



Roles and Responsibilities of Work Place Parties

Presented By: Don Martell, CRSP

**Presented To: Municipality Of The County Of
Inverness Council Members**

Date:



Occupational Health and Safety: Why should I be Concerned?



Costs: Human

- ▶ Employees in Nova Scotia who suffer a time loss injury this year will experience
 - ▶ Possibly disabling injury or death
 - ▶ lost work time and income
 - ▶ Pain/hardships to individual and family

Costs: Corporate

- ▶ Share feeling of Loss with friend, family, or community member (Human Resources valuable experience)
- ▶ Legal Fees for Prosecution defense for Employer, board of directors/council/management/supervisors/employees
- ▶ Missed project/contract deadlines
- ▶ Property/Equipment damage
- ▶ fines and or imprisonment





The Occupational Health & Safety Act

- applies to all employers under provincial jurisdiction **that are not** (federal or federally regulated)
- provides basis for specific regulations (Occupational General Safety Regs, Workplace Health and Safety Regs, First Aid,, WHMIS, Violence in the workplace regs, Smoke Free Work Places regs, Administrative Penalty regs, Traffic Control Code of Practice, CSA Standards ANSI Standards)
- establishes mandatory minimum standards for Occupational Health and Safety in the workplace



Components of the Occupational Health & Safety Act

- Internal Responsibility System (IRS)
- Key Definitions
- Duties and Responsibilities
- Requirement for OHS Policies, OHS Programs and OHS Code of Practices
- Requirement for Safe work Practices
- Requirement for Hazard Identification Program
- Requirement for Accident Investigation Program
- Requirement for JOHS Committee
- Requirement for Workplace Inspection Program



Components of the Occupational Health & Safety Act

- Defines Employee rights
- Requirements for Complaints and Discriminatory Action
- Requirement for Work Refusals
- Requirement for Appeals and Deviations
- Requirement for Enforcement and Penalties



Definitions of the Occupational Health & Safety Act

(f) “constructor” means a person who contracts for work on a project or who undertakes work on a project himself or herself;

(g) “contractor” means a person who contracts for work to be performed at the premises of the person contracting to have the work performed, but does not include a dependent contractor or a constructor;

(h) “contracts for work” includes contracting to perform work and contracting to have work performed;



Definitions of the Occupational Health & Safety Act

(j) “dependent contractor” means a person, whether or not employed under a contract of employment and whether or not furnishing the person’s own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another on such terms and conditions that the person is

- (i) in a position of economic dependence upon the other,
- (ii) under an obligation to perform duties mainly for the other, and
- (iii) in a relationship with the other more closely resembling that of an employee than an independent contractor;



Definitions of the Occupational Health & Safety Act

(o) “employee” means a person who is employed to do work and includes a dependent contractor;

(p) “employer” means a person who employs one or more employees or contracts for the services of one or more employees, and includes a constructor, contractor or subcontractor;

(ab) “reasonably practicable” means practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty;



Definitions of the Occupational Health & Safety Act

(ah) “workplace” means any place where an employee or a self-employed person is or is likely to be engaged in any occupation and includes any vehicle or mobile equipment used or likely to be used by an employee or



Roles and Responsibilities of the Occupational Health & Safety Act

DUTIES AND PRECAUTIONS

Employers' precautions and duties

13 (1) Every employer shall take every precaution that is reasonable in the circumstances to

- (a) ensure the health and safety of persons at or near the workplace;
- (b) provide and maintain equipment, machines, materials or things that are properly equipped with safety devices;
- (c) provide such information, instruction, training, supervision and facilities as are necessary to the health or safety of the employees;



Roles and Responsibilities of the Occupational Health & Safety Act

- (d) ensure that the employees, and particularly the supervisors and foremen, are made familiar with any health or safety hazards that may be met by them at the workplace;
- (e) ensure that the employees are made familiar with the proper use of all devices, equipment and clothing required for their protection; and
- (f) conduct the employer's undertaking so that employees are not exposed to health or safety hazards as a result of the undertaking.



Roles and Responsibilities of the Occupational Health & Safety Act

(2) Every employer shall

(a) consult and co-operate with the joint occupational health and safety committee, where such a committee has been established at the workplace, or the health and safety representative, where one has been selected at the workplace;

(b) co-operate with any person performing a duty imposed or exercising a power conferred by this Act or the regulations;



Roles and Responsibilities of the Occupational Health & Safety Act

- (c) provide such additional training of committee members or the representative as may be prescribed by the regulations;
- (d) comply with this Act and the regulations and ensure that employees at the workplace comply with this Act and the regulations;
- and
- (e) where an occupational health and safety policy or occupational health and safety program is required pursuant to this Act or the regulations, establish the policy or program.



Roles and Responsibilities of the Occupational Health & Safety Act

Precautions to be taken by constructors

15 Every constructor shall take every precaution that is reasonable in the circumstances to ensure

- (a) the health and safety of persons at or near a project;
- (b) that the activities of the employers and self-employed persons at the project are co-ordinated;



Roles and Responsibilities of the Occupational Health & Safety Act

- (c) communication between the employers and self-employed persons at the project of information necessary to the health and safety of persons at the project, and facilitate communication with any committee or representative required for the project pursuant to this Act or the regulations;
- (d) that the measures and procedures prescribed under this Act and the regulations are carried out on the project; and
- (e) that every employee, self-employed person and employer performing work in respect of the project complies with this Act and the regulations. 1996, c. 7, s. 15.



Roles and Responsibilities of the Occupational Health & Safety Act

Owners' precautions and duties

19 Every owner shall

(a) take every precaution that is reasonable in the circumstances to provide and maintain the owner's land or premises being or to be used as a workplace

(i) in a manner that ensures the health and safety of persons at or near the workplace, and

(ii) in compliance with this Act and the regulations; and

(b) give to the employer at the workplace the information that is

(i) known to the owner or that the owner could reasonably be expected to know, and

(ii) necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace. 1996, c. 7, s. 19.



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Nature and extent of duties and requirements

23 (1) A specific duty or requirement imposed by this Act or the regulations does not limit the generality of any other duty or requirement imposed by this Act or the regulations.

(2) Where a provision of this Act or the regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement.



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(3) Notwithstanding subsection (2), but subject to subsection (5), where the person with the greatest degree of control fails to comply with a duty or requirement referred to in subsection (2), the other person or persons on whom the duty or requirement lies shall, where possible, comply with the provision.

(4) Where the person with the greatest degree of control complies with a provision described in subsection (2), the other persons are relieved of the obligation to comply with the provision only

(a) for the time during which the person with the greatest degree of control is in compliance with the provision;



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(b) where simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and

(c) where the health and safety of persons at the workplace is not put at risk by compliance by only one person.

(5) Where the person with the greatest degree of control fails to comply with a provision described in subsection (2) but one of the other persons on whom the duty or requirement is imposed complies with the provision, the other persons, if any, to whom the provision applies are relieved of the obligation to comply with the provision in the circumstances set out in clauses 4(a) to (c) with the necessary modifications. 1996, c. 7, s. 23.



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Power to arrest

73 (1) A police officer who has reasonable and probable grounds to believe that a person is failing to comply with an order issued pursuant to subsection 55(4) may arrest the person without warrant and shall take the person before a justice as soon as practicable.

(2) A person taken before a justice pursuant to subsection (1) is entitled to an immediate hearing but, if a hearing cannot then be had, the person shall be released from custody on giving a personal undertaking to appear to answer to the charge at such time and place as shall then be fixed by the justice.

(3) A police officer who arrests a person pursuant to subsection (1) shall promptly inform the person of the reason for the arrest and of the right to retain and instruct counsel without delay.

1996, c. 7, s. 73.



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Offences and penalties

74 (1) A person who

(a) contravenes this Act or the regulations; or

(b) fails to comply with

(i) an order or direction made pursuant to this Act or the regulations, or

(ii) a provision of a code of practice adopted pursuant to Section 66, is guilty of an offence and liable on summary conviction to a fine as set out in subsections (1A) and (1B), or to a term of imprisonment not exceeding two years, or to both a fine and imprisonment.



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(1A) A person is liable

(a) to a fine of not more than two hundred and fifty thousand dollars; or

(b) for a second or subsequent offence, within five years from the date of conviction for a previous offence, to a fine of not more than five hundred thousand dollars.

(1B) Notwithstanding subsection (1A), where the offence resulted in a fatality, the person is liable to a fine of not more than five hundred thousand dollars.

(2) In addition to a fine imposed pursuant to subsection (1A), (1B) or (3), the court may impose a fine not exceeding twenty-five thousand dollars for each additional day during which the offence continues.



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Deemed act or omission of employer

76 (1) In a proceeding or prosecution against an employer pursuant to this Act or the regulations, the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is deemed to be the act or omission of the employer.



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(2) Notwithstanding subsection (1), the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is not the act or omission of the employer where it is proven that the employer took every precaution reasonable in the circumstances to ensure that the act or omission would not occur and the employer

- (a) did not have actual knowledge of, or could not reasonably have known of, the act or omission; and
- (b) did not expressly or impliedly consent to the act or omission.

1996, c. 7, s. 76.



Internal Responsibility System

- ▶ Basis of Occupational Health and Safety in the workplace
- ▶ All workplace parties share responsibility for health and safety of persons at the workplace
 - ▶ employers / constructors / contractors
 - ▶ employees / unions
 - ▶ suppliers / engineers / architects

DECISION

[Cite as R. v. Department of Transportation and Public Works]

Before: His Honour Judge John MacDougall

Date of Decision: September 30, 2002

Counsel: Mr. Richard Hartlen, for the Prosecution
Mr. A. William Moreira, for the Defence

The co-defendant, Black and MacDonald Limited (“BML”) entered a plea of guilty and, therefore, this decision involves only Her Majesty the Queen in the Right of the Province of Nova Scotia as represented by the Minister of Transportation and Public Works (“TPW”).



Internal Responsibility System

[30] The operating mind and will of TPW entered into a contract with BML providing for a system of maintenance which adequately addressed the issues safety. It will be held responsible for its failure to independently ensure the system was implemented and monitored when it could and should have done so. Under the *Act* TPW is deemed to be an employer and in this capacity do what is reasonable. I am of the opinion it did what was reasonable with respect to the second, third and fourth counts and therefore enter an acquittal on each of these charges.



Internal Responsibility System

- ▶ Duties or requirements are imposed primarily on the person/s with the greatest degree of control
- ▶ Person/s with the authority to act, has the responsibility to act to prevent injury or illness
- ▶ OH&S Division supports IRS and intervenes when parties fail to meet commitments



Employers must take every reasonable precaution to ensure:

- ▶ hazards are identified and employees and supervisors are made familiar with hazards and how to avoid injury / illness
- ▶ That the work is done in a manner that does not expose employees to hazards

Constructors / Contractors must ensure health and safety information is communicated to all parties, eg construction site



OH&S Officers Role and Powers

- inspect, investigate accidents and complaints, advise workplace parties, obtain expert advice, issue orders and initiate prosecutions
- entry at any reasonable time of day or night
- powers of a peace officer under the Criminal Code
- unlawful to obstruct or interfere with an officer



OH&S Officers Powers

Officers may issue orders:

- to a person requiring actions to achieve compliance
- to employers, and others, to conduct tests, assessments or obtain reports
- to a person to stop work where a source of danger or hazard is present
- Compliance notice must be submitted to the Officer within allocated time



Appeal of an Officer's Order

- ▶ Officers' Orders may be appealed to the Executive Director
- ▶ Appeals must be filed within 14 days of receiving the order
- ▶ Form available from the Officer, or from the OH&S Information Officer
- ▶ 1-800-9Labour (952-2687)



Accident Notification

- ▶ Employer must send written notice to the Director, OH&S
 - ▶ Of fire or accident with bodily injury within seven days
 - ▶ of accidental explosion within twenty-four hours (injury or not)
 - ▶ of person killed or potentially fatal injuries within twenty-four hours
- ▶ ***true copy of WCB notice is acceptable**



Accident Scene

an accident scene that results in serious injury or death cannot be disturbed except to:

- ▶ attend to persons injured or killed;
- ▶ prevent further injuries; or
- ▶ protect property that is endangered



By-stander Safety

- ▶ Employer must take adequate precautions to ensure safety of the pedestrian or other person at or near the workplace.



Due Diligence

- ▶ Due Diligence is a legal defense in a strict liability case
- ▶ the Court assumes you are liable for your unlawful act unless you produce proof you were not negligent, that is, took all reasonable care



Due Diligence

Who will establish due diligence when defending a prosecution?

- ▶ The court will determine the standard that a reasonably careful person would follow in the same circumstances.
- ▶ Court then compares the amount of care proven by the accused to this reasonable standard, to see if it fell short



Due Diligence

How can you establish due diligence when defending a prosecution?

Have documentation of the following

- ▶ Comply with OH&S Act and regulations
- ▶ IMPLEMENT and MAINTAIN a JOHSC or Rep, Training, Supervision, Hazard Assessments and Inspection, Safe Work Procedures and Records maintenance ie: OHS Program
- ▶ Establish a safety culture: Communicate safety values, and enforce requirements



Due Diligence

How can you establish due diligence when defending a prosecution?

- ▶ Due diligence always depends on the facts of the situation, but it's too late to build a defense after an incident



Penalties

- maximum fines of \$250,000 or 2 years in jail
- courts may impose additional fines of up to \$25,000 per day
- courts may assess fines for recovery of benefits
- courts may order additional penalties ie: Creative Sentencing

Act or omission of managers/Board of directors/operating mind is deemed that of employer.

Strict Liability offences: employer must demonstrate every reasonable precaution had been taken - Due Diligence



Remember - Our primary objective:

...you, and the people who share your working life, make it home to their families at the end of the day - every day !

Helping employers and employees reduce occupational injury and illness





Thank you for listening

▶ **Any Questions?**