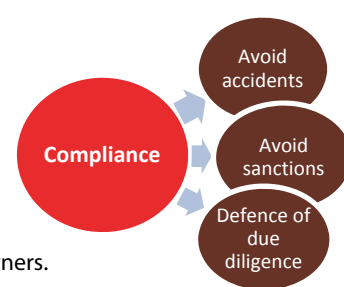




Legal Liability & Due Diligence - Safety is a Shared Responsibility

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Safety is a Shared Responsibility of Employers, Employees, Contractors, Suppliers and Owners.



Occupational Health & Safety (OHS) Duties

Employer's Duties

- Employer → Any one who employs one or more employees. Includes officers, directors and managers.
- Ensure health and safety of persons at or near the workplace (not just employees).
- Ensure employees comply with Act and Regulations.
- Provide and maintain equipment, including proper safety devices.
- Provide information, training and supervision.
- Post copy of OHS Act.
- Advise re right to refuse unsafe work.
- Establish safety programs, policies and committees.
- Consult and cooperate with JOHS committee.

Some additional duties in N.B.:

- Ensure workplace is inspected at least once per month to identify workplace hazards
- In addition to the duty to provide protective equipment to employees, ensure that the equipment is used by employees in the course of their work

Contractor's, Constructor's and Contracting Employer's Duties

- Contractor → In N.S., this means independent contractor. In N.B., this means whoever is undertaking "all of the work on a project", e.g. the owner or general contractor.
- Constructor → N.S. term. Means anyone who contracts for work on a project or who undertakes work on a project himself or herself (can also be an employer).
- Contracting employer → N.B. term. Means anyone who through contract, agreement or ownership, directs the activities of employer(s).
- Ensure health and safety of persons at or near the workplace.
- Ensure coordination of activities and communication of health and safety information between employers and self-employed persons.
- Ensure that every employer, employee and self-employed person at the workplace complies with safety legislation.

Employee's and Self-Employed Person's Duties

- Take every reasonable precaution to protect health and safety of self and other persons at or near the workplace.
- Cooperate with others (employers, fellow employees, JOHS committee, anyone responsible for enforcing safety legislation).
- Use/wear protective devices, equipment and clothing.
- Comply with safety legislation.
- Report dangerous condition or equipment.

Health & Safety Policy

- Statement of employer's commitment to health and safety
- Plan and commitment of resources
- Reasons for commitment
- Shared responsibilities in fulfilling the commitment
- Signed by employer
- Yearly review

Health & Safety Program

- Training
- Procedure for preparation of safe work practices
- Creation of JOHS committee, if required
- System for incident investigation
- Hazard identification procedures
- Systems for monitoring, follow-up and record-keeping
- Internal audit – dual purpose: ensure compliance AND establish due diligence defence
 - what physical work is carried out at workplace
 - associated risks
 - how risks are being managed

Project JOHS Committee

- Required on projects where 20 or more people regularly work at site, whether all employed by same employer or different employers.
 - Except in N.S. where project < 4 weeks.
- Does not relieve employers of duty to form home base JOHS committees.
- No requirement for project health and safety policy or program.
- Responsibility for formation:
 - N.S. → Constructor with greatest degree of control
 - N.B. → Principal contractor

Health & Safety Representative / JOHS Committee

Health & safety representative – Non-management.
JOHS committee – Size varies but management and non-management representation must be balanced.

Training for committee members:

- N.B. → Must have attended, or attend within 12 months after appointment, an education program prescribed by the legislation.
- N.S. → No formal requirement, but employers are required to provide "as necessary".

Duties:

- Meet at least once a month and take minutes
- In N.B., member names and minutes must be posted in a prominent place
- Identify hazards
- Audit compliance with OHS requirements
- Receive and respond to complaints
- Participate in inspections
- Respond to work refusals
- Make recommendations to employer
- Can demand production of documents



Duty to Report Accidents

Accidents – Nova Scotia

Duty to report any:

- "fire or accident at the workplace that occasions serious injury, within 7 days"
- "accidental explosion at the workplace, whether any person is injured or not, within 24 hours"
- "where at the workplace a person is killed ... or is injured ... in a manner likely to prove fatal, within 24 hours"

Accidents – New Brunswick

Duty to report any injury that causes:

- Loss of consciousness
- An amputation
- Fracture other than to finger or toe
- A deep laceration
- A burn that requires medical attention
- Loss of vision in one or both eyes
- Hospitalization
- Death

Workplace Inspections

OHS Officer Powers

- Inspect workplace within reasonable amount of time after arrival (usually 10-20 minutes)
- Take pictures, measurements, samples
- Order production of documents
- Question any person

Employer Duties

- Give health and safety representative, member of JOHS committee, or another employee, the opportunity to accompany the Officer
- Give access to the workplace, cooperate and do not interfere
- Disclose information about accident and do not disturb accident scene

Employer Rights

- Accompany the Officer
- Attend management-level employee interviews

Consequences

Nova Scotia

OHS Violation

A. OHS Officers can issue:

- Stop work order
- Compliance order
- Summary offence ticket (~\$500 to \$800)
- Administrative penalty (new)

B. Prosecution (max. fine of \$500,000)

C. s. 217.1 of the Criminal Code

Electrical Violation

A. Inspectors can:

- Require that work be stopped
- Refuse to connect or disconnect power supply
- "Take whatever action ... necessary to ensure safety in the area"

B. Prosecution (max. fine of \$1,000)

Administrative Penalties

New system in effect as of October 1, 2014.

Major changes:

- OHS Officers can issue penalties
- Must be issued within 14 days of compliance order (can be extended)
- Guidelines for issuing penalties & new penalty schedule
- Appeals go directly to Labour Board
- Simplified appeal process
- Extended deadline for appeals (30 days after order or penalty issued)
- Power to direct funds to workplace safety initiatives

Guidelines for issuing penalties:

Officer shall consider issuing a penalty in the following circumstances:

1. Contravention of "High Risk" section – e.g. PPE ss. 13-14; Electrical Safety ss. 120-126 & 128
2. Contravention poses serious danger to health or life, and a Stop Work Order was issued
3. Repeat offender – same section contravened at least once before, whether or not penalty was issued
4. Repeat offender – different section contravened, but present contravention demonstrates lack of commitment to "internal responsibility system"

New Brunswick

Enforcement is restricted to prosecution.

If convicted of a breach of the OHS, an employer is subject to:

- A fine not exceeding \$250,000;
- A term of imprisonment of not more than 6 months; or
- Both

If the employer is a corporation, an officer, director, manager or agent who directed, assented to, acquiesced or participated in the commission of the offence is party to it and subject to prosecution.

In addition to fines and potential incarceration under the OHS an employer who commits an electrical violation may also be subject to a prosecution under the Electrical Installation and Inspection Act in NB.

The fines are levied daily under that Act and range as follows:

- \$140 to \$640 for a failure to comply with the regulations under the Act
- \$240 to \$5200 for interference with an investigation or failure to comply with an order
- \$240 to \$10,200 for performing electrical work in violation of the Act and regulations, failing to report a fire or interference with the scene of an accident or fire

Penalty Schedule for Nova Scotia

Type of Party	Administrative Penalty		
	1 st	2 nd	3 rd and subsequent
Employer, contractor, constructor, supplier, provider of OHS service, architect or professional engineer	\$500	\$1000	\$2000
Owner, Employee with supervision responsibilities, or self-employed person	\$250	\$500	\$1000
Employee	\$100	\$200	\$500