



*Representing Employers on  
Workplace Safety and  
Insurance Law*

**Industrial Mediation**  
Professional Corporation

# HOW TO SUCCESSFULLY MEET THE HIGHEST STANDARDS IN SAFETY A CASE FOR DUE DILIGENCE

Prepared for the Canadian Association of  
Movers

Occupational Health and Safety

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"SEND THIS BACK TO THE LEGAL DEPARTMENT, I THINK THEY COULD  
MAKE IT MUCH MORE COMPLICATED THAN THIS..."

## Agenda

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1. Jurisdictional Issues and sub-contracting
2. Types of Orders
3. Strict Liability and Due Diligence
4. What the courts are expecting - 6 key expectations
5. Key Elements for Consideration

# Jurisdictional overlaps

## What are your vulnerabilities?

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### Provincial MOL

- ❑ Applies to provincially regulated workplaces
- ❑ Including suppliers, subcontracting, self employed

### OHSA does not apply

- ❑ Federally regulated employers

### Canada Labour Code Part II

- ❑ Administered by Human Resources and Skills Development Canada
- ❑ Includes...interprovincial trucking, shipping

### Intersection between MOL and CLC

Workplace under Federal jurisdiction, although federal authorities accept that outside contractors and their employees, while in Federal workplace, are under provincial jurisdiction

# Jurisdictional overlaps

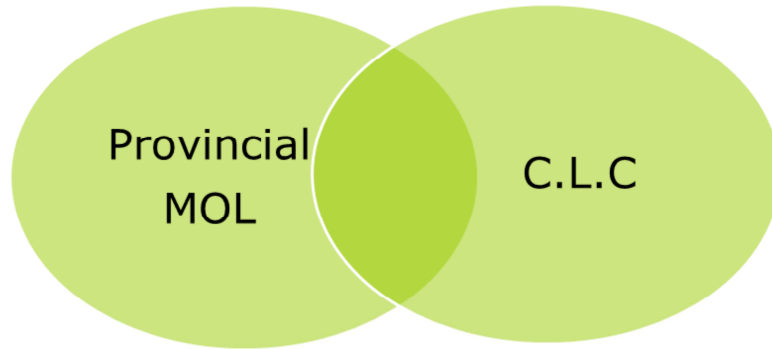
## What are your vulnerabilities?

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## Orders and Fines

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### Orders - Compliance

- Forthwith
- Time based
- Stop work

Signed and return!

- Can you Appeal orders?

**You have the right to appeal  
to the OLRB within 30 days**

### Fines

- Tickets
  - Schedule 67 fixed fines  
and max \$295 plus 20%  
Victim surcharge + court  
fees
- Part 1 summons
  - Max \$1,000 plus 20%  
Victim surcharge + court  
fees
- Part 3 summons More  
serious charges

# Strict Liability and Due Diligence

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**It shall be the defence for the accused to prove that every precaution reasonable in the circumstance was taken**

## Provincial MOL - Convictions

- ❑ For an individual: Max fine of \$25,000 and/ or 12 months in prison (for each offense)
  
- ❑ For corporation: Max fine of \$500,000 (for each offense)

## CLC Part II – Conviction

- ❑ For an individual Max of \$1,000,000 or imprisonment not more than 2 years or both

## Why is Due Diligence is so Critical

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- ❑ Individual liability Increasing
- ❑ Increase in supervisor prosecutions
- ❑ Fewer personal changes being withdrawn
- ❑ Jail term being sought
  - Bill c-45
- ❑ Directors/officers prosecutions more frequent
- ❑ Public relations
  - Media
  - Government News Releases



## Lack of Due Diligence

### Examples:

- Knowledge of hazards but no action taken
- Delegate without monitoring
- Actions to control hazards deliberately in non-compliance
- **Rules established but not enforced**
- No progressive discipline, repeat of actions
- **Lack of or no training**

## Most Frequent Reasons for Charges

**Lack of, or no Training**



**Written documents not being maintained**

## OHS Program - Court Fines

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J.R. Contracting Property Services Ltd. Fined \$75,000, Supervisor Jailed 45 days-After Worker Permanently Injured in Fall

### **What the courts are expecting**

1. Provide training to workers
2. Provide supervision to workers
3. Provide instruction to workers
4. Provide information to workers
5. Enforcement
- 6. Sub-contracting**
7. Documentation

# 1. Provide Training

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The employer shall prepare and review at least annually a written OHS policy AND develop AND maintain a program to **implement** that policy.

## Five point check system

1. Develop
2. Communicate
- 3. Training**
  - General
  - Specific
4. Review
5. Make improvements



- Written records maintained
- Defense against strict liability
- Helps to mitigate fines

## 2. Provide supervision

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Every person who organizes and controls work activities is considered a supervisor

### □ Who appoints a supervisor?

The employer is to appoint a **competent** supervisor

- i. Competency is a test of law
  - i. Know the WORK
  - ii. Know the HARZARD
  - iii. Know the LAW

**Strong recommendation - ensure supervisors and managers have  
Fundamentals of Supervision course**

## 3 & 4 Provide Information and Instruction to a worker

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### **Providing Information – must be appropriate not generic**

**Orientation** - Must take into consideration the following:

- How long is the orientation?
- What information is being reviewed?
- Who is doing the orientation?
- What documents are being kept?

### **Providing Instruction**

In the orientation process is the worker being trained on:

- Safety Policies
- Safe Work Methods / SOP's
- Rules
- What documents are to be kept?

## 5. Enforcement procedures

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### □ What constitutes a safety infraction?

A **minor** safety infraction includes a minor violation under the company's health and safety rules, and or Provincial occupational health and safety law(s) and their regulation(s) that does not endanger the welfare of the worker or others.

Consequences



A verbal warning will be given where in the opinion of management the safety infraction is *\*minor in nature*. The verbal warning will include a compulsory safety talk given by the worker's supervisor.

## Sub-Contractors IO'S

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- ❑ Common practice - Owner Operator
- ❑ Risk exposures
  - Workers' Compensation-right to sue
  - MOL and / or CLC can fine both

WHY?

**WSIB / WCB clearance of certificate requirements DOES NOT mitigate your liability under the OHSA /CLC in the event of an accident**



## Definition of Employer Means...

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A person (or company) who employs one or more workers or **contracts for the services** of one or more workers.

Includes:

- ❑ an Independent Operator, 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.

## 6. Sub-contracting agreement

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### Elements to include

- Outline the scope of work to be done
- Responsibilities for compliance with safety
- Provide qualified workers for the work to be done
- Provide competent supervision for the work being performed
- Ensure workers are properly trained
- WHMIS 2015, Fall Protection, defensive driving etc....
- Principal to monitor and remove from premise – enforcement
- Report safety accidents and investigate for corrective action

**Annually resign and review**

# Key Elements to Consider

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## Where to start

Take the time to review your safety program - annually

▣ Ask yourself

1. When is the last time I reviewed the safety program
2. Are policies and procedures dated within one year
3. Are the policies current with legislative changes
  - Hazard prevention Program (Hazard Assessment)
  - Workplace Violence prevention program
  - WHMIS 2015 etc....
4. Do I have written training documents for all workers and within a year

**UNDERTAKE A SAFETY AUDIT TO IDENTIFY GAPS AND MAKE IMPROVEMENTS**