



## Health and Safety Duties and Responsibilities

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# Introduction

- Part 1: OHS Regime
- Part 2: Duties and Responsibilities
- Part 3: Serious and Potentially Serious Incidents
- Part 4: Due Diligence Defence

# PART I - OHS REGIME

# Introduction to OHS law

- Purpose is to protect workers from health and safety hazards on the job.
- Establishes procedures for dealing with workplace hazards and provides for enforcement of the law where compliance has not been achieved voluntarily.
- Wide scope of application (applies to almost every worker, supervisor, employer and workplace).

# General Legislative Regime

## Key Legislation:

- *Occupational Health & Safety Act*
- *Criminal Code of Canada – Bill C-45*
- *Workers' Compensation Act*

## Other Considerations:

- Contractual & Collective Agreement Obligations

# Consequences of Non-Compliance

- Alberta OHS regulators may issue orders (e.g. stop work, testing, compliance steps).
- Alberta OHS regulators may charge individuals and companies with offences under the OHS Act.
- There are also criminal charges possible under the C-45 amendments to the *Criminal Code of Canada* (e.g. criminal negligence causing death).

# Maximum Penalties under the OHS Act

- First offence, up to \$500,000 and/or 6 months in jail.
- Second or subsequent offence, up to \$1,000,000 and/or up to 12 months in jail.
- A person who fails to comply with a stop work order is guilty of an offence and can receive a fine of up to \$1,000,000 and/or 12 months in jail.

# Administrative Penalties

- Maximum fine of \$10,000 + \$10,000 for each day failure continues.
- Regulated person who pays administrative penalty in respect of a contravention or a failure to comply shall not be charged under the OHS Act with an offence in respect of the same contravention or failure to comply.
- Notice of administrative penalty may be given within two years of the alleged contravention or non-compliance.



# Recent Administrative Penalties

Amount	Violation
\$500-\$25,000	General fall protection
\$1,000	Chemical hazards, exposure during shifts longer than 8 hours
\$2,000	General duty of Employer
\$2,500	Covering openings
\$3,500	Danger to persons on site (previous OHS Act)
\$5,000	Methods of protection for excavation
\$5,000-\$15,000	Providing safeguards in respect of machinery
\$7,500	Obligations of prime contractors
\$7,500	Securing equipment and materials
\$15,000	Excavation, covering openings, vehicle traffic control, emergency preparedness
\$42,500	Safeguards for scaffolding, fall protection, scaffolds and temporary work platforms
\$53,900	General provisions for asbestos, silica, coal, dust and lead

# Criminal Code – Bill C-45

- Individuals
  - Bodily harm: 10 years imprisonment
  - Death: life imprisonment
- Organizations
  - Fines for summary (less serious) convictions would range from \$25,000 to \$100,000
  - Fines for indictable (more serious) convictions do not have a maximum limit.
- For conviction, the Crown must prove both the guilty act and the guilty mind.
- For organizational convictions, one employee is not usually broad enough to capture all individuals who may act on behalf of the organization.
- Other sentencing options.

# **PART II – DUTIES AND RESPONSIBILITIES**

# Employer's Duties

- The OHS Act places most of the responsibility for occupational health and safety on the employer. Some of the significant duties are:
  - To take all steps insofar as it is “reasonably practicable” to protect employees health and safety;
  - Duty extends to those in the vicinity of the work site;
  - Provide information, instruction, supervision and training to a worker to protect his or her health and safety; and
  - Appoint “competent” supervisors (new in Alberta).

# Supervisor's Duties

- Take all necessary precautions to protect the health and safety of workers under their supervision.
- Ensure they are competent to supervise their workers.
- Ensure workers under their supervision:
  - Comply with OHS legislation;
  - Use hazard controls and properly use or wear personal protective equipment as required; and
  - Are not subjected to and do not participate in harassment or violence at the work site.
- Advise workers of all known or foreseeable hazards to health and safety.
- Report concerns of unsafe or harmful work site acts or conditions to the employer.

# Cases Involving Supervisors

- *R v Haya Homes Ltd., Sahib Contracting Inc. and Sukwinder Singh Nagra (2017)*
  - April 2015 a trench at an infill housing construction site collapsed, fatally injuring a worker.
  - Supervisor was sentenced to four months in jail and a fine for \$30,000 for failing to protect the health and safety of another worker.
  - Employer sentenced to a fine of \$425,000 plus victim fine surcharge of \$63,750.
  - Developer, prime contractor fined \$111,250 and \$50,000 contribution to organization in the worker's name.



# Serious Injuries and Incidents

**The types of injuries and incidents that need to be reported include:**

- An injury or incident that results in the death of a worker
- An injury or accident that results in a worker being admitted to a hospital
- An unplanned or uncontrolled explosion, fire or flood that causes a serious injury or has the potential of causing a serious injury
- The collapse or upset of a crane, derrick or hoist
- The collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure
- Involves an incident listed in section 40(3) of the OHS Act at a mine
- potentially serious incidents (PSI)



# Serious Injuries and Incidents

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**The types of injuries and incidents that occur at a mine or mine site that need to be reported include:**

- an unexpected major ground fall or subsidence that endangers or may endanger workers, equipment or facilities;
  - an unplanned stoppage of the main underground ventilation system, if it lasts more than 30 minutes, or occurs repeatedly;
  - a vehicle that goes out of control;
  - an ignition of flammable gas, combustible dust or other material underground;
  - workers being withdrawn from a hazardous location under emergency conditions;
  - electrical equipment failures or incidents that cause, or threaten to cause, injury to workers or damage to equipment or facilities;
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# Serious Injuries and Incidents

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**The types of injuries and incidents that occur at a mine or mine site that need to be reported include:**

- outbursts and inrushes;
  - an incident involving a hoist, sheave, hoisting rope, shaft conveyance, shaft, shaft timbering or head frame structure;
  - any other unusual incident or unexpected event that could have caused serious injury to a worker; and
  - the following incidents where the integrity of a dam or dike is affected at a mine or mine site:
    - cracking or evidence of weakening or subsidence of a dam or impoundment;
    - unexpected seepage or the appearance of springs on the outer face of a dam or dike;
    - the freeboard of a dam or dike being less than adequate; and
    - a washout or significant erosion to a dam or dike.
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# Investigation of Serious Injuries and Incidents

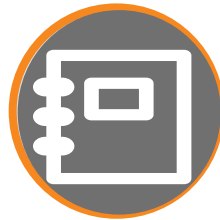
If an injury or any other incident that has the potential of causing serious injury to a person occurs at a work site, the prime contractor or, if there is no prime contractor, the employer shall



Carry out an investigation of the injury or incident with the participation of the joint work site health and safety committee or health and safety representative, if there is one at the work site



Prepare a report outlining the circumstances of the injury or incident and the corrective action, if any, undertaken to prevent a recurrence of the injury or incident



Ensure that a copy of the report is readily available and provided to an officer on demand



Provide a copy of the report to a Director of Inspection, the joint work site health and safety committee and safety representative or make it available to workers once the investigation is complete



Retain a copy of the report for at least 2 years after the Incident



# Case Example

## **Stony Valley Contracting Ltd.**

- Serious Injury
- Company entered a guilty plea for failing to notify Alberta OHS of the time, place and nature of the injury
- Fined \$90,000, inclusive of the victim fine surcharge



# Information to Include in Employer's Report

General details of what happened



If applicable, also include

- Injured worker's name, date of birth and job title
- The name and location of hospital the worker was taken to
- Any corrective action undertaken to prevent a recurrence of the injury or incident

# Potentially Serious Incidents

**A Potentially Serious Incident (“PSI”) is any event where a reasonable person would determine that under slightly different circumstances, there would be a high likelihood for a serious injury to a person.**

**When determining whether an incident is a PSI, the following factors should be taken into consideration:**

- Actual circumstances of the incident (person, place, time etc.)
- Hazards present at the time of the incident
- Appropriate controls in place at the time of the incident
- Slightly different circumstances (timing, body position, etc.) that may have resulted in a serious injury
- Similar incidents that have occurred within the employer or prime contractor’s operations in the past 2 years that resulted in serious injury

# PSI or Not?

A worker is crossing a road at a marked intersection to another work site and is nearly hit by a vehicle. The worker was obeying traffic signals at the intersection.

## PSI or Not?

A resident at a group home becomes aggressive toward their support worker but does not injure workers physically or psychologically. The employer was aware of the resident's tendency toward aggressive behavior but failed to inform workers.



# PSI or Not?

A chemical substance is unexpectedly discharged into the open air at a product processing site when no persons were present. This was not a planned event.

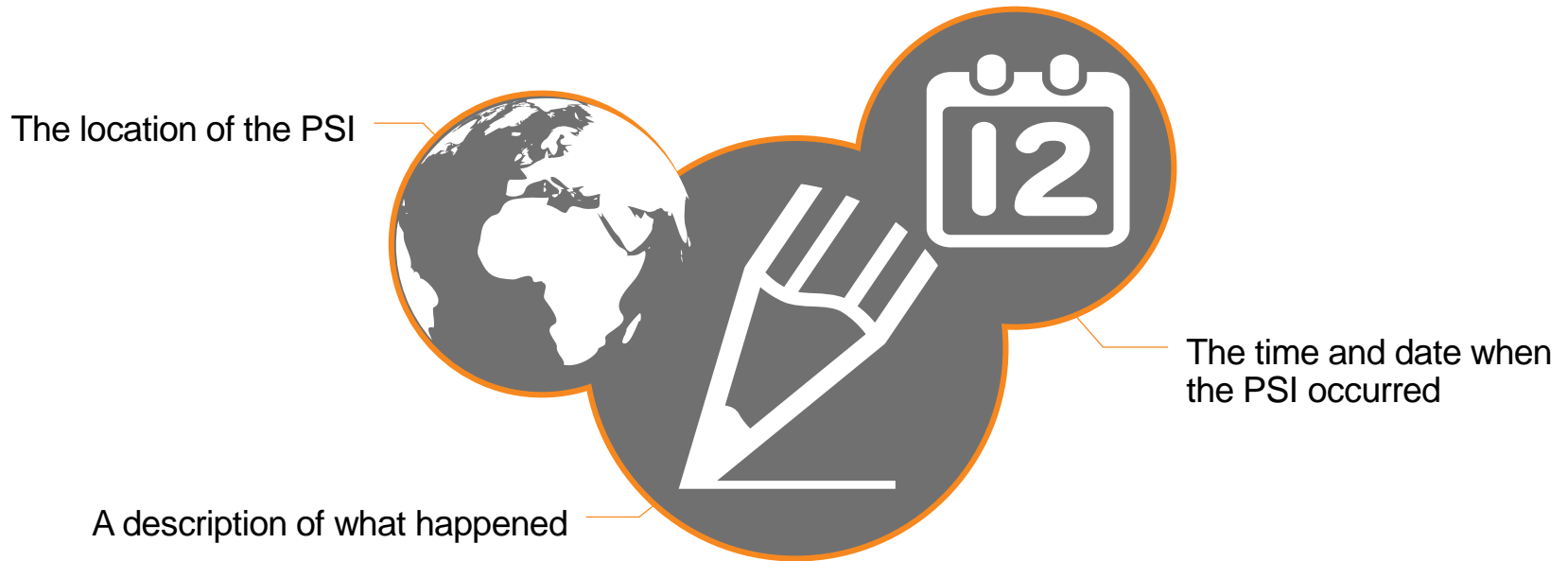
# PSI or Not?

A worker wearing a hard hat is struck on the head by a falling object and although stunned, recovers without injury. Several more, larger and heavier objects fall near the worker.

# PSI or Not?

While hoisting a motor, the weld on the lifting eye breaks. The area around and below the electric motor is not secured with appropriate controls. The motor falls. No one was injured.

# Information to Include in Employer's Report



**Reports are to be submitted using Alberta Occupational Health and Safety's PSI Online Reporting Service**

# Investigation of Potentially Serious Incidents

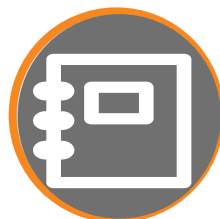
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Retain a copy of the report for at least 2 years after the PSI





# Due Diligence Defence

- The due diligence defence will succeed where:
  - The accused had an honest subjective belief in a mistaken set of facts that was objectively reasonable in the circumstances; or
  - The accused exercised “all reasonable care by establishing a proper system to prevent the commission of the offence and by taking reasonable steps to ensure the effective operation of the system.”
- Due diligence is about ensuring you have taken all reasonable steps to protect your workers from harm.

# The Importance of Supervisors Not Turning a Blind Eye

- A due diligence defence will not be successful if there is evidence that incidents of non-compliance with health and safety requirements are not dealt with appropriately (e.g. discipline).
- Discipline must be effective and not promote a culture of discretion.
  - *Regina v Wilson's Truck Lines Limited* – Policies were implemented to ensure the safe moving of trucks. However, no worker had ever received a written warning, suspension or dismissal for failing to follow the procedures. The court found the employer had not taken every precaution “reasonable” to ensure the health and safety of the workers.
  - *R v D & J Isley & Sons Contracting Ltd.* (2019 AB Prov. Ct) – in respect of a due diligence defence, the court found best intentions manifested through safety policy is not enough. To be meaningful, the policies need to be actuated through humans. Monitoring systems are needed to confirm follow-through.



# Case Law Example –Due Diligence

- *R v Bartram* (2009) – The General Superintendent of the TTC Track and Structure Department (senior level operations manager) was charged under the OHSA after a carbon monoxide exposure injured a crew of workers. He was acquitted on the basis of the due diligence defence. The court found that the accused had a system in place to avoid known hazards and to ensure the effective operation of the system:
  - Workers knew of their right to refuse unsafe work;
  - Procedures had been changed and updated as a result of worker concerns regarding fumes;
  - Based on reviewing regular reports from the training department, he understood that proper training was in place and up to date;
  - Management previously disciplined a front-line supervisor for not following safety rules; and
  - The Superintendent did a monthly walk through to see that health and safety procedures were being followed.

# Proving Due Diligence – Document, Document, Document

- OHS Act prosecutions take place years after the events which lead to them. For this reason, it is critical that documentation exists and is retained to refresh your memory and to help prove that all reasonable steps in the circumstances were taken. Documentation can take many forms:
  - Minutes of meetings;
  - Notebook;
  - Disciplinary notes;
  - Memos; and
  - E-mails.

# Key Take Aways

- Employers and Supervisors have obligations to ensure the health and safety of their workers
- Supervisors must be trained and “competent”
- Non-compliance should be addressed with discipline
- Document
- Know the law

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