

Who is the “constructor” on a construction site and why is it important?

Under the Ontario Occupational Health and Safety Act (the Act) the person or entity designated as the “constructor” is responsible for all aspects of health and safety on a construction site.

Usually that person or entity is the contractor who is hired to do the work, but not always. The intent of the Occupational Health and Safety Act is to have one person with overall authority for health and safety matters on a project. This person is the “constructor” of the project. The constructor is responsible for ensuring that every worker and situation on the project is in compliance with the Act.

The constructor must ensure that hard hats are worn, that safety boots are worn, that scaffolding is properly erected, that all contact with electricity complies with regulations, that workers are properly trained in working safely and on and on. It is an onerous responsibility.

If there is an accident on a construction site, the Ministry of Labour (the Ministry) will investigate. If they find that health and safety regulations were not complied with, they usually lay charges, and the person charged is the “constructor”.

So as a warden, why should this concern me? **Well under certain circumstances, you can be designated as the constructor under the Act.**

The key wording is that the Ministry demand that one person be held responsible for health and safety. When you have two contractors working on a site at the same time it is no longer clear who that one person is, so **the Ministry will hold the owner to be that one person.**

Section 1 of the Act defines “owner” as including “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”

In the case of an Anglican Church, that person is the warden(s). The Ministry may also extend the liability to an officer of the Diocese, but the warden will be the person with primary responsibility.

This is not a responsibility that you ever want to accept. Therefore never retain two contractors to work on your church buildings at the same time.

Examples:

1. You are having the church roof re-shingled, and the interior of the church hall repainted at the same time. The painting crew are wearing sneakers, while the roofing crew are wearing safety work boots. A member of the painting crew leaves the church hall and steps on a roofing nail that goes through the sole of his sneaker into his foot. The Ministry deem safety rules were not followed. **The warden is responsible.**
2. The same scenario, but this time the roofing contractor has installed scaffolding to access the church steeple. The scaffolding was not properly installed and collapses, seriously injuring a worker. **The warden is responsible.**

There are many more examples none of which you want to be responsible for, so you can understand why it is essential that you never have two contractors on your property at the same time.

Will scenario #1 still apply if the church hall is being painted by volunteer members of our congregation? This is a grey area, which can easily be clarified by an inspector from the Ministry. If in doubt, call the Ministry. They may require you to have a written agreement with the roofing contractor that he does not object to the volunteer painters and will take overall responsibility for safety.

What about sub-contractors?

If you hire a contractor to replace your roof, and that contractor retains other contractors to do components of the work, you have still only retained one contractor, so the prime contractor is still designated as the constructor under the Act, and they are responsible for ensuring their sub-contractors comply with safety regulations.

What if we have a contract with someone to cut our grass?

The Ministry considers this a maintenance contract, not a construction contract, and as such it falls under Industrial Regulations and not the Occupational Health and Safety Act, so you are in the clear. If in doubt, call the local office of the Ministry to clarify.

The regulations themselves are detailed and include much more information. You can find it at:

https://www.labour.gov.on.ca/english/hs/pubs/constructor/cons_3.php

If in doubt, call the Ministry and ask for clarification. **We never want to be designated as the constructor on any of our church properties.**

And by the way, the same rules apply if you employ two contractors to work on your home at the same time. You become the “constructor” under the Act.

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