



RELATIONSHIPS BETWEEN THE PARTIES OF THE INTERNAL RESPONSIBILITY SYSTEM





THE RESIDENTIAL CONSTRUCTION SAFETY ASSOCIATION RCSA

**THIS ORIENTATION MODULE IS DESIGNED TO
CREATE A HIGHER LEVEL OF UNDERSTANDING
BETWEEN THE HOMEOWNER, THE INDEPENDENT
CONTRACTOR AND THE SELF-EMPLOYED
INDIVIDUALS UNDER THE I.R.S. THE
OCCUPATIONAL HEALTH AND SAFETY ACT &
REGULATIONS**

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To better assist the reader of this Orientation we have included three website URIs, one is to The N.S. Reference Guide Occupational Health and Safety Act. 2011

<http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10641695.pdf>

Disclaimer:

The commentary found in this document is not intended to be an exhaustive interpretation or to constitute legal advice to members of the public. This document is prepared for convenience only, and for accurate reference, the reader should see the official volumes of the legislation.

The left side column refers to the Act and the right side column is a commentary on that particular section of the Act.

Below is the URI to the present Volume of The Occupational Health and Safety Act 2016.

<https://nslegislature.ca/sites/default/files/legc/statutes/occupational%20health%20and%20safety.pdf>

Who is an owner as defined under the Internal Responsibility System?

Owner: Includes a trustee; a receiver; mortgagee in possession; a tenant, lessee or occupier of lands or premises used as a workplace; and a person who acts for, or on behalf of an owner as an agent or delegate. (OHSA Section 3, page 4, 2011)

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 insures 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. (OHSA Section 19, 2011)



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This definition outlines the duty and responsibility that a homeowner must carry out when they hire a contractor to perform work on their property. As a homeowner you are only required to have knowledge of the content of the Occupational Health and Safety Act that is reasonable and practical as defined in the Occupational Health and Safety Act. The contractor you hire is responsible for the health and safety of their employees, independent contractors and self-employed individuals they bring to your property. The contractor needs to determine how and where to apply the safety controls necessary to your workplace and have knowledge and be in compliance with the Act.

The homeowner is required to share with the person you hire of any pre-existing hazards that are present on your property that could reasonably be known by you. This could be as simple as informing the person you hire that you have a dog that is protective of your family and should not be approached by the workers as they may be bitten by the animal. Having the contractor share their assessment of the hazards and controls needed to carry out the work with the homeowner helps and provides peace of mind to both parties. Over the years construction workers have had to increase their knowledge of health and safety through a wide variety of safety training programs as it applies to the Internal Responsibility System.

As a homeowner you need to understand that your place of residence has become a workplace and a wide variety of hazards come with every workplace. This orientation is designed to help the homeowner to understand what due-diligence is required on behalf of the contractor you hire in addition to the homeowner if they decide to be the constructor.

What is meant by Due Diligence?

- Due diligence is the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances.
- Applied to occupational health and safety, due diligence means that employers shall take all reasonable precautions, under the particular circumstances, to prevent injuries or accidents in the workplace. This duty also applies to situations that are not addressed elsewhere in the occupational health and safety legislation. Reasonable precautions are also referred to as reasonable care. It refers to the care, caution, or action a reasonable person is expected to take under similar circumstances.



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- Another term used is employers must do what is “reasonably practicable”. Reasonably practicable has been described by the Labour Program (Canada) as taking precautions that are not only possible, but that are also suitable or rational, given the particular situation. Determining what should be done is usually done on a case by case basis.
- To exercise due diligence, an employer must implement a plan to identify possible workplace hazards and carry out the appropriate corrective action to prevent accidents or injuries arising from these hazards.

The contractor you hire may decide to hire independent contractors or self-employed individuals in addition to their own employees to carry out the work they contracted from the homeowner. When this occurs the contractor then becomes the constructor with additional responsibilities.

When the homeowner decides that instead of hiring a contractor to oversee their complete project and directly hire independent contractors and self-employed individuals they themselves have taken on the role of the constructor.

When a homeowner decides to take this position your responsibilities increase. The homeowner needs to work closely with the independent contractors and self-employed individuals and together you will determine what controls would be required to reduce or eliminate the risk of the health and safety of persons at or near the workplace.

The homeowner also needs to know what new hazards are going to be created on your property as it pertains to the type of work that is to be carried out on your property. This is where the homeowner needs to apply their knowledge and understanding of the content of the Occupational Health and Safety Act beyond what would normally be required with the knowledge of the person you hire.



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A homeowner now has to be aware of any and all hazards that exist on their property before and during the process of any work being carried out on their property. When these hazards become identified by a homeowner the homeowner can then delegate those responsibilities to the person(s) you hire. As a homeowner (constructor) you can delegate your responsibilities under the Occupational Health and Safety act to the person(s) you hire but you can never be removed from them when you take on the role of the constructor. If the homeowner is a trades person by their profession, the safety training you received or the lack of could be used against you in your defence of applying due diligence at the workplace if a workplace accident occurred on your property.

When the homeowner together with the person(s) you hire refer to both the Occupational Health and Safety Act as well as the Occupational Health and Safety Act General Regulation it will benefit both parties when applying your due diligence. The answers to many of your questions and concerns can be found in either or both of these documents. An online address to both documents can be found in this orientation program.

The Internal Responsibility System is a shared responsibility and everyone at or near the workplace has a duty under the Act. Supervision at a workplace is a mandatory requirement under the Internal Responsibility System. The owner of residential property or a house is not responsible for construction work, unless the owner has actual control of the project, the owner must have responsibility under the Act. That duty applies to the owner of the land or premises.

After the tragedy of the Westray mine accident in Nova Scotia in the early 1990's our Occupational Health and Safety Act was completely overhauled in Canada. In the rewriting of the regulations it extended the law beyond the traditional employer, employee relationship. This required the individual to have knowledge beyond their personal job description requirements under the Occupational Health and Safety Act.



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Internal Responsibility System (I.R.S.)

1 / This Act may be cited as the Occupational Health and Safety Act.

(OHSA Section 1 page 1, 2011)

2 / The foundation of this Act is the Internal Responsibility System which

- (a) Is based on the principal that
 - (i) Employers, contractors, constructors, employees and self-employed persons at the workplace, and
 - (ii) The owner of a workplace, supplier of goods or provider of an occupational health and safety service to a workplace or an architect or professional engineer, all of whom can affect the health and safety of persons at the workplace, share the responsibility for the health and safety of persons at the workplace;
- (b) Assumes that the primary responsibility for creating and maintaining a safe and healthy workplace should be that each of these parties, to the extent of each party's authority and ability to do so;
- (c) Includes a framework for participation, transfer of information and refusal of unsafe work, all of which are necessary for the parties to carry out their responsibilities pursuant to this Act and the regulations; and
- (d) Is supplemented by the role of the Occupational Health and Safety Division of the Department of Labour, which is not to assume responsibility for creating and maintaining safe and healthy workplaces, but to establish and clarify the responsibilities of the parties under the law, to support them in carrying out their responsibilities and to intervene appropriately when those responsibilities are not carried out. (OHSA Section 2 page 1, 2011)

The identification and controls for health and safety at the workplace starts in the planning process of the project. This involves the homeowner and the person(s) you choose to hire to carry out the work on your property. The identification of hazards on a construction site are fluid throughout the completion process. In other words, as the project moves forward new hazards are created that may not have been apparent in the beginning of the project.



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The identification and controls of a hazard at a workplace are achieved by breaking down the process of the project step by step. By following this process in the planning stages identifies, reduces or eliminates the risk when carrying out unsafe work by controlling the hazard. Upon the completion of this process there is a protocol in the way these responsibilities are delegated to individuals at a workplace.

It starts with the homeowner acknowledging the new hazards they are creating on their property and the cost involved to control them. The homeowner then delegates those responsibilities to the employer (person) and their associates. The employer (person) then delegates these responsibilities to various levels of their employees starting with their supervisor. These responsibilities are then delegated to the foreman, lead hand and competent person who carries out the work in this order. There are many levels of skills development safety training programs available for the titles of these individuals that assist them in the role they play at a workplace when carrying out their responsibilities under the Internal Responsibility System. When an accident occurs at the workplace the process of the investigation of the cause is done in the reverse starting with the competent person (worker) and ends with the homeowner.

Upon the completion of this process with your contractor or independent contractor or self-employed individuals as a homeowner if you witness unsafe work being carried out on your project you then have a new role. You must have the individual who is doing that work unsafely stop what they are doing and get to a safe place before they become injured. If they refuse to comply then you should contact the Department of Labour and Advanced Education and a regulator of the Province will visit your work site to ensure they are in compliance of the Occupational Health and Safety Act and its regulations or they may issue a non-compliance order to correct the deficiency. Otherwise you could share in that responsibility if an accident was to occur on your property.



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“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;

“Contracts for work” includes contracting to perform work and contracting for work to be performed. (OHSA Section 3 page 1, 2011)

Every contractor shall take every precaution that is reasonable in the circumstances to ensure;

- (a) The health and safety of persons at or near a workplace;
- (b) That the activities of the employers and self-employed persons at the workplace are coordinated;
- (c) Communication between the employers and self-employed persons at the workplace of information necessary to the health and safety of persons at the workplace;
- (d) That the measures and procedures prescribed pursuant to this Act and the regulations are carried out at the workplace; and
- (e) That every employee, self-employed person and employer performing work at the workplace complies with this Act and the regulations.

(OHSA Section 14, 2011)

“Dependent contractor” means a person, whether or not employed under a contract of employment and whether or not furnishing the persons own tools, vehicle, 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.

(OHSA Section 3 page 2, 2011)

“Self-employed person” means a person who is engaged in an occupation on that person’s own behalf but does not include a dependent contractor.

(OHSA Section 3 page 5, 2011)

Every self-employed person shall

- (a) Take every reasonable precaution in the circumstances to protect the self-employed person’s own health and safety and that of other persons who may be affected by the self-employed person’s undertaking;



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- (b) Co-operate with any employer, joint occupational health and safety committee or health and safety representative that may be found at a workplace at which the self-employed conducts an undertaking, to protect the self-employed person's own health and safety and that of other persons who may be affected by the undertaking;
- (c) Co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and
- (d) Comply with this Act and the regulations. (OHSA Section 18, 2011)

“Constructor” means a person who contracts for work on a project or who undertakes work on a project himself or herself. (OHSA Section 3 page 1, 2011)
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;
- (c) Communication between the employer and the 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.

(OHSA Section 15, 2011)

Dependent contractors and the self-employed person can not be a constructor under the Occupational Health and Safety Act. The responsibility of supervision and health and safety is placed upon the one who hires them to perform work on the project that could be either the contractor or the homeowner.

The homeowner due-diligence process under the I.R.S.

- Have your contract (agreement) reduced to writing and signed by both parties.
- Provide proof of liability insurance by both parties.
- Provide a letter of good standing from the WCB by the contractor if the employer carries WCB coverage.



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OWNER AND CONTRACTOR EXAMPLE SAFETY CONTRACT

The owner of the work site delegates the responsibility of the safe work practices and controls to _____.

Workplace safety on site will be the responsibility of a competent person _____.

These responsibilities will include but not be limited to the following;

1. Ensure that all persons that the contractor (person) brings to the work site have received the proper level of workplace safety generic training to complete their specific task when their job description is associated with the assigned work.

OWNERS/EMPLOYERS;

- Principals of Loss Control
- Principals of Loss Control Audit
- Hazard Identification and Control

SUPERVISORS, FOREMAN, LEADHANDS;

- Leadership for Safety Excellence
- Hazard Identification and Control
- Occupational Health and Safety Act and Regulation
- Workplace Hazardous Material Information System (Mandatory safety training when their job description is associated with the assigned work)
- Fall Protection Basic (Mandatory safety training when their job description is associated with the assigned work.)
- Fall Protection Supervisor (Mandatory safety training when their job description is associated with the assigned work)
- Fall Arrest Rescue
- Pipe Frame Scaffolding (Mandatory safety training when their job description is associated with the assigned work)



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- Knowledge of written instructions of manufactured fall arrest pitched roof anchors, guardrails, bracket scaffolding platforms, pump-jacks, roof-jacks, ramps and ladders. All of which must have a copy of those written instructions at the workplace. Manufactured products must meet a strict set of guidelines within the Occupational Health and Safety Act. This is to ensure they are in compliance with the Act and its regulations. (There is no formal training provided at present time)
- Knowledge of the Occupational Health and Safety Act requirements of wooden staging with platforms and guardrails and ramps built on site. (There is no formal training provided at present time)
- Knowledge of the content of the Certificate of Recognition (COR) their employer may posses. The employers programs policies and work procedures.
- Respiratory Basic
- Respiratory Management for Supervisors
- First Aid (It is only mandatory that at least one individual at the workplace is trained)
- Accident Control and Investigation

SAFETY REPRESENTATIVES:

- Workplace Hazardous Material Information System (Mandatory safety training when their job description is associated with the assigned work)
- Safety Orientation
- First Aid
- Occupational Health and Safety Committee Member/Representative

EMPLOYEE:

- First Aid (It is only mandatory that at least one individual at the workplace is trained)
- Confined Space (Mandatory safety training when their job description is associated with the assigned work)
- Leadership for Safety Excellence
- Workplace Hazardous Material Information System (Mandatory safety training when their job description is associated with the assigned work)
- Safety Orientation



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- Workplace Hazardous Material Information System (Mandatory safety training when their job description is associated with the assigned work)
- Safety Orientation
- Fall Protection Basic (Mandatory safety training when their job description is associated with the assigned work)
- Fall Arrest Rescue
- Pipe Frame Scaffolding (Mandatory safety training when their job description is associated with the assigned work)
- Knowledge of written instructions of manufactured fall arrest pitched roof anchors, guardrails, bracket scaffolding platforms, pump-jacks, roof-jacks, ramps and ladders. All of which must have a copy of those written instructions at the workplace. Manufactured products must meet a strict set of guidelines within the Occupational Health and Safety Act. This is to ensure they are in compliance with the Act and its regulations. (There is no formal training provided at present time)
- Knowledge of the Occupational Health and Safety Act requirements of wooden staging with platforms and guardrails and ramps built on site. (There is no formal training provided at present time)
- Knowledge of the content of the Certificate of Recognition (COR) their employer may posses. The employer's programs policies and work procedures.

There are a wide variety of safety training programs that have been identified for the many positions that are held with in a construction company. Many of which are not mandatory to have under the Act. The safety training programs that are mandatory are not necessarily mandatory for every person at the workplace. It only applies to those individuals when their job description is associated with the assigned work. There is however a benefit to be gained by having these above mentioned safety programs. It is part and partial of becoming a competent person. Each of these safety programs have a value in the process of the reduction of a workplace accident as well as the health and safety of everyone at or near the workplace. It is important to understand that every safety training program is designed for a purpose and compliment one another when they are applied to a workplace. The more safety training an individual has the better equipped they are to complete their job safely. This is what is meant by the term Skilled Trades Person in addition to their profession.



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“competent person” means a person who is

- (i) qualified because of their knowledge, training and experience to do the assigned work in a manner that ensures the health and safety of every person in the workplace, and
- (ii) knowledgeable about the provisions of the Act and regulations that apply to the assigned work, and about potential or actual danger to health or safety associated with the assigned work

OCCUPATIONAL HEALTH and SAFETY ACT GENERAL REGULATIONS 2013

https://www.novascotia.ca/just/regulations/regs/ohsgensf.htm#TOC2_62

In addition to the safety training identified, when operating machinery such as scissors lift, forklifts or a zoom boom it is mandatory that the individual receive safety and operation training. (part 7 section 55 OHSA General Regulations)

Temporary stairway and guardrail construction
(part 142 section 1 – 9 OHSA General Regulations)

Use of Personal Protective Equipment (part 9 section 1 – 4 part 9a)
Hazard to eyes, face or neck (standard 10 section 1 & 2 OHSA General Regulations)

Hazard to head (standard 11 OHSA General Regulations)

Hazard to foot or skin (standard 12 section 1 & 2 OHSA General Regulations)

The General Regulations describe what needs to be known in a wide variety of circumstances that are found at a workplace.

2. Carry out periodic hazard assessments to ensure the safety of persons at the site through all the phases of the work.

3. Identify the safety controls, implement and enforce them through out the project this would include P.P.E. (Personal Protective Equipment such as, eye protection, hard hat, gloves, ear plugs, safety boots, harness and lanyard etc.)



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4. Carry out a brief safety orientation with all persons at the work site everyday to identify and ensure that everyone is aware of any new hazards.
5. Have a proper first aid kit at the work site at all times and that everyone at the work site knows where it is.
6. Identify the person who has received first aid training for all to know at the work site.
7. It is the responsibility of the contractor to share with the owner of the work site the hazards that will be present throughout the project.
8. It is the responsibility of the contractor to share with the owner of the work site the safety controls that will be put in place to eliminate or reduce a possible work place accident.
9. The contractor will upon request from the owner of the work site show the mandatory generic safety training certificates of persons at the workplace. e.g. Fall Protection Basic, Hazard Identification & Control and Fall Protection Rescue
10. The contractor will identify the hazards that will be brought to the owner's property in writing and give it to the owner. This would be an attachment to this agreement.
11. The contractor will identify the safety controls necessary to control the hazards and the cost of putting these controls in place in writing to the owner. e.g. Fall Arrest, Railings, Plate Forms, House Keeping, safety glasses, hard hats and safety boots. This would be an attachment to this agreement.
12. The owner of the work site may if so deemed by the owner have an independent building inspector review any and all construction work without notice to the contractor. The building inspector would then report back to the owner in writing.
 - It is necessary to have this put into the contract if the homeowner decides to hire an independent building inspector to oversee the construction of the project. Otherwise the contractor or person you hire has the authority to refuse the independent building inspector access to the property. A provincially assigned building inspector is the only person permitted on



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a project without notice to the contractor or person you hire to inspect the construction work and ensure it meets the building code requirements.

13. The owner of the work site may if so deemed by the owner have an independent safety officer to inspect all safety practices and controls without notice to the contractor. The independent safety officer would then report back to the owner in writing.

- It is necessary to have this put in to the contract if the homeowner decides to hire an independent safety inspector to over see that workplace safety of the project is followed and implemented. Otherwise the contractor or person you hire has the authority to refuse the independent safety inspector access to the property. A provincially assigned safety inspector is the only person permitted on a project without notice to the contractor or person you hire to inspect the workplace safety procedures and ensure it meets the Occupational Health and Safety Act and Regulations requirements.

14. The contractor must prove that they carry liability insurance and if they have three or more than three workers they must carry WCB insurance and show that the contractor is in good standing with the W.C.B.

- A homeowner's liability property insurance covers a wide range of security to the homeowner. This also includes a person who could become injured on their property. It does not however prevent that injured person from successfully suing the homeowner for the injury. Insurance companies have what is called a cap that determines what they are willing to pay to compensate the injured person for their injuries. If the courts decide that the compensation is greater than the cap then the homeowner must make up the difference out of their own pocket including the cost of legal council.
- Contractor liability insurance protects the homeowner from any damages that might be caused by the contractor to your property while the work is being carried out.
- WCB insurance is mandatory for all employers who employ three or more employees. This includes independent contractors who may have self-employed individuals assisting them. The WCB insurance has a monopoly over a workplace unlike other insurance companies.



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- This insurance removes the ability of anyone who has been injured at a workplace to successfully sue anybody that may or may not be responsible for the injury of that individual. In return for giving up this right of successfully suing anyone the WCB offers a no-fault insurance to the injured person who may or may not qualify for financial compensation due to an injury. However the WCB does retain the right to successfully sue their client (employer) for the cost of the injured person injuries if they choose too.
- The WCB is pro active in the reduction of workplace accidents and it is in their best interest to reduce workplace accidents and the financial cost paid out to the injured person. A large portion of the Division of the Department of Labour's operational cost is covered by the WCB. The WCB also provides a levy which is a percentage of the premiums paid to a wide range of industries who carry their insurance. The levy is there to allow each sector to grow, develop and deliver their Occupational Health and Safety Programs as well as the development of safety skills development training for their employees. The WCB also works with and provides financial support to many injured worker associations.
- Neither of these two types of insurance cover the cost of the Department of Labour and Advanced Education fines (summary offences) and penalties or legal council when found guilty for non-compliance safety violations under the Act.

15. Both # 10 and # 11 must be completed and included with the company contract. This safety contract attachment is a binding part of the agreed upon contract between the owner and the contractor.

I the contractor _____, having the control and authority hereby agree to these terms and conditions.

Company Officer: _____.

Print Name: _____.

Owner of Worksite: _____.

Print Name: _____.

Date: _____.

OTHER TERMS AND CONDITIONS