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Philip Bryden, Q.C.  
Deputy Minister of Justice and  
Deputy Solicitor General  
Justice and Solicitor General  
224 Bowker Building  
9833 -109 Street  
Edmonton, Alberta T5K 2E8



Dear Deputy Minister Bryden:

I am in receipt of your letter of February 28, 2018, including the “Report to the Minister of Justice and Solicitor General” prepared by the Honourable Judge D.G. Rae following the inquest into the tragic work place death of Cody Mason Demary on November 2, 2011.

Thank you sharing this report with me. I share Alberta’s concern in ensuring the health and safety of every Albertan, and every Canadian, is protected. One of Judge Rae’s recommendations is that the federal and provincial regulators establish a protocol to ensure that work place jurisdiction is accurately determined early in investigations, so that the proper regulatory authority may assume control.

The Labour Program of Employment and Social Development Canada accepted this recommendation. Specifically, in March 2015, as a direct response to the above incident, the Labour Program and the Alberta Jobs, Skills Training and Labour Department negotiated and signed the “Canada - Alberta Protocol on Collaboration on Occupational Health and Safety”, which is attached for your reference. The stated purpose of this protocol is to “... *support health and safety investigations at worksites in Alberta where it is unclear if jurisdiction for occupational health and safety is provincial or federal*”. Since the signing of the protocol, I am advised that there have been discussions regarding other cases where jurisdiction was initially unclear and were subsequently satisfactorily resolved following this protocol.

The Labour Program is working towards developing long-term information sharing agreements with each province and territory, which will also widen our ability to share information quickly and more openly. This is another step to ensure these types of events don’t reoccur and will also serve to open more dialogue between our respective organizations.

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I thank you again for reaching out to the Labour Program, and for bringing the findings of the inquiry to our attention. We look forward to continuing to work with our colleagues in Alberta as we continue to resolving jurisdiction questions regarding health and safety of workers.

Yours sincerely,

Original signed

APR 13 2018

Lori Sterling

Attachment: 1

# Canada-Alberta Protocol on Collaboration on Occupational Health and Safety

## A. The Parties

The parties to this protocol are the Province of Alberta (as represented by Alberta Jobs, Skills Training and Labour ("Alberta")) and Canada (as represented by the Labour Program, Employment and Social Development Canada ("Canada")).

## B. Preamble

Provincial jurisdiction may be seen as the constitutional default rule, from which federal jurisdiction operates as the exception. In many cases, it is clear if a worksite attracts federal or provincial occupational health and safety jurisdiction, but in many other cases, jurisdiction is not obvious. This protocol has been established to address situations in which jurisdiction is not obvious.

## C. Overarching principles

This protocol is intended to further strengthen the working relationship between Alberta and Canada and supports the sharing of occupational health and safety information, excluding personal information, to the extent permitted under legislation. Sharing of personal information will be addressed on a case-by-case-basis. It is understood that in implementing this protocol, both Alberta and Canada will respect the policies, processes and procedures and legislation of each other's jurisdiction.

## D. Purpose

The process outlined in this protocol is to be used to support health and safety investigations at worksites in Alberta where it is unclear if jurisdiction for occupational health and safety is provincial or federal.

## E. Process

*Reactive assignments for worksites where jurisdiction for occupational health and safety is unclear:*

In any situation where there is doubt about the jurisdiction of the worksite, whichever jurisdiction receives notice of an incident, including an accident, a refusal to work or a complaint, they will inform the other jurisdiction as soon as possible about the incident.

In the situation of a workplace incident, the jurisdiction that receives notification will be the first responder so as not to cause a delay in the investigation.

Should circumstances prevent the jurisdiction from commencing the investigation without delay, they will contact the other jurisdiction to jointly determine how to proceed.

While one jurisdiction may be the first responder, the intention is that initially both parties will cooperate and work in unison where permitted by legislation, and in parallel where unison is not permitted in legislation, in conducting an investigation until jurisdiction is determined, and will share their investigative information also where permitted under legislation.

Should jurisdiction be clarified while an investigation is underway, both jurisdictions should be made aware immediately of the conclusion and all investigative information, including the information which supports the jurisdictional conclusion, but which excludes personal information, will be immediately shared with the party whose jurisdiction the worksite attracts. Disclosure of personal information will be addressed on a case-by-case-basis according to the respective legislation in each jurisdiction.

Should the assignment be a serious injury or fatality, and where facts suggest the possibility of a prosecution, both parties agree that jurisdiction must be resolved as soon as practical, but within six months, recognizing the two year limitation period for laying charges, which exists in each jurisdiction.

*Proactive assignments for worksites where jurisdiction for occupational health and safety is unclear:*

Proactive work intended to prevent future accidents or injuries and promote safety, such as inspections and education sessions, will only be considered on a case by case basis where jurisdiction has remained unclear for an extended period of time. Both Alberta and Canada will discuss these situations in advance of any action, individually or jointly.

## **F. Jurisdictional determination**

*General:*

It is recognized that all jurisdictional determinations made by either party are considered to be administrative determinations that face some risk of challenge. Final determination of jurisdiction can only be made in a tribunal or court of law, and may be subject to judicial review or appeal.

**Alberta:**

The following criteria are used by Alberta to determine jurisdiction for a worksite for occupational health and safety:

- A worksite where occupational health and safety is provincially regulated is one that operates within the geographical boundaries of the Province of Alberta, and should not be regulated by Canada.

**Canada:**

The following criteria are used by Canada to determine the jurisdiction of a worksite for occupational health and safety:

- Provincial jurisdiction is the constitutional default rule, from which federal jurisdiction operates as the exception.
- A worksite where occupational health and safety is federally regulated is one where the business operates in one of the following sectors:
  - banks (under the Bank Act)
  - marine shipping, ferry and port services
  - air transportation, including airports, aerodromes and airlines
  - railway and road transportation that involves crossing provincial, territorial or international borders
  - canals, pipelines, tunnels and bridges (crossing provincial borders)
  - telephone, telegraph and cable systems
  - radio and television broadcasting
  - grain elevators, feed and seed mills (under the Canada Grain Act)
  - uranium mining and processing
  - businesses dealing with the protection of fisheries as a natural resource
  - some First Nation activities
  - federal Crown corporations
  - federal public service
  - private businesses necessary to the operation of a federal act

Federal jurisdiction also can apply when there is an integral, vital or essential relationship between the business and a federal undertaking.

**Cooperation and notification:**

Before any final jurisdictional determination is made regarding a worksite, both parties agree to engage in prior consultations before determining, or attempting to agree upon, the jurisdiction status and to agree to the process for making the change, including notification of the change to the employer and the employees.

Where an Alberta jurisdictional determination of a worksite in Alberta indicates that it attracts federal jurisdiction, Alberta will immediately inform Canada and share all relevant facts and details which support the jurisdictional determination.

Where a federal jurisdictional determination of a worksite in Alberta indicates that it attracts provincial jurisdiction, Canada will immediately inform Alberta and share all relevant facts and details, excluding personal information, which support the jurisdictional determination. Disclosure of personal information will be addressed on a case-by-case-basis according to the respective legislation in each jurisdiction.

Where the jurisdiction remains unclear, both parties will work with their respective legal supports to clarify jurisdiction as soon as possible and seek all relevant information from the employer to assist in the determination of the jurisdictional issue.

#### **G. Dispute Resolution**

Any disagreement with respect to this protocol is to be resolved by the designated officials of each party.

#### **H. Amendments**

This protocol may be amended at any time by an exchange of letters between the designated officials of each party.

#### **I. Termination**

Either party may terminate this protocol by written notice to the other designated official of their intention to terminate. The protocol terminates six months from the date of the notice.

Alberta and Canada may mutually decide to terminate this protocol at any time through an exchange of letters between the designated officials.

#### **J. Nature of the protocol**

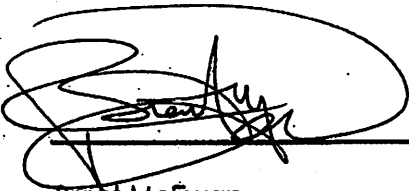
This protocol is an administrative agreement between the parties and is not intended to be legally binding or enforceable before the courts.

**K. Designated Officials**

The following designated officials for Alberta and Canada, respectively, have overall administrative responsibility for this protocol:

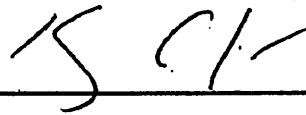
For Alberta:

For Canada:



Brent McEwan  
Assistant Deputy Minister  
Alberta Jobs, Skills Training and Labour

Date: Mar 18, 2015



Kin Choi  
Assistant Deputy Minister  
Compliance, Operations and Program  
Development  
Labour Program

Date: April 17, 2015

Approved pursuant to the Government  
Organization Act:



Alberta International and  
Intergovernmental Relations

Date: 2015.03.27