

The Use of Lie Detector Tests – Know The Laws Of Your Province



Courts in Canada generally don't accept the results of polygraph or lie detector tests as evidence in a legal proceeding. However, laws of evidence don't necessarily limit employers from requiring or asking employees to take a lie detector test, either as part of the pre-employment screening process or as an investigative or disciplinary measure after the employee has been hired. Legal restrictions on employer use of lie detector tests may derive from 3 sources:

- Provincial privacy laws that cover employees (FED, AB, BC, QC);
- Employment standards laws (NB and ON); and/or
- Provisions in a collective agreement or individual employment contract (all jurisdictions)

Legality of Using Lie Detector Tests for Employment-Related Purposes Across Canada



- Lie detector tests banned by employment standards laws
- Lie detector tests may be banned by personal privacy laws
- Lie detector tests may violate contract or common law

Lie detector tests in federally regulated workplaces may violate PIPEDA

Here's a look at the specific laws in each part of Canada.

WORKPLACE LIE DETECTOR LAWS ACROSS CANADA

FEDERAL

1. Employer may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances (*Personal Information Protection and Electronic Documents Act (PIPEDA)*, Section 5(3));
2. Meaningful consent required for the collection of personal information and the subsequent use or disclosure of that information (PIPEDA, Principle 4.3.1);
3. Organizations must make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used (PIPEDA, Principle 4.3.1); and
4. Not specifically addressed in *Canada Labour Code*

ALBERTA

1. Organization may collect, use and disclose personal employee information about an individual without the consent of the individual if: (a) the information is collected, used or disclosed solely for the purposes of (i) establishing, managing or terminating an employment or volunteer-work relationship, or (ii) managing a post-employment or post-volunteer-work relationship, between the organization and the individual; (b) it is reasonable to collect, use or disclose the information for the particular purpose for which it's being collected, used or disclosed; and (c) in the case of a current employee, the

organization has, before collecting, using or disclosing the information, provided the individual with reasonable notification that personal employee information about the individual is going to be collected, used or disclosed and of the purposes for which the information is going to be collected, used or disclosed (*Personal Information Protection Act*, Sections 15, 18 and 21); and

2. Not specifically addressed in *Employment Standards Code*

BRITISH COLUMBIA

1. Organization may collect, use or disclose employee personal information without the consent of the individual if: (a) sections 12, 15 and 18, respectively, allow the collection, use and disclosure of the employee personal information without consent, or (b) the collection, use or disclosure is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual, and (c) Organization notifies an individual that it will be collecting, using or disclosing employee personal information about the individual and the purposes for the collection, use or disclosure before it collects, uses or discloses the employee personal information without the consent of the individual (*Personal Information Protection Act (PIPA)*, Sections 13, 16 and 19); and
2. Not specifically addressed in *Employment Standards Act*

MANITOBA

1. Not specifically addressed.

NEW BRUNSWICK

1. Employees have a right not to take or be asked or required to take or submit to a lie detector test;
2. No person may require, request, enable or influence, directly or indirectly, an employee to take or submit to a lie detector test;
3. No person may communicate or disclose to an employer: i. that an employee has taken a lie detector test, or ii. the results of a lie detector test taken in any other jurisdiction;
4. Director may order employer who commits a violation to do or refrain from doing anything to comply with this section and may order the employer to reinstate or to hire the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement or hiring for loss of earnings or other employment benefits in an amount not exceeding \$4,000 that may be assessed by the Director against the employer; and
5. "Lie detector test" defined as an analysis, examination, interrogation or test taken or performed by means of or in conjunction with a device, instrument or machine, whether mechanical, electrical, electromagnetic, electronic or otherwise, and that is taken or performed for the purpose of assessing or purporting to assess a person's credibility (*Employment Standards Act*, Sec. 44.1)

NEWFOUNDLAND

1. Not specifically addressed.

NOVA SCOTIA

1. Not specifically addressed.

ONTARIO

1. Employees have a right not to take, be asked to take or be required to take a lie detector test;
2. No person may, directly or indirectly, require, request, enable or influence an employee to take a lie detector test;
3. No person may disclose to an employer that an employee has taken a lie detector test or disclose to an employer the results of a lie detector test taken by an employee; and
4. "Lie detector test" defined as an analysis, examination, interrogation or test that taken or performed, (a) by means of or in conjunction with a device, instrument or machine, and (b) for the purpose of assessing or purporting to assess a person's credibility (*Employment Standards Act*, Sections 69 to 70)

PRINCE EDWARD ISLAND

1. Not specifically addressed.

QUÉBEC

1. No person may refuse to respond to a request relating to employment by reason of the applicant's refusal to disclose personal information except where: (1) collection of that information is necessary for the conclusion or performance of a contract; (2) collection of that information is authorized by law; or (3) there are reasonable grounds to believe that the request is not lawful. In case of doubt, personal information is deemed to be non-necessary (*Protection of Personal Information in the Private Sector Act*, Section 9); and
2. Not specifically addressed in *Labour Standards Act*

SASKATCHEWAN

1. Not specifically addressed.

NORTHWEST TERRITORIES

1. Not specifically addressed.

NUNAVUT

1. Not specifically addressed.

YUKON

1. Not specifically addressed.