

Canadian Work Alone Legislation & Employer Duty of Care



A review of Canadian work alone legislation, and available mobile satellite communications solutions that effectively address employer duty of care concerns.

Technological Solutions

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Summary

Occupational health and safety (OH&S) laws exist at both the provincial and federal level. Approximately 10% of the Canadian workforce falls under the OH&S jurisdiction of the federal government (*Canadian Labor Code Part II*). The remaining 90% of Canadian workers fall under the legislation of the province or territory where they work; though each province is distinct, there are many similarities in the legislation and intent of the law.

Not only are there distinct health and safety regulations in each province and territory, but organizations can now be held criminally responsible for serious violations of OH&S regulations. On March 31, 2004, Bill C-45 officially became law; this federal legislation amended the Canadian

Bill C-45: Established new rules for attributing criminal liability to organizations for the acts of their representatives.

Criminal Code (CCC), established new legal duties for workplace health and safety, and imposed serious penalties for violations that result in injuries or death. Bill C-45 is separate legislation from existing OH&S acts. It established new rules for attributing criminal liability to organizations for the acts of their representatives, and established a

legal duty for all persons directing the work of others to take reasonable steps to ensure the safety of workers and the public. If this duty is "wantonly" or recklessly disregarded and bodily harm or death results, an organization or individual could be charged with criminal negligence.

Who does it affect? Bill C-45 affects all organizations and individuals who direct the work of others, anywhere in Canada. **Employers failing to comply with the legislation face serious penalties** described in more detail in the pages that follow.

In addition to Bill C-45, a number of provinces have amended their OH&S legislation to specifically regulate situations where employees are deemed to be working alone. As of January 2014, these jurisdictions include *Alberta, Saskatchewan, Manitoba, BC, New Brunswick, Newfoundland and Labrador, Quebec, and Prince Edward Island*.¹ There is also a brief mention of lone workers in the Northwest Territories and Nunavut regulations.

Employers must provide an "effective" communication system for the specific lone working situation.

Though provincial regulations vary, a few common principles apply. Employers must conduct a hazard assessment, take all reasonable measures to eliminate or minimize the hazard and provide an effective communication system for the specific lone working situation.

It should be noted that while federal legislation does not mandate the use of a specific form of communication, it does require that such communication be "effective" with regard to the specific lone working situation and risks. Provincial legislation is more specific with respect to communication and in most cases demands that an effective means of communication be provided to lone workers "to signal the need for assistance". Certain jurisdictions, like BC, go even further and the legislation is quite specific with respect to the employer's obligations to

¹ CUPE, Working Alone Health and Safety Fact Sheet, web source: http://cupe.ca/sites/cupe/files/hs_factsheet_working_alone_e_final.pdf

conduct interval checks on the well being of employees assigned to work alone or in isolation, and mandates that employees performing higher risk activities require shorter check-in intervals.

A 2010 report by the Canadian Center for Policy Alternatives titled *Success is No Accident* sheds light on the declining workplace safety concerns related to employers under federal jurisdiction and recommends that “all federal government and crown corporations should comply with “best practice” standards for worker safety”².

OH&S legislation and specific Lone Worker legislation have important implications for all employers in Canada. Health and safety managers and supervisors should familiarize themselves with available technological and communications solutions, like inReach, which can assist the organization in addressing its duty of care obligations, and demonstrating compliance with applicable federal and provincial regulations.

NGOs, oil and gas workers, park rangers, conservationists, environmental scientists, private security firms, rural and wild fire fighters, geophysicists and other organizations with employees working alone in regions poorly served by traditional communication, are impacted by this legislation. In summary, the intent of the law is to ensure that workers working by themselves can do so safely. Two-way messaging and SOS alerting solutions like inReach can effectively and affordably be applied to address the organization’s general legal duty to:

- provide adequate supervision
- conduct hazard assessments, and take measures to eliminate the hazard or minimize the risk from the hazard
- provide an effective means of communication to ensure the employee can secure emergency assistance and the employer can provide said assistance in the event that the employee’s health or safety is endangered
- establish procedures for maintaining regular contact to check the well-being of workers with a check-in interval appropriate to the hazard assessment

Addressing Duty of Care and Legislative Compliance

Lone Worker Legislation requires that organizations take all reasonable measures to ensure the safety of employees. Provincial legislation states employers must conduct workplace hazard assessments, take steps to eliminate or minimize the risk from the hazard, and provide an effective form of communication to lone workers given the specific situation and risks.

How does inReach assist employers with legal duty of care compliance?

A reliable two-way communications connection that works anywhere can be the best protection. When the employee is equipped with a voice or text messaging solution, everyone can breathe easier knowing that they can be reached and monitored anywhere, and request and obtain help should they need it. The following specific examples illustrate how two-way satellite messaging

² *Success is No Accident: Declining Workplace Safety Among Federal Jurisdiction Employees*, David Macdonald, Canadian Center for Policy Alternatives, web source:
http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Success%20Is%20No%20Accident_0.pdf

and SOS alerting devices and monitoring solutions like inReach mitigate risk, for employers and employees, and aid in compliance with OH&S and applicable lone worker legislation:

- Provides employees with a reliable means of requesting and obtaining emergency assistance, anywhere in the world, thereby mitigating the risk that employees might be unable to get help in the case of injury, ill health or violence.
- Confirms that the emergency is not a false alarm, and ensures that designated emergency response teams are promptly notified.
- Enables a constant connection with the employee during an emergency, helping response personnel to obtain critical information about the incident and provide updates on the rescue effort.
- Built-in highly accurate GPS allows management or rescuers to zero-in on the location of remote workers with a high degree of accuracy.
- Helps management identify others who are in the vicinity and may be able to provide assistance to the employee in distress.
- Provides highly accurate GPS location information so that emergency responders can be effectively dispatched to the employee's location.
- Helps management identify critical resources, for example emergency shelter, in-field medical supplies or food caches, available in the vicinity of the employee.
- Aids management's due diligence in conducting hazard assessments and examining past incidents by maintaining and ensuring secure access to a complete message and event audit trail.
- Facilitates easy employee check-in, anywhere on Earth.
- Helps management construct and consult a complete message and event audit trail to support incident investigations, litigation or compliance reporting.

"Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person..."

Two-way satellite text messaging devices offering 100% global coverage can effectively and affordably connect and protect anyone working in the remote field beyond cellular coverage. Deploying these solutions sends a clear message to employees and regulators that employee health and safety is paramount. The Garmin inReach is fast becoming the solution of choice for addressing employer duty of care.

References

Note: Reference information is provided in the sections that follow, however readers are advised to consult the specific provincial or federal legal act in every case.

Federal Legislation

Every jurisdiction in Canada is responsible for writing its own workplace safety laws. Though each provincial act is distinct, and not all have specific laws governing working alone, the Canadian Center for Occupational Health and Safety (CCOHS) points out that there are a number of similarities in OH&S across Canada and provides the following general descriptions of a supervisor's and employees duties.³

Generally an **employer's duties** include:

- taking every reasonable precaution to ensure the workplace is safe
- training employees about any potential hazards and how to handle emergencies
- supplying personal protective equipment and ensure workers know how to use the equipment safely and properly
- immediately reporting all critical injuries to the government department responsible for OH&S
- appointing a competent supervisor who sets the standards for performance, and who ensures safe working conditions are always observed

Because managers and supervisors act on behalf of the employer, they have the responsibility to meet the duties of the employer as specified in the Act. A **manager or supervisor's duties** include:

- ensuring that workers use prescribed protective equipment devices
- advising workers of potential and actual hazards
- taking every reasonable precaution in the circumstances for the protection of workers

Canadian Labour Code (CLC) Part II

With regard to workplaces governed by the Canada Labour Code and the Canada Occupational Health and Safety Regulations, there are no specific references dealing with workers working alone or in isolation. Although the federal legislation does not specifically have any working alone provisions, there is a general duty clause within the CLC - Part II that requires an employer to ensure that the health and safety of its workers is protected.⁴ This means that if you are working alone, your employer must assess any hazards associated with this type of work and find ways to eliminate or reduce them.

³ CCOHS, OH&S Legislation in Canada, Basic Responsibilities, web source: <http://www.ccohs.ca/oshanswers/legisl/responsi.html>

⁴ Canadian Labour Code Part II, s.124.

The CLC Part II is federal health and safety legislation; it applies to employees of companies or sectors that operate across provincial or international borders (about 10% of Canada's workforce). These businesses include:

- airports
- banks
- canals
- exploration and development of petroleum on lands subject to federal jurisdiction;
- ferries, tunnels and bridges
- grain elevators licensed by the Canadian Grain Commission, and certain feed mills and feed warehouses, flour mills and grain seed cleaning plants
- highway transport
- pipelines
- radio and television broadcasting and cable systems
- railway
- shipping and shipping service
- telephone and telegraph systems

Canadian Criminal Code (CCC) – Bill C-45

The criminal code is a distinct set of rules and should not be confused with occupational health and safety laws. Bill C-45 is a separate piece of legislation that applies to the CCC only and does not intrude upon, or override existing federal, provincial or territorial occupational health and safety statutes and regulations.

Bill C-45 was passed on March 31, 2004 and added Section 217.1 to the criminal code which reads:

"Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."¹

Bill C-45 also added Sections 22.1 and 22.2 to the Criminal Code imposing criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2). Under this legislation the term representative is defined to mean director, partners, members, agents and contractors as well as employees. It should be noted that the criminal code may apply more widely to anyone who undertakes to "direct" work.⁵

This bill legally forces employers to examine their workforce health and safety practices and take adequate measures to ensure the safety of their lone workers and the public. It also imposes serious penalties for violations that result in injuries or death.

The legislation applies to all organizations including federal, provincial and municipal governments, corporations, private companies, charities and non-government organizations.

⁵ Canadian Occupational Safety Magazine, Bill C-45, web source: <http://www.cos-mag.com/legal/legal-columns/1366-bill-c-45-questions-get-answered.html>

Note: The Department of Justice published a plain language guide: Bill C-45 - Amendments to the Criminal Code Affecting the Criminal Liability of Organizations. It can be accessed at: <http://www.justice.gc.ca/eng/rp-pr/other-autre/c45/c45.pdf>

To date, there have been a number of prosecutions under the Bill C-45 amendments. The first conviction of a corporation under Bill C-45 took place in 2008 when Transpavé, a paving company, was convicted of criminal negligence and fined \$110,000 for the death of an employee who was fatally crushed in a workplace incident in 2005.⁶

Since then, there have been a number of high-profile cases where charges have been laid under the Bill C-45 amendments, including the 2009 Christmas Eve workplace accident that saw Metron Construction fined \$750,000 for safety violations. The decision in Transpavé and subsequent rulings have clearly demonstrated that corporations can and will be held criminally responsible for failing to comply with safety regulations.

Not only can companies be charged under the Bill C-45 amendments, but each province also imposes hefty fines for OH&S violations. As just one example, in 2011, Garda Canada Security Corp was fined over \$90,000 on a charge under Alberta’s OH&S Act for failing to protect a female worker who was attacked while working alone at an isolated worksite. This case set an important precedent, as it highlighted the need to tighten and enforce legislation involving employees working alone.⁷

Provincial Lone Worker Legislation

In each province or territory, there is an act which applies to most workplaces in that region. Many aspects of the legislation are similar in all the jurisdictions across Canada, however, the details of the OH&S legislation, including who is or is not covered, and how the laws are enforced vary from one jurisdiction to another, should be consulted.⁸

A number of provinces and territories have specifically adopted legislation pertaining to lone workers, in addition to Bill C-45. While no provinces explicitly prohibit working alone, the following provinces have legislation specifically regulating working alone:

Alberta British Columbia New Brunswick Prince Edward Island	Manitoba Saskatchewan Quebec Newfoundland & Labrador
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Although the specific regulations vary, in general, employers in these jurisdictions must:

- conduct hazard assessments, and take measures to eliminate the hazard or minimize the risk from the hazard

⁶ <http://ccohs.ca/oshanswers/legisl/billc45.html>
⁷ <http://www2.canada.com/calgaryherald/news/city/story.html?id=d833e8f5-4f72-42b0-9659-10d6389bfd6a>
⁸ CCOHS, Canadian Government Departments Responsible for OH&S, web source: <http://www.ccohs.ca/oshanswers/information/govt.html>

- provide an effective means of communication to ensure the employee can secure emergency assistance and the employer can provide said assistance in the event that the employee's health or safety is endangered
- establish procedures for maintaining regular contact to check the well being of workers with a check-in interval appropriate to the hazard assessment

In Ontario and Nova Scotia, the law does not discuss working alone specifically. However the general intent of the law in each province is that employers, managers and supervisors must do everything that is reasonable to ensure that workers are healthy and safe.⁹ For example, Ontario's Ministry of Labour states that it will rely on the employer's general duty to take every reasonable precaution for protection of the health and safety of workers. Therefore, employees must be concerned about lone workers regardless of whether they are directly subject to lone worker legislation, since working alone is generally understood as a hazard to be protected against under the general duty clause.¹⁰

Definition of a Lone Worker

A lone worker is an individual working without close or direct supervision that does not have visual or audible contact with another person who can provide or call for assistance in the event of an emergency, injury or illness.

Working alone requirements apply when employees are working by themselves and assistance is not readily available to the worker:

- in case of an emergency, or
- in case the worker is injured or in ill health

Definition of an Employer

The definition of an employer frequently includes the organization, its agents and representatives and also may include individuals that are not paid by the organization. The applicable legislation should be consulted in each case.

Hazard Assessment

Hazard assessments must consider the probability of injury associated with the work, including location and type of work. It should be noted that workers expectation of "readily available assistance" increase as the probability of injury associated with the work increases; employers also need to consider that the probability of injury may change over time, or with changing workplace conditions. For example, the probability of injury could increase if an employee is in a region experiencing sudden geopolitical unrest, or new hazards could emerge from dynamically changing events like weather conditions in the location that the employee is working.

In Alberta, employers are encouraged to review all factors that increase the risk to employee safety such as the lack of communication devices, and factors that increase the likelihood of

⁹ CCOHS, Working Alone, web source: <http://www.ccohs.ca/oshanswers/hsprograms/workingalone.html>

¹⁰ When Working Alone Takes A Deadly Turn, web source: <http://www.cos-mag.com/Legal/Legal-Columns/when-working-alone-takes-deadly-turn.html>

occupational injury such as high hard work (e.g. tree cutting), isolation from first aid services, or an inability to call for help.¹¹

Effective Communication

The purpose behind this requirement for an “effective communication system” is to permit a worker requiring assistance to send a message or signal to someone capable of providing assistance to them. The provision of effective communication may include cellular or satellite phones, two-way radios or computer-based systems that allow workers to send a message or signal their need for assistance. Communication must be “effective” with regard to the specific situation and risks.

Certain jurisdictions like Alberta and British Columbia also require that employers have in place procedures for checking on the well being of workers assigned to work alone or in isolation and that this procedure must include the time interval between checks and the procedure to follow in case the worker can not be contacted including provisions for emergency rescue.

In some jurisdictions, an alternative to an effective means of communication is a “contact” system which includes scheduled check-ins or visual/audible contact with other persons who can offer assistance when needed.

Criminal and Civil Penalties

The amendments to the criminal code under Bill C-45 create both individual and corporate liability, and impose serious penalties for offences:

“For individuals, the maximum penalty for criminal negligence causing death is life imprisonment, and the maximum penalty for criminal negligence causing bodily harm is ten years’ imprisonment. However, individuals are subject to a range of Criminal Code sentencing options from absolute discharge, to probation, to life in prison, depending on the specific circumstances of the contravention.

Organizations, including corporations, are subject to different penalties depending on how the Crown proceeds. Where the Crown proceeds by summary conviction (the least serious manner of proceeding), the maximum fine is \$100,000 for an organization.

Where the Crown proceeds by indictment (the most serious manner of proceeding), there is no limit on the amount of the fine for the corporation or organization.”¹²

¹¹ Alberta Occupational Health and Safety Code 2009. Explanation Guide, Subsection 393(2).

¹² Canadian Occupational Safety Magazine, May 2008, <http://www.cos-mag.com/legal/legal-columns/1366-bill-c-45-questions-get-answered.html>

In May 2010, the OHS Insider published a summary of OHS penalties¹³ in the various jurisdictions in Canada. The following table is from the article:

JURISDICTION	FIRST OFFENCE	SUBSEQUENT OFFENCE
Federal	\$100K for summary conviction \$1 million for indictment	NA
Alberta	\$500,000 + \$30K per day that the offence continues	\$1 million + \$60,000 per day that the offence continues
British Columbia	\$618,730.69 + \$30,936.59 per day	\$1,237,461.35 + \$61,873.07 per day
Manitoba	\$150K + \$25K per day	\$300K + \$50K per day
New Brunswick	\$250K	NA
Newfoundland/Labrador	\$250K + \$25K per day	NA
Nova Scotia	\$250K + \$25K per day	NA
Ontario	\$250K (individual) \$500K (corporation)	NA
Prince Edward Island	\$250K + \$5K per day	NA
Quebec	\$1K (individual) \$20K (corporation)	\$2K (individual) \$50K (corporation)
Saskatchewan	\$50K + \$5K per day \$300K in the case of a fatality	\$100K + \$10K per day \$300 K in the case of a fatality

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¹³ Canada's Crazy Patchwork of Maximum OHS Fines, OHS Insider, May 2010, web source: <http://www.ohsinsider.com/diligence/canada%E2%80%99s-crazy-quilt-patchwork-of-maximum-ohs-fines>