSA to secure a meeting
- Meet owner and explain their "risk" and the value of using an industry standard like COR™
- Should an owner be unresponsive, we will contact all other bidders to institute a unified approach through the OGCA Qualification of Bids system.

Contractor will:

- Issue a letter to the owner opposing the use and cost of a TPSVC (Appendix A – Sample letter)
- Notify all subtrades asking for support. This will filter down to them at some point. Further, as indicated, many of their parent organizations support OGCA's position, and make sure that the CC on the letter shows this.

It is vital you push back strongly. Do not be intimidated. You will have the full support of the OGCA and its members.

Remember the owner would not have asked you to prequalify or bid if they did not respect your professionalism and abilities.

LEGAL OPINION AND OGCA SUMMARY

We commissioned an independent review of the value and “risks” associated with the TPSVC to owners and the industry.

The review was carried out by one of Canada’s foremost experts in health and safety law, Mr. Norm Keith of Fasken Martineau.

The British Columbia Construction Association commissioned a second independent review which supported the facts delivered in Mr. Keith’s opinion.

Since then, the BCCA was successful in having a major owner B.C. Hydro decline to use a TPSVC and adopt COR™.

Feel free to use these opinions and other material here as attachments to letters to your clients. The stronger the stance taken by the industry, the more owners will take time to truly evaluate the value of TPSVC.

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December 5, 2014
File No.: 301136.00001/19681

Mr. Clive Thurston
Ontario General Contractors Association
6299 Airport Road, Ste. 703
Mississauga ON L4V 1N3

Dear Mr. Thurston:

Re: OHS Legal Opinion

You have retained our firm to provide our legal opinion regarding the provision of Third Party Occupational Health & Safety Verification (“Third Party”) and the Certificate of Recognition Program (“CORTM”) and their respective value in complying with the legal duties of workplace parties under the *Occupational Health and Safety Act* (“OHSA”) and Construction Regulations (O. Reg. 213).

Factual Assumptions

The following assumptions have been made in this opinion:

- Third Party and CORTM are not requirements under the *OHSA* or O. Reg. 213.
- Third Party and CORTM are assessment tools that owners, constructors and employers may use to their discretion to qualify that contractors and sub-contractors meet their specific health and safety requirements or standards prior to bidding on contracts.
- Third Party and CORTM may assist owners, constructors and employers to meet their legal requirements as defined under the *OHSA* and O. Reg. 213.
- Third Party and CORTM provide consistency in the selection process of qualified bidders.
- Third Party and CORTM do not guarantee that a contractor or sub-contractor will be awarded a contract.

Before evaluating Third Party and CORTM with regards to compliance, the two programs are reviewed.

Third Party

A Third Party may be used by organizations in the pre-qualification process of contractors bidding on work at their respective locations. A Third Party may be a company such as ISNetworld, PICS, Canqual and ComplyWorks. For the purpose of this opinion, we reviewed the example of ISNetworld.

ISNetworld is an online contractor management database designed to meet internal and government record keeping and compliance requirements. Its stated goal is to assist “Hiring Clients”, generally owners or employers, and/or Contractor Operators, generally prime contractors or constructors, “...hire safe, reliable and sustainable contractors and suppliers around the globe”.¹

ISNetworld evaluates health and safety compliance based on the submission of documents. The guidelines used are legislated requirements and an owner’s or Hiring Client’s requirements. A Hiring Client’s requirements may require a specific accident rating or severity rating based on the Hiring Client’s specified calculations. Advantages to the Hiring Client are the standardization of the health and safety requirements that a Hiring Client requires for contractors and suppliers working at their workplace. Another advantage is the potential marketing exposure they achieve as a member of ISNetworld. The requirements for contractors and suppliers are determined by the Hiring Client and are primarily based on the health and safety requirements outlined in the applicable Act or regulation, and on corporate directives or standards. Requirements will vary due to the specific requirements of the Hiring Clients. For example, a contractor may be required to subscribe to ISNetworld for multiple Hiring Clients, but the health and safety programs, the acceptable accident rating and insurance requirements will vary. The contractor, therefore, will be required to make submissions per Hiring Client. It is not as simple as entering data one time for every potential Hiring Client a contractor may wish to work for.

General Overview of the Process

1. A corporation advises that in order to bid on their projects your company must belong to ISNetworld.
2. There are three ways to subscribe online with ISNetworld as a contractor or supplier.
 - ISNetworld sends letter with a reference code
 - You have the name of a Hiring Client; enter that name and you are brought to their contractor page
 - You don’t have a code or Hiring client name.
The annual fee is based on you region, subscription type, and the number of employees. There is also a one-time set up fee upon registration.
3. If you have entered a reference code or Hiring Client’s name, you will be requested to upload information in the database in an auditor’s questionnaire format, based on the requirements of that Hiring client.

¹ www.isnetworld.com, October 15, 2014.

4. ISNetwork collects and maintains this information which includes insurance certifications, safety program procedures and accident rates.
5. A Review and Verification Services Team (RAVS) reviews the company's information to confirm it meets the Hiring Client's compliance requirements. The RAVS will determine if the program "passes or fails" the compliance requirements.

Other considerations of belonging to ISNetwork:

1. There can be as many as 2,200 questions required on the auditor's questionnaire.
2. Quarterly and annual updates of accident ratings, workers compensation documents or revisions to procedures must be uploaded.
3. As a contractor or supplier your health and safety program may be compliant with the requirements of your industry sector; however, not meet the requirements of the Hiring Client's industry sector. RAV may advise that your procedure is not compliant and request that you change your procedure to meet the Hiring Client's industry sector.
4. The subscription to ISNetwork is costly not only the subscription costs but the manpower to review and maintain the program.
5. If the organization operates in several provinces you must ensure your health and safety program meets all of the minimum health and safety requirements for all provinces.
6. There is no requirement that a representative of senior management or health and safety is involved in the health and safety management system.

Belonging to a Third Party is costly and does not guarantee a company will be awarded a contract. Membership also does not confirm that a company's uploaded OHS management system is carried out at the work place. The RAV process appears to check that uploaded procedures state legislation verbatim rather than audit the system for non-conformances, discussion with workers and workplace observations. A Third Party is strictly a collection agency to ensure all contract bidders follow the same set standards. It does not verify that OHS programs and procedures protect the workers, are implemented or meet any standardized certification requirement.

CORTM

The CORTM is nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations (CFCSA). It provides employers with an effective tool to assess their health and safety management system.

The CORTM program began in Alberta more than 20 years ago. Being CORTM certified that a company is recognized through a partnership with the OHS, Workers Compensation Board and an Industry Association as having a safety program that meets certain criteria. The bulk of CORTM firms are in construction; however, the standard is used by major business sectors in Alberta and British Columbia. A CORTM is awarded to employers who develop health and safety programs that meet established standards. In Alberta certificates are issued by Alberta Jobs, Skills, Training and Labour and are co-signed by Certifying Partners. Achieving and maintaining a valid CORTM is required for earning a financial incentive through the WCB Partnerships in Injury Reduction program.

In Ontario, CORTM is a voluntary program and is not recognized by the WSIB for firms to earn financial incentives. The Infrastructure Health and Safety Association (“IHSA”) assists companies attain CORTM in Ontario.

One common audit instrument is used by CORTM across Canada. Thirteen elements of the audit are the same for all provinces. These include: Policy Statement, Hazard Analysis, Safe Work Practices, Safe Job Procedures, Company Rules, Personal Protective Equipment, Preventive Maintenance, Training & Communication, Workplace Inspections, Investigations & Reporting, Emergency Preparedness, Statistics & Records, and Legislation. CORTM requirements are more stringent in Ontario as compared to other provinces. Six additional elements are specific to Ontario and include: Occupational Health, First Aid, Health & Safety Representative/Joint Health and Safety Committee, Workplace Violence & Harassment, Return to Work and Management Review.

According to the IHSA the benefits to CORTM include²:

- Employers are able to demonstrate to buyers of construction that their health and safety management system has been developed, implemented, and evaluated on an annual basis through comprehensive internal and external audits.
- Audits will typically include interviews, documentation review, and observation techniques to evaluate how well the employer is able to identify, assess, and control risks to workers.
- The audit criteria used by CORTM are recognized by industries throughout Canada. Your company will be part of a nationwide network participating in and promoting health and safety excellence.
- In a situation where you have to demonstrate that you have an active health and safety management system, participation in CORTM is an asset.
- Firms that are registered in the CORTM program may qualify ahead of others for certain jobs. Buyers of construction can make CORTM a requirement for contractors bidding on jobs in order to be more confident in the contractor's health and safety performance.
- Protecting the health and safety of all workers at all times is the right thing to do. Effective development and maintenance of a health and safety management system is a proactive approach to eliminating workplace injuries and illnesses.
- A firm's corporate image will be enhanced within the industry and community. Commitment to a strong culture of safety will attract safety-conscious workers.
- Providing immediate proof that you have an effective health and safety management system in place will give your organization a competitive advantage. Buyers of construction can be assured that you will bring superior safety practices to the workplace.
- Your program will comply with CORTM national standards, since all stipulations have been endorsed by participating members of the Canadian Federation of Construction Safety Associations (CFCSA).

² <http://www.ihsa.ca/cor/faqs.cfm>. November 3, 2014

There are costs associated with attaining and maintaining CORTM. Besides review, maintenance and continual improvement of the program, there are costs to train workers in order to meet the internal auditor requirement.

Once the training is complete, the employer is required to conduct an internal audit of their HSMS using IHSA's CORTM Audit Tool. The internal audit is reviewed by IHSA, and is then followed up with an external audit from IHSA staff. Upon successful completion of the internal and external audits, the employer is issued the Certificate of Recognition, and a Letter of Good Standing (good for one year). The employer is required to conduct and successfully complete annual internal audits for each of the next two years using IHSA's CORTM Audit Tool in order to receive a Letter of Good Standing for years two and three.³

CORTM is a valuable assessment tool that assists contractors continually improve their health and safety management program. Because CORTM is standardized it may be a required element in the pre-qualification process of contract bidders. An owner may be certain that all employers having attained CORTM have met a standardized level of health and safety expectations and requirements., and may be required in order to pre-qualify in bidding on projects.

Because CORTM requires involvement of senior management and both internal and external audits of the health and safety management system, it provides a greater certainty that the health and safety management program is not only documented, but implemented and reviewed annually ensuring a dynamic OHS management system.

Occupational Health and Safety Act (“OHSA”)

Under the *OHSA*, there are three primary legal stakeholder roles that apply to construction to consider when contracting. These are the Owner, Constructor, and Employer. In order to compare either a Third Party or CORTM with the due diligence requirements under the *OHSA*, it is important to understand the definitions and requirements of the workplace stakeholders. A review of the *OHSA* can be found in Appendix “A”.

Analysis and Review of Assessment Programs - Due Diligence

Third Party and the CORTM are assessment programs or tools that assist owners, constructors and employers in continually reviewing, monitoring and measuring the performance of their health and safety programs. Both programs are used for pre-bid qualification purposes to ensure that specified health and safety standards, both corporate and regulatory, are achieved. Both programs rate a company's compliance. Companies pass or fail; receive certification or not. In this manner all companies meet standardized criteria in order to become a pre-qualified contractor or supplier. In reality most employers may not have thought about a Third Party or CORTM until the requirement to have one or the other is presented to them in order to obtain work. Instead of reviewing the programs as “which is better”, an analysis comparing each system with the idea of due diligence, in the event of a prosecution, may determine which system provides a better return on investment and ultimately better protects workers health and safety.

³ Ibid

The primary defence in a prosecution of a health and safety offence is a due diligence defense. Section 66(3) of the *OHS*A provides a statutory requirement for a due diligence defense and the matter *R. V. Sault Ste Marie* provided the two branches of a due diligence defence; the mistake of fact branch and the reasonable precautions branch.

Use of a Third Party or COR™ would provide the due diligence defence following the reasonable precautions branch.

Elements of a health and safety management program, which have generally been accepted by the courts as evidence of due diligence, include:

- Occupational Health and Safety Policy
- Occupational Health and Safety Program
- Joint Health and Safety Committees
- A Workplace Hazardous Materials Information System (WHMIS) program
- Documented instruction and training
- Effective OHS communication
- Pre-start health and safety reviews
- Preventive Maintenance program
- Contractor Management program
- Occupational Health and Safety with senior management
- Accident and Incident Investigation
- Review and Audit of the health and safety management system

Documentation is only one aspect of the defence for due diligence. A court will look at the efforts put forward through the documented policies and procedures; however, the court will also review the efforts relating to a specific charge; i.e. have the procedures been carried out in the workplace.

A Third Party does not required members to meet standardized health and safety elements. Procedures submitted by members must include the legislated requirements; however, not all legislated requirements are prescribed to every industry sector. These must be reviewed specifically for the work an organization performs. In this manner, a Third Party is not focusing on the safety of an organization, but on the safety documentation of an organization. This misleads organizations to believe if documentation exists, so does safe behaviour. By trying to fit every organization into the safe legislated requirements, and by not having a standardized safety requirement for all members, achieving a passing score with a Third Party may be a frustrating

and costly endeavor. The lack of any set program standardization, the lack of any senior management involvement and the lack of planned audits to a set criterion do not ensure that an organization is committed to protecting the health and safety of workers, that workers are competent or that workers are committed to protecting not only their health and safety, but the safety of other workers. Document submission is a static process that separates itself from a dynamic health and safety program. The document submission narrows itself to the only the provision of documents not to the provision of protecting workers and continual improvement.

CORTM is a nationally recognized program with set standardization. Employers with CORTM are able to demonstrate through internal and external audits that their health and safety management system is not only documented, but implement and evaluated annually. Audits require more than a review of documentation compliance with legislated requirements. Audits generally also include interviews of workers and observation of practices at a workplace. In this manner the audit not only ensures legislated compliance but confirms that the health and safety management system is meeting the company's policy and objectives.

Another significant difference between CORTM and a Third Party is the requirement in CORTM that a representative from senior management and one designated full-time permanent employee must take prescribed training offered by IHSA. The training is conducted to help the employer understand and commit to the program, and for the full-time employee to become the designated Internal Auditor. The mandatory courses that must be taken can be found at Steps to Achieve CORTM web page.⁴ There is no confirmation that a member of senior management is involved in the Third Party submission of documentation, or trained in the requirements of the company's health and safety management system.

Statistics have shown that the greater involvement of senior management in a health and safety management system, the greater the success in the protection of the health and safety of workers. This is a key component that shows the involvement of management and practical efforts in the practice of due diligence. In this way, CORTM provides owners with greater confidence that all aspects of reasonable care are undertaken and meet all efforts recognized by the courts for a defence of due diligence.

On a balance of probabilities, in our opinion, the CORTM is superior to the Third Party assessment program.

Summary and Conclusion

A full and complete OHS management system should include a contractor prequalification or procurement process, which may include a Third Party, CORTM or other safety management system, to assess the health and safety practices and policies of a potential contractor or subcontractor. The program must include a safety orientation informing and instructing contractors or sub-contractors of the actual and potential hazards in the workplace, as well as assessment of the contractor or sub-contractor working at the workplace in order to ensure they are following the company rules and procedures, and the ability to escort a contractor or sub-contractor off-site in the event they are working unsafely.

⁴ Ibid

While documentation is an important aspect of due diligence in the event of a prosecution, it is important to exercise appropriate due diligence. This cannot be fulfilled by downloading documents into a database, auditing procedures only or stipulating specific definitions in a contract.

With this in mind, it is conclusive that the requirements of COR™, which include national standards, senior management involvement and a formal auditing protocol required annually, provide a superior assessment tool in confirming an OHS management system and due diligence. Consistent monitoring of the safety performance of an OHS management system, ensure that the system is based on continual improvement for the protection of workers.

A system that requires solely the uploading of documentation to show that a company is safe is unrealistic and may provide a false sense of security to an employer. Documentation is only one aspect of ensuring a defences of due diligence. The system must be shown to be carried out in the workplace and known by all workers.

Management review is an essential part of any OHS management system. Employers should keep in mind that approval by a Third Party as a contractor or the achievement of COR™ does not always guarantee a safety OHS management system. An employer should be aware that while both COR™ and Third Party may provide a means to show legislative compliance, having one system or the other does not negate the fact that companies may still be charged under the applicable statute or regulations.

For example, Agrium Inc. is a Hiring Client of ISNetworld with very strict standards for potential contractors or suppliers. Agrium Inc. was fined \$420,000 for a safety violation under the Occupational Health and Safety legislation in Saskatchewan on May 30, 2012. Agrium Inc. apparently failed to provide or maintain a system of work or working environment that ensured, as far as is reasonably practicable, the health, safety and welfare of a worker.⁵

In another example, Sureway Construction Ltd is an employee with COR in Alberta. Workers were installing a vertical portion of a manhole. One worker suffered fatal injuries when the suspended load crushed him against the excavation wall. On December 2, 2013, Sureway Construction Ltd. pled guilty to Section 70(1)(c) of the Occupational Health and Safety Code, Tag and hoisting lines, for failing to ensure a tag line is used when it allows worker separation from the load. On December 18, 2013, a penalty of \$275,000 (inclusive of victim fine surcharge) was imposed on Sureway Construction Ltd.

Qualifications, Assumptions and Reservations

Opinions expressed herein are subject to the following qualifications, assumptions and reservations:

- a. We have assumed and relied upon the accuracy, correctness and completeness of the information and facts provided by OGCA and that they represent all relevant facts for the purpose of providing our opinion; and

⁵ www.saskatchewan.ca/government/news-and-media/2012/may/30/agrium-inc-fined... October 16, 2014.

- b. This opinion is rendered solely for use by OCGA and may not be relied upon by any other person or for any other purposes without our prior written consent.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Norm Keith

Appendix “A”

The Ministry of Labour (“MOL”) is the regulator for health and safety in Ontario under the *OHS*A. MOL Inspectors enforce the *OHS*A and prescribed regulations during the course of field visits and related activities. The *OHS*A sets out the regulatory framework for the management and enforcement of health and safety standards directly and through its regulations. An owner or other person with duties under the *OHS*A cannot contract out of the *OHS*A. A field visit by a MOL Inspector may be to respond to a worker complaint, inspection, investigation and/or consultation.

The *OHS*A defines an owner,

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate.

The *OHS*A definitions of construction, constructor and project:

“construction” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project but does not include any work or undertaking underground in a mine.

“constructor” means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than 1 employer.

“project” means a construction project, whether public or private including, (a) the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, water main, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof, (b) the moving of a building or structure, and (c) any work or undertaking, or any lands or appurtenances used in connection with construction.”

The *OHS*A defines an employer,

“employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services.”

The *OHS*A is drafted to ensure that there is one legal entity with overall responsibility for health and safety of workers on a project; this entity is the constructor. The constructor has the greatest degree of control over the health and safety at the entire project and has broad responsibility for

the health and safety of all workers.⁶ When an owner undertakes all or part of a project, either by him- or herself, or by contracting work out to more than one contractor or employer, the owner becomes a constructor as set out in the *OHS*A. In that circumstance, the owner has the legal duties and responsibilities of a constructor. If the owner hires only one employer to do all the work, directly or through sub-contractor employers, then that employer becomes the constructor, depending on the contractual arrangements with the owner. The contractual agreements may be reviewed to determine if the owner may still be viewed as the constructor based on the wording of the agreement and the application of the *OHS*A.

Under the *OHS*A, section 1(3) states,

An owner does not become a constructor by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a project.

Therefore, if an owner hires a Project Manager or Construction Manager and the role of that party is for quality assurance that will not, in and of itself, cause the owner to be the constructor.

On all projects either the owner or another party the owner has contracted with will be the constructor. Everyone involved in a project ought to be made aware who is the constructor undertaking the project, and the roles and responsibilities of everyone on the project. Optimally, contractual agreements should formally document the roles and relationships of the parties on a project. Individual projects should be identified by their location, time frame for construction activities and the identified goal of the project, i.e. erecting a new building, modifying an existing building, conducting repairs, maintenance.

Owners may also have legal duties on a project under the *OHS*A as an employer. The *OHS*A is not the only legislation that an owner may be held accountable and charged under with regards to health and safety. An owner may also be charged for safety violations under other legislation; i.e. the *Boilers and Pressure Vessels Act* and its regulations. It is therefore important to establish and outline the specific roles and duties, in writing, of all workplace parties.

For the purposes of reviewing the current legal requirements and enforcement practices of the MOL with regards to owner responsibilities it is important to be aware of and review the duties of an owner under the *OHS*A. That topic is beyond the scope of this opinion.

Bill C-45 established a new legal duty for the health and safety of works and the public in the *Criminal Code*. If breached, that duty gives rise to the offence of OHS criminal negligence. If the accused was under a legal duty and breached that duty by an act or omission, and did so with wanton or reckless disregard for the lives or safety of other persons, this amounts to the criminal offence of criminal negligence. The parties cannot contract out of the legal duty under the *OHS*A or the *Criminal Code*.

⁶ Occupational Health and Safety Branch Ministry of Labour, "Construction Guideline", March 2009, 1

The Harwood Safety Group

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February 9, 2015

Mr. Mike McKenna
Executive Director
BC Construction Safety Alliance
#400, 625 Agnes Street
New Westminster, BC
V3M 5Y4

Dear Mike,

Re: Legal Opinion on COR in BC

The following is my legal opinion prepared for the BC Construction Safety Alliance (BCCSA), which compares the Certificate of Recognition program (COR) with Third Party Safety Verification programs (TPSVs), in terms of the benefits of each program to the construction industry in complying with the BC occupational health and safety (OHS) laws.

As we discussed, this opinion includes:

- The application in the BC context of the results from a recent study commissioned by the Ontario General Contractors Association (OGCA) comparing COR and TPSVs
- Consideration of the impact of implementation by construction firms of TPSVs and COR in meeting a “due diligence” standard in defence of regulatory orders and penalties imposed by WorkSafeBC
- A summary of any reported decisions from the Review Division of WorkSafeBC and the Workers Compensation Appeal Tribunal (WCAT) relating to COR or TPSVs in the construction industry

I. COR and TPSV

1. Overview

COR

COR in the construction industry is a program accredited through the Canadian Federation of Construction Safety Associations (CFCSA) and implemented by certifying

partners across Canada - in BC by the BCCSA. COR offers construction firms a program for implementing and maintaining a comprehensive and health and safety management system.

TPSVs

TPSVs are available to construction firms through various commercial providers. One such provider, ISNetwork, states that their verification services, "...standardize contractor management across multiple sites and geographic regions, clearly communicate requirements and expectations and exchange data with other internal systems. The result is lower incident rates and higher compliance numbers."

ISNetwork reports that they collect self-reported information from contractors and maintains it in a centralized database. Subject matter experts verify the information to ensure consistency with the requirements set forth by their clients and regulatory agencies. Information collected and verified includes:

- Management System Questionnaire
- Health & Safety, Environmental, Sustainability & Quality Programs
- Injury & Illness Records
- Audit Results
- Insurance Certificates
- Workers' Compensation & Experience Modifier

It is also said to connect clients, "...with safe and sustainable contractors, facilitating partnerships to help ensure compliance with safety and procurement standards."¹

2. Comparison of COR and TPSV in Ontario

A campaign is underway in Ontario where the OGCA is petitioning the government for a single accreditation system for the construction industry that recognizes employers who successfully implement a health and safety management system.² The OGCA supports industry accreditation through COR versus TPSVs saying it, "strongly believes that these firms [TPSV] should not be relied on to accredit whether or not a firm is safe and is actually practicing safe policies."³

In support of its position, the OGCA references a study (the OGCA study) that it commissioned from Norm Keith of Fasken Martineau Dumoulin LLP. The study compares the respective value to workplace parties of TPSV (using ISNetwork) and COR (using the CFCSA program as applied through the Infrastructure Health and Safety Association), in

¹ www.isnetwork.com/WhatWeDo.aspx

² www.ogca.ca/petition

³ www.dailycommercialnews.com/Associations/News/2014/12/Third-party-safety-verification-smoke-and-mirrors-states-OGCA-study-1004604W/

complying with OHS laws in Ontario. The OGCA notes the differences between the programs, as well as the conclusions reached from the study. The summary from the OGCA website states:

Belonging to a Third Party is costly and does not guarantee a company will be awarded a contract. Membership also does not confirm that a company's uploaded OHS management system is carried out at the work place. The RAY process appears to check that uploaded procedures state legislation verbatim rather than audit the system for non-conformances, discussion with workers and workplace observations....

Because COR requires involvement of senior management and both internal and external audits of the health and safety management system, it provides a greater certainty that the health and safety management program is not only documented, but implemented and reviewed annually ensuring a dynamic OHS management system.

While documentation is an important aspect of due diligence in the event of a prosecution, it is important to exercise appropriate due diligence. This cannot be fulfilled by downloading documents into a database, auditing procedures only or stipulating specific definitions in a contract.

With this in mind, it is conclusive that the requirements of COR, which include national standards, senior management involvement and a formal auditing protocol required annually, provide a superior assessment tool in confirming an QHS management system and due diligence.⁴ (emphasis added)

In summary, the OGCA study found that COR was superior to TPSV in three aspects:

1. Standardized program requirements, to a national standard
2. Senior management involvement, including prescribed training
3. Formal audits which include workplace observations and interviews

3. COR in BC

COR is described as a program which,

... recognizes and rewards employers who go beyond the legal requirements of the Workers Compensation Act and the Occupational Health and Safety Regulation by taking a best practices approach to implementing health, safety, and return-to-work (RTW) management systems. The program promotes equally the

⁴ Ibid

concept of managing health and safety with other components necessary for a successful business, such as profitability and productivity.⁵

COR was first made available to BC employers in 2002 as a pilot program in the construction sector. The BC oil and gas sector entered the COR program in 2004, with a program closely aligned with industry in Alberta, where a COR program has been available since 1990. In 2006, the WorkSafeBC Board of Directors formally approved expanding the COR program from the pilot phase to become available to all industries in BC. Last reported, the COR is available in nine industries in BC.

COR program includes three partners: WorkSafeBC, the certifying partner, and the qualified auditors. WorkSafeBC sets standards and guidelines, and audits the certifying partner to ensure that the mandatory standards are followed; the certifying partner administers the program and confirms the validity of employers' audits; and, the qualified auditors evaluate and monitor the employer.

The quality assurance maintained over the BC COR is said to include measures to ensure that: a consistently high standard of performance is maintained; quality-related activities are being performed effectively; and, stakeholders will have confidence that audit results are valid and meaningful.⁶

In the BC construction industry, "the authority having jurisdiction" or certifying partner is the BCCSA. The COR is voluntary and the benefits of COR to construction include:

- Makes a strong public statement about a company's commitment to protecting the well-being of workers and maintaining a culture of safety on jobsites. A win-win for everyone!
- Employers who achieve and maintain COR may be eligible to receive up to 15% in annual incentive payments (10% for OHS COR; 5% for IM/RTW COR) from WorkSafeBC.
- Over time, with reduced injuries and lower claim costs, a COR company's experience-rated WorkSafeBC premiums will reflect additional savings.
- Many general contractors require subcontractors to have a recognized safety program in place as a prequalification to bid on projects. COR meets that requirement.⁷

The 14 elements in the BCCSA COR audit document are:

- Company Health and Safety Policy
- Other policies for applicable Elements (e.g. PPE, inspections, investigations)

⁵ www.worksafebc.com/insurance/partners_program/assets/info_sheets/COR_Overview.pdf

⁶ www.worksafebc.com/insurance/partners_program/quality_assurance/default.asp

⁷ www.bccsa.ca/index.php?id=211#1

- Completed workplace hazard assessment forms
- Safe work practices and safe job procedures
- Company rules and disciplinary measures
- Preventative maintenance program (review the maintenance schedule and compare to actual samples)
- Training and communication (health and safety meetings, on-the-job training, orientations, and specialized training)
- Completed inspection reports
- Completed investigations
- Emergency preparedness (review of site specific plans)
- Statistics calculations
- Medical monitoring (where applicable)
- Corrective action plans and previous audit reports (if applicable). Were the action items addressed within the timeframe specified?
- Joint health and safety committee meeting policies and minutes

Auditor verification through an observational site tour, including interviews with various company representatives and employees, confirms and supplements the information provided on the document review. Qualified external auditors are required for companies with 20 or more employees. Training of internal company personnel who can be responsible for the COR standards is also recommended. Trained internal auditors may be used for “small COR” firms.

4. OGCA Study Applied to BC

For the purposes of the determining the efficacy of relying on the conclusions noted above from the OGCA study, a comparison of the Ontario-based COR used in the study and the COR administered in BC shows no significant differences between the audit standards. Both include the elements from the CFCSA national standard, and some additional requirements such as a joint health and safety committee.

Given the similarity of the program elements between the COR in Ontario and BC, the conclusions in the OGCA study relating to the comparison of TPSV and Ontario COR can reasonably be confirmed as applying in BC. Namely, BC COR is also superior to TPSV as it includes:

- Standardized program requirements
- Senior management involvement
- Formal audits which include workplace observations and interviews

In addition to these noted program elements, the BC COR offers some further advantages for construction firms in this province. As the COR is well established and recognized in BC, the “COR system” has benefits over TPSVs which were not included as part of the

OGCA study.

The COR program in BC is established through a partnership program. WorkSafeBC recognizes COR as the industry standard for incentive payments to firms for up to 10% of their assessments annually for the OHS component. This provides additional incentive to employers to become certified and maintain certification. It also emphasizes the importance of COR as **the recognized industry standard in BC** for developing and implementing a quality health and safety and injury management system.

In summary, in BC there are significant additional benefits to COR over TPSV. These include:

- Program requirements that meet a provincially-recognized standard
- Partnership that involves a certifying partner, qualified auditors and the OHS regulatory agency (WorkSafeBC) with the mandate and resources to align the program to the specific needs of each COR industry type
- Incentives from WorkSafeBC for OHS of up to 10% of assessments
- Designed to ensure consistency and quality over the whole system through prescribed COR system standards, recommended guidelines and quality assurance practices
- Independent oversight and quality assurance over the certifying partners by WorkSafeBC
- Training of auditors to accepted standards and independent oversight of qualified auditors through the certified partners

II. COR and Due Diligence

1. Overview

It is well understood that attaining COR is not, in and of itself, evidence of compliance with OHS regulatory requirements. However, it may provide some evidence towards establishing the defence of due diligence on general duty orders and penalties.

The remainder of this opinion considers how COR applies to due diligence in BC, including contrasting how it is considered in other jurisdictions such as Ontario. The conclusions that apply to COR will have some application for TPSVs. However, given the noted advantages of COR, particularly its support and recognition through WorkSafeBC, relying on TPSV in defence of WorkSafeBC enforcement action arguably is significantly more challenging. No reported review or appeal decisions appear to document a TPSV being raised on a defence.

2. Due Diligence Standard/Defence

Due diligence is the standard that workplace parties must meet in fulfilling their general OHS duties. The standard may be set out in an OHS statute as a requirement, and/or as a defence to proposed enforcement action. Where not included in legislation, due diligence is applied through common law with reliance on the precedential Supreme Court of Canada case - *R. v. Sault Ste. Marie*.⁸

Due diligence is often described as a “defence” to regulatory enforcement action. The defence involves an objective review of what a reasonable person would have done in the circumstances. The two branches of the defence are: that the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent; or, the accused took all reasonable steps to avoid the particular event.

In BC, workplace parties - owners, prime contractors, employers, suppliers, officers and directors, supervisors and workers – must demonstrate that they have performed their general duties to a standard of “all reasonable care in the circumstances.”⁹ In the construction industry, a review of reasonable care may include considering how a firm pre-qualified its prime contractors, construction supervisors, contractors or sub-trades in ensuring health and safety.

There are some notable differences in how due diligence is applied in BC compared to Ontario and many other jurisdictions. A brief review of the differences will set the stage for a consideration how COR is considered in applying due diligence in BC.

3. Due Diligence in Prosecutions

In Ontario, due diligence is available to workplace parties as a statutory defence to a regulatory offence in prosecutions in court. This is similar to most jurisdictions in Canada where the OHS legal regimes require regulatory authorities to pursue monetary and other sanctions through prosecutions.

In applying the defence of due diligence, the courts will consider three factors: foreseeability - could a reasonable person have foreseen that something could go wrong; preventability - was there an opportunity to prevent the injury; and, control - who was the responsible person present who could have prevented the incident.

A key element in addressing these factors and establishing due diligence is to show that an employer had an effective written OHS management program. The court cases indicate that the management program should include various elements and be properly documented.¹⁰

⁸ [1978] 85 DLR (3rd) 161

⁹ The general duty sections are section 115 to 121 of the WCA

¹⁰ These elements include: that workplace safety is a commitment and a priority; OHS policies, practices, procedures are established, implemented and enforced; an ongoing system for assessing and addressing workplace hazards; proper

While evidence of an OHS management program is important, another critical consideration by the court is the actual effectiveness of the OHS management program in the circumstances of the alleged offence.

4. Due Diligence in BC

BC is one of only a few Canadian jurisdictions with OHS legislative authority to impose significant administrative penalties (up to over \$600,000). Prosecutions are available as an alternative but have been used infrequently because of the availability of significant penalties.¹¹ This contrasts with enforcement regimes in jurisdictions like Ontario where administrative penalties are not available, so prosecutions are more readily relied upon.

The vast majority of enforcement action in BC relates to orders and penalties. Orders may be written on any workplace party under the WCA, while administrative penalties may be imposed only on employers.¹² The courts are not involved in reviews or appeals of orders and penalties (except in limited cases of judicial review). The Review Division of WorkSafeBC is the first level of review available for parties with orders and/or proposed penalties, and the Workers Compensation Appeal Tribunal (WCAT) provides a second level of appeal for penalties.

In BC, due diligence is specifically set out in the WCA as a defence to a proposed penalty, and as a factor to be considered in imposing a penalty.¹³ There is also related policy of the Board of Directors of WorkSafeBC which safety officers as well as the Review Division and WCAT are bound by.¹⁴ Review and appeal decisions primarily establish the legal approach to how due diligence is applied rather than court precedent.

training and instruction; routine monitoring of workplace safety to ensure compliance with policies, practices, and procedures; a proper and functioning joint health and safety committee; regular occupational health safety meetings and reviews; effective communication; investigation of accidents and incidents, including provision for corrective actions and necessary changes to the program; regular reviews of the program.

¹¹ The same can be said for prosecutions for negligence under the *Criminal Code*, with less than a dozen having been pursued anywhere Canada since enactment of Bill C-45 in 2002.

¹² Section 196

(1) The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

(a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,

(b) the employer has not complied with this Part, the regulations or an applicable order, or

(c) the employer's workplace or working conditions are not safe.

(2) An administrative penalty which is greater than \$621,615.98 must not be imposed under this section.

¹³ Section 196(3) - An administrative penalty must not be imposed under this section if an employer exercised due diligence to prevent the circumstances described in subsection (1).

¹⁴ WCAT may refuse to apply Board policy in limited cases where it is challenged as "patently unreasonable" under section 251 WCA.

5. WorkSafeBC Policies

Due Diligence Policy

In BC, the defence of due diligence is available in two instances:

- for violations of general duties under the WCA
- where a penalty has been proposed pertaining to a violation of the OHS Regulation or the WCA.

Due diligence is generally not a defence in the case of a violation of the OHS Regulation where no penalty has been proposed as these are regarded as “strict liability” violations.

The WorkSafeBC policy on *Due Diligence* states:

The Board will consider that the employer exercised due diligence if the evidence shows on a balance of probabilities that the employer took all reasonable care. This involves consideration of what a reasonable person would have done in the circumstances. Due diligence will be found if the employer reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if the employer took all reasonable steps to avoid the particular event.

In determining whether the employer has exercised due diligence under section 196(3), all the circumstances of the case must be considered.¹⁵

Penalty Policy

Specific factors are listed in the WorkSafeBC policy that will be considered in deciding whether to impose an administrative penalty:¹⁶

- **whether the employer has an effective, overall program for complying with the Act and the regulations;**
- **whether the employer has otherwise exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates;** (emphasis added)
- whether the violations or other circumstances have resulted from the independent action of workers who have been properly instructed, trained and supervised;
- the potential seriousness of the injury or illness that might have occurred, the number of people who might have been at risk and the likelihood of the injury or illness occurring;
- the past compliance history of the employer, including the nature, number and frequency of violations, and the occurrence of repeat violations;
- the extent to which the employer was aware or should have been aware of the

¹⁵ Prevention Manual Policy - D12-196-10

¹⁶ Prevention Manual Policy - D12-196-1

- hazard or that the Act or regulations were being violated;
- the need to provide an incentive for the employer to comply;
- whether an alternative means of enforcing the regulations would be more effective;
- other relevant circumstances.

The first two factors most closely relate to where COR, theoretically, could militate against imposition of a penalty.

III. COR and Due Diligence

The following summarizes of a survey of the decisions of the Review Division and WCAT in applying due diligence as a defence to penalties and general duty violations, and how COR has been considered as a factor on those defences.

On penalty reviews and appeals, the penalty factors noted above are each considered and weighed against one another in reaching the outcome of whether a penalty should be imposed. The policy provides two separate factors relevant to COR as a defence: one is the need for “effective, overall program” and the other is demonstrating “due diligence.”

The separation of these factors into two items is significant. When COR has been raised in defence, it is considered under the first category – whether an effective overall program is in place – and a finding made on whether that factor was met.

Consideration is then given to the next factor - due diligence to prevent the failure, non-compliance or conditions – and a separate finding made on that. Under this category, and in considering the due diligence defence as a whole, decision-makers consider other evidence relating to the violation. The steps and actions the employer took in the particular circumstances of the case are the primary considerations in determining if the employer was duly diligence.

COR is one factor weighed with the other factors in the penalty policy, and in determining due diligence. COR is considered principally in deciding if an effective overall program was in place. That said, COR has been accepted as evidence establishing an “effective, overall program.”

Similarly, on decisions reviewing non-compliance with the general duty sections under the WCA, proof of a good safety management system through attaining and maintaining COR is one factor that can contribute to a finding of due diligence though again, other evidence will weigh heavily on the final determination.

In summary, in BC the due diligence standard and the defence is applied and interpreted in accordance with the policies under the WCA. The COR is not complete proof of due diligence in defence of a penalty or to support fulfillment of a workplace party’s general

duties. It has been accepted as evidence of an effective, overall program, and can be an important factor in establishing due diligence.

IV. Conclusions

The findings of the OGCA study comparing COR and TPSVs in Ontario can be equally applied in this province. In addition, as the BC COR system is recognized, standardized and provides independent quality oversight as well as incentives to industry, it offers further benefits to construction firms over TPSVs. Showing that COR has been achieved and maintained can also be important to demonstrating a firm's due diligence in fulfilling its general duties and as a defence on penalty actions.

Please advise if you require any further information or advice relating to the matters covered in this opinion.

Sincerely,

Nancy Harwood
Lawyer and Owner
The Harwood Safety Group

OGCA SUMMARY

Third Party Safety Verification Companies and the Smoke and Mirrors of Health and Safety

Who is safe? How does an owner hire a contractor and have confidence that they are as qualified on health and safety as they are to deliver the project? Ontario hasn't had a process to provide certainty that the contractor has invested in training and processes required.

Frustrated owners have been seduced by so-called "Third Party Safety Verification Companies" (TPSVC). They promote compliance as being easy. Line up your policies; if they meet the grade, then they are eligible to bid.

The OGCA and many of its fellow construction associations are very concerned with the proliferation of TPSVC. A paper audit that doesn't include site confirmation proves very little. Instead, we believe in a single recognized accreditation system for our industry that is reliable and contributes to the delivery of a high standard of health and safety for our employees.

As part of our ongoing opposition to owners relying on TPSVC, we commissioned a study on the key aspect of "Due Diligence" and an examination of both TPSVC and COR™ to determine the value that either system might provide.

The study was conducted by Mr. Norm Keith of the firm, Fasken Martineau DuMonlin LLP. Mr. Keith is well known and respected as one of the foremost experts on the issue of health and safety, particularly in the construction industry.

The full report can be viewed on the OGCA website www.ogca.ca

Some key points were raised by Mr. Keith, but the use of "Due Diligence" as a defense in the event of a prosecution is the most important. We asked Mr.

Keith to compare the two systems, TPSVC and COR™ in respect to their use as a "Due Diligence" defense.

In comparison, it is important to first assess how each works to provide owners with the necessary information. While both are third party accreditation systems, there are some very key and important differences. The study describes these in great detail, but the one that owners should perhaps be most aware of is as follows.

He points out that:

"The primary defence in a prosecution of a health and safety offence is a due diligence defense."

"Belonging to a Third Party is costly and does not guarantee a company will be awarded a contract. Membership also does not confirm that a company's

uploaded OHS management system is carried out at the work place. The RAY process appears to check that uploaded procedures state legislation verbatim rather than audit the system for non-conformances, discussion with workers and workplace observations".

"Because COR™ requires involvement of senior management and both internal and external audits of the health and safety management system, it provides a greater certainty that the health and safety management program is not only documented, but implemented and reviewed annually ensuring a dynamic OHS management system."

The OGCA and many of its fellow construction associations are very concerned with the proliferation of TPSVC.

OGCA SUMMARY

The differences are important. COR™ requires actual physical audits of the firm's policies and programs at their office and sites - TPSVC does not.

True accreditation programs require a great deal of work, investment and participation by senior management right down to the site collecting policies. Firms invest in the necessary training and education of their workers through a program like COR™. We have learned that it is possible to meet the TPSVC requirements in 72 hours!

Accrediting a firm that has achieved TPSVC compliance in just 72 hours does not constitute "Due Diligence" nor is it of much value to an owner. We do not believe in having to register with numerous TPSVC, all with different practices.

The OGCA strongly believes that these firms should not be relied on to accredit whether or not a firm is safe and is actually practicing safe policies.

We are urging the Government and CPO to move to recognition of an Accreditation Program that will include COR™ and is applicable to the entire Ontario construction sector.

In short, Mr. Keith found:

"On a balance of probabilities, in our opinion, the COR™ is superior to the Third Party assessment program."

The construction industry is very complex and challenging. We do face "risk" when working and that is why it is vital to continue to drive the vision of a "safety culture" led by a workable and effective "internal responsibility" program.

In his summary, Mr. Keith offers the following opinion in regards to the difference between TPSVC and industry accreditation like COR™.

"While documentation is an important aspect of due diligence in the event of a prosecution, it is

important to exercise appropriate due diligence. This cannot be fulfilled by downloading documents into a database, auditing procedures only or stipulating specific definitions in a contract.

With this in mind, it is conclusive that the requirements of COR™, which include national standards, senior management involvement and a formal auditing protocol required annually, provide a superior assessment tool in confirming an OHS management system and due diligence.

Consistent monitoring of the safety performance of an OHS management system, ensure that the system is based on continual improvement for the protection of workers."

The industry needs to speak out on this issue. We ask all industry stakeholders and supporters to join in the online petition at:

www.ogca.ca/petition

We are asking Mr. Kevin Flynn, Minister of Labour, to act by developing standards for accreditation of OH&S excellence. This will identify the programs that work, set a high standard and confirm it through an onsite audit. Buyers will then be able to sort out the TPSVC that don't make the grade.

We will be pleased to make the full opinion available to any owner seeking information. Thanks to the support of the IHSA, we can provide experienced experts to meet with you and explain your opportunity as an owner.

APPENDIX A

FORM LETTERS

VARIOUS DAILY COMMERCIAL NEWS ARTICLES

INSERT GTAA LETTER

INSERT YORK REGION LETTER 1

INSERT YORK REGION LETTER 2

[date]

Owner's Principal Contact

Reference: Mandatory Requirements for GCs to be ISNetworld prequalified
OPG RFP # AM2015-47

Dear Sir or Madam:

The Ontario General Contractors Association represents over 200 general contractors throughout Ontario. We provide the industry with a number of services including the review of tender documents and the tendering process. This is done in the belief that a clear, concise and equitable set of bidding documents, combined with a fair, open and transparent tendering process, will benefit all of the parties involved: the design professional, the contractor and most importantly, the owner.

In this case, we are writing with regards to the requirement for general contractors to be prequalified by (insert name of the TPSVC). OGCA members have the highest level of Safety in the Province confirmed through independent studies when employing contractors simply requiring they be members in good standing with the OGCA provides an excellent confirmation of their commitment to safety.

The OGCA has been working with the Infrastructure Health and Safety Association to bring the Certificate of Recognition (COR™) to Ontario as an accreditation process for safety. The program is in use successfully across Canada and is becoming well established here in Ontario.

The OGCA has recently recognized the Region of York for the commitment it has made to require the highest level of safety on its construction projects. They have recently joined the ranks of Infrastructure Ontario (IO), GTAA, the TTC and other public buyers in embracing the COR™ accreditation process to pre-qualify contractors.

Like many owners, the Region was looking for a better way to manage safety on their projects through the Prequalification Process.

They decided on using a Third Party Safety Verification Company (TPSVC), a process which is not supported by the industry. On behalf of a number of those organizations, the OGCA wrote to the Region and requested a meeting.

The OGCA has a very successful and collaborative relationship with the Region and they quickly agreed to meet with us. Members of the industry representing OGCA, ORBA, MCAO, ECAO, and IHSA met with the Region's staff where we informed them of our concerns regarding the decision to use a TPSVC.

...2/

Owner's Principal Contact
[date]
OGCA 2

We stressed that there need be only one standard Accreditation level across the province and that many of us support the Certificate of Recognition Program (COR™) used across the country and administered by the Infrastructure Health and Safety Association (IHSA).

The Region agreed to take our concerns under consideration and discuss with the Region's senior management team.

On December 2, 2014, the OGCA was very pleased to receive confirmation that as a result of these discussions, the Region of York was prepared to implement the COR™ program as an alternative to registering with a TPSVC. The Region will now accept prequalification by ISNetworld, or COR™ certification.

As with other organizations who have adopted the COR™ program, the Region intends to utilize a phased approach to implement COR™ during this period.

The OGCA and IHSA are currently meeting with numerous Public Owners to explain the risks of TPSVCs and the value of COR™.

We would be pleased to meet with you and your team.

For more information, please go to <http://www.ihsa.ca/Certificate.of.recognition>

Yours sincerely,

ONTARIO GENERAL CONTRACTORS ASSOCIATION

Clive Thurston
President

Contractor's Form Letter

[date]

Owner's Chief Contact
Address, etc.

Reference: Use of a Third Party Safety Verification Company (TPSVC)

Dear Sir or Madam:

[Your firm name] is proud of its safety record and the programs we have in place to protect our workers.

We are members in good standing with the Ontario General Contractors Association, an organization that leads the industry and the province of Ontario in the development of safety programs and is constantly working to raise the bar by creating a culture of safety.

The OGCA works closely with the Ministry of Labour, WSIB and the Infrastructure Health and Safety Association (IHSA) to meet those objectives.

Independent studies have shown and continue to show that year after year, OGCA members have the best LTI record in the industry. In fact, we average 40% fewer LTIs than other non-OGCA contractors.

The OGCA has carefully evaluated the value of these TPSVCs as have others, like Infrastructure Ontario.

Recently, Lawrence Quinn, Senior VP Service Delivery, made the following statement at the OGCA annual Safety Leadership Day:

"Regarding the health and safety audits coming in from the United States ... We've looked at them all, ad nauseam, at Infrastructure Ontario. They are large databases, but not a good way to operationalize health and safety. From CEO to out in the field and cycling back, you need a program, which is what COR™ is all about. These large databases do not cut it."

The OGCA had an independent review done of the value of these companies by Mr. Norm Keith of Fasken Martineau. Mr. Keith's reputation and expertise in Health and Safety is well-known.

Attached is a summary of some of the key points he found. The full report can be viewed through the OGCA website at www.ogca.ca.

We respectfully request that you do not require contractors to register with these companies. In our opinion, it simply adds cost, does nothing to ensure a safe and healthy work site and it may place you, the owner, at a significant risk.

There are alternatives such as the COR™ program that are supported by the industry and currently being adopted by many owners.

The OGCA will be contacting you with further information and asking that you meet with them and the IHSA before you impose this questionable regime on the industry.

Yours sincerely,

[company name]

CEO/President of [company name]

OGCA Release

York Region Steps Up on Construction Health and Safety

The OGCA would like to recognize the Region of York for the commitment it has made to require the highest level of safety on its construction projects. They have recently joined the ranks of Infrastructure Ontario (IO), GTAA, the TTC and other public buyers in embracing the COR™ accreditation process to pre-qualify contractors.

Like many owners, the Region was looking for a better way to manage safety on their projects through the Prequalification Process.

They decided on using a Third Party Safety Verification Company (TPSVC), a process which is not supported by the industry. On behalf of a number of those organizations, the OGCA wrote to the Region and requested a meeting.

The OGCA has a very successful and collaborative relationship with the Region and they quickly agreed to meet with us. Members of the industry representing OGCA, ORBA, MCAO, ECAO, and IHSA met with the Region's staff where we informed them of our concerns regarding the decision to use a TPSVC.

We stressed that there need be only one standard Accreditation level across the province and that many of us support the Certificate of Recognition Program (COR™) used across the country and administered by the Infrastructure Health and Safety Association (IHSA).

The Region agreed to take our concerns under consideration and discuss with the Region's senior management team.

On December 2, 2014, the OGCA was very pleased to receive confirmation that, as a result of these discussions, the Region of York was prepared to implement the COR™ program as an alternative to registering with a TPSVC.

Beginning in 2015, firms tendering on high risk work for the Region will be required to be either;

- (1) Must be subscribed to ISNetworld and must have a minimum grade of 'B' under the work type(s) specified by the Region; or
- (2) Must be COR™ certified or enrolled in the COR™ program

As with other organizations who have adopted the COR™ program, the Region intends to utilize a phased approach to implement COR™ during this period.

The industry wishes to extend its thanks to the Region of York for its leadership in health and safety and adopting what we believe is the best accreditation system available for construction.

Daily Commercial News

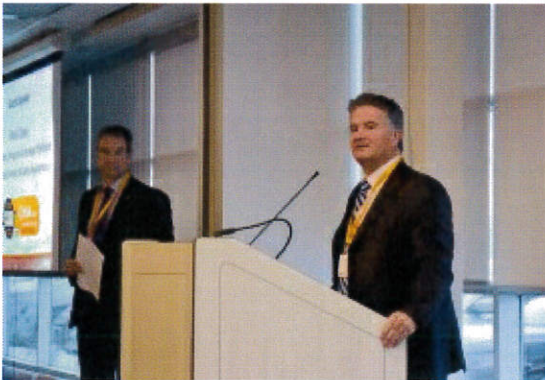
Article

COR's value is worth the work, say its advocates

comments: 0 views: 195 label: Associations

by label: Lindsey Cole Mar 11, 2015

The president of Ball Construction says you can't put a price tag on the Certificate of Recognition (COR) program and while it's a lot of work to become certified, it's well worth the effort.



Paul Casey, the vice-president of programs and strategic development at the Infrastructure Health and Safety Association (IHSA) and David Frame, the director of government relations at the Ontario General Contractors Association (OGCA) both spoke about the importance of becoming COR certified and the steps to do so during the COR Open House and OGCA Leadership Day held recently in Mississauga. - Photo: LINDSEY COLE

"It was discussed a couple years ago and our firm right away said we want to be part of that. It took us a little while to get our head around it, but we did get our head around it," Jason Ball told those in attendance at the recent COR Open House and Ontario General Contractors Association (OGCA) Leadership Day.

"OGCA promoted the COR program, we saw the reason to join. It's a solid program."

Ball says it took about 14 months to become COR certified and the results already speak for themselves.

"The first year we had COR, we had an injury reduction of 73 per cent," he explains.

"There's something here. This is a program where you get audited, you have to prove what you're doing. It's much more in-depth. You've got a team that's working. It's not easy, but it is definitely showing results."

Ball was one of several speakers who spoke about the benefits of the COR program, giving his company's perspective.

On the implementation side, Paul Casey, vice-president of programs and strategic development at the Infrastructure Health and Safety Association (IHSA), discussed the process of becoming certified.
<http://www.dailycommercialnews.com/Associations/News/2015/3/CORs-value-is-worth-the-work-sa...> 3/13/2015

employers into our programs. What we can do is work with owners, and buyers and users."

If COR is required for more jobs, more companies are going to adopt the program.

"The workplace has to change," he states.

"To get business in Ontario, a lot of times it's only been a matter of having a binder. IHSA is pursuing COR and it is not easy. It's not a cakewalk. You don't show up to a room with a binder and get a pat on the back and leave with a plaque saying you're certified."

Casey says attaining COR certification involves some key elements. According to the IHSA, step one begins with submitting a COR application form. Next, explains Casey, are mandatory training courses. A representative from senior management must complete one course, states the IHSA, and a permanent full-time employee must complete three courses.

This eventually builds an internal auditor within the company, Casey states, who essentially becomes the resource for the program

"What makes COR kind of unique is that we're not trying to create a dependency within your organization on consultants or ourselves. We want to build a resource in your company," he says, adding step three is a self-audit of the workplace.

"There are many things that you'll find out when you do your audit. You can only know by doing a review of your workplace that you have controls of what your risks are."

After the internal audit, the results are submitted, provided with solid evidence to back up the findings, Casey added.

"Evidence is actually being able put information together aligned with what's required and submit it to us. Once you get through that desk audit...then we actually schedule an audit. We will validate the documents at the location. We will observe the controls being implemented and we'll actually talk to people about their knowledge of the controls and the program in the workplace."

Once a workplace achieves COR, it is valid for three years "provided the employer performs internal maintenance audits in the second and third years and complies with the terms and conditions of the COR™ program," the IHSA states on its website.

And while some in the audience had questions surrounding third party verifications, both Ball and the OGCA's Director of Government Relations David Frame were quick to point out the difference.

"We are forced to use some other third party because of certain clients, but this program has accountability and it has all the elements that you want in a program," states Ball.

"It creates worker buy in. From a pre-qualification point of view... you're going to see COR as a pre-qualification requirement."

Frame said COR will help pave the way to safer workplaces and better business practices.

"Many contractors don't have a choice. If you're going to bid on a job you have to do the required third party verification," he says.

"What we're doing is that we're saying we're going to change that so that there's one recognized source through the government of program or programs like COR that are recognized and it will clear out the confusion and make it simple."

Follow Lindsey Cole on Twitter

Article

IO official drives safety message with first-hand accounts

comments: 0 views: 214 label: Associations

by label: Lindsey Cole Mar 13, 2015

Lawrence Quinn didn't want to rhyme off statistics and numbers when presenting about health and safety at the COR Open House and Ontario General Contractors Association (OGCA) Leadership Conference.



Lawrence Quinn of Infrastructure Ontario was one of the speakers during the COR Open House and OGCA Leadership Conference held recently. He spoke about his own personal experiences out in the field as well as the importance of COR certification. - Photo: LINDSEY COLE

Instead, the senior vice-president of major projects at Infrastructure Ontario (IO) decided to give a snapshot of what incidents are really like — incidents he witnessed firsthand throughout his 32 years in the field.

"I saw a Bell technician get electrocuted with a 13 kVA line doing a splice into a subdivision," he said. "I saw a young engineering graduate almost drown 70 feet below ground in a caisson."

He saw a roof inspector fall 40 feet to his death, a bulldozer roll over on Highway 7, a concrete pumper explode. But of all his stories, it was clear two stood out from the rest.

"The Bell technician being electrocuted and the engineering grad in the caisson, that was me," he said.

"I think about it every day."

Both of those instances are examples of the importance of health and safety training programs.

"By the time they fished me out of the caisson, the guy who was my lifeline at the top...was feathering my safety rope with my harness and the moron dropped my safety rope from 70 feet," he explained, as he motioned to just below his chin, indicating where the water level was.

"I've got a few seconds before I'm under water and they're pulling me up on a little bucket with a little steel cable and I got to get to the top now without a safety harness."

When he was electrocuted it was an entirely different experience.

"The only thing that saved my bacon was a safety program. I followed their (Bell Canada's) safety rules to the T," he said, adding this was in the mid-1970s.

"I had my neoprene rubber liner, almost like a scuba diving suit underneath, then my safety clothes, my rubber gloves and I brushed a 13 kV line. It might have had a different ending had I come into full contact with this feeder. I was paralyzed for about 15 minutes."

What Quinn wanted to illustrate through these stories was that accidents do not happen on the job site.

"They have something in common that actually resonates with the COR program. They were hardly, what you'd call accidents. They were all completely preventable. And in every single case, somebody either didn't follow a process that was documented, or there was no process and there certainly was no job hazard analysis," he said.

Such is the reason why he, and IO, are in support of the Certificate of Recognition (COR) program as IO has demonstrated by being one of the first owners to use COR to pre-qualify for bids on major Alternative Financing and Procurement (AFP) projects.

"What we like about it, it doesn't drive down into the micro detail and tell you how to do things. It does force you though to do the job hazard analysis and document it," he stated, adding it's successful because of a few critical factors.

"It's top down driven. It's a way of life. It's not some one time activity. The beauty of the program is it's from start to finish."

While Quinn admits initially he was skeptical of COR, he has seen how it benefits those in the industry and is now an advocate.

"I was the biggest cynic and the hardest sell at IO. Can't explain why, I just had my own ideas," he told the crowd.

"We were cynics, and we've looked at it very very carefully. Reinventing the wheel, running off as a big purchaser of services and creating our own program is not the way to go. The COR program in Ontario right now I think is far superior to anything we have. We believe that COR is raising the benchmark. It's bringing firms who didn't have such a robust program up to a level playing field."

According to Quinn, IO has rolled out COR for civil infrastructure such as Metrolinx, Toronto Transit Commission and highway projects.

"In the RFQ, in the project agreement now is a requirement for COR," he stated.

"And we're not being silly about it. If you don't have it we're just asking that you get signed up and make the best reasonable commercial efforts."

In April of this year, IO is also going to start asking for COR to be applied to jobs on \$10 million or more. In April 2016, the goal is to have every bidder in the RFQ stage COR certified.

"Really it's an appeal to all of the perspective buyers of health safety programs," he said.

"Sometimes it's just good to get on the bandwagon."

Mar 13, 2015

Related tags

OGCA Health and Safety Safety Equipment
Ontario General Contractors Association (OGCA)
Building Organizations & Professional Associations Concrete Bidding
Prequalifications

see also

comments: 0 views: 270

COR's value is worth the work, say its advocates

label: Associations *March 11, 2015*

comments: 0 views: 195

Infrastructure Ontario drafting CoR-use guidelines

label: OH&S *April 19, 2013*

comments: 0 views: 74

OGCA and IHSA team up to promote CoR certification

label: Associations *September 23, 2013*

comments: 0 views: 10

Certificate of Recognition program can be core prevention tool

label: OH&S *January 1, 2011*

comments: 0 views: 182

OGCA conference to tackle health and safety

label: OH&S *February 6, 2015*

Daily Commercial News

Article

Ontario safety revamp not just about regulations

comments: 0 views: 396 label: OH&S

by label: Lindsey Cole Mar 5, 2015

During his time as Ontario's first Chief Prevention Officer George Gritziotis recalls a four-month span where 11 people died as a result of falls from heights.



"That was like the worst four months of my life," he described to an audience during a presentation at the COR (Certificate of Recognition) Open House and Ontario General Contractors Association (OGCA) Leadership Conference.

So when people ask him why the Ministry of Labour is moving so fast to implement mandatory working at heights training, "I go back to those four months," he says.

"It's a little hard to eat four months of fatalities and have people give me grief of how quick we're moving on this."

As of April 1, 2015 certain workers will need to complete a working at heights program that's been approved by Gritziotis. The new training requirement applies to workers who use travel restraint systems, fall restricting systems, fall arrest systems, safety nets and work belts or safety belts. There is a two year transition period for workers who already meet the existing fall protection training requirements, giving them until April 1, 2017 to complete an approved working at heights training program.

"If you work at heights 365 days a year, yes you're covered under this (regulation), but you're also covered under it if you do it one day a year in a non-construction environment," he explained.

While Gritziotis highlighted this new safety standard as one of the key priorities he established in his role, he was also quick to point out there are many other initiatives that fit into his mandate of preventing and eliminating work-related injuries and fatalities.

"A 'reg' in itself isn't going to fix it," he said.

"Working at heights is a nice reg...but there's a bunch of other activities out there that we want to attach to it."

Gritziotis has been Ontario's chief prevention officer since 2011. He began his work after an Expert Panel on Occupational Health and Safety, headed by Tony Dean, released its final report in 2010. The panel was created in response to the Toronto swing-stage tragedy, where four construction workers plunged 13 storeys to their deaths while conducting apartment restoration work on Dec. 24, 2009. A fifth worker survived the fall, but sustained serious injuries.

"He inherited the Ontario government's longest to-do list," stated David Frame, OGCA director of government relations.

"It included 46 recommendations designed to refocus accountability for health and safety."

Gritziotis was tasked with leading the implementation of the province's first Integrated Occupational Health and Safety Strategy, a Mining Health, Safety and Prevention Review, mandatory health and safety awareness training, and standards for working at heights. He is also focused on a construction health and safety action plan.

"(I'm) never satisfied, by the way, in the work I do because at the end of the day I look at the data and outcomes," he said, adding fatalities have cycled over the past 15 years between 70 and 100 annually, with the construction sector leading in deaths. There were 20 in 2014.

Gritziotis said some of the key aspects to the plan include developing a health and safety culture, accreditation across all sectors, enforcement initiatives, training and working with youth.

Currently, a draft standard has been developed for mandatory entry-level training for construction. While it is currently being consulted on, Gritziotis said the target enforcement date is April 2016.

"Over the course of developing the plan, we'll start pushing things out right away," he explained.

He also stated there are many individuals who are often hard to reach when it comes to encouraging health and safety such as a small contractor working on a short term job.

"It's piecework, I gotta get it done quick. It's going to take me a lot longer if I have to use scaffolding and tie offs and all that stuff," he said.

"Typically that's the world we're looking at, not suggesting we're not looking anywhere else. When I look at the numbers that's the biggest challenge."

Such is the reason why he says collaboration is key, perhaps with other levels of enforcement.

"We need a building permit when we're looking at structural issues because of the integrity of the structure," he added.

"For high risk activities, maybe it should be mandatory that we draw permits."

Gritziotis said accreditation is also a key point to overall health and safety.

"We are working very closely with the minister pushing towards an accreditation, albeit it's accreditation across all sectors, but COR is typically a leader," he said.

"In my office I hear more about COR than I hear from other sectors. As we develop the accreditation standard for the province we want to hear and learn from those who have been involved in it on an ongoing basis."

Frame says for the industry COR is the answer.

"Our message to George is we've made it easy," he said.

"We're developing COR as an accreditation. It's a system that's been proven in other provinces and it's being accepted in Ontario and so we're going to work with the Ontario government just to bring it full speed."

Mar 5, 2015

Related tags

***Enforcement Health and Safety
Ontario General Contractors Association (OGCA)
Construction Industry Certification & Licensing Education
Building Organizations & Professional Associations
Site Security & Surveillance Education & Training***

see also

comments: 0 views: 197

New standard aims to improve safety for workers working from heights

label: OH&S *December 31, 2013*

comments: 0 views: 17

Reinforce Ontario youth worker safety: CPO

label: OH&S *January 1, 2014*

comments: 1 views: 1491

Ontario construction deaths unacceptable: industry

label: OH&S *July 24, 2014*

comments: 0 views: 51

Construction Sector Council's George Gritziotis appointed Ontario Chief Prevention Officer



Friday 4 April 2014

**Greater Toronto
Airports Authority**

P.O. Box 6031
3111 Convaire Drive
Toronto AMF, Ontario
Canada L5P 1B2

P 416.776.3000
F 416.776.7746

GTAA.com

Re: IHSA Certificate of Recognition (COR)

The Greater Toronto Airports Authority (GTAA) is the functioning body that oversees the safe and efficient operation of Toronto Pearson International Airport. To meet the needs associated with passenger and cargo growth, the GTAA is continuing with a significant program of expansion and renovation. Contractors will have a key role in ensuring the work is performed in a safe, secure, and environmentally conscious manner.

To ensure that all work is performed in accordance with GTAA safety requirements, applicable legislation, and good industry practices, the GTAA will require all contractors to be Certificate of Recognition (COR) certified by January 2017. It will be a requirement for contractors bidding on jobs at the GTAA to have applied for, or have, COR certification. By achieving COR, the Contractor will be 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.

The COR certification is valid for three years from the date of certification, provided the employer performs and successfully completes internal maintenance audits in the second and third years and complies with the terms and conditions of the COR program. All internal audit results must be approved by IHSA. Details can be found at the following link:

<http://www.ihsa.ca/cor/>

Yours truly,

A handwritten signature in black ink, appearing to read 'Garry L. Price'.

GREATER TORONTO AIRPORTS AUTHORITY

Garry L. Price Manager AAE Capital Restoration Projects



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International Airport
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torontopearson.com



Supplies and Services Branch

December 2, 2014

Ontario General Contractors Associations
6299 Airport Road, Suite 703
Mississauga, ON
L4V 1N3

Attention: Clive Thurston, President

Dear Clive:

**Re: York Region's Use of Third Party Safety Verification Service Providers
and CORTM**

In your letter of August 27, 2014, and during the meeting between representatives of the Region, OGCA, ORBA, ECAO and IHSA, which took place on October 6, 2014, you raised concerns regarding the Region's decision to contract out its health and safety pre-qualification process to a third party safety verification service provider (in this case ISNetworld). During the meeting Regional staff were also informed of the OGCA's (and other contractor groups') support of the Certificate of Recognition (CORTM) safety program, issued by the Infrastructure Health and Safety Association (IHSA).

We have now had the opportunity to discuss the issues raised by our contractors, and contractor groups, with the Region's senior management team and are pleased to advise that the Region has approved the implementation of the CORTM safety program as an alternative to ISNetworld.

Therefore, contractors bidding on high risk work Regional contracts in 2015, or seeking to pre-qualify for Regional contracts involving high risk work in 2015, will be required to meet either of the following requirements in order to be considered for pre-qualification and/or award:

- (1) Must be subscribed to ISNetworld and must have a minimum grade of 'B' under the work type(s) specified by the Region; or
- (2) Must be COR certified or enrolled in the COR program

Similar to other organizations that have implemented COR, the Region intends to utilize a phased in approach during this initial period. York Region will identify all prequalification requirements, including the relevant timelines, in the procurement documents it issues in 2015.

This information has been communicated to the Region's contractors by way of a letter, a sample of which is attached for your reference.

York Region Contractor Management Program
ISNetworld/COR

We thank you for taking the time to discuss your concerns regarding Regional construction projects and value the open and honest dialogue that we are able to have with the Region's contractor groups including the OGCA.

We look forward to OGCA's continued assistance in the implementation of our contractor management program and working with the OGCA on future construction initiatives that will benefit our contractors.

Thank you for your cooperation.

Sincerely,



Stan Gal, Director,
Supplies and Services Branch

Copy to: Bruce Macgregor, Chief Administrative Officer, York Region
Teresa DuCroix, Manager, Workplace Health, Safety and Wellness, York Region
Jerry Paglia, Senior Counsel, Legal Services, York Region



Supplies and Services Branch

December 2, 2014

Company
Address
City, Province, Postal Code
Attn: Contact

Dear Company:

This letter is an update to our letter of July 31, 2014, in which we advised you that we have enlisted the help of ISNetworld (www.isn.com) to assist with our contractor management program, specifically related to occupational health and safety for contractors who would perform high risk work for the Region.

York Region and ISN hosted two Contractor Information Sessions in Newmarket on September 9 and 10, 2014, where contractors were advised of the benefits of ISNetworld and were given the opportunity to provide their feedback on York Region's proposed contractor management program. These information sessions were well attended and resulted in some meaningful dialogue regarding the Region's program.

In response to the feedback received during these information sessions and in consultation with various industry contractor groups, we are pleased to advise that the Region has also decided to implement the Certificate of Recognition (CORTM) safety program, endorsed by the Infrastructure Health and Safety Association (IHSA), as an alternative to ISNetworld.

Contractors who have already subscribed to ISNetworld do not need to take any further action in response to this letter, and can continue to enjoy the benefits of their ISNetworld subscription. Contractors who have not yet subscribed to ISNetworld now have the option to subscribe to ISNetworld, enroll in the COR program, or both. The Region's goal, in endorsing both ISNetworld and COR, is to improve contractor health and safety on Regional projects.

Contractors bidding on Regional contracts in 2015 involving high risk work, or seeking to pre-qualify for Regional contracts involving high risk work, will therefore be required to meet either of the following requirements in order to be considered for pre-qualification and/or award:

- (1) Must be subscribed to ISNetworld and must have a minimum grade of 'B' under the work type(s) specified by the Region; or
- (2) Must be COR certified or enrolled in the COR program

York Region will identify all prequalification requirements, including timelines, in the procurement documents issued in 2015.

York Region Contractor Management Program
ISNetworld/COR

Contractors interested in bidding on Regional contracts involving high risk work are encouraged to familiarize themselves with ISNetworld and COR, and the respective requirements for each program.

For further details about ISNetworld and their subscription fees, or to begin the subscription process, please contact the ISNetworld Customer Service Team at 1-800-976-1303 or visit their website at www.isn.com.

For further details about COR and enrollment fees, or to begin the enrollment process, please contact the Centre for Health and Safety Innovation (CHSI) at 1-800-263-5024 or visit their website at www.ihsa.ca/cor.

If you do not perform high-risk work for York Region, you are not required to subscribe to ISNetworld or enroll in COR at this time.

Your company's cooperation and participation allows York Region to ensure due diligence, while ensuring the health and safety of all contractors, employees and the community.

Thank you for your cooperation.

Sincerely,

Stan Gal, Director,
Supplies and Services Branch

Copy to: Teresa DuCroix, Manager, Workplace Health, Safety and Wellness, York Region
Tina Gardiner, Manager, Insurance and Risk, York Region
Jan Livingston, Administrative Assistant, Supplies and Services, York Region
Jerry Paglia, Senior Counsel, Legal Services, York Region