

# **WorkSafeBC Review and Action Plan**

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Administrator

July 1, 2014

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Honourable Shirley Bond  
British Columbia Minister of Jobs, Tourism and Skills Training and Minister Responsible for Labour  
Province of British Columbia  
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Dear Minister,

I hereby submit the WorkSafeBC Review and Action Plan status report. My report addresses the six priorities outlined in your letter of April 14, 2014 and includes 43 recommendations that will move WorkSafeBC's inspection and investigation regime towards world class status.

Gordon Macatee  
Administrator

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# 1 – Executive Summary

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The Minister of Jobs, Tourism and Skills Training and Minister Responsible for Labour delivered a letter dated April 14, 2014 to the Chair of WorkSafeBC. The letter outlined six specific priorities that were to be addressed by a special Administrator appointed for that purpose. This interim report addresses those priorities and makes a series of recommendations to achieve the Minister's intention that WorkSafeBC investigations be handled correctly in future, that sawmills be safer places to work, that best practices be employed in occupational health and safety (OHS) organizational structure, and that BC establish a world class inspection and investigation regime. The actions which led to the tragic events at the Babine and Lakeland sawmills, with the resulting failure of prosecution, should never happen again.

## **1. *Minister's Priority: Ensure future investigations are handled correctly.***

Regulatory charges were not approved by the Criminal Justice Branch (CJB) in the Babine and Lakeland mill explosions in part because evidence collected by WorkSafeBC during the investigations was likely inadmissible in court. The evidence was collected without a warrant and people were interviewed without being informed of their *Charter* rights. These tools (i.e. warrantless seizure) were intentionally provided to WorkSafeBC to facilitate the determination of the cause of a workplace health or safety incident and to prevent future occurrences. Cause identification and preventive action is a core function of all OHS entities and care needs to be taken to ensure this capability is not sacrificed in a shift toward more emphasis on prosecution.

Case law has determined that where a regulatory agency moves from an investigation for cause to an investigation for prosecution, WorkSafeBC cannot use its "cause and prevention" tools to gather evidence against the employer. Warrants are required for seizure of evidence, and *Charter* rights must be explained where legally required.

The Dyble Report recommends Memorandums of Understanding (MOU) with Police Services and the Criminal Justice Branch, initiatives to enhance co-operation and training, and ongoing dialogue and advice as WorkSafeBC investigations proceed. These recommendations have either been fully implemented or have made adequate progress to this point in time.

### **Recommendation: The MOUs with Police Services and the CJB should be signed.**

For all WorkSafeBC investigations, there is discretion on the decision to refer an investigation to the CJB for prosecution. The primary consideration is whether prosecution is the appropriate tool to achieve the desired outcome. Cases which involve fatality or serious injury, flagrant offenders, or negligence are examples where prosecution may be considered the only tool sufficient to achieve general and specific deterrence. The decision making process for whether to refer a WorkSafeBC investigation file to the CJB for

prosecution would be strengthened by having a formal policy in place to outline the factors that should be reviewed in deciding whether a case should be referred for prosecution.

**Recommendation: WorkSafeBC should develop a policy to guide referrals to the CJB for prosecution. The decision to refer a file for prosecution is made independently by WorkSafeBC; however, development of this policy should be informed by consultation with the CJB.**

Major case management is an investigation process supported by sophisticated data management systems which ensures that case control is clearly established, roles are well defined, and all necessary steps are taken to achieve a successful prosecution. WorkSafeBC has already started training staff in major case management, and a procurement process for a system is in progress. A suitable system will be selected by the end of July. WorkSafeBC has consulted with the CJB during this process. The system should be up and running by October 2014.

**Recommendation: WorkSafeBC should proceed with the adoption of a major case management protocol and system in its investigations.**

Once the decision is made to pursue prosecution, there can be no expectation that information will be volunteered without legal advice. Having the ability to use one set of tools for cause investigations and a second set for prosecution, without compromising the effectiveness of either, is a considerable challenge.

Splitting WorkSafeBC's Fatal and Serious Injuries department (FSI) into two completely separate units will help address this issue. The separation needs to be set out in clear protocols and be sufficiently robust to ensure that the units cannot have access to each other's work, that there can be no access to or sharing of electronic files, and that the "ethical wall" be high enough to satisfy the CJB and the courts that the two units are completely independent. In the course of their work, if either team determines that a case undertaken as a cause investigation has elements which might warrant prosecution, they would be required to immediately notify a Gatekeeper situated in the Legal Services Department; the Gatekeeper would need to be a legally trained individual with authority over both FSI teams. Upon notification, the Gatekeeper would instruct the initial team to "down tools" and secure all files. The case would then be assigned to the other team, which would start the investigation over using warrants to collect evidence, re-interview all parties, and provide notification of *Charter* rights where legally required. The two teams would have no communication with each other regarding the case, and the receiving team would not have access to any evidence taken without a warrant or to any previous interview notes. It is understood that, in these situations, prosecution would take priority over the cause investigation.

**Recommendation: Implement a new investigation model that preserves the ability to conduct both cause investigations and prosecution investigations.**

## **2. Minister's Priority: Ensure our sawmills are safer places to work.**

It is recognized that getting combustible dust under full control in wood product manufacturing mills is a huge challenge. The mills were not designed with dust control as a consideration, and it requires significant capital investment and hard physical work to manage the problem. The level of commitment and determination by both management and employees that has been observed to date is certainly impressive. Sustaining that level of commitment will be difficult but is essential.

Across the wood manufacturing industry, specific actions have been taken to ensure that sawmills are safer places to work:

### **a. 90 Day Action Plan**

A 90 day action plan was developed by the Minister, with input from WorkSafeBC, industry, and labour. The plan contains specific actions to broaden the reach of the combustible dust strategy, enhance training, establish protocols, and increase awareness on workers' rights to refuse unsafe work. The plan has been largely implemented. There is still policy work to be completed to outline steps for employers, workers, and supervisors to take to address combustible dust hazards. Stakeholder consultation is underway, and the policies are expected to be brought to WorkSafeBC's Board of Directors for consideration in July 2014.

**Recommendation: Move forward with the development of OHS policies to specify reasonable steps for employers, workers, and supervisors to take to address combustible dust hazards.**

### **b. Phase IV Combustible Dust Program - Sawmills**

The fourth phase of combustible dust enforcement work is complete and has demonstrated improvement in overall compliance. At the end of Phase III, 61 mills had received compliance orders; at the end of Phase IV, the number has dropped to 14 mills. Getting to full compliance is the first challenge. Sustaining compliance over the long term is the larger challenge and needs to be the focus of the work that lies ahead. Discussions with leaders in the sawmill industry have produced a plan for closing the remaining gap and ensuring the sustainability of control measures.

Where there is still evidence of combustible dust risk, the employer would have two options. They can voluntarily commit to daily, independent third party inspections, with weekly reports to WorkSafeBC, at their own expense. These daily inspections would continue for a minimum of three months and until such time as there is demonstration of sustained compliance for 30 days. Alternatively, WorkSafeBC will continue with ramped up direct inspections and stronger enforcement actions wherever non-

compliance is observed. In either event, random unannounced inspections by WorkSafeBC Prevention Officers will continue. Employers who were in compliance in the Phase IV inspection program are encouraged to participate in independent third party inspections on a voluntary basis for 90 days to ensure a sustainable level of control.

**Recommendation: Implement the sustained compliance plan for sawmills as outlined above.**

- c. Phase IV Combustible Dust Program – Wood Product Manufacturers (other than sawmills) and Pellet Mills

Combustible dust management in the other wood product manufacturing and pellet mill industries has not seen the same level of progress as in the sawmill industry. There are a relatively small number of these mills, and the challenges of managing dust accumulations are undoubtedly difficult. However, the risk of a combustible dust event remains unacceptably high with 60% of mills receiving orders. Further work is required.

**Recommendation: Develop a plan for on-going inspections of other wood product manufacturers and pellet mills by WorkSafeBC Prevention Officers, with appropriate enforcement efforts to bring this sector into sustained compliance.**

- d. The wood manufacturing industry does not presently have a Health and Safety Association (HSA) in place to provide leadership on managing safety issues in the workplace. These associations exist in other sectors and play a critical role in providing information, training, audit tools, and advice. In the absence of an HSA, the Manufacturers Advisory Group (MAG) stepped in to provide necessary leadership following the events at Babine and Lakeland. MAG has done a very good job but is an ad hoc entity that does not represent all operators.

**Recommendation: WorkSafeBC should assist the wood product manufacturing industry to create an HSA, or expand the scope of an existing one, to address occupational health and safety issues in this industry in future.**

- e. Fire events are not presently reportable to WorkSafeBC on a routine basis. In the Babine and Lakeland sawmill explosions, prior fire events may have occurred which WorkSafeBC would not have been aware of. The current Fire Inspection and Prevention Initiative (FIPI) is a time limited partnership between WorkSafeBC and the Office of the Fire Commissioner to enhance training and develop a referral process. This initiative has delivered on its mandate, but to be successful in the long term, FIPI requires a permanent host at the municipal level.

**Recommendation:** The Fire Inspection and Prevention Initiative should be extended, with continued funding from WorkSafeBC, and efforts made to find a permanent host at the municipal level.

**Recommendation:** WorkSafeBC should consider developing an information sharing Memorandum of Understanding with the appropriate agencies to ensure WorkSafeBC is notified when there is a fire event at a workplace in BC.

**3. Minister's Priority: Understand the merits of and determine best practices in organizational structures specifically relating to the separation of enforcement vs. regulation.**

a. Separation of enforcement and regulation

WorkSafeBC is one of six jurisdictions in Canada that is responsible for occupational health and safety in addition to compensation, assessment, and rehabilitation. In all other jurisdictions, the provincial government is responsible for occupational health and safety.

There appears to be a consensus among leaders in both industry and labour that the current WorkSafeBC model is working well and is viewed as superior to other models. It is clear that there is no desire to see the “baby thrown out with the bathwater”. The concerns which led to this review are being addressed by other recommendations in this report.

**Recommendation:** Changes should not be made to the fundamental structure of WorkSafeBC at this time. WorkSafeBC should continue to monitor the effectiveness of its current model.

b. Other organizational changes:

There are opportunities to better align different functions within the current structure to support the recommended investigations model changes.

**Recommendation:** The Worker and Employer Services Division should be re-structured to ensure that departments carrying out similar functions fall under the same reporting structure.

**Recommendation:** Investigation Services must be re-structured to accommodate the recommended dual team model for investigations.

The recommended changes are as follows:

- i. Move the Engineering team to the Regulatory Practices department to better establish their role as a resource to both Prevention Officers and Investigation Officers.
- ii. Move the Investigations Legal Officers to the Legal Services Department and clarify their advisory role in relation to Prevention Officers and Investigation Officers.
- iii. Create a “Gatekeeper” role in the Legal Services Department to oversee investigations for prosecution.
- iv. Create two separate fatal and serious injury investigation teams, each with its own manager, to ensure prosecution options are not compromised.
- v. Add at least one Special Provincial Constable position to each of the fatal and serious injury investigation teams to allow for exchange of sensitive information with police authorities.

#### ***4. Minister’s Priority: Develop a plan for implementing a world-class inspection and investigation regime, incorporating best practices, a workforce review and enhanced training.***

Research was conducted to identify world-class principles based on leading practices from organizations across the globe. It was evident as part of this review that no single principle or operating model is adopted by all organizations. Organizations differ in the adoption of policies and procedures based on their focus on deterrence or compliance. In defining world-class principles, factors such as the social and economic environment, industry, employer and worker mix, and occupational health and safety culture need to be considered.

A world class occupational health and safety (OHS) regime is defined as one with the following attributes:

- supports a prosperous and sustainable business environment;
- the rules are widely known and understood;
- proactive compliance is encouraged;
- enforcement is visible;
- enforcement tools are effective at driving compliance and deterrence;
- enforcement escalates as necessary to address repeat non-compliance and to change behaviour;
- penalties are timely;
- prosecutions are successful;
- OHS reviews are dealt with efficiently ;
- fines are collected;
- flagrant, repeat violators are dealt with firmly and prevented from putting worker health and safety at risk;
- the regulator is respected by industry and labour and trusted by the general public;
- there is strong, effective collaboration between all regulators, police, and prosecutors;

- the organization is driven by outcomes-based performance measures;
- the organization takes a risk-based approach to inspections;
- there is an appropriate balance between prevention and enforcement;
- there is an ability to predict hazards based on both historical data and predictive modeling; and
- there is a strong organizational commitment to performance measurement, evaluation, and continuous improvement.

The ensuing discussion evaluates how WorkSafeBC compares to an “ideal” world class regime.

#### a. Governance

WorkSafeBC’s current Board of Directors (BOD) model is considered to be best in class in that it is made up of members with defined skills, is independent, and is high performing. However, the current skills matrix of the BOD members is weighted toward the claims and insurance sides of the business.

**Recommendation: Amend the *Workers Compensation Act (WCA)* to enhance the occupational health and safety expertise of the BOD by adding two new members. The additions would be a person with legal and/or regulatory expertise (ideally with investigation or prosecution experience) and a person with a professional designation in occupational health and safety (ideally a registered health and safety professional).**

#### b. Regulation Making

WorkSafeBC is unique in that it is able to make regulations and give them legal force without the routine involvement of government. Government does retain the ability to make regulations directly and to overturn regulations which are not considered appropriate, although these powers are used very sparingly. Requirements for stakeholder engagement and consultation are robust, and the results are generally seen as positive by all sides. The function can be further enhanced by increasing the level of engagement with labour and industry stakeholders and by publishing a rolling two year regulation development plan annually.

**Recommendation: WorkSafeBC should retain the ability to develop and approve OHS regulations.**

**Recommendation: Enhance industry and labour involvement in the setting of regulatory priorities.**

**Recommendation: WorkSafeBC should update and publish its OHS workplans annually to increase transparency and improve stakeholder involvement.**

c. Education, Consultation, and Proactive Compliance

World class OHS regimes put a high priority on education, training, industry-led initiatives, and a host of proactive compliance tools. WorkSafeBC is regarded as a leader in this field by other jurisdictions.

**Recommendation: WorkSafeBC should continue to put a priority on education and proactive compliance and provide resource allocations accordingly.**

d. Enforcement Tools

A world class OHS regime takes a risk based approach to enforcement. Enforcement activities, including inspections, give priority to worksites where there is a higher risk, higher potential for serious injury, above normal claims, or history of non-compliance.

**Recommendation: WorkSafeBC should review its risk-based model for the allocation of work and the setting of priorities with respect to inspection and enforcement activities.**

Enforcement tools available to WorkSafeBC are either “soft” ones or very “hard” punitive ones. There is very little in between that would allow an officer to escalate enforcement in a more gradual way. A best-in-class regulatory model has a full complement of enforcement tools available, which allow measured approaches with minor violations, escalating to strong tools for the worst offenders. Additional tools should be created, including tools aimed at voluntary compliance, a ticketing capability with set fines that increase with repeat violations, strengthening of the stop work order provisions, and new injunction provisions aimed at the worst offenders.

i. Incremental Escalation

The tool selected by an officer should be the least onerous one which can be expected to achieve the desired behaviour. Escalation of enforcement should move to the next available tool that can be expected to result in compliance, which does not rule out moving one or more steps up the enforcement ladder when necessary.

**Recommendation: Develop a hierarchy of enforcement tools.**

ii. Assurance of Compliance (AC)

BC should introduce an Assurance of Compliance tool, where the most senior executive or manager present at the time of an inspection may sign a formal undertaking to rectify an OHS violation within a specified period of time. Failure to do so would result in a follow-up inspection and any further enforcement activities deemed necessary.

**Recommendation: Amend the WCA to introduce an Assurance of Compliance tool.**

iii. Citations to Employers

Several other jurisdictions have ticketing provisions for OHS violations. BC should introduce this tool for certain violations with fixed amount fines and a provision for escalation of fines for repeat violations. This might include provision for a warning citation and a citation which is revocable if specific actions are taken within a set period of time and confirmed by the senior executive of the company.

**Recommendation: Introduce OHS citations, with escalating fine provisions, to be imposed on employers who violate certain OHS requirements.**

iv. Citations to Workers

Other jurisdictions have provision for ticketing of workers. There is an important concept of shared responsibility for health and safety in the workplace. Personal protective equipment (PPE) is the most fundamental tool for protecting health and safety in the workplace and regulating its use would be comparable to existing regulations for seatbelts and motorcycle helmets. Financial penalties would be intended for repeat offenders who are aware of the requirements but have demonstrated an unwillingness to comply. Creating this tool would require a statutory change.

**Recommendation: WorkSafeBC should undertake a consultation process with industry and labour to consider whether a limited citation model should be introduced for workers who fail to wear PPE. Recognizing the fact that employers have ultimate control over the workplace, the consultation should also consider whether a citation to a worker would trigger an equivalent or larger citation against the employer.**

v. Stop Work Orders

BC is unique in that stop work orders may only be applied if “an immediate danger exists that would likely result in serious injury, serious illness or death to a worker.”

It is very difficult to prove immediacy; therefore this tool is of limited effectiveness in gaining compliance. Other jurisdictions use a test of “high risk” of an event which would have “significant health and safety consequences”. Stop work orders should also be available as an enforcement tool for situations where orders and other enforcement tools have been ignored.

The criteria for issuing stop work orders should be broadened in order to address situations where there is danger that may not be “immediate”, but where the risk is

high and the consequences would likely be severe. There are also situations where unsafe practices on one worksite would likely be occurring on other sites under the control of the same employer. Stop work orders should have the ability to be applied to multiple worksites in some circumstances. Stop work orders should also be part of the enforcement escalation process for situations where lesser enforcement tools have been unsuccessful or ignored.

**Recommendation: Amend the WCA to create three circumstances where stop work orders may be issued.**

vi. Administrative Penalties

In order to have a deterrent effect, penalties need to be applied in a timely way. WorkSafeBC's penalty process is cumbersome and extremely slow. It takes an average of 12 months to impose a penalty and in some cases has taken three years or more. There is an elaborate process that unfolds after a violation is observed. The officer is required to create a "recommendation for sanction" package and submit it to an Investigations Legal Officer. This is followed by a period of back and forth discussions about evidence, an assessment of "due diligence", writing of a penalty order, and handing the penalty order back to the officer to issue it to the employer. This process needs to be streamlined.

The penalty process is also delayed in part because WorkSafeBC has interpreted the WCA to require an assessment of the defense of due diligence before issuing a penalty. The defense is provided for in the WCA and is appropriate. However, the onus should rest with the employer to prove due diligence. Shifting the onus to the employer will shorten the penalty process.

**Recommendation: Significantly shorten the timelines for the issuance of penalties through continuous ownership of the penalty order, instituting a performance management system to assess outcomes, shifting the onus around the due diligence requirements, and reviewing WorkSafeBC's penalty policies.**

vii. Amount of Penalties

Administrative penalties, when necessary, must have a significant deterrent effect to ensure employers are brought into compliance with OHS requirements. WorkSafeBC must have the ability to issue penalties in amounts that are appropriate to the violation and will have the necessary deterrent effect.

**Recommendation: Ensure that when administrative penalties are imposed, the amount of the penalty is proportional, with consideration of the circumstances of the incident and the size of the employer.**

#### viii. Collection of penalties

There are many documented cases of egregious, repeat offenders being issued orders, repeat orders, warning letters, and administrative penalties, followed by review/appeal and a final determination that a penalty is payable. After moving through that entire process, some of the worst offenders have been able to avoid their penalties by declaring bankruptcy and re-emerging in the same industry under a new name and with a clean slate.

**Recommendation: Amend the WCA to improve the ability to pierce the corporate veil to address situations of non-payment of administrative penalties by an employer.**

#### ix. Injunctions to prohibit continued participation in an industry

The most flagrant violators of OHS requirements require a deterrent that exceeds any of the tools presently available. There is a record of one operator who has had several hundred orders written, penalties assessed that have not been paid, and has been in front of a judge for an injunction application, but this operator is still in business and putting worker health and safety at risk.

**Recommendation: Amend the WCA to improve injunctive powers to address egregious and ongoing violations of the WCA and/or Occupational Health and Safety Regulation.**

#### x. Prosecutions

There are very few examples anywhere of prosecutions for either *Criminal Code* or regulatory OHS offenses which have resulted in jail time for a responsible party. Most prosecutions result in a plea resolution or a fine. Administrative penalties available to WorkSafeBC can be substantial and may even exceed the fine that would result from a prosecution. There is a temptation to simply not use the prosecution tool for anything other than *Criminal Code* offenses. However, prosecution is a significant escalation tool for the worst offenders and has its place regardless of the size of a fine.

**Recommendation: WorkSafeBC should continue to pursue prosecutions for regulatory violations, using major case management and the appropriate evidence gathering and interviewing techniques.**

xi. Transparency

Research has shown that publicizing enforcement information has resulted in improved rates of compliance due to the significant reputational risk that arises from publication of such information.

**Recommendation: WorkSafeBC should consider publishing additional information regarding employer non-compliance to increase transparency. WorkSafeBC should consult with industry and labour stakeholders on this issue.**

e. Hazard Alerts

There are occasional situations where investigators identify an act of negligence which could warrant prosecution but where there is also an immediate risk of serious injury at other worksites. For example, a defective piece of equipment which has caused a serious injury or fatality on one worksite may also be in use on other sites. A hazard alert may be considered necessary to protect workers, even if issuing the alert may put the likelihood of successful prosecution in jeopardy.

**Recommendation: The Memorandum of Understanding with Police Services should be expanded to provide guidance where a hazard alert may be necessary and to include an agreed upon procedure for making such a determination.**

f. Incident Investigations by the Employer

The WCA requires that all incidents of workplace injury, including near misses, be immediately reported to WorkSafeBC. Employers are also required to immediately undertake an investigation into the cause of the incident and prepare an incident investigation report, which must be submitted to WorkSafeBC. The WCA does not specify a time limit for submission of the report. Several other Canadian jurisdictions specify a time period for completing the investigation.

**Recommendation: Amend the WCA to specify timelines for employer incident investigations. The employer should be required to complete a preliminary investigation within 48 hours. The full incident investigation should be completed, and report submitted to WorkSafeBC, within 30 days with an extension available in certain circumstances.**

g. Visible presence of enforcement

A world class OHS regime creates an expectation that violations will have a high likelihood of being discovered and dealt with. This requires a level of presence at all times when work is happening. Presence, which would have a deterrent effect, requires that at least some inspections be scheduled on weekends and evenings.

**Recommendation: WorkSafeBC should routinely schedule some Prevention Officers to conduct inspections on weekends and evenings to create an ongoing and effective level of presence in the workplace.**

h. Review and Appeal

There are two appeal mechanisms in the WorkSafeBC system for penalty orders, not including the judicial review option which is always available. The first, the Review Division, is internal and has a target completion date of 150 days. The second is external through the Workers' Compensation Appeal Tribunal and has a target completion of 180 days. The judicial review option can add additional time. The time period between a violation and the conclusion of all appeals can extend over several years. There can be no expectation of a deterrent effect when the time period before a penalty is finally applied is so excessive.

**Recommendation: WorkSafeBC should conduct an assessment of the internal OHS review processes and give consideration to discontinuing the practice of holding oral hearings for OHS reviews; seeking an amendment to the WCA to shorten the timeframe for order reviews; seeking an amendment to the WCA to shorten the timeframes for penalty order reviews; and seeking an amendment to the WCA to reduce the time limit to apply for an order or penalty order review from 90 days to 10 days.**

**Recommendation: Amend the WCA to introduce an expedited review process for OHS citations as an alternative to existing review options.**

i. Performance Measurement

WorkSafeBC has a well developed set of performance measures, which need to continue. All jurisdictions track leading indicators and historical performance measures. Some additional measures have been identified which focus on safety culture, employee knowledge, engagement, and compliance effectiveness.

**Recommendation: Develop and implement performance measures to assess the "health and safety awareness" levels among workers; the "health and safety culture" of the business enterprise; the effective engagement of WorkSafeBC officers; and the effectiveness of compliance activities.**

j. Corporate Culture

Leading jurisdictions have corporate cultures which support and reinforce their approach towards health and safety outcomes. WorkSafeBC is fully committed to the

goal of a province free from workplace injury, disease and death, and could further strengthen its corporate culture to help achieve its mandate.

**Recommendation: Develop strategies to enhance the corporate culture with focus on the following attributes:**

- A culture of collaboration, openness, and ownership across the prevention functions of WorkSafeBC (i.e. Prevention Services, Investigation Services, and Industry and Labour Services).
- A culture of collaboration with other regulatory entities including Police Services, the Criminal Justice Branch, the Office of the Fire Commissioner, the Coroner's Office, the Transportation Safety Board, the BC Safety Authority, and others.
- A culture of ongoing engagement and collaboration at all levels of WorkSafeBC with stakeholders in labour and industry.
- An enhanced culture of embracing innovation and use of technology to improve health and safety compliance.
- A culture of incremental escalation in the use of enforcement tools, to drive compliance with the least onerous tool which is able to effect the desired change in behavior.

k. Internal and Stakeholder Communications

The Babine and Lakeland sawmill incidents revealed some challenges with internal communication procedures that require attention. The flow of information between all levels of staff and management in the organization, and between WorkSafeBC and its external stakeholders, claimants, and workers' families, was at times inadequate.

**Recommendation: Evaluate internal and external communications with a view to improving the flow of information between internal levels and departments; establishing and formalizing clear points of contact with key external stakeholders; establishing a forum for external stakeholders to have an ongoing dialogue with WorkSafeBC on OHS issues; and increasing direct communication between WorkSafeBC and both the CJB and the Ministry responsible for Labour.**

l. Anticipation and Prediction of Emerging Hazards

As an organization responsible for OHS and compensation matters, WorkSafeBC has the advantage of being able to use both OHS and claims data to drive its prevention mandate. WorkSafeBC recognizes the value of using data to anticipate and predict emerging hazards. As an innovator in this area, WorkSafeBC has developed new technology to improve access to data to determine emerging issues.

**Recommendation: WorkSafeBC should continue to leverage new and innovative technology that will help identify emerging occupational health and safety issues.**

**Recommendation: WorkSafeBC should take the lead in creating agreements and developing technology and processes that would make data sharing between partners and jurisdictions possible.**

m. Enhanced Training

Ongoing training initiatives are an important mechanism to incorporate best practices and lessons learned into inspection and investigation protocols and practices. This allows the organization to continuously update and improve on its practices as an industry leader and to attract the best talent to the organization.

Prevention Officers, Investigation Officers, and managers will need additional training to address some of the recommendations in this report. Prevention Officers will need enhanced training in penalty process management, analytical skills, order drafting, collection of evidence to support a penalty or citation, administration of citation tools, and use of the new stop work provisions. Investigation Officers will need training in major case management and all of the related functions. Managers will need enhanced training to better manage a risk based deployment of resources and provide oversight with respect to the new enforcement tools to ensure balance and appropriate application.

**Recommendation: Commit to enhanced training of WorkSafeBC officers and managers in the areas of penalty process management, administration of enforcement tools, major case management, investigation techniques, interviewing skills, report writing, use of new IT systems and tools, and collaboration skills.**

**Recommendation: Management should always take a proactive role in setting training priorities (both corporate and individual), for vetting the quality of training programs, and ensuring all staff take part on a regular basis.**

**5. Minister's Priority: Provide a single status report by July 1, consolidating the plans and reports noted in items 1 to 4, as well as feedback received from Mr. Len Doust, QC, regarding the implementation of the J. Dyble Recommendations.**

The report has been completed and provided to the Minister.

**6. Minister's Priority: Conduct the search for and finalize the appointment of a new and permanent CEO.**

The CEO position is an extremely difficult role and a unique challenge to fill. WorkSafeBC has several very different businesses operating under one umbrella. It is an insurance

business handling thousands of claims annually, an investment business with a portfolio of over \$15 billion, a regulatory agency, and a quasi-government entity. The skill requirements for the President and CEO are vast, and there are no obvious “lower priorities” which can be learned over time. The desire to see WorkSafeBC emerge as a world class leader in the field also requires an ability to establish and maintain strong relationships with stakeholders; a commitment to customer service; strong leadership skills; experience leading a large, complex organization; an ability to drive continuous change; and experience in the public sector

**Recommendation: Re-engage with the search firm immediately, and expand the criteria to address the unique attributes the position of President and CEO will require.**

## 2 – Introduction and Background

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### A. Babine and Lakeland Mill Explosions

On January 20, 2012, there was an explosion at the Babine Forest Products sawmill in Burns Lake, BC. Fire spread throughout the premises and completely destroyed the mill. Two workers were killed in the explosion and 20 others were injured.

Approximately three months later, on April 23, 2012, a second explosion occurred at the Lakeland sawmill in Prince George, BC. The sawmill caught fire as a result of the explosion and was destroyed. Two workers died from injuries suffered in the explosion and 22 others were injured.

Following the Babine and Lakeland explosions, WorkSafeBC conducted investigations of each incident. On the basis of the information gathered, both the Babine and Lakeland incidents were referred to the Criminal Justice Branch (CJB) for charge assessment. In both cases, the CJB issued Clear Statements outlining that no charges would be approved against either Babine Forest Products or Lakeland Mills Ltd. due to the inadmissibility of some of the evidence gathered by WorkSafeBC investigators and the defence of due diligence.

#### i. WorkSafeBC Investigations

In its investigations into the Babine and Lakeland explosions, WorkSafeBC considered witness interviews, eyewitness accounts, and physical evidence to develop hypotheses on how the explosions occurred.

For both mill explosions, WorkSafeBC's investigations concluded that all of the conditions for a wood dust explosion existed, and that the wood dust dispersed in the air in both mills was of sufficient concentration to explode. With respect to the Babine explosion, WorkSafeBC found the following to be underlying factors in the explosion:

- The dust collection system was ineffective in controlling the airborne dusts and accumulation of other fine dusts in the sawmill. The mill produced large volumes of wood waste that was not adequately removed from the mill during production shifts, which provided abundant fuel for the explosion and subsequent fires.
- The inspection and maintenance system for equipment at the sawmill was ineffective.
- Cold weather conditions resulted in a dry environment with low humidity, and this condition was compounded by the dry beetle-killed wood being processed at the sawmill. The dry humidity, environment, and dust conditions all contributed to the incident.

- The waste conveyors in the basement level of the sawmill did not adequately capture the fine dust generated during lumber processing.
- Supervisors were not adequately monitoring clean-up and maintenance work at the sawmill, as indicated by the accumulations of wood dust and the poor condition of some of the electrical equipment.

With respect to the Lakeland explosion, WorkSafeBC found the following to be underlying factors in the explosion:

- The mill's dust control measures were ineffective in controlling and removing the wood dust in the slasher and debarker areas, which were the dustiest areas of the sawmill.
- The gear reducer cooling fans were not regularly inspected or maintained.
- The waste conveyors in the basement did not adequately capture the fine dust generated during lumber processing.
- Weather conditions resulted in a very dry environment with low humidity, which was compounded by very dry beetle-killed wood. The dry humidity, environment, and dust conditions all contributed to the incident.
- Supervisors were not adequately monitoring clean-up and maintenance work at the sawmill, as indicated by the accumulations of wood dust and the poor condition of some of the electrical equipment.

WorkSafeBC's investigations found that both the Babine and Lakeland explosions were preventable. The incidents may not have occurred if effective actions had been taken to control the airborne dispersal of wood dust and to control the excessive accumulations of wood dust on floors and surfaces.

The [Incident Investigation Report into Babine Forest Products explosion](#) and the [Incident Investigation Report into Lakeland Mills, Ltd. explosion](#) are available on the WorkSafeBC website.

## ii. Criminal Justice Branch Decision on Charges

On September 4, 2013, WorkSafeBC formally submitted a Report to Crown Counsel (RTCC) to the CJB for an assessment on whether charges should be laid against Babine Forest Products arising out the explosion. The RTCC recommended that the CJB consider provincial, regulatory charges, namely offences under the *Workers Compensation Act* (WCA) and the Occupational Health and Safety Regulation (OHSR). The charges were in relation to the following seven sections of the OHSR and one section of the WCA:

- OHSR s. 3.5 – General requirements
- OHSR s. 4.1 – Safe workplace

- OHSR s. 4.41 – Waste material
- OHSR s. 4.42(1) – Cleaning with compressed air
- OHSR s. 5.67(1) & (2) – Ventilation effectiveness
- OHSR s. 5.71(1) – Flammable air contaminants
- OHSR s. 5.81 – Combustible dust
- WCA, s. 115(1) & (2) – General duties of employers

Under CJB policy, charges will only be approved where Crown Counsel is satisfied that the evidence gathered by the investigative agency provides a substantial likelihood of conviction, and if so, that a prosecution is required in the public interest. In applying this standard to the RTCC, the CJB determined that no charges would be approved against Babine.

In its [Clear Statement on Babine](#), issued January 10, 2014, the CJB stated that there was no substantial likelihood of conviction for any of the regulatory offences recommended by WorkSafeBC, as the manner in which WorkSafeBC conducted parts of its inspection/investigation would render significant evidence that it had gathered inadmissible in court. Without the whole of the evidence gathered by WorkSafeBC available for use in court, Crown Counsel would not be able to prove the mechanics of the fire and explosion(s), including the ignition source.

The CJB noted that WorkSafeBC's examination of the site and its related inquiries were conducted as a safety-compliance inspection rather than as an investigation into possible criminal or regulatory enforcement. WorkSafeBC did not, therefore, obtain a search warrant authorizing search and seizure at the Babine site even after its officers<sup>1</sup> formed reasonable grounds to believe Babine had violated the WCA and the OHSR. Instead, WorkSafeBC relied on its powers under the WCA to conduct warrantless search and seizures. Similarly, when officers interviewed the president of Babine, they did not provide him with any *Charter of Rights and Freedoms* warning or citation. The CJB noted that, while suitable for the purposes of a safety compliance inspection, this approach did not adequately take into account the legal requirements for the collection of evidence that apply when it is understood that the evidence gathered by an agency may subsequently be used for the purposes of prosecution. Failing to comply with these requirements can result in evidence not being admissible in a prosecution.

The CJB drew a distinction between an "inspection" and an "investigation", stating that an inspection is a means of ensuring compliance with legislation while an investigation is a means of gathering evidence of non-compliance with that same legislation. "Investigators" possess constrained and restricted powers, which are further subject to the *Charter of Rights and Freedoms* and evidentiary rules that generally do not apply to inspections. The CJB concluded that, within the context of the Babine case, what began

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<sup>1</sup> Where the term "officers" appears in this Report, it refers to WorkSafeBC Prevention Officers and Investigation Officers.

as an inspection by WorkSafeBC following the fire and explosion evolved into an investigation with the potential for regulatory charges. Taking into account the relevant case law, the CJB concluded that a trial court would likely rule as inadmissible significant evidence that was collected by WorkSafeBC after the matter had evolved from being an inspection to an investigation.

The CJB pointed to two important legal cases: *R. v. Ling*<sup>2</sup> (*Ling*) and *R. v. Jarvis*<sup>3</sup> (*Jarvis*), which provided significant developments for regulatory investigations.<sup>4</sup> In these two cases, what began as a taxpayer audit became an investigation for breaches of the *Income Tax Act*. The Supreme Court of Canada held that an individual is entitled to the same *Charter of Rights and Freedoms* and other protections when an audit becomes an investigation as an individual who is faced with an investigation from the outset.

The CJB also found that Babine Forest Products had a strong due diligence defence, arising in part from WorkSafeBC inspections that had not identified explosion or fire as a risk and in part from actions Babine was taking to address the dust situation.

Following the CJB's Clear Statement on Babine, on February 19, 2014, WorkSafeBC formally submitted a RTCC to the CJB for an assessment of whether charges under provincial legislation should be laid against Lakeland Mills Ltd. The RTCC recommended the following four regulatory charges under the WCA and OHSR:

- failing to ensure the health and safety of workers (WCA, s.115(1))
- failing to remedy hazardous workplace conditions (WCA, s.115(2)(a))
- failing to prevent the hazardous accumulation of material (OHSR, s. 4.41)
- failing to safely remove combustible dust (OHSR, s. 5.81)

As with the Babine case, the CJB determined that no charges would be approved against Lakeland Mills Ltd., as there was no substantial likelihood of a conviction. In its [Clear Statement on Lakeland](#), issued April 14, 2014, the CJB provided similar reasons for not approving charges as had been provided in the Babine case, namely that

- the manner in which WorkSafeBC conducted parts of its examination of the Lakeland mill site would likely render some evidence that it gathered from the site inadmissible in court (i.e. WorkSafeBC had not obtained search warrants during its investigation), and
- Lakeland Mills Ltd. had a strong due diligence defence.

In its Clear Statements on both the Babine and Lakeland cases, the CJB also noted the fact that WorkSafeBC did not use major case management methodology in its

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<sup>2</sup> 2002 S.C.C. 74, [2002] 3 S.C.R. 814.

<sup>3</sup> 2002 S.C.C. 73 [2002] 3 S.C.R. 757.

<sup>4</sup> A more detailed explanation of Ling and Jarvis is provided in Chapter 6 – Investigations.

investigations. The CJB stated that, while not legally required, the use of this methodology is recommended best practice for major incidents, as it can provide a more focused exploration of relevant evidence. A focused, comprehensive, and organized investigative approach can better provide the evidentiary foundation needed to prove the essential legal elements of a proposed offence and to challenge defences that may be asserted by the accused, including the defence of due diligence.

### iii. Dyble Report and Recommendations

Following the CJB's decision not to approve charges against Babine Forest Products, Premier Christy Clark asked John Dyble, Deputy Minister to the Premier, Cabinet Secretary and Head of the Public Service, to undertake an analysis of the issues raised as a result of WorkSafeBC's investigation into the incident.<sup>5</sup> In his report, Mr. Dyble noted that WorkSafeBC has been given extensive powers under the WCA to carry out its mandate. While these powers are considered necessary to enable WorkSafeBC to obtain the information it needs to prevent future injuries, when a workplace safety matter moves from preventing future injuries through inspection and investigation of cause to investigation of potential regulatory offences, there is a tension between the powers given to WorkSafeBC and the protections provided within the justice system that are intended to ensure fairness.

Mr. Dyble noted that, in the Babine investigation, WorkSafeBC adopted its customary evidence-gathering methods, including the use of its statutory authority to compel the production of evidence without search warrants. This approach was accentuated by a difference in view between the CJB and WorkSafeBC legal counsel regarding the application of *Ling* and *Jarvis* requirements. However, Mr. Dyble stated that it was WorkSafeBC's responsibility to ensure it properly understood the rules of evidence and to request clarification from the CJB if necessary. By not resolving the difference in views, the evidence obtained by WorkSafeBC in pursuing its assessment to determine the cause of the explosion did not meet the test for admissibility in a regulatory prosecution.

The report also noted a lack of processes for effective internal communication at WorkSafeBC.

Mr. Dyble's report made a number of recommendations for improvement, which fall into four categories. The recommendations are reproduced below:

#### **1. Measures to improve interaction between investigating and prosecuting agencies**

- ***WorkSafeBC and Police Services Memorandum of Understanding:*** Work should be completed to update the MOU currently in place between WorkSafeBC and

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<sup>5</sup> John Dyble, [Babine Explosion Investigation: Fact Pattern and Recommendations](#) (February 6, 2014).

*police services. The purpose of this MOU is to coordinate jurisdiction when investigating an incident. While it is understood an updated draft is currently in circulation among police offices, WorkSafeBC should discuss with its partners whether further updates and improvements can be incorporated that reflect lessons learned in this case.*

- ***CJB and WorkSafeBC Memorandum of Understanding:*** *WorkSafeBC should enter into a Memorandum of Understanding with CJB on the specific issues of disclosure and preparation of a RTCC, similar to the MOU that has already been developed and is in place between CJB and police agencies across the province. While respecting the independent roles of these two organizations, the MOU should address key issues, including the need for a mechanism to ensure that issues or disagreements on the application of fundamental legal principles, or otherwise, can be identified in a timely fashion and appropriately resolved, or escalated to senior levels in the organizations if necessary. Similar to the current MOU with police agencies, the WorkSafeBC MOU should also offer guidance on the preparation of effective RTCCs for charge assessment purposes.*
- ***Enhanced co-operation:*** *WorkSafeBC and CJB should both commit to enhancing the co-operative working relationship between them to ensure that WorkSafeBC is better equipped with the information it needs to make informed decisions on how to prepare and refer a RTCC.*
- ***Legal advice during investigations:*** *WorkSafeBC should work with CJB to develop a means of appropriately consulting and obtaining legal advice during major incidents, without placing CJB in the position of “directing” the investigation (which is prohibited at law). Through this mechanism, outstanding issues related to understanding of the application of Ling and Jarvis can be addressed.*
- ***Major case management model and senior prosecutor availability:*** *In alignment with a Major Case Management Model that CJB implemented in Dec. 2012, which brings a project management approach to its largest prosecutions, the Branch should re-commit to making its prosecutors with expertise in Occupational, Health and Safety matters available to WorkSafeBC investigators for early and ongoing consultation and legal advice in the course of significant investigations.*
- ***Regular Informational Meetings:*** *CJB and WorkSafeBC should hold twice-annual informational meetings between CJB’s Director of Appeals and Special Prosecutions and/or designate, and the Director of Investigations for WorkSafeBC and/or designate, to discuss new developments in the law governing the investigation and prosecution of Occupational, Health and Safety matters, and/or issues of concern that either party has in relation to files that are brought to CJB for charge assessment. The purpose of these meetings will be to build upon and*

*support the ongoing, co-operative working relationship between CJB and WorkSafeBC, and to facilitate constructive information sharing on a regular basis.*

## **2. Improvement of policies, procedures and communications within WorkSafeBC**

*The fact pattern demonstrated a lack of processes for internal communication at WorkSafeBC. This must be addressed through new and updated procedures and approaches and through targeted training.*

*As an independent organization, the Board of WorkSafeBC should task the CEO with undertaking an effort to address internal communications issues and to report back to the board on the measures taken and their effectiveness.*

*Based on the WorkSafeBC communications that emerged at and after CJB's Clear Statement, and the apparent difference in perspective on an important legal issue, it is apparent that improvements are required to WorkSafeBC investigative policies and procedures and to processes to ensure effective information sharing.*

## **3. Enhanced training and improved working relationships**

- **Training materials:** *CJB will provide WorkSafeBC with a package of training materials on disclosure and the preparation of RTCCs that has recently been produced and distributed to police agencies across the province.*
- **Investigations protocol review and input:** *CJB has been provided with a copy of the Memorandum of Understanding Respecting the Investigation of Workplace Fatalities and Serious Injuries that WorkSafeBC has been developing with police on the process/protocol to be followed in workplace investigations. CJB should review the MOU from a prosecution perspective and provide input on whether any parts of it present difficulty for the admissibility of evidence at potential prosecutions. If necessary, CJB should make suggestions for improvement of the MOU, including in respect of addressing and clarifying when there is an area of disagreement.*
- **Educational seminars and training:** *CJB is prepared to make its Crown Counsel available to WorkSafeBC for the purpose of educational seminars and training where desired, including (but not limited to): the role of the BC Prosecution Service; its charge assessment policy; preparation of a RTCC; significant developments in substantive and procedural law relating to regulatory investigations and prosecutions; and the applicability of the Supreme Court of Canada's 2002 decisions in R. v. Jarvis (2002), 169 C.C.C. (3d) 1 and R. v. Ling (2002), 169 C.C.C. (3d) 46 to Occupational, Health and Safety inspections and investigations.*

- **WorkSafeBC investigation practices:** WorkSafeBC should consider a comprehensive review of its current inspection and investigative practices in light of governing legal principles, including the development of best practices for regulatory investigations in significant Occupational, Health and Safety matters. This review should reflect the importance of developing an effective approach to major incidents that carry the realistic potential for investigation and prosecution. For example, WorkSafeBC may wish to consider the adoption of a major case investigative approach to these incidents to ensure that evidence gathered by WorkSafeBC meets the evidentiary requirements for a prosecution.

#### 4. Moving forward

*In order to ensure the most complete approach possible to the issues raised in this document, I asked that Leonard Doust QC, as independent advisor, verify the accuracy of legal issues and opinions expressed.*

*I recommend that Mr. Doust's mandate be extended to ensure thorough implementation of these recommendations, as well as to provide advice on further improvements. Specifically, I recommend the following mandate:*

- *Review implementation of the recommendations made in this document with the Deputy Minister of Labour and Deputy Attorney General at a time agreed upon, and report back to me as appropriate; and*
- *Advise of other recommendations that may flow from implementation.*

## B. Minister's Six Point Priorities

On April 14, 2014, the Minister of Jobs, Tourism and Skills Training and Minister Responsible for Labour (Minister) issued a letter to the Chair of the Board of Directors of WorkSafeBC setting out further steps that needed to be taken to make sure WorkSafeBC's investigations are handled correctly for future prosecutions; ensure that what happened at Babine and Lakeland does not happen again and risk the lives of workers; and drive change in the culture and process at WorkSafeBC.

The Minister and the Board of Directors agreed to appoint an Administrator to WorkSafeBC. The role of the Administrator is to ensure an agenda of change is accelerated and to oversee the following six priorities:

1. Ensure future investigations are handled correctly. This includes successful implementation of the Dyble recommendations.

2. Ensure our sawmills are safe workplaces. This includes ensuring that WorkSafeBC's role in the 90-day action plan to ensure sustained dust safety compliance in sawmills, which is cooperative work between organized labour, the forest industry, government, and WorkSafeBC, is fully realized.
3. Review workers' compensation boards in other jurisdictions, to understand the merits of and determine best practices in organizational structures specifically relating to the separation of enforcement vs. regulation.
4. Develop a plan for implementing a world-class inspection and investigation regime, incorporating best practices, a workforce review and enhanced training.
5. Provide a single status report to the Province by July 1, consolidating the plans and reports noted in items 1 to 4 above, as well as feedback received from Mr. Len Doust, QC, regarding implementation of the J. Dyble review recommendations.
6. Conduct the search for and finalize the appointment of a new and permanent CEO. This is to follow completion of the actions listed above.

## 3 – WorkSafeBC’s Occupational Health and Safety Mandate

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### A. Legal Framework

WorkSafeBC’s jurisdiction over occupational health and safety (OHS) is derived from Part 3 of the *Workers Compensation Act* (WCA).

#### i. History of Occupational Health and Safety in BC

The Workers’ Compensation Board has had responsibility for OHS in British Columbia (originally referred to as “accident prevention”) since 1917, when the 1916 *Workmen’s Compensation Act*<sup>6</sup> was enacted. The 1916 *Act* focused on compensation and rehabilitation, with only a few provisions devoted to OHS. This continued in the subsequent versions of the *Act*, with the bulk of OHS provisions contained in regulation.

On October 1, 1999, the *Workers Compensation (Occupational Health and Safety) Amendment Act (Bill 14)*<sup>7</sup> was enacted and introduced Part 3 of the WCA. Part 3 was introduced in response to the 1997 interim report of the Royal Commission on Workers’ Compensation in British Columbia.<sup>8</sup>

In its report, the Royal Commission noted that relegating OHS to regulations under the *Act* was an inherent weakness in B.C.’s legislative framework. The report stated that, while compensation and rehabilitation were important objectives, OHS should be given the highest priority and should not merely be a subset of workers’ compensation legislation.

The Royal Commission recommended that a new statute be introduced for OHS and that the new legislation set out general and specific legislative objectives, as well as agency directives. They also recommended that the new legislation include sections on the application of OHS provisions; general duties of employers, suppliers, and workers; worker rights; and penalties.

The Commission’s report subsequently formed the basis of Bill 14 (1998). Rather than introducing a new, separate OHS statute, Bill 14 added Part 3 to the WCA to address OHS. The provisions of Part 3 address the gaps that the Royal Commission had identified in BC’s OHS framework. Part 3 sets out the general purposes of the new

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<sup>6</sup> S.B.C. 1916, c. 77.

<sup>7</sup> S.B.C. 1998, c., 50, s. 6.

<sup>8</sup> Royal Commission on Workers’ Compensation in British Columbia, [Report on Sections 2 and 3\(a\) of the Commission’s Terms of Reference](#) (Victoria: October 31, 1997) (Chair: Gurmail Gill).

component on occupational health and safety and its relationship with Part 1 of the *WCA*, which focuses on compensation. It also sets out the Board's mandate with respect to occupational health and safety and the occupational environment.

## ii. Current Legal Framework

As mentioned above, WorkSafeBC's jurisdiction over OHS in the province is set out in Part 3 of the *WCA*. The *WCA* provides the legal authority and framework for all of WorkSafeBC's prevention activity.

The general purpose of Part 3 is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work related risks to their health and safety.<sup>9</sup> The specific purposes of Part 3 are to

- promote a culture of commitment on the part of employers and workers to a high standard of occupational health and safety;
- prevent work related accidents, injuries, and illnesses;
- encourage the education of employers, workers, and others regarding occupational health and safety;
- ensure an occupational environment that provides for the health and safety of workers and others;
- ensure that employers, workers, and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of their authority and ability to do so;
- foster cooperative and consultative relationships between employers, workers, and others regarding occupational health and safety; and
- minimize the social and economic costs of work related accidents, injuries, and illnesses.<sup>10</sup>

In accordance with these purposes, the *WCA* mandates WorkSafeBC to be concerned with occupational health and safety generally and with the maintenance of reasonable standards for the protection of the health and safety of workers in BC and the occupational environment in which they work.<sup>11</sup> The *WCA* gives WorkSafeBC certain power and duties to aid in carrying out this mandate; these include

- making regulations to establish standards and requirements for the protection of workers;
- undertaking inspections, investigations, and inquiries on matters of occupational health and safety and occupational environment;

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<sup>9</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 107(1).

<sup>10</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 107(2).

<sup>11</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 111(1).

- providing information and advice regarding the administration of the OHS provisions; and
- promoting public awareness of OHS.<sup>12</sup>

The Occupational Health and Safety Regulation (OHSR) is enacted under the authority of the WCA.<sup>13</sup> The OHSR sets out regulatory rules for specific industries or work situations. The requirements of the OHSR are legally binding on employers, workers, and other workplace parties.

OHS policies are also developed under the authority of the WCA.<sup>14</sup> These policies, which are contained in the Prevention Manual, provide direction on compliance with the WCA and OHSR. The policies are binding on WorkSafeBC decision makers and on the Workers' Compensation Appeal Tribunal.

## B. Overall Prevention Strategy

A key part of WorkSafeBC's mandate is the prevention of work-related accidents, injuries, illnesses, disease, and death. The primacy of this prevention imperative drives WorkSafeBC's strategy, policy, and operations.

WorkSafeBC's Worker and Employer Services Division (WES) works to achieve the prevention mandate through consultation, education, and enforcement.

Over the past years, WES has focused on reducing the injury and fatality rates through a strategy that involves six key elements. These elements are described below.

- **High Risk Strategy**

A predetermined portion of prevention resources and officer field time is focused on workplaces in specific classification unit sectors that have the highest risk of injury and/or disease. Prevention Officers' field activities (educate, consult, and enforce) focus on risk patterns identified through data mining to raise awareness and compliance with the regulation and related injury-prevention measures. Risks considered in targeting are probable risk, actual risk, and fatalities. The current high risk strategy focuses on four primary high-risk industries (manufacturing, construction, forestry and health care) and four secondary high-risk industries (agriculture, fishing, oil and gas, and transportation). WorkSafeBC also focuses on specific high risk issues such as combustible dust, asbestos, confined spaces, and bullying and harassment.

<sup>12</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 111(2).

<sup>13</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 225.

<sup>14</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 82.

- ***Health and Safety Associations***

One way for WorkSafeBC to maximize the impact of its resources is to partner with others in shared programs or encourage others to actively work towards the collective aims of injury and occupational disease reduction. Helping in the formation of safety associations aligned to target industries is one method of doing this. It allows WorkSafeBC to assist the best placed parties to effect changes in behaviors and attitudes concerning safety and health practices and to assist these parties to take increased ownership.

In the past two decades, a number of Health and Safety Associations (HSA) have been founded in British Columbia to promote awareness of workplace health and safety, improve prevention of workplace accidents and injuries, and improve return to work outcomes in their respective industry sectors. In the last decade, the number of HSAs has grown from three to thirteen, and these represent most industries in British Columbia. WorkSafeBC also funds seven ongoing health and safety initiatives across all major industries in British Columbia.

- ***Partner Programs***

The Partners in Injury and Disability Prevention Program (aka Partners Program) develops and manages employer incentive programs that promote WorkSafeBC's vision of British Columbians free from workplace injury, disease and death. The Partners Program also facilitates the Certificate of Recognition (COR) Program. Employers participating in this voluntary program implement comprehensive occupational health and safety management and return-to-work systems in order to qualify for a COR. The COR deems the employer eligible for financial incentives and also represents their commitment to improving their health and safety performance. The COR program is administered by the Industry and Labour Services department at WorkSafeBC and by the Certifying Partners in industry. There are nine certifying partners and over 3,700 COR Certified Employers in BC.

- ***Outreach Programs***

Occupational health and safety consultation and education is a broad-based approach, carried out primarily by WorkSafeBC's Industry and Labour Services (ILS) department. They disseminate best practices in occupational health and safety, and build strategic partnerships to address major health and safety issues. General and industry-specific campaigns are designed to focus public attention on work-related injury, disease and death issues. Strategic partnerships have also been established to work with specific employer and worker segments of the population such as small business employers and young workers. ILS produces and distributes educational materials including books, videos, brochures, templates, info-flips and other resources through a variety of traditional and digital channels. Selected materials are translated into Punjabi, Spanish,

Chinese and Vietnamese as part of a program to address the needs of workers in sectors with ongoing high injury rates where there are significant populations of non-English speaking workers.

- ***Employer Consultants***

WorkSafeBC's Employer Consultants are comprised of two teams: (1) Key Account Performance Consultants, and (2) Account Managers. Both teams work closely with targeted large and very large employers who are performing poorly with respect to injuries, serious injuries, and/or claims duration. These employer consultants develop strategic partnerships with the targeted employers and initiate projects designed to substantively improve injury rates, serious injury rates, and claims duration. The Account Management program has been operating for several years. Many large employers have engaged with the Account Managers over that time and the results have shown improvements in safety culture and reduced injury rates and claims duration. The Key Account Performance Consultant program began in Q2 of 2013. To date, about 20 in-depth strategic engagements have been entered into. There are another 30 employers targeted for consultations over the next year. Although this initiative is still in the early stages, improvements have been made by the majority of the very large employers.

- ***Response Work***

Prevention Officers respond to safety and hygiene related complaints, questions, and or issues from workers, employers, industry, WorkSafeBC employees, and the general public as they arise. Response work allows WorkSafeBC to move swiftly to address emerging issues such as asbestos removal practices, combustible dust containment, and falls from heights in the residential construction industry.

## **C. Current Structure**

WorkSafeBC's prevention mandate is carried out by a number of departments. These departments are responsible for fulfilling WorkSafeBC's duties to conduct inspections and investigations, provide education and consultation services, support stakeholders, and make regulations.

Inspection, investigation, and education/consultation services are carried out by various departments within the Worker and Employer Services Division<sup>15</sup>, such as Prevention Services, Investigation Services, and Industry and Labour Services. The regulatory development function is facilitated by the Policy, Regulation and Research Division.

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<sup>15</sup> The Senior Vice President, Operations is responsible for the Worker and Employer Services Division.

An organizational chart outlining the departments responsible for prevention activities and the reporting structure is provided in Appendix A.

### **i. Inspections (Prevention Services)**

Inspections and enforcement activities are carried out by WorkSafeBC's Prevention Services Department.<sup>16</sup> Prevention Services is divided into 16 regions across BC, each headed by a Regional Prevention Manager (RPM). The RPMs report to one of four Regional Directors<sup>17</sup> who are responsible for both prevention and compensation matters. For prevention matters, the Regional Directors report to the Vice President, Prevention Services, who reports to the Senior Vice President, Operations.

There are approximately 250 Prevention Officers who are involved in inspection and enforcement activities at workplaces. Their role is to ensure compliance with OHS requirements and to assist employers, workers, and other workplace parties to understand and meet their OHS responsibilities. Prevention Officers respond to complaints about unsafe conditions in the workplace and are first responders when a workplace incident occurs.

WorkSafeBC's authority to conduct inspections is contained in Division 11 of the *WCA*. Section 179 states that an officer of the Board<sup>18</sup> may enter a place, including a vehicle or vessel, and conduct an inspection for the purposes of preventing accidents, injuries, and illnesses; investigating a complaint regarding OHS matters; and otherwise enforcing the health and safety provisions. Section 179 also sets out the specific powers that an officer may exercise in conducting an inspection. These include inspecting materials and equipment, conducting tests, securing a workplace or part of it, requiring production of records for inspection, and questioning persons under oath. Special restrictions on these powers apply to inspections of private residences.<sup>19</sup>

In conducting an inspection, officers have limited authority to seize items without a warrant if the item is in plain view and the officer has reasonable grounds for believing that Part 3 of the *WCA*, the *OHSR*, or an order has been contravened and the item would provide evidence of the contravention.<sup>20</sup>

If, in the course of an inspection, a prevention officer discovers a violation of the OHS requirements of the *WCA* or the *OHSR*, this may result in enforcement activities.<sup>21</sup>

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<sup>16</sup> Prevention Services also provides education and consultation services; this will be discussed in a later section.

<sup>17</sup> The four regions are Lower Mainland Centre North, Lower Mainland East, Vancouver Island, and Interior and North.

<sup>18</sup> Where the term "Board" appears in this report, it refers to the Workers' Compensation Board of BC, otherwise known as WorkSafeBC.

<sup>19</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 181.

<sup>20</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 185.

<sup>21</sup> See *Chapter 13 – Enforcement* for a description of enforcement tools.

## ii. Investigations (Investigation Services)

When a workplace incident occurs, WorkSafeBC's Investigation Services will, in certain cases, conduct an investigation to aid in the prevention of injury, illness, and disease and to help ensure compliance with law, regulation, and policy.<sup>22</sup>

Investigation Services consists of a number of departments reporting to the Director, Investigations, who in turn reports to the Vice President, Employer, Industry and Worker Services and Investigations. The three departments within Investigation Services most directly involved in prevention activities are Fatal and Serious Injuries (FSI), Compliance, and Engineering.

The FSI department investigates serious and fatal workplace accidents. The department consists of approximately 20 Investigation Officers, three supervisors, and one senior regional officer. These officers report to the Manager, FSI.

The role of FSI is to investigate serious and fatal workplace accidents to

- determine the causes and underlying factors of a workplace incident;
- provide recommendations to industry to aid in the prevention of future injury, disease, and death;
- identify associated compliance issues and help ensure compliance with the *WCA* and *OHSR*; and
- refer cases for administrative penalties under the *WCA* or refer cases to the Criminal Justice Branch for prosecution under the *WCA* or *Criminal Code of Canada*.

Each year, Investigation Services receives approximately 600 reports of incidents involving worker injury and approximately 90 reports of incidents involving a worker death. Approximately 145 FSI investigations are initiated annually. A FSI investigation is initiated when one of the following criteria is met: fatality, evidence of serious injury, near miss (potential fatality or serious injury), structural collapse, excavation collapse, crane collapse, major chemical spill, major exposure, diving incident, blasting incident, power line contact, high profile potential, or unique incident. The majority (approximately 60%) of FSI investigations involve fatalities.

As with inspections, WorkSafeBC's authority to conduct investigations is contained in Division 11 of the *WCA*. Section 179 provides officers with the authority to enter a place and conduct an investigation for the purposes of ascertaining the cause and particulars of a work related accident, injury, or illness or of an incident that had the potential to cause an accident, injury, or illness. Officers have all the same powers for conducting an

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<sup>22</sup> In the case of certain incidents, the employer is also required to conduct an accident investigation (see section 173 of the *WCA*).

investigation as they do for conducting an inspection<sup>23</sup>, including inspecting materials and equipment, conducting tests, securing a workplace or part of it, requiring production of records for inspection, questioning persons under oath, and seizing items without a warrant.<sup>24</sup>

WorkSafeBC investigations may result in enforcement actions where the investigation uncovers there was a violation of Part 3 of the *WCA* or the *OHSR*.

The Compliance and Engineering departments provide services to FSI, as well as other areas of WorkSafeBC, to support prevention activities.

The Compliance Department consists of approximately 20 Investigations Legal Officers. Their role is to support Investigation and Prevention Officers by providing legal advice and expertise with respect to penalty recommendations; reviews and appeals; and prosecutions, administrative penalties, and investigations.

The Engineering Department consists of approximately 10 engineers and two senior engineers. The Engineering Department supports the work of Prevention and Investigation Officers by providing technical advice relating to the requirements of the *OHSR*. The department also investigates occupational safety and health hazards that can be reduced through engineering means.

Both the Compliance and Engineering departments report to a single manager, the Manager, Engineering and Compliance.

### **iii. Education and Consultation (Prevention Services and Industry and Labour Services)**

In addition to conducting inspections, providing education and consultation services is a key part of the role of Prevention Officers.

Education and consultation services are also provided by Industry and Labour Services (ILS). ILS consists of 12 managers, each responsible for a particular sector. These managers report to the Director, Industry and Labour Services, who in turn reports to the Vice President, Employer, Industry and Worker Services and Investigations.

ILS works with external partners to develop and promote industry-specific safety associations, promote best practices in OHS, and build strategic partnerships to address major OHS issues. ILS provides education, consultation, and research in a variety of sectors but focuses much of its effort in certain high risk sectors: health care,

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<sup>23</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 178.

<sup>24</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 179 and 185.

manufacturing, construction, and forestry. ILS promotes joint worker and employer health and safety initiatives.

More information on WorkSafeBC's education and consultation services is provided in Chapter 12 – Education, Consultation, and Proactive Compliance.

#### **iv. Regulatory Development (Policy, Regulation and Research Division)**

The WCA authorizes WorkSafeBC to make its own regulations. Under the WCA, WorkSafeBC is required to undertake an ongoing review of the OHSR to ensure that they are consistent with current workplace practices, technological advances, and other changes affecting OHS and occupational environment.<sup>25</sup> The review and development of regulations is facilitated by the OHS Regulation and Policy Department within the Policy, Regulation and Research Division. The Director OHS Regulation & Policy and Governance reports to the Senior Vice President, Human Resources and Corporate Services.

### **D. Outcomes and Strengths**

WorkSafeBC's prevention mandate is focused on preventing workplace accidents, injuries, and illnesses. The results of the focus on prevention are evident in the steady decline in the fatality and injury rates over the past years. The number of work related deaths has declined 46% since 1990; the number of work related deaths due to injury has declined 51% since 2004; the serious injury rate has declined by 30% since 2000; and the injury rate has declined by 45% since 2000.

More information on the fatality and injury rates is provided in Appendix B.

### **E. Areas for Improvement**

Key departments at WorkSafeBC carry out important functions to support the OHS mandate, and they are generally effective in their roles. However, the current organizational structure of these departments could be improved. These areas would benefit from reorganization to ensure that departments carrying out similar functions, and which are intended to support each other in carrying out these functions, are grouped together. This is discussed in more detail in Chapter 8 – Organizational Change.

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<sup>25</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 228.

## 4 – Process Utilized in Review

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### A. Information Gathering and Review

An understanding of the current state of governance, organizational structure, policies, procedures, technology, people and processes was important to provide a baseline from which to identify gaps and opportunities to achieve a world class regime. In order to identify current issues and challenges, interviews were conducted with WorkSafeBC executives, management, and staff. Information was also gathered from corporate and department reports.

### B. Input from Stakeholders

WorkSafeBC's external stakeholder community provided their feedback on the performance of the organization, as well as their thoughts on opportunities for improvement. Interviews were conducted with various stakeholders including employer and worker representatives, industry representatives, forestry companies, and other partner organizations. Mill visits were also conducted, both with and without WorkSafeBC officers, in West Bank, Prince George, Quesnel, Isle Pierre, Duncan, and Ladysmith.

### C. Review of Best Practices from Other Jurisdictions

Deloitte LLP was engaged to conduct a jurisdictional scan to understand how OHS organizations in other jurisdictions, as well as select regulatory bodies in other industries, approach regulation, inspections, and enforcement. Key areas of focus included overall governance, industry consultation and regulation, prevention, investigation, enforcement, and follow up. In addition, Deloitte LLP helped identify "world-class" practices in these areas that would be relevant to WorkSafeBC in addressing challenges related to investigations and prosecutions. As part of this engagement, Deloitte LLP evaluated WorkSafeBC against these leading practices and identified opportunities for improvement.

The findings presented in the Deloitte report, *WorkSafeBC Leading Inspections and Investigations Practices* (see Appendix J), are primarily drawn from a review of publically available literature on worker health and safety, consultations with thought leaders in areas of workers compensation and regulatory enforcement, and interviews with subject matter experts from select organizations across Canada, the United States, Australia, and the United Kingdom.

The organizations were chosen based on a variety of considerations with each of the organizations meeting one or more of the following criteria:

- an international reputation as a leader;
- a referral by one or more other organizations;
- engaged in worker safety;
- engaged in other regulatory enforcement; or
- recognized for innovative or progressive models for inspections and investigations.

## 5 – Implementation of Dyble Recommendations

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### A. Implementation Status

Implementation of the Dyble recommendations has been largely completed. The recommended Memorandums of Understanding (MOU) with Police Services and the Criminal Justice Branch (CJB) have been developed, and work is ongoing with respect to enhanced cooperation; additional training; and improved policies, procedures, and communication. Mr. Len Doust, QC has reviewed the plans developed and actions taken with respect to implementation of the Dyble recommendations.

A summary of the progress that has been made on each recommendation is provided below.

- ***WorkSafeBC and Police Services MOU***

The MOU has been drafted and reviewed with the CJB. The finalized document is ready for signature.

A MOU has been in place with a number of police services except the RCMP since 2006. During 2013, the RCMP expressed an interest in joining the agreement as well. The agreement was amended to include the RCMP and finalized in December 2013.

The Dyble Report recommended that WorkSafeBC discuss with its partners whether further updates and improvements could be incorporated that reflect the lessons learned in the Babine case.

The MOU was given to the CJB for review, and they suggested the following four improvements which have been incorporated into the MOU:

- The MOU originally provided that the police would investigate *Criminal Code* offenses and offenses under provincial statutes with regard to workplace incidents. The MOU was amended to provide that only WorkSafeBC will investigate violations under the *Workers Compensation Act (WCA)*, or the Occupational Health and Safety Regulation, and the police will investigate pursuant to any other provincial statute or the *Criminal Code*. It is anticipated that this clarification may address any confusion with regard to the role of each agency at a workplace incident.
- The MOU requires each agency to use major case management where practicable and warranted. The absence of a major case management system at WorkSafeBC was noted by the CJB as an issue during the investigation of both the Babine and Lakeland explosions. It is expected that this addition will prompt both agencies to

consider utilizing major case management in appropriate circumstances in the future.

- Part 3 of the *WCA* grants WorkSafeBC the same powers to perform inspections, investigations and inquiries. However, since the decisions in *Ling* and *Jarvis* (which came after the introduction of Part 3), “investigations” has become synonymous with investigations for the purposes of prosecution, particularly when viewed by the CJB. The MOU clarifies that WorkSafeBC’s powers are necessarily limited by *Charter* considerations when the purpose of collecting evidence is for a prosecution but not for any other investigation under the *WCA*. This should help ensure that the police services, the CJB, and WorkSafeBC share a common understanding of “investigations” under the *WCA* and “investigations” for the purpose of a prosecution, along with the requisite rules for each function.
- Police who attend a fatality (or serious injury) investigate for evidence of *Criminal Code* offenses. The MOU explicitly provides that the Bill C-45, or Westray, amendments<sup>26</sup> to the *Criminal Code* should be considered in any work-related fatality or serious injury. It is expected that this provision will ensure that the Westray amendments will be fully considered by both agencies for every serious injury and fatality at workplaces in BC.

- ***WorkSafeBC and CJB MOU***

The MOU has been finalized by WorkSafeBC and the CJB. The finalized document is ready for signature.

Prior to this MOU, there was a previous memorandum of understanding with the CJB that expired in 2002, and there is no record that it was extended beyond that date. However, the 2002 MOU was restricted to the appointment of a dedicated prosecutor to WorkSafeBC who would also provide legal advice with respect to investigations.

As a result, the process to refer a matter to the CJB was based largely on internal WorkSafeBC policy and discussions between WorkSafeBC and CJB personnel. Communications between agencies, expectations regarding disclosure, and education and training were *ad hoc*, dependent on personal relationships between agencies, and based upon previous experiences working together.

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<sup>26</sup> Bill C-45 is federal legislation that amended the *Criminal Code of Canada* (see s. 217.1 of the *Criminal Code*). The Bill established new legal duties for workplace health and safety and imposed serious penalties for violations that result in injuries or death. The Bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives, and those who direct the work of others. The Bill C-45 amendments arose as a result of the 1992 Westray coal mining disaster in Nova Scotia, where 26 miners were killed after methane gas ignited causing an explosion.

This MOU formalizes many of those functions. It codifies each agency's role during an investigation and removes the risks of changing protocols as key individual contacts change within each organization over time. The dependence on personal communications and previous understandings based on prior investigations is removed.

The MOU mirrors memorandums of understanding the CJB has in place with police agencies around the province, and adds the pertinent elements of the Dyble recommendations. This is expected to ensure OHS investigations remain on par with criminal investigations referred to the CJB by police agencies, and that each agency will continue to dedicate the appropriate resources to OHS investigations in order to comply with the MOU.

The key elements of the MOU are as follows:

- The MOU addresses process issues of a prosecution that must be followed in order to comply with the *Charter of Rights and Freedoms (Charter)*. Specifically, the MOU covers disclosure of WorkSafeBC investigation materials so they can disclose all relevant materials to the accused in accordance with section 11 of the *Charter*.
- The MOU contains a schedule that details the format and content of a quality Crown brief that is used to refer a matter for prosecution. Both agencies have agreed that this format represents best practice.
- The MOU commits the CJB to provide up-to-date training materials on disclosure and preparing a Crown brief. It also commits the CJB to making Crown Counsel available on an ongoing basis to provide educational seminars on a variety of related topics, including significant developments in case law.

The MOU commits both agencies to have formal meetings twice per year to discuss issues, legal practice, and technical developments.

- The MOU articulates that the CJB cannot lawfully direct investigations or dictate the kinds of evidence that should be gathered. However, the MOU does agree that WorkSafeBC may contact the CJB for legal advice during an investigation but is under no obligation to take it.
- The MOU provides that both agencies will notify each other prior to any external communications on a matter and will work co-operatively where appropriate.
- The MOU sets out a procedure to resolve disputes between the agencies for issues unrelated to a charge assessment. It also contains a process for WorkSafeBC to review charge assessments with which it disagrees. This procedure includes elevating issues to higher levels in each agency if required.

- ***Enhanced co-operation***

WorkSafeBC and the CJB continue to work cooperatively by planning ongoing seminars and training opportunities. The CJB attended WorkSafeBC training on March 6, 2014 and spoke to legal issues relating to fraud and to *Ling* and *Jarvis*. WorkSafeBC and the CJB have agreed their next joint training session will take place in September 2014. A meeting between WorkSafeBC and the CJB also took place on June 20, 2014; topics discussed at this meeting included warrants, prosecution policies, Special Provincial Constable status for Investigation Officers, and opportunities for further discussions and collaboration.

- ***Legal advice during investigations***

WorkSafeBC will engage with the CJB about a process to seek advice upon execution of the MOU between WorkSafeBC and the CJB.

- ***Major case management model and senior prosecutor availability***

The CJB has provided a document that summarizes their approach. WorkSafeBC has been training staff in major case management since the fall of 2012 and is in the process of fully implementing a major case management model. The procurement process for a major case management system is underway, and a provider will be selected by the end of July 2014. The system is intended to be in use by the fall of 2014.

A four day session tailored to major case management and the WCA has been held at the Justice Institute. All Fatal and Serious Injury investigators attended the training. Training included the duties of the first investigator on scene; obtaining and evaluating information and evidence beginning at the scene; principles of major case management; and procedures for effective witness management.

- ***Regular informational meetings***

WorkSafeBC and the CJB have committed to meeting twice a year to share information.

- ***Improvement of policies, procedures, and communications within WorkSafeBC***

This is currently under review by WorkSafeBC's Senior Vice President, Operations. The improvements will be governed by the MOU between WorkSafeBC and the CJB and by the implementation of the major case management model.

- ***Training materials***

A package of material that was provided by the CJB to policing agencies has been provided to WorkSafeBC.

- ***Investigations protocol review and input***

This review will be governed by the MOU between WorkSafeBC and the CJB, the MOU between WorkSafeBC and Police Services, and the major case management model. The protocol will also be adjusted to address input from the CJB. WorkSafeBC anticipates that there will be a new model for referring its files to the Crown under the WCA.

- ***Educational seminars and training***

Staff from the CJB attended WorkSafeBC training in March 2014. CJB staff provided training on a variety of topics, including legal issues in regard to fraud and *Ling* and *Jarvis*. Training on additional topics is planned for later this year.

- ***WorkSafeBC investigative practices***

As mentioned above, WorkSafeBC is conducting a review of its policies, procedures, and protocols. The review will be governed by the MOUs and the major case management model and will take into account input from the CJB.

## **B. Recommendations**

- The MOUs with Police Services and the CJB should be signed.**
- WorkSafeBC should develop a policy to guide referrals to the CJB for prosecution. The decision to refer a file for prosecution is made independently by WorkSafeBC; however, development of this policy should be informed by consultation with the CJB.**

The choice of whether to refer a case to the CJB is made by the President and CEO with support from internal WorkSafeBC staff. The decision making process would be strengthened by having a formal policy in place to outline the factors that should be reviewed in deciding whether a case should be referred for prosecution and the personnel who should be involved in conducting this review; preferably, this review should be conducted by WorkSafeBC lawyers outside of Investigation Services. This policy should be informed by consultation with the CJB.

## 6 – Investigations

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### A. Major Case Management

In its Clear Statements on Babine and Lakeland, the Criminal Justice Branch (CJB) recommended that WorkSafeBC adopt the use of major case management (MCM) in its investigations.

MCM is a methodology for managing major incidents that provides accountability; clear goals and objectives; planning; utilizing of resources; and control over the speed, flow, and direction of the investigation. MCM is a framework by which the Fatal and Serious Injuries department (FSI) can be organized to ensure a constant and consistent effort in every investigation. MCM provides an assurance that the end result will be an investigation of the highest calibre that will meet or exceed the expectations of any tribunal or inquest.

Even before the CJB's recommendation, WorkSafeBC was already in the process of implementing MCM. Investigation Services has developed business rules around MCM that meet all the requirements of the CJB. The procurement process for a MCM system is in process, and a provider will be selected by the end of July. The system is intended to be in use by the fall of 2014.

WorkSafeBC has been training staff in MCM since the fall of 2012. A four day session tailored to MCM and the WCA has been held at the Justice Institute. All FSI investigators attended the training. Training included the duties of the first investigator on scene; obtaining and evaluating information and evidence beginning at the scene; principles of major case management; and procedures for effective witness management.

### B. Ling and Jarvis Explanation

*Ling* and *Jarvis* are the two leading cases from the Supreme Court of Canada regarding the admissibility of evidence in a prosecution that had been gathered by the use of legislative powers of compulsion. Both cases arose under the *Income Tax Act* of Canada. The Canada Customs and Revenue Agency (CCRA) had both audit and investigation divisions. The audit division conducted audits for the purposes of ensuring compliance, while the investigation division was responsible for conducting investigations for the purposes of prosecutions under the *Income Tax Act*. In both *Ling* and *Jarvis*, an auditor, while conducting a compliance audit, had compelled answers and records using powers granted under the *Income Tax Act*. At some point during the process, the auditors concluded that an offence might have been committed and referred the files to the investigation division of CCRA. Further investigations were conducted and the defendants charged. In both cases, the defendants argued that the information obtained by the auditors was not admissible in the

prosecutions on the grounds that it had been obtained in violation of their charter rights under sections 7 & 8 of the *Charter of Rights and Freedoms*.

The court concluded that there was a difference between audit and investigation activities. They stated that, where the predominant purpose of an inquiry is the determination of penal liability, CCRA officials must relinquish the authority to use their inspection and requirement powers. Officials “cross the Rubicon” or the “bright line” when the inquiry engages the adversarial relationship between the taxpayer and the state. The court also stated that the factors could have application to other provincial or federal government departments or agencies; however, in applying these factors, the particular structure, function, and organization of the agency must be taken into account.

The principles from *Ling* and *Jarvis* as they apply to WorkSafeBC are that

- the powers of compulsion given under Part 3, Division 11, sections 178 to 186 of the *Workers Compensation Act (WCA)* can be used by WorkSafeBC officers for the purposes of ensuring compliance with the *WCA*;
- evidence gathered using the power of compulsion that was gathered with the predominant purpose of enforcing compliance, and before the Rubicon or bright line has been crossed, is admissible in a prosecution; and
- after the Rubicon or bright line has been crossed, WorkSafeBC can continue to use the powers of compulsion for the purposes of compliance, but evidence gathered in that manner is not admissible in court.

## C. Cause Investigations versus Prosecution Investigations

The *WCA* gives WorkSafeBC officers broad powers for conducting an investigation into a workplace incident. Officers have all the same powers in conducting an investigation as they do for conducting an inspection<sup>27</sup>, including inspecting materials and equipment, conducting tests, securing a workplace or part of it, requiring production of records for inspection, questioning persons under oath, and seizing items without a warrant.<sup>28</sup>

These powers were designed to support WorkSafeBC’s ability to conduct investigations to determine the cause of an incident with the goal of preventing the incident from occurring again. The effect of the case law, and the CJB’s interpretation with respect to WorkSafeBC investigations, is that some of these same powers should not be used to support an investigation for prosecution.

WorkSafeBC must continue to conduct cause investigations in order to meet its prevention mandate. Where there is danger to other workers, employers, or the public, conducting an investigation into the cause of an incident may mean sacrificing the ability to pursue a

<sup>27</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 178.

<sup>28</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 179 and 185.

prosecution. In these investigations, WorkSafeBC should continue to use all of the investigative tools and powers provided under the *WCA*.

WorkSafeBC should, however, also continue to conduct investigations to determine fault and pursue prosecution in appropriate circumstances. Prosecutions are a severe remedy that must be available as a real threat to those who violate occupational health and safety requirements. These investigations should be conducted by WorkSafeBC, as it is the agency with the appropriate expertise to determine violations of the *WCA* and Occupational Health and Safety Regulation. In these investigations, WorkSafeBC must be guided by *Ling* and *Jarvis* considerations and ensure that evidence gathered meets the evidentiary requirements for a prosecution. This will mean not employing some of the investigative powers granted by the *WCA*. In these situations, prosecution would take precedence over the cause/prevention investigation.

In order to pursue both cause and prosecution investigations, WorkSafeBC must adapt its investigation processes, team structures, systems, and procedures.

## D. Separation of Teams to Meet Legal Requirements

In order to preserve the ability to prosecute for occupational health and safety violations where necessary, WorkSafeBC should institute a new model for investigations into fatalities and serious injuries. The proposed new model involves creating two separate teams to handle these investigations.

The Deloitte report suggested that WorkSafeBC should look to adjust its investigations branch and related procedures to separate “for cause” and “for prosecution” investigations, as has been seen with the Ontario Securities Commission.<sup>29</sup>

This model is based on the Investigative-Prosecutorial model of the Ontario Securities Commission Joint Serious Offence Team and has been modified for WorkSafeBC’s purposes. The key consideration in moving to this model is to protect the cause and prevention role of WorkSafeBC in the majority of cases and to eliminate any opportunities for file and evidence contamination once it is determined that the Rubicon or bright line has been crossed. In designing a new model, it is important to ensure that staff are doing the full range of work to make sure that their skills are maintained, and that the model optimizes staff deployment.

The dual model concept would require splitting the existing Fatal and Serious Injuries department into two distinct teams. Both teams would report to different managers and would be located in separate areas. A new information technology solution would have to be implemented to allow for complete file and information separation for both teams; this

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<sup>29</sup> Deloitte, *WorkSafeBC Leading Inspections and Investigations Practices* (June 20, 2014), at 20. See Appendix J.

will ensure that there is no cross-over of work. For the majority of the teams' work, which is focused on cause and prevention, the teams and their managers would report to the Director of Investigations.

Once it is determined that the Rubicon or bright line has been crossed, the investigating team would immediately notify the 'Gatekeeper'. The Gatekeeper would be a lawyer at the Director level or above in the Legal Services department. Once a team considers that there may be cause for prosecution, the Gatekeeper would take control of the file and direct the initial investigating team (e.g. Team A) to cease their investigation immediately. The other team (e.g. Team B) would then initiate a 'for prosecution' investigation. The team would follow all evidentiary rules for a prosecution, including obtaining warrants for seizures and the reading of *Charter* rights to the appropriate parties.

Both teams should include a trained Special Provincial Constable (SPC).<sup>30</sup> The inclusion of a SPC would permit access to sensitive information in the possession of the police. The SPC would be knowledgeable in the protocols surrounding access to sensitive files. The SPC would also be the point person for ongoing relationships and dialogue with police services to help ensure that WorkSafeBC is kept abreast of any new legal, policy, or procedural implications for investigations.

The proposed Investigation Services organizational structure and model are outlined in Appendix C. Implementation of this model will necessitate changes to the organizational structure within Investigation Services. These are discussed in more detail in Chapter 8 – Organizational Change.

## E. Recommendations

- i. **WorkSafeBC should proceed with the adoption of a major case management protocol and system in its investigations.**
  - This will contribute to a more focused, comprehensive, and organized investigative approach.
- ii. **Implement a new investigation model that preserves the ability to conduct both cause investigations and prosecution investigations.**
  - WorkSafeBC should adopt a dual team model for fatal and serious injury investigations. This model will ensure that when an investigation moves from a cause focus to a prosecution focus, the prosecution investigation is conducted under the principles of *Ling* and *Jarvis*.

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<sup>30</sup> SPCs are appointed under section 9 of the [Police Act R.S.B.C 1996 c. 367](#).

- In support of the dual team model, the FSI department should be divided into two separate units, each reporting to a different manager. The two units should be located in separate areas and should not have access to each other's files.
- A Gatekeeper should be designated in the Legal Services Department. The Gatekeeper's role will be to ensure that, when an investigation moves from cause to prosecution, the transition of the file from one team to the other is done in a way that meets the evidentiary rules for a prosecution.
- At least one Special Provincial Constable should be included on each FSI team. This role will improve information sharing between WorkSafeBC and police services.

## 7 – Combustible Dust

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### A. 90 Day Action Plan

On March 28, 2014, Government, the forest industry, organized labour, and WorkSafeBC had a meeting focused on combustible dust and sawmill safety. The result of the meeting was a co-ordinated plan to accomplish a number of outcomes in the following 90 days.

The 90 day plan agreed to by labour, industry, WorkSafeBC, the Manufacturers' Advisory Group (MAG),<sup>31</sup> and Government has been largely completed. Where there are incomplete elements, they are of a longer term nature; however, these are considered to be on track and making good progress.

The outstanding piece is policy work to specify reasonable standards for employers, workers, and supervisors to take to address combustible dust hazards. Public consultation on the proposed policies is underway. The policies are expected to be brought to WorkSafeBC's Board of Directors for consideration in July 2014.

The components of the plan, and the results of each, are summarized below.

- ***Council of Forest Industries' (COFI) membership conditions*** – *The Council of Forest Industries will contemplate their ability to stipulate membership conditions related to compliance with the combustible dust strategy.*

This has been completed. On May 8, 2014, the Board of Directors of COFI approved a resolution around future membership requirements. The resolution stipulates that COFI membership will be contingent upon membership in MAG as well as a commitment by member sawmills to use the combustible dust audit tool created by MAG.

- ***Team of technical experts established and training provided*** – *A team of technical experts (i.e. Industry Advisors) will be established by industry and supported by WorkSafeBC to help all mills on compliance with the Workers Compensation Act (WCA) and the Occupational Health and Safety Regulation (OHSR).*

This has been completed. WorkSafeBC, MAG, and the BC Forest Safety Council (BCFSC) have been working collaboratively to establish the terms of the Industry Advisor initiative. A memorandum of understanding between MAG and BCFSC around the Industry Advisor initiative was signed on May 5, 2014. The contract between BCFSC and WorkSafeBC outlining the Industry Advisor remuneration has been signed by both parties.

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<sup>31</sup> MAG is made up of a dozen companies which account for about 75% of B.C.'s lumber production.

MAG has hired five Industry Advisors. Additional Industry Advisors will be contracted on an as-needed basis. The Industry Advisors received training in combustible dust mitigation, control, and audit procedures from both MAG and the National Fire Protection Association. Industry Advisors began their first consultation engagements with sawmill employers during the week of June 2, 2014 and began working with BC's pellet mills and other wood product manufacturers during the week of June 16, 2014.

BCFSC and MAG communicated and promoted the Industry Advisor initiative to all BC sawmills and sawmill employer associations during the week of June 2. During this week, the Industry Initiative communications were mailed to all sawmill employers. Industry associations are informing their member companies of the Industry Advisor initiative and how to request a consultation. This information has also been posted on the industry associations' websites.

- ***Dust Mitigation and Control Audit protocol (MAG's best practices)*** - MAG has developed a Dust Mitigation and Control Audit protocol and is offering it to mills of every size throughout BC. The group will use its expertise and resources to ensure that best practices regarding sawmill dust risk reduction are shared with any company needing help within the province.

This has been completed. MAG has made its Dust Mitigation and Control audit available to all BC sawmills. All MAG member sawmills have undertaken to complete the audit by the end of the third quarter of 2014; additional sawmills will be required to complete the audit as a result of the proposed amendments to COFI's membership conditions.

MAG offered three full-day sessions of combustible dust mitigation and control training in May 2014. Representatives from well over 50 sawmills attended.

WorkSafeBC, together with all of the sawmill industry associations, presented three full-day combustible dust educational sessions in May 2014 with a combustible dust expert with the National Fire Protection Association. These sessions were presented by MAG, endorsed and supported by all industry associations, and facilitated by WorkSafeBC. Over 100 representatives from sawmills across the province attended the sessions, which took place in Prince George, Kelowna, and Vancouver.

In order to address the needs of smaller sawmills in the province, the International Wood Products Association is creating a scaled-down version of the MAG audit tool and will be presenting a draft to its membership when completed.

The Wood Pellet Association of Canada and all of its BC member pellet mills have agreed to work with the BCFSC to create a combustible dust audit tool that is customized for pellet mill operations.

- ***Awareness campaign on workers' rights in refusing unsafe work*** – Sawmill employers, organized labour, and WorkSafeBC will launch an awareness campaign on workers' rights in refusing unsafe work. A toolbox kit on the issue will be provided by WorkSafeBC to employers, health and safety committees, and health and safety representatives in all sawmills.

This has been completed. The toolbox kit includes the following information:

1. Toolbox Meeting Guide: *"Combustible dust and your right to refuse unsafe work"*
2. Crew Talk Backgrounder for Supervisors & Safety Managers
3. Handout for Workers
4. WorkSafeBC Bulletin: *Combustible dust hazard - refusing unsafe work*
5. Toolbox Meeting Guide: *What is combustible dust?*
6. Toolbox Meeting Guide: *Combustible dust awareness & controls*

The toolbox kit was distributed to all industry associations and to the Steelworkers Union to be posted to their websites for download.

As a follow up initiative, the toolbox kit has been translated into Punjabi and made available to Prevention Officers. The toolbox will be translated into other languages upon request.

- ***WorkSafeBC letters setting inspection expectations to non-compliant sawmills*** – WorkSafeBC will write to the 61 sawmills with combustible dust compliance issues during Phase III of the Combustible Dust Inspection Initiative to set expectations for the next round of inspections. Where there is repeat non-compliance, WorkSafeBC Officers will consider penalties.

This has been completed. Letters outlining the particulars of the expectations of the Phase IV sawmills inspections were sent to the 61 sawmills with combustible dust compliance issues identified during the Phase III inspections. A slightly modified letter was also sent to 83 sawmills that were included in the Phase III inspections but that did not have combustible dust compliance issues identified.

- ***Industry wide ongoing dialogue and collaboration*** – All parties agreed to continue the dialogue when WorkSafeBC hosts a joint meeting with industry and labour at the COFI convention in Kelowna.

This is ongoing. WorkSafeBC is continuing to dialogue and collaborate with all industry associations, key industry leaders, and the Steelworker's union to ensure that the deliverables set out in the Joint Statement are achieved and to ensure that industry complies with the WorkSafeBC regulations around combustible dust mitigation and control and achieves an effective and sustainable compliance plan.

- ***Phase IV Combustible Dust Inspection Initiative*** – WorkSafeBC will double the size of the designated inspection team to 20 and launch further sawmill inspections during Phase IV of their Sawmill Inspection Initiative. The focus of this phase will be on companies which were found to be out of compliance, particularly in Phase III, but all sawmills will be included.

This has been completed. Phase IV of the sawmill inspections began on April 7, 2014. Twenty Prevention Officers received specialized training and orientation.

As of June 22, 2014, inspections have been completed at 100 locations. Twenty-three mills received orders relating to combustible dust regulations, including nine stop work orders.

## **B. Post Phase IV Plan – Sawmills**

At the end of four phases of effort, there has been considerable improvement in bringing industry into compliance with combustible dust requirements. However, there is still work to do before the issue can be considered to be fully in hand. On the positive side, the non-compliance level has dropped from 61 mills at the end of Phase III to 14 at the end of Phase IV. Sawmills are showing the best progress, and pellet mills need the most attention going forward. An inspection summary is provided in Appendix D.

Controlling dust in a sawmill is no small challenge. Cutting wood creates sawdust in vast quantities. Generally speaking, sawmills were not designed with dust control in mind. The buildings tend to be very large with multiple levels, high ceilings, overhead beams and girders, and many flat surfaces where dust can settle. Equipment suppliers are still reluctant to modify their designs to address this relatively new issue in the industry. Effectively controlling dust requires a remarkable level of commitment in terms of capital investment, specialized equipment, and hard physical work on a daily basis.

At this point, it is encouraging to see the level of investment that industry has made, and continues to make, with respect to dust control. Many mills have installed sophisticated vacuum systems, fogging and misting systems, and enclosures on conveyors; mills have also taken measures to eliminate ignition sources. All of the mills appear to have dust control plans in place. The mills employ full time dust control crews and are using the combustible dust auditing tools developed by MAG. Long time employees in the industry appear to believe the mills are safer now than they have been in the past.

A side benefit of the efforts that have been made with respect to dust control is a general improvement in the working environment in the sawmills. Visibility and general air quality have improved considerably and will undoubtedly contribute to health and safety in the industry beyond the combustion risk.

Dust control is a permanent challenge. The current level of effort, attention, and commitment must be sustained going forward. In spite of the work and investment that has been seen to date, it is very clear that any loss of focus can quickly result in a return to hazardous conditions.

Noting the improvements to date, it is discouraging that after four phases of concentrated enforcement effort, there are still incidents of non-compliance. The question is “what next” to close the remaining gap.

The next phase of compliance work will need to achieve several things. Those still out of compliance will continue to need attention, with a ramping up of both oversight and compliance actions. WorkSafeBC cannot sustain the recent level of direct oversight on the combustible dust issue or important work in other sectors can be expected to suffer. Increased onus must be placed on industry to come fully into compliance and to bear the cost of a continued high level of oversight. The fifth, and hopefully final, phase must do two things: bring all of the mills into full compliance with combustible dust management requirements and ensure that combustible dust management controls will be sustained in the future.

The proposed approach for the next phase of combustible dust compliance work would see the following features:

- Operators that have received stop work orders or sanctions in Phase IV will be required to either move to daily inspection by an independent, qualified third party or continue with a ramped up inspection program by WorkSafeBC.
- The third party inspector will be required to file a summary report with WorkSafeBC on a weekly basis. The inspector will be expected to work with the operator to address deficiencies and violations as they are noted. Failure to immediately address incidents of non-compliance must be included in the weekly reports.
- WorkSafeBC will continue to perform unannounced, random inspections and use whatever enforcement tools are deemed necessary to achieve sustained compliance.
- The daily inspection routine must continue for a minimum of 90 days and beyond that, if necessary, until there has been a documented 30 day period of sustained compliance.
- Operators that are in compliance at Phase IV are encouraged to voluntarily move to a daily inspection and weekly reporting regime to ensure their controls are fully sustainable. If they choose to do this, WorkSafeBC will not conduct further combustible dust inspections at those locations during the period when independent inspections are being conducted. Routine WorkSafeBC inspections will proceed as normal.

- Operators that are not in compliance at Phase IV and that are not prepared to participate in the daily inspection model outlined above will be subject to a ramped up inspection program by WorkSafeBC Prevention Officers. Prevention Officers will be directed to issue compliance orders, stop work orders, stop use orders, and/or penalty orders for all incidents of non-compliance with combustible dust management requirements.

## C. Post Phase IV Plan – Wood Product Manufacturers (other than sawmills) and Pellet Mills

Wood product manufacturers (other than sawmills) and pellet mills have not shown the same kind of progress in combustible dust management as sawmills. At the end of Phase IV, the compliance rate in pellet mills and other wood product manufacturers was 40%.

This is a relatively small industry, and the challenges involved with managing dust accumulations are considerable. Further work is required to ensure the risks associated with combustible dust are mitigated. As such, Prevention Officers should continue to conduct regular inspections of pellet mills and other wood product manufacturers. Where violations are discovered, enforcement tools should be escalated to bring this sector into compliance.

## D. Observations

A challenge in managing the combustible dust issue has been the lack of an established Health and Safety Association (HSA) in the wood product manufacturing sector. HSAs are structured as non-profit societies with a representative Board of Directors; they provide training and certification and are responsible for sharing industry best practices with their members. HSAs play an important role in providing leadership and support to industry. There are currently 13 HSAs representing major industries in BC.<sup>32</sup>

In the absence of an HSA, MAG has stepped in to provide significant leadership to the wood manufacturing sector. However, MAG is an ad hoc entity and does not fully represent the sector.

## E. Recommendations

- i. **Move forward with the development of OHS policies to specify reasonable steps for employers, workers, and supervisors to take to address combustible dust hazards.**

<sup>32</sup> For example, the construction sector is represented by the BC Construction Safety Alliance, the Construction Safety Association of BC, and the BC Association for Crane Safety. The agricultural sector is represented by the Farm and Ranch Safety and Health Association. The forestry and manufacturing sectors are represented by the BC Forest Safety Council and the Food and General Manufacturing Industries Health and Safety Association.

- ii. **Implement the sustained compliance plan for sawmills as outlined above.**
- iii. **Develop a plan for ongoing inspections of other wood manufacturers and pellet mills by WorkSafeBC Prevention Officers, with appropriate enforcement efforts to bring this sector into sustained compliance.**
- iv. **WorkSafeBC should assist the wood product manufacturing industry to create an HSA, or expand the scope of an existing one, to address occupational health and safety issues in this industry in future.**
- v. **The Fire Inspection and Prevention Initiative (FIPI) should be extended, with continued funding from WorkSafeBC, and efforts made to find a permanent host at the municipal level.**

The Office of the Fire Commissioner (OFC) is the senior fire authority in the province with respect to fire safety and prevention. Services include administration and enforcement of fire safety legislation, training of local assistants to the fire commissioner (LAFC), fire loss statistics collection, fire investigation, fire inspection, response to major fire emergencies, advice to local governments on delivery of fire protection services, public fire safety education, and fire fighter certification.

The OFC administers the *Fire Service Act* and the *BC Fire Code*. The province of BC is divided into five zones with a Fire Safety Advisor for each zone. Municipalities are responsible for the maintenance of a fire department and/or to appoint a person as a local assistant to the fire commissioner.

On October 2012, the BC government announced the creation of FIPI to improve fire code compliance in primary wood product manufacturing operations that have combustible wood dust-producing processes. The outcome is intended to be enhanced health and safety for workers in British Columbia from the reduced risk of combustible dust fire, deflagration, and explosion. FIPI was intended as two-year initiative (2013-2014), with a focus on education for workplace parties, education for local assistants to the Fire Commissioner, and the development of a fire safety plan referral process.

Currently, when there is a workplace fire, there is no formal protocol for LAFCs to advise the OFC. As a result, there is inconsistency in reporting of information from the local assistants to the OFC. There is also no current protocol in place to share incidents of workplace fires with WorkSafeBC. Sharing of warning letters or orders when a workplace is found to be in violation of the *Fire Services Act* and the *BC Fire Code* would be helpful to WorkSafeBC. It would help in determining priorities for workplace inspections depending on the hazards identified. Protocols need to be established for the sharing of information between the OFC and WorkSafeBC, with FIPI playing a key role.

FIPI is currently funded and hosted by WorkSafeBC. The initiative was to end in 2014 but should be extended while efforts are made to find a permanent host at the municipal level.

- vi. WorkSafeBC should consider developing an information sharing Memorandum of Understanding with the appropriate agencies to ensure WorkSafeBC is notified when there is a fire event at a workplace in BC.**

## 8 – Organizational Change

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### A. Responsibility for Compensation and Occupational Health and Safety

WorkSafeBC is one of six workers' compensation boards in Canada that is also responsible for occupational health and safety (OHS). While there are other models for OHS and workers' compensation entities,<sup>33</sup> this review has indicated that having responsibility for workers' compensation and OHS rest with one organization is a key element of a world class OHS regime.

Having compensation and OHS managed by a single organization provides valuable information with respect to prevention activities and influences strategy and tactics. WorkSafeBC is able to mine its claims data to target prevention activities to those industries where they will have the greatest impact. This is evidenced by the high risk strategy, in which a predetermined portion of prevention resources and Prevention Officer field time is focused on workplaces in specific sectors that have the highest risk of injury and/or disease (i.e. manufacturing, construction, health care, and forestry). Furthermore, WorkSafeBC has direct access to claims data, which allows it to quickly ascertain the impact of prevention efforts on claims experience.

Another benefit to having WorkSafeBC responsible for OHS is that the organization is fully funded by insurance premiums paid by employers. Employer premiums pay for workers' compensation but also fund prevention activities aimed at eliminating injury and death in the workplace. In this way, employers see a return on their investment in the workers' compensation system through reductions in claims.

### B. Changes to Organizational Structure

As outlined earlier in this report, a number of departments within the Worker and Employer Services Division (WES) carry out WorkSafeBC's prevention mandate:

- Prevention Services, which is responsible for inspections and enforcement, as well as education and consultation activities at workplaces;
- Investigation Services, which conducts investigations into certain workplace incidents to ensure compliance with law, regulation, and policy; and
- Industry and Labour Services (ILS), which provides education and consultation to a variety of sectors.

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<sup>33</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 10-11. See Appendix J.

Each of these departments carries out important functions, and they are generally very effective in their roles. However, the current organizational structure of these departments is not ideal. These areas would benefit from reorganization to ensure that departments carrying out similar functions, and which are intended to support each other in carrying out these functions, are grouped together.

The Engineering group currently falls under Investigation Services. However, one of their primary roles is to provide support to Prevention Officers and others within Prevention Services. This group should fall under the same reporting structure as the internal groups it supports.

The Compliance group provides legal advice and oversight to the administration of penalties and other sanctions, as well as legal support for investigations. As its primary role is to provide legal support, this group should be included in the Legal Services department.

There will also need to be some re-structuring to accommodate the new investigations dual team model, which was outlined in Chapter 16 – Investigations; the changes required are as follows:

- A Gatekeeper role should be created in the Legal Services department to oversee the transition of files from investigations for cause to investigations for prosecution.
- A second Manager, Fatal and Serious Injuries must be created to oversee the second team of investigators.

## C. Recommendations

**i. Changes should not be made to the fundamental structure of WorkSafeBC at this time. WorkSafeBC should continue to monitor the effectiveness of its current model.**

- WorkSafeBC's current model is working well and has the support of both industry and labour stakeholders.

**ii. WES should be re-structured to ensure that departments carrying out similar functions fall under the same reporting structure.**

- The Engineering team should move to the Regulatory Practices department to better establish their support service role as a resource to both Prevention Officers and Investigations Officers.
- The Compliance team should move to the Legal Services department and their advisory role in relation to Prevention Officers and Investigation Officers should be clarified.

- In order to accommodate these changes, the Manager, Engineering and Compliance must be split into two positions – one Manager, Engineering (who will report to the Director, Regulatory Practices) and one Manager, Compliance (who will report to someone at the Director level or above in Legal Services).

**iii. Investigation Services must be re-structured to accommodate the recommended dual team model for investigations.**

- Create a “Gatekeeper” role in the Legal Services Department to oversee investigations for prosecution.
- Create a second Manager, Fatal and Serious Injuries to oversee the second team of Investigators. Both managers will report to the Director, Investigations for operational matters and in relation to investigations for cause. The managers will report to the Gatekeeper on prosecution investigations.

## 9 – Definition of World Class

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### A. Attributes of a World Class Occupational Health and Safety Regime

For the purposes of this review, world class is defined as “being of the highest calibre in the world”<sup>34</sup>, or more specifically, “a workers’ compensation organization that innovates and draws on the leading practices of other leading jurisdictions and is looked to as the benchmark or leading organization by others in the industry”. Specific research by economic and policy organizations on what makes a world class organization was also identified as part of the best practice review.<sup>35</sup>

In Deloitte’s research to identify world-class principles based on leading practices from organizations across the globe, it was evident that no single principle or operating model is adopted by all organizations. Policies and procedures adopted by organizations are based on the primary strategy of focus on deterrence or compliance. Both approaches have at times been adopted by organizations and led to both positive and unintended negative consequences. The objective of identifying these world-class principles is to identify key attributes, policies, and practices of organizations that are achieving positive outcomes related to prevention, serious injury incidents, and fatalities. Findings from the Deloitte report have been incorporated in this section. For the full report, please refer to Appendix J.

For WorkSafeBC, this review defines a world class occupational health and safety regime as having the following attributes:

- Supports a prosperous and sustainable business environment.

As pointed out in the Deloitte report, regulations are designed to balance complex social, environmental, and economic objectives and need to be comprehensive and responsive to changing circumstances. An effective health and safety regulator supports this balance by providing a “level playing field” for all regulated organizations and supporting the highest possible level of compliance, while reducing administrative burdens and costs for companies demonstrating strong health and safety performance. World-class enforcement agencies are proactive in scanning the business environment for emerging key risks. They will adjust their focus as early warning ‘triggers’ indicate a growing safety-related risk event, in effect becoming a learning organization that course-corrects for changing conditions, including the development of regulations to help address these emerging issues.

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<sup>34</sup> Merriam-Webster Dictionary (2014). <http://www.merriam-webster.com/dictionary/>

<sup>35</sup> Deloitte, *WorkSafeBC Leading Inspections and Investigations Practices* (June 20, 2014), at 6. See Appendix J.

- The rules are widely known and understood.

A workers' compensation organization perceived as world class will have developed clear and transparent enforcement policies, procedures, and processes. The rationale behind them and the mechanisms for deployment are well understood by all parties, and mechanisms exist to address stakeholder input where appropriate. Employers and workers are also regularly informed of their roles, rights, and obligations with respect to inspections and enforcement process through active dissemination of information through all available media and channels.

- Proactive compliance is encouraged.

World class regulatory agencies invest significant resources to promote and facilitate adoption of proactive compliance, self-monitoring, and self-reporting by employers and employees. In cases where a minor infraction is noted by an officer (and there is no imminent threat of harm), some regulators provide organizations with the option to rectify the issue within a given timeframe prior to issuing a penalty. In such instances, there is a requirement for the officer to follow up to ensure that the actions have taken place, and in cases where compliance has not been attained, the option exists to utilize a more significant enforcement tool to attain compliance.

- Enforcement is visible.

A world-class regulatory and enforcement agency does not have to be physically present in the workplace at all times, but in principle is omnipresent in the minds of the employers and workers as they make strategic and tactical decisions, implement new processes, and conduct their daily activities. There is an expectation that violations will be observed and acted upon at any time that work is occurring.

- Enforcement tools are effective at driving compliance and deterrence.

In many jurisdictions, it was observed that officers have the ability to apply a range of enforcement tools to multiple levels within an organization (e.g., workers, managers, directors, the corporate entity) and to multiple organizations working at a given site. This includes the ability to apply enforcement actions to employers, suppliers, contractors, and workers. This flexibility enables the officer to work with other stakeholders to ensure that enforcement actions, and the resulting deterrence effect, are targeted at the actual offenders, and that accountabilities for safety on the work site are clearly communicated and understood.

- Enforcement escalates as necessary to address repeat non-compliance and to change behaviour.

A common principle adopted in many leading regulatory environments is that of proportionality. The primary goal is to reduce the risk of workplace illness and injury by

supporting companies that are actively seeking to comply, while retaining strong enforcement tools for those that are poor performers or who have acted recklessly. To accomplish this, a broad suite of enforcement tools is required to enable regulators to take a measured and escalating approach as required. An effective suite of tools allows regulators to apply the lowest level of enforcement required to support compliance, while also enabling significant punitive action where it serves the public interest and/or has a strong deterrence effect for the most serious contraventions.

- Penalties are timely; prosecutions are successful; OHS reviews are dealt with efficiently; fines are collected; and flagrant, repeat violators are dealt with firmly and prevented from putting worker health and safety at risk.

Policies, processes, people and technology need to be in place to support the effective implementation of the enforcement suite of tools. There is a need for streamlined enforcement and appeal processes to achieve the intended compliance objectives, and escalation protocols need to be established for stronger tools and more immediate action in cases where worker health and safety are at risk.

- The regulator is respected by industry and labour and trusted by the general public.

A common thread amongst all world-class regulatory and enforcement occupational health and safety organizations is the high level of credibility and trust afforded to these organizations by employers, workers, and the general public. This enhances the ability of the organization to make regulations that are viewed as credible, and it allows the effective enforcement of rules and regulations.

- There is strong, effective collaboration between all regulators, police, and prosecutors.

Many organizations need to work together to ensure effective occupational health and safety in their jurisdictions. Leading jurisdictions create effective partnerships with their respective counterparts in the development, delivery and implementation of occupational health and safety regulations and practices. Ongoing collaboration contributes to strong working relationships and the sharing of best practices to achieve optimal outcomes for health and safety in each jurisdiction. This creates an environment of increased alignment of activities between agencies and better mutual reliance and coordination of approaches towards occupational health and safety.

- The organization is driven by outcomes-based performance measures.

In all leading jurisdictions and industries studied, the long-term vision and actions of enforcement organizations are measured based on leading indicators and historical performance measures. The linkage between regulator interventions (in support of prevention and deterrence) and key health and safety measures is understood and monitored to support transparent performance reporting and continual improvement. Indicators range from wider economic measures (such as the attraction and growth in

compliant, profitable businesses) to health and safety-related metrics (such as reductions in loss-time injury claims and fatalities) and enforcement effectiveness (such as the number of penalties and prosecutions).

- The organization takes a risk-based approach to inspections.

The best practice review shows that across all jurisdictions and industries, leaders consistently used a risk-based methodology to identify, target and weight inspection activities towards higher risk offenders. Risk is determined through a variety of measures, including the inherent risk of the industry as a whole, the risk associated with a specific process or activity and the risk associated with the individual operator (based on historical performance). Risk measures are also dynamic in order to account for changing conditions within a given industry or region and to enable the regulator to focus limited inspection resources on the highest-risk activities and operators. In addition, in some jurisdictions, the same enforcement activities available to address safety accidents and incidents were also available to address the risks that would enable such incidents to occur. Applying the same enforcement tools (at the same level of severity) in cases where the risk of an event was observed was noted to have a strong deterrence effect and to change behavior.

- There is an appropriate balance between prevention and enforcement.

A world-class occupational health and safety organization will appropriately balance the goals of education, collaboration and other prevention-focused activities with the need to enforce and penalize those organizations who choose not to comply. Enforcement tools are used sparingly and in direct proportion to the nature of the safety offense and the track record of the employer and/or employee. The range of tools available to the officer allows for the gradual escalation of enforcement actions and penalties if requests to rectify and maintain a safe working environment are ignored.

- There is an ability to predict hazards based on both historic data and predictive modeling.









Improving the ability to predict hazards greatly improves the effectiveness of prevention activities. Leading organizations continue to leverage research and innovation to support improvements to their inspections and investigations programs. This includes initiatives to improve the effectiveness of training for officers; provide officers with new tools to keep them informed and connected; use emerging sciences to support the identification, monitoring and investigation of emerging risks; incorporate of predictive and visual information analytics to support decision making; and automate compliance and enforcement planning.











- There is a strong organizational commitment to performance measurement, evaluation, and continuous improvement.

This is accomplished through regular assessments of performance, identification of successes and lessons learned and incorporation of these lessons into training and improved processes and tools. This ensures the required standards, tools, and processes are followed by all officers and investigators.

As part of this commitment to continuous improvement, world-class organizations invest in competent, trusted personnel trained to lead and support all levels of inspection; to initiate enforcement activities; to lead strong investigations; and ultimately to oversee legal and prosecution activities as required.

## B. Assessment of World Class Status

Guiding Principles	WorkSafeBC Current State
Supports a prosperous and sustainable business environment.	
The rules are widely known and understood.	
Proactive compliance is encouraged.	
Enforcement is visible.	
Enforcement tools are effective at driving compliance and deterrence.	
Enforcement escalates as necessary to address repeat non-compliance and change behaviour.	
Penalties are timely.	
Prosecutions are successful.	

Guiding Principles	WorkSafeBC Current State
OHS reviews are dealt with efficiently.	
Fines are collected.	
Flagrant, repeat violators are dealt with firmly and prevented from putting worker health and safety at risk.	
The regulator is respected by industry and labour and trusted by the general public.	
There is strong effective collaboration between all regulators, police, and prosecutors.	
The organization is driven by outcomes-based performance measures.	
The organization takes a risk-based approach to inspections.	
There is an appropriate balance between prevention and enforcement.	
There is an ability to predict hazards based on both historic data and predictive modeling.	
There is a strong organizational commitment to performance measurement, evaluation, and continuous improvement.	

### Legend

WorkSafeBC Current State:



strong



weak

## 10 – Governance

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### A. History of Governance at WorkSafeBC

The *Workmen's Compensation Act* was originally created in 1917 with a board of three Commissioners appointed to administer the *Act*. The original *Act* is now referred to as the “historic compromise”. The compromise was an agreement where workers gave up the right to sue their employers and fellow workers for injuries sustained on the job in exchange for a no-fault insurance program funded by employers.

Over the ensuing 97 years, the board has gone through numerous evolutions, including reviews in 1942, 1952, and 1966. There was a Royal Commission conducted in 1999, and a Core Review was conducted in 2002.

WorkSafeBC's governance structure has evolved over time and has resulted in the current model with an independent Crown corporation, a seven member board of directors, and specific skill requirements for board members. The board is empowered to create regulations and has had that authority during the entire history of the organization.

### B. WorkSafeBC's Current Board of Directors Structure

In 2002, the *Workers Compensation Act (WCA)* was amended<sup>36</sup> to establish a Board of Directors (BOD). The current board structure arose out of the recommendations of the 2002 *Core Services Review of the Workers' Compensation System*.<sup>37</sup> The review supported employer and worker representation on the board, but strongly recommended that these representatives should not constitute the predominant or majority position on the board. With respect to the public interest representatives, the review recommended that one be appointed from an organization whose primary focus is disabled workers and that one have expertise in financial matters; these positions were recommended in order to ensure that the duties of providing a fair compensation system for disabled workers and of acting in a financially responsible and accountable manner were being met.

The current BOD has seven voting members:

- three public interest representatives, one of whom is the chair;
- one director representative of workers, selected from a list of at least 3 persons, each of whom is nominated by one or more organizations that represent workers or classes of workers;

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<sup>36</sup> Bill 49, [Workers Compensation Amendment Act, 2002](#), 4th session, 37th Parliament, British Columbia, 2003.

<sup>37</sup> Alan Winter, [Core Services Review of the Workers' Compensation Board](#) (March 11, 2002).

- one director representative of employers, selected from a list of at least 3 persons, each of whom is nominated by one or more organizations that represent employers or classes of employers;
- one director who is a professional providing health care or rehabilitation services to persons with disabilities, selected from a list of at least 3 persons, each of whom is nominated by one or more organizations that provide health care or rehabilitation services to persons with disabilities; and
- one director who is an actuary, selected from a list of at least 3 persons, each of whom is nominated by one or more professional organizations for actuaries.<sup>38</sup>

In addition, the President and CEO is a non-voting member of the board.

The chair holds office for a term of up to five years. The term of the chair can be renewed but may not exceed a continuous period of more than 10 years. All other members of the BOD, with the exception of the President and CEO, hold office for a term of up to three years. These members can also be reappointed to a maximum term of six years.

The terms of the current members of the BOD expire either this year or next year. The term of the chair expires in December 2015, as does the term of one of the other public interest representatives.<sup>39</sup> The terms of the third public interest representative, the worker representative, and the employer representative expire in January 2015.<sup>40</sup> The BOD's actuary was appointed for a two year term, which expires in December 2014.<sup>41</sup> The term of the health care and rehabilitation representative expired in April 2014; a replacement has not yet been appointed.

Some of the current BOD members are eligible for reappointment but, due to the statutory maximums set for appointments of BOD members, more than half of the BOD must be replaced over the next 18 months.

The duties of the BOD are set out in the *WCA* and include:

- setting policies on compensation, assessment, rehabilitation, and occupational health and safety;
- setting and supervising the direction of WorkSafeBC;
- selecting and setting the functions of the President;
- approving WorkSafeBC's budget;
- ensuring adequate funding of the accident fund;

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<sup>38</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 81.

<sup>39</sup> These members are both serving their first terms and have not reached the statutory maximum for consecutive years of appointment. Both can be reappointed.

<sup>40</sup> These members have reached the statutory maximum for consecutive years of appointment and cannot be reappointed.

<sup>41</sup> This member is eligible for reappointment under the *WCA*.

- planning for the future of WorkSafeBC; and
- approving amendments to the Occupational Health and Safety Regulation.<sup>42</sup>

In exercising their duties as a member of the BOD, directors are required to act with a view to the best interests and objectives of the workers' compensation system as a whole.<sup>43</sup>

## C. Jurisdictional Comparison

A jurisdictional review was conducted to examine the governance structure of workers' compensation boards in the other Canadian jurisdictions. A table outlining the governance structure of each jurisdiction is provided in Appendix E.

Five other jurisdictions have workers' compensation boards that, like BC, are responsible for occupational health and safety in addition to compensation, assessment, and rehabilitation.<sup>44</sup> In the other jurisdictions, the provincial government is responsible for occupational health and safety.

The boards of the other jurisdictions range in size from 3 to 16 members. As in BC, the boards are established by legislation.<sup>45</sup> The boards in each of the other jurisdictions must include a chair and both worker and employer representatives; however, only four other jurisdictions require public interest representatives to be included on the board.<sup>46</sup> BC is the only jurisdiction that requires the board to include members with specific expertise (i.e. a health care and rehabilitation representative and an actuary).

A review of the current boards across Canada revealed members with expertise in a wide range of fields, such as finance, accounting, health care, construction, business management, injured worker support, agriculture, public service, health and safety, labour relations, and commercial law.

The Provincial or Territorial Government is responsible for appointing board members and for setting the term of appointment for each member. In most of the jurisdictions, the legislation sets a maximum for the term of appointment<sup>47</sup> ranging from three to five years.

<sup>42</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 82 and 227.

<sup>43</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 84(b).

<sup>44</sup> New Brunswick, the Northwest Territories/Nunavut, Prince Edward Island, Quebec, and the Yukon.

<sup>45</sup> In each jurisdiction, with the exception of Quebec, the board of directors is established under the provincial/territorial workers' compensation statute. In Quebec, the board is established under Quebec's occupational health and safety statute.

<sup>46</sup> Alberta, Manitoba, Newfoundland & Labrador, and the Northwest Territories/Nunavut.

<sup>47</sup> Newfoundland and Labrador and Ontario do not have maximums for the term of appointment in their workers' compensation statutes.

In the majority of the other Canadian jurisdictions, the President/CEO is an ex-officio member of the Board under the legislation.<sup>48</sup> Two jurisdictions, New Brunswick and Newfoundland, also include other ex-officio members on the board: the Chairperson of the Appeals Tribunal is a member of board in New Brunswick<sup>49</sup> and an employee of Service NL appointed by the minister is a member of the board in Newfoundland.<sup>50</sup> In Quebec, the Government appoints an observer to the board; this individual participates in all meetings of the board but does not have voting rights.<sup>51</sup>

## D. Gaps

WorkSafeBC's current governance structure developed out of a need to address issues with previous governance models to ensure that a strong, credible, and stable board was in place. The current structure is consistent with other boards across the country but is unique in its inclusion of two directors with specialized skills; these appointments enhance the board's ability to fulfil its obligations to disabled workers and to act in a financially responsible manner.

In addition to its financial obligations and duties to disabled workers, the BOD also has an obligation to govern the occupational health and safety mandate of WorkSafeBC. This mandate includes:

- making occupational health and safety regulations for the protection of workers;
- providing education and other services related to occupational health and safety; and
- undertaking inspections, investigations, and inquiries.<sup>52</sup>

However, WorkSafeBC's governing structure does not mandate the inclusion of directors with expertise relevant to enhancing WorkSafeBC's occupational health and safety function. Amending the board structure to include directors with such skills would enhance WorkSafeBC's ability to meet its duties with respect to occupational health and safety.

## E. Observations

WorkSafeBC's current governance model has evolved over time and stands out as a leading practice. The BOD is effective in meeting its duties and obligations under the WCA. The requirement for WorkSafeBC's BOD to include members with specialized skills improves the ability of the BOD to make informed decisions. The specialized skills required enhance the

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<sup>48</sup> The exceptions are Nova Scotia, Prince Edward Island, and Saskatchewan.

<sup>49</sup> [Workplace Health, Safety and Compensation Commission Act](#), SNB 1994, c. W14, s. 8(1)(f).

<sup>50</sup> [Workplace Health, Safety and Compensation Act](#), RSNL 1990, c. W-11, s. 4(3). This is currently the Assistant Deputy Minister, Occupational Health and Safety Branch, Service NL.

<sup>51</sup> *An Act respecting occupational health and safety*, CQLR c. S-2.1, s. 145.

<sup>52</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 111.

compensation and financial knowledge of the BOD. However, the board is lacking similar expertise in occupational health and safety and legal/regulatory matters.

## F. Recommendations

### i. **Amend the WCA to enhance the occupational health and safety expertise of the BOD by adding two new members.**

- Section 81 of the WCA should be amended to require that the BOD include a director with legal and/or regulatory expertise who ideally would have experience with investigations and/or prosecutions. Examples of individuals who could fill this role include retired police officers or fire marshals, litigators, retired Crown prosecutors, or investigators from fields such as transportation safety, securities, or environmental protection.
- Section 81 of the WCA should be amended to require that the BOD include a director with expertise and practical experience in occupational health and safety. This individual should be an occupational health and safety practitioner who ideally possesses a relevant professional designation, such as a certified safety professional (CSP), Canadian registered safety professional (CRSP), certified industrial hygienist (CIH), or a registered occupational hygienist (ROH).
- As with the other positions on the BOD, these directors should be drawn from the most senior ranks of their organizations or callings and have stature within their respective communities. These directors should also be individuals who could not reasonably be perceived to be biased toward either the worker or employer communities.

## 11 – Regulation Making Model

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### A. History of WorkSafeBC's Regulation Making Authority

The 1916 *Workmen's Compensation Act*<sup>53</sup> gave the Workers' Compensation Board the power to make regulations, which could be of general or specific application and could apply to both employers and workers, for the prevention of accidents and industrial diseases in workplaces. In 1968, the original *Workmen's Compensation Act* was replaced by a new Act<sup>54</sup> which continued to grant the Board the power to make regulations for the prevention of workplace accidents and industrial diseases. The 1974 amendments<sup>55</sup> also continued to grant this power.

In its 1997 report<sup>56</sup>, the Royal Commission noted that B.C. was distinct from other jurisdictions in Canada in that the Board had exclusive authority to develop, approve, and enforce occupational health and safety regulations. The Commission expressed concern with this approach and stated that the need for political accountability in establishing social policy was not compatible with the Board holding exclusive authority to develop and approve the laws that it was charged with enforcing.

Although the Royal Commission recommended that the Provincial Cabinet alone hold the final authority to review and approve all the occupational health and safety (OHS) regulations that would be prepared by the Board (or possibly some other agency), the government decided to split the regulation-making powers between the Board and Cabinet, with Cabinet holding the exclusive authority to make regulations in relation to major social policy issues while the Board's regulation-making authority is focused on more technical matters, such as safety standards and requirements.

In the legislative assembly debates, the Minister of Labour indicated that the government decided to split regulation-making authority between Cabinet and the Board because Cabinet had decided it would be neither feasible nor practical for it to be responsible for all OHS regulations.<sup>57</sup> The government believed that Bill 14 responded to the Royal Commission's concern that there be governmental accountability for health and safety matters because Lieutenant-Governor-in-Council regulations are broader and more public

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<sup>53</sup> S.B.C. 1916, c. 77.

<sup>54</sup> *Workmen's Compensation Act*, S.B.C. 1968, c. 59.

<sup>55</sup> *Workers' Compensation Act*, S.B.C. 1974, c. 101 (proclaimed in effect July 1, 1974).

<sup>56</sup> Royal Commission on Workers' Compensation in British Columbia, *Report on Sections 2 and 3(a) of the Commission's Terms of Reference* (Victoria: October 31, 1997) (Chair: Gurmail Gill).

<sup>57</sup> British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, Vol. 9, No. 25 (21 May 1998) at 7997 (Hon. D. Lovick).

policy in nature, while Board regulations are more operational and technical in nature.<sup>58</sup> As well, employers and workers consulted by the government had agreed that the Board should be the agency responsible for OHS.<sup>59</sup>

## B. WorkSafeBC's Current Regulation Making Authority and Process

The *Workers Compensation Act (WCA)* provides that Cabinet may make regulations referred to in section 41 of the *Interpretation Act*, which in turn states (among other things) that Cabinet "may make regulations as are considered necessary and advisable." The *WCA* also lists 15 specific items on which Cabinet may make regulations (which implicitly are not subject to WorkSafeBC's regulatory amendment process).<sup>60</sup>

Under the *WCA*, WorkSafeBC is given authority for occupational health and safety, including the power to make regulations related to health and safety in the workplace. Section 228 of the *WCA* requires WorkSafeBC to undertake a process of ongoing review and consultation on its regulations to ensure consistency with current practices and technological advances. WorkSafeBC reviews and updates regulations on a regular basis to meet its obligations under this section.

Section 226 lays out specific requirements that WorkSafeBC must meet before making a regulation. These requirements are intended to ensure that stakeholders are aware of regulatory amendments and are given the opportunity to provide feedback. The requirements are that WorkSafeBC

- must give notice of the proposed regulation in the Gazette and in at least 3 newspapers; one of which must be published in the City of Victoria and one in the City of Vancouver;
- must hold at least one public hearing on the proposed regulation; and
- may conduct additional consultations with representatives of employers, workers and other persons who may be affected by the proposed regulation.

WorkSafeBC's regulatory amendment process goes beyond the requirements in the *WCA*. The major steps are as follows:

- Development of Regulatory Amendment Workplan: A regulatory development workplan is developed every year. Requests for regulatory change can be received from a number of sources, including external stakeholders, internal WorkSafeBC divisions, the Provincial

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<sup>58</sup> British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, Vol. 9, No. 4 (28 April 1998) at 7270 (Hon. D. Lovick); British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, Vol. 9, No. 10 (5 May 1998) at 7469 (Hon. D. Lovick).

<sup>59</sup> British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, Vol. 10, No. 2 (25 May 1998) at 8062 (Hon. D. Lovick & C. Hansen).

<sup>60</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 224.

Government, the BC Coroner's Service, and the Board of Directors (BOD).<sup>61</sup> After development of the regulatory amendment workplan, it is presented to the BOD for acceptance. The workplan is shared with the Policy, Practice and Consultative Committee (PPCC)<sup>62</sup> once approved.

- Pre-consultation: Staff in the Policy, Regulation and Research Division work with internal subject matter experts to draft regulatory amendments. WorkSafeBC staff then meets with a small number of external subject matter experts to clarify any issues they may have with the regulatory proposals.
- Public Consultation: The draft regulatory amendments are released to the general public for feedback.
- Public Hearing: Based on the consultation from stakeholders, the draft proposals are revised as necessary and released to public hearing. The public hearing process provides stakeholders with a second opportunity to provide feedback. Oral hearings are held in several locations throughout the province. Stakeholders also have the opportunity to provide written feedback.
- BOD Decision: Public hearing feedback is reported to the BOD, and the BOD is then asked to approve the amendments.
- Amendment Becomes Effective: The regulation is deposited with the Office of the Registrar of Regulations, Ministry of the Attorney General. The regulation comes into force on the date specified as its effective date. The effective date must be at least 90 days after deposit.

The regulatory amendment process takes approximately one and a half to two years to complete.

Under section 229 of the *WCA*, the Minister may ask the Board to consider making or amending one of its regulations. If the Board does not act as recommended by the Minister, Cabinet can step-in and pass the requested regulation or amendment. When Cabinet takes this action, the new regulation is deemed to be a regulation of the Board.

## C. Jurisdictional Comparison

BC is unique in Canada in that it is the only jurisdiction in which the Board has the authority to make and approve occupational health and safety regulations. This authority has existed since 1916. A table outlining the regulation making authority in the other jurisdictions is provided in Appendix F.

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<sup>61</sup> For the regulatory amendment requests considered by WorkSafeBC over the period 2004-2014, the majority of the requests came from internal WorkSafeBC divisions.

<sup>62</sup> The PPCC is made up of representatives from WorkSafeBC and the employer and worker communities. The committee provides input and advice to WorkSafeBC's senior executive on issues such as the scope and method of public consultation on policy and regulation matters and WorkSafeBC's strategies and policy and regulatory priorities. The PPCC's role is also to receive updates on key issues and share relevant information with their communities.

In Newfoundland, the Northwest Territories/Nunavut, Prince Edward Island, and Quebec, the Board/Commission has the authority to make occupational health and safety regulations. However, in these provinces, regulations are subject to approval by the Government/Cabinet.

In all of the other jurisdictions in Canada, only the Lieutenant Governor or Commissioner in Council has the authority to make occupational health and safety regulations.

BC is also the only jurisdiction in Canada that amends its OHS regulations on an annual basis. Alberta, Saskatchewan, and Manitoba have a five year cycle to conduct a large scale review and update of their regulations; however, immediate changes may be considered where a critical issue arises. Nova Scotia also reviews its regulations every five years, but the review does not always result in amendments.

Ontario, Quebec, Newfoundland, and New Brunswick do not have fixed review cycles but instead amend the regulations as necessary. These jurisdictions have technical committees that continuously review the regulations and recommend amendments.

The Yukon and Prince Edward Island do not review or amend their regulations according to a schedule but instead make amendments as necessary.

The Northwest Territories and Nunavut are currently in the midst of a nine year project to review their regulations.

## D. Gaps

Having the regulatory making function rest with WorkSafeBC is advantageous in several ways. The regulations have the input of those with the appropriate expertise, the process is nimble, and the development of the regulations is at arm's length from the political process.

There are also some possible disadvantages to WorkSafeBC developing the OHS regulations.<sup>63</sup> There could also be a perception that WorkSafeBC does not consider its regulatory making authority from the broader public interest perspective in the same way as government.

Although the regulatory development process provides stakeholders with the opportunity to provide feedback at several stages (i.e. pre-consultation, public consultation, and public hearing), stakeholders have advised that they would like to have more input into the process. Specifically, they have requested advance notice of priorities for the OHS regulatory agenda so that they can ensure they have the appropriate resources lined up to

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<sup>63</sup> Some of the advantages and disadvantages listed in this section were discussed in Winter's 2002 [Core Services Review of the Workers' Compensation Board](#).

provide meaningful feedback; this would also provide industry and labour stakeholders with the opportunity to bring forward ideas for regulatory amendment rather than simply providing feedback.

## E. Observations

One of the specific tasks set by the Minister was to look at the merits of, and best practices relating to, the separation of the enforcement and regulation functions in workers' compensation boards. This review has led to the conclusion that WorkSafeBC should maintain the authority to develop OHS regulations. Having the OHS regulation making authority vested in the same organization that handles workers' compensation and OHS enforcement provides access to valuable information. WorkSafeBC has experience dealing with occupational injuries, diseases, and fatalities and is therefore in the best position to create regulations that will prevent or reduce these incidents. WorkSafeBC also has the technical expertise to develop OHS regulations that are appropriate for workplaces.

There are further advantages to WorkSafeBC making the OHS regulations. WorkSafeBC is unique in its requirement for members of the Board of Directors to have specific skills. This helps ensure decisions on regulatory amendments are well reasoned and informed.

WorkSafeBC's regulatory amendment process is nimble and efficient, which allows for regulatory issues to be dealt with in a timely fashion. The process is open and transparent, as it involves extensive consultation with stakeholders. By the time new regulations are introduced, stakeholders have had several opportunities to review and comment on the proposals, which ensures that regulatory amendments are clear and implementable.

Stakeholders are generally supportive of WorkSafeBC having the authority to make regulations and of the current regulatory amendment process. Having WorkSafeBC make OHS regulations is viewed by stakeholders as a politically independent process that allows the focus to remain on workplace safety. Stakeholders would, however, like to have more input into the setting of OHS regulatory priorities.

## F. Recommendations

- i. **WorkSafeBC should retain the ability to develop and approve OHS regulations.**
- ii. **Enhance industry and labour involvement in the setting of regulatory priorities.**
  - WorkSafeBC should make an effort to set its regulatory priorities 12 to 24 months in advance of developing amendments. Doing so would provide an opportunity for meaningful consultation with stakeholders on regulatory priorities and would enhance the ability of stakeholders to provide input into the setting of these priorities.

- In adopting these recommendations, WorkSafeBC should ensure that it retains the ability to address unanticipated or urgent situations, while not sacrificing key steps in the regulatory development process.
- External stakeholders should also be provided with a clear channel for submitting requests for regulatory amendments to WorkSafeBC.

**iii. WorkSafeBC should update and publish its OHS workplans annually to increase transparency and improve stakeholder involvement.**

- Once finalized and approved by the BOD, the regulatory amendment workplan should be posted on WorkSafeBC's website so that it is easily accessible to stakeholders.

## 12 – Education, Consultation, and Proactive Compliance

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### A. Education and Consultation

WorkSafeBC actively engages and supports education and training initiatives to build knowledge, capacity, and awareness of occupational health and safety (OHS), with the goal of reducing injuries, diseases, and fatalities.

A key part of the role of Prevention Officers is to consult with employers and workers on occupational health and safety issues as they carry out their workplace safety inspections. Additionally, WorkSafeBC staff may be asked to provide educational presentations to employers, workers, and industry and labour associations.

Prevention Officers are supported by the team in Industry and Labour Services (ILS) who work with external partners to develop industry-specific safety associations, promote best practices in occupational health and safety, and build strategic partnerships to address major health and safety issues. ILS produces educational material on a variety of safety issues and best practices; these materials come in many forms including videos, books (including e-books), slide shows, safety bulletins, and brochures. ILS also produces tools to help employers improve their health and safety performance. A relatively new tool is the Employer Safety Planning Toolkit, which is an online tool that allows employers to view their own performance data, analyze their performance, and target specific areas for improvement. The toolkit leads employers through their organization's data (claim types, volumes, and costs) and allows them to compare their safety performance and insurance costs with others in their industry.

WorkSafeBC tailors its educational product offerings depending on industry, employer size, and language requirements. Safety materials have been developed for small businesses and for and with specific industries such as retail, hospitality and agriculture.

### B. Proactive Compliance

Education and consultation are just as important as enforcement tools in helping to bring employers and workers into compliance with OHS requirements. A first step in achieving proactive compliance is ensuring that employers and workers are equipped with the information and knowledge required to understand and meet their OHS obligations.

Employers and workers are increasing their uptake of educational tools to help guide their behaviours. WorkSafeBC and/or its partners should continue to expand the suite of educational products and services to address OHS issues and to better inform stakeholders.

## C. Recommendation

- i. WorkSafeBC should continue to put a priority on education and proactive compliance and provide resource allocations accordingly.

## 13 – Enforcement

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### A. History of WorkSafeBC's Enforcement Powers

The 1916 *Workmen's Compensation Act*<sup>64</sup> granted the Board the power to enforce occupational health and safety regulations. The Board was given the power to impose fines, up to a statutory maximum, for breach of the accident prevention regulations. From 1918 to 1968, the Board's powers were amended and expanded; the Board was granted the power to issue stop work orders and was given a new form of monetary sanctions applicable to employers.<sup>65</sup> The 1968 *Workmen's Compensation Act*<sup>66</sup> and the 1974 *Workers' Compensation Act*<sup>67</sup> continued the Board's power to issue orders and directions specifying requirements for the prevention of workplace accidents and industrial diseases.

In 1998, Part 3 of the *Workers Compensation Act (WCA)* was enacted and provided the current enforcement tools.

### B. WorkSafeBC's Current Enforcement Tools

The methods available to the Board for enforcing compliance with the health and safety provisions of the *WCA* and Occupational Health and Safety Regulation (OHSR) include orders, stop use orders, stop work orders, warning letters, administrative penalties, court injunctions, and prosecution of offences in court. A description of each of these tools is provided below.

It must be noted that these enforcement tools are not used equally. Orders are by far the most frequently used tool to bring workplace parties into compliance with occupational health and safety (OHS) requirements. A table outlining the frequency with which these tools are used is provided in Appendix G.

#### i. Orders

Where officers find violations of Part 3 of the *WCA* or of the OHSR during an inspection, they may issue orders to the responsible person to remedy the situation. This is done under section 187 of the *WCA*, which gives the Board broad authority to make orders to carry out matters regulated by Part 3 or by the OHSR. This authority includes the power to make orders:

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<sup>64</sup> S.B.C. 1916, c. 77.

<sup>65</sup> The Board was granted the power to levy and collect from the employer half of the compensation payable in respect of a worker's injury, up to a set maximum, if the worker's injury was due entirely to the employer's failure to comply with Board directions or the Board's accident prevention Regulations.

<sup>66</sup> S.B.C. 1968, c. 59.

<sup>67</sup> S.B.C. 1974, c. 101 (proclaimed in effect July 1, 1974).

- establishing standards and requirements to be adopted in a workplace to prevent accidents, injuries and illnesses;
- specifying measures that a person must take to ensure compliance;
- requiring an employer to obtain tests or assessments, and provide these results to the Board;
- requiring an employer to install and maintain first aid equipment;
- requiring posting of orders as directed by an officer; and
- doing any other thing the Board considers necessary for the prevention of accidents, injuries and illnesses.

The Board may also order the suspension or cancellation of any certificate issued under the *WCA*, namely a first aid or a blasting certificate.<sup>68</sup>

The content and process requirements relating to orders are set out in section 188 of the *WCA*. Orders are normally issued to employers and may include a requirement that an employer prepare a compliance report.<sup>69, 70</sup> An order may also be issued to a worker (commonly called an order to worker or OTW) and to any other person with responsibilities under the *WCA*.<sup>71</sup>

Where an officer finds a violation of the same section of Part 3 of the *WCA* or of the OHSR on more than one occasion, the officer may issue a repeat order. Repeat orders, among other factors, may be taken into account when determining whether to impose an administrative penalty.

A workplace party can request a review of an order imposed under Part 3 or of an officer's decision not to write an order.<sup>72</sup> The decision of the Review Officer is final.

## ii. Orders to Stop Use or Supplying

An officer may issue an order to stop the use of a thing (e.g. tool, appliance, equipment) that is being used by a worker or may be used by a worker if the officer has reasonable grounds for believing it is not in safe operating condition or does not comply with Part 3 of the *WCA* or the OHSR. An officer may also issue an order to a supplier to stop supplying an item that the officer has reasonable grounds to believe is not in safe operating condition or is non-compliant.<sup>73</sup> Stop use orders do not have a time limit, but can be cancelled once WorkSafeBC is satisfied that the equipment is safe.

<sup>68</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 195.

<sup>69</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 194.

<sup>70</sup> The compliance report must specify what has been done to comply with the order and, if compliance has not been achieved at the time of the report, a plan of what will be done to comply.

<sup>71</sup> WorkSafeBC's policy on orders is set out at Items [D12-187-1](#) and [D12-188-1](#) of the Prevention Manual.

<sup>72</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 96.2(1)(c).

<sup>73</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 190.

### iii. Orders to Stop Work

If the Board has reasonable grounds to believe that an immediate danger exists that would likely result in serious injury, illness, or death to a worker, it may order work at the workplace, or any part of it, to stop until the situation is remedied and the order is cancelled.<sup>74</sup> A stop work order must be in writing and expires within 72 hours, unless the Vice President, Prevention Services authorizes an extension in writing. The employer must continue paying workers affected by the shut down for a minimum of three days while the stop work order is in effect.<sup>75</sup>

In considering whether there are reasonable grounds for an initial order, the officer will consider his or her own observations, knowledge, and experience regarding the situation along with any advice and assistance that may be immediately available. An officer may need to make a quick decision, without the benefit of a full inquiry, in order to avoid the potential for immediate danger. If the Board wishes to confirm the order beyond the initial 72-hour period, it may make additional inquiries. At that point, new information might be received that affects the decision as to whether there are reasonable grounds for continuance of the order.<sup>76</sup>

### iv. Warning Letters

Where there has been a violation of Part 3 of the WCA or the OHSR, WorkSafeBC may send the employer a warning letter.<sup>77</sup> The authority for issuing a warning letter is provided by OHS policy.<sup>78</sup> Warning letters are intended to motivate employers to comply with the WCA and the OHSR by informing the employer that further similar violations could result in an administrative penalty. WorkSafeBC may send a warning letter when the criteria for imposing an administrative penalty have been met, and an employer has failed to exercise due diligence.

When considering the appropriateness of a warning letter, some of the factors WorkSafeBC may consider are

- the potential for serious injury, illness or death in the circumstances; and
- the likelihood that a warning letter will be sufficient to motivate the employer to comply in the future.

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<sup>74</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 191.

<sup>75</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 192.

<sup>76</sup> WorkSafeBC, Prevention Manual Policy Item [D12-191-1](#), “Orders – To Stop Work” (1 October 1999).

<sup>77</sup> A warning letter can be used as an alternative to imposing an administrative penalty, however there is no requirement that a warning letter be sent prior to imposing a penalty.

<sup>78</sup> WorkSafeBC, Prevention Manual Policy Item [D12-196-11](#), “OHS Warning Letters” (1 May 2013).

A warning letter will not ordinarily be issued where the employer has already received a warning letter, has received a penalty, or has been prosecuted for the same or similar violations. Warning letters are normally sent by a Regional Prevention Manager.

## **v. Administrative Penalties**

Where an order or warning letter is considered insufficient to obtain compliance with the *WCA* or *OHSR*, the usual means of enforcement is the levying of an administrative penalty against an employer.<sup>79</sup> The *WCA* only allows for an administrative penalty to be imposed on an employer. A penalty cannot be imposed on workers or other workplace parties.

WorkSafeBC may impose an administrative penalty against an employer where it considers that

- the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses;
- the employer has not complied with Part 3 of the *WCA*, the *OHSR*, or an applicable order; or
- the employer's workplace or working conditions are not safe.<sup>80</sup>

However, an administrative penalty cannot be imposed if the employer exercised due diligence to prevent the circumstances listed above.<sup>81</sup>

Administrative penalties are imposed by WorkSafeBC officers with the assistance of Investigations Legal Officers (ILO) within Investigation Services. Where an officer finds that an administrative penalty is warranted, per the requirements of the *WCA* and the applicable policy, the officer will prepare a Recommendation for Sanction (RFS) package. The RFS package is referred to an ILO for review. If the ILO finds the RFS package is complete and accurate, the ILO will calculate the amount of the penalty and send the information to the officer. The officer will then prepare a penalty order and issue it to the employer.<sup>82</sup>

This vetting process was instituted in 2003 to reduce the incidence of penalty orders being overturned on review or appeal. The process is in place to ensure legal issues are

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<sup>79</sup> Administrative penalties are imposed outside of the court system. Administrative penalties allow certain entities to levy civil financial penalties against persons for regulatory violations without the need to engage the formal court process.

<sup>80</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 196(1).

<sup>81</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 196(3).

<sup>82</sup> ILO legal advice is provided in advance of an administrative penalty ordered being issued, but Board officers and managers are not required to follow that advice when confirming the decision to issue an administrative penalty. Legal advice is provided prior to sign-off by a Regional Prevention Manager, but other levels of Board management can become involved in the penalty decision process.

addressed prior to a penalty order being imposed. For example, section 196(3) states that an administrative penalty must not be imposed if the employer exercised due diligence. As part of their review of the RFS, ILOs assist officers in considering whether the employer exercised due diligence to ensure that a penalty is not imposed where prohibited by the *WCA*.

If an administrative penalty is imposed on an employer, the employer may request a review of the penalty.<sup>83</sup> The decision of the Review Officer may be appealed to the Workers' Compensation Appeal Tribunal.<sup>84</sup>

### ***Policy Background***

OHS policy D12-196-1 ("Penalties – Criteria for Imposing") identifies circumstances when officers will consider penalties, such as high risk violations, prior violations, failure to comply with a previous order, and knowing or reckless disregard of OHS requirements. Additional factors that WorkSafeBC will consider in deciding whether to impose an administrative penalty are also set out in policy and include

- whether the employer has an effective, overall program for complying with the *WCA* and the OHSR;
- whether the violations or other circumstances have resulted from the independent action of workers who have been properly instructed, trained and supervised;
- the potential seriousness of the injury or illness that might have occurred, the number of people who might have been at risk, and the likelihood of the injury or illness occurring;
- the past compliance history of the employer;
- the extent to which the employer was aware or should have been aware of the hazard or that the *WCA* or OHSR were being violated;
- the need to provide an incentive for the employer to comply; and
- whether an alternative means of enforcing the regulations would be more effective.

An administrative penalty commonly follows a warning letter for a previous violation, but a penalty may be applied without a prior warning letter if the circumstances of the violation warrant it, such as where there has been a high risk violation or a violation has resulted in a serious injury or illness.

OHS policy D12-196-2 ("Penalties – High Risk Violations") sets out how WorkSafeBC determines whether a violation is high risk. A "high risk" determination affects whether a penalty or warning letter can be issued, the amount of the penalty, and whether WorkSafeBC may issue a discretionary penalty that departs from the standard payroll-based penalty amounts. The current policy provides criteria to determine whether a

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<sup>83</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 96.2(1)(c).

<sup>84</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 239.

violation is high risk. The policy also contains a list of 11 items that are presumed to be high risk in the absence of evidence to the contrary. WorkSafeBC is currently in the process of amending this policy to clarify and simplify the criteria for determining if a violation is high risk. The proposed amendments would also replace the current list of presumed high risk violations with six circumstances in which violations will be designated as high risk. WorkSafeBC is conducting public consultation on the proposed amendments to its high risk policy in the summer of 2014.

OHS policy D12-196-3 (“Penalties – Prior Violations and Orders”) provides guidance on considering an employer’s history of prior violations when deciding whether to impose an administrative penalty. The policy states that violations at one of several locations of a firm will normally be considered as though that location were the firm’s only location; however, violations at more than one location may be considered together if they result from a failure of the firm’s overall program of compliance with OHS requirements. The policy also provides that, when an employer’s claims experience rating is transferred to a successor firm under assessment policy, the employer’s OHS history is carried over as well. This affects whether violations are treated as repeat violations when considering a penalty.

OHS policy D12-196-4 (“Penalties – Authority to Impose”) sets out the ways in which WorkSafeBC may impose financial penalties if an employer does not comply with OHS requirements. WorkSafeBC has the authority, under the *WCA*, to impose an administrative penalty under section 196(1); collect a claims cost levy under section 73(1)<sup>85</sup>; and/or impose a special rate of assessment under section 160(b)<sup>86</sup>.

OHS policy D12-196-10 (“Penalties – Due Diligence”) discusses due diligence. Section 196(3) of the *WCA* provides that an administrative penalty must not be imposed if the employer exercised due diligence to prevent the failure, non-compliance, or conditions to which the penalty relates. Currently, WorkSafeBC interprets this language as putting the onus of determining due diligence on WorkSafeBC. The policy provides information on how WorkSafeBC determines whether the employer exercised due diligence.

WorkSafeBC is currently in the process of reviewing its OHS policies on penalties. WorkSafeBC recognizes that some aspects of the current policies are confusing and unduly complicated and may be hindering the penalty process.

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<sup>85</sup> Under certain circumstances, section 73(1) of the *WCA* allows WorkSafeBC to levy and collect from an employer the amount of compensation that was payable in respect of the injury, death, or disablement of a worker of that employer.

<sup>86</sup> A special rate of assessment can only be imposed where the employer fails, neglects, or refuses to install or maintain first aid equipment or service required by the OHSR or by an order of the Board.

### *Amount of Penalty*

Amounts of administrative penalties are determined under OHS policy D12-196-6 (“Penalties – Amount of Penalty”).

The maximum administrative penalty that can be imposed is currently \$607,297.58.<sup>87</sup> The formula for calculating penalties is set out in policy and is based on the payroll of an employer and the nature of the offence.<sup>88</sup> The policy divides penalties into Category A and B. Category A applies where there is a serious injury or illness or death, a high risk of serious injury or illness or death, or non-compliance was wilful or with reckless disregard. Any other violations are Category B (e.g. repeat violations or failure to comply with an order in a timely manner). The basic amount of the penalty is determined on the basis of the employer’s assessable payroll for the full calendar year immediately preceding the year in which the incident giving rise to the penalty occurred.

For repeat penalties (i.e. violations that are the same or substantially similar to prior violations that occurred within three years), the basic amount is multiplied by set factors ranging from two to 24. The Policy also provides that these penalty amounts may be varied upwards or downwards by up to 30%, having regard to the circumstances and the following factors:

- the nature of the violation;
- the nature of the hazard created by the violation;
- the degree of actual risk created by the violation;
- whether the employer knew about the situation giving rise to the violation;
- the extent of the measures undertaken by the employer to comply;
- the extent to which the behaviour of other workplace parties contributed to the violation;
- employer history;
- whether the financial impact of the penalty would be unduly harsh in view of the employer’s size; and
- any other factors relevant to the particular workplace.

Discretionary penalties (not based on payroll) can be imposed in exceptional circumstances and with the approval of WorkSafeBC’s President. Discretionary penalties may only be applied when all of the following apply:

- the violation was high risk;
- the violation was committed willfully or with reckless disregard; and
- the violation caused death or serious impairment.

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<sup>87</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 25.2, 196(2); BC Workers Compensation Board, [Board Minute](#) (November 27, 2013). The maximum is adjusted each year in line with consumer price index adjustments.

<sup>88</sup> WorkSafeBC, Prevention Manual Policy Item [D12-196-6](#), “Penalties – Amount of Penalty” (2 January 2010).

The maximum discretionary penalty is \$250,000 if one worker is affected or any amount up to the statutory maximum (i.e. \$607,297.58) if multiple workers are affected and the employer has shown systematic disregard for worker safety. The threshold for imposing discretionary penalties is very high due to the prevailing interpretation of wilful and reckless disregard<sup>89</sup> and the number of other factors that must be present.

WorkSafeBC may impose a claims cost levy in addition to a penalty where a violation caused an injury, death, or disablement that was due substantially to gross negligence of an employer; the failure of an employer to adopt reasonable means for the prevention of injuries, deaths, or occupational diseases; or the failure of an employer to comply with the orders or directions of the Board or with the OHSR.<sup>90</sup> The maximum amount that can be levied is the total cost of the claim or \$52,221.94, whichever is lower.<sup>91</sup> Generally, claim cost levies are used when a penalty alone would have insufficient deterrent effect.

As with the other penalty policies, WorkSafeBC has identified issues with the penalty amounts policies (D12-196-6 and D24-73-1) and is planning to undertake a review of the policies. A major issue with the penalty amounts policies is that the current payroll tables stop at \$10.4 million in payroll, resulting in a maximum base penalty of \$75,000 (subject to variation). The effect of this is that employers with payrolls as high as \$1 billion would receive the same penalty as an employer with \$10.4 million in payroll.

## vi. Injunctions

Injunctions can be used to achieve compliance with an order or an obligation under Part 3 of the *WCA* or the OHSR. The *WCA* provides that WorkSafeBC may apply to the court for an injunction restraining a person (which includes corporate and individual employers, owners, supervisors, suppliers, and workers, etc.) from continuing or committing a contravention or requiring a person to comply with Part 3 of the *WCA*, the OHSR, or an order.<sup>92</sup> When WorkSafeBC applies to the court for an injunction, the court decides whether or not to grant it. The court may grant the injunction if it is satisfied that there are reasonable grounds to believe that a person has contravened or has not complied or is likely to contravene or not to comply.<sup>93</sup>

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<sup>89</sup> Appeal decisions generally define wilful and reckless disregard as wanton or reckless conduct, which is a very high standard.

<sup>90</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 73(1) and Prevention Manual Policy Item D24-73-1, "Imposition of Levies – Charging of Claim Costs."

<sup>91</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 73(1).

<sup>92</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 198.

<sup>93</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 198(1).

An injunction may be granted without notice if it is necessary to do so in order to protect the health or safety of workers.<sup>94</sup> WorkSafeBC may seek an injunction alone, or in concert with other tools such as an administrative penalty or prosecution.<sup>95</sup>

If a person fails to comply with an injunction and is found to be in contempt of court, they may face a fine, jail sentence, or other terms imposed by the court.

WorkSafeBC has set out in policy some of the circumstances in which it may consider applying for an injunction.<sup>96</sup> Those circumstances include

- failure to comply with a stop work order;
- failure to comply with an order to stop using or stop supplying unsafe equipment;
- failure to comply with any other order; and
- repeated violations of the same, or similar, sections of the WCA or OHSR.

The policy also sets out factors to consider in determining the necessity and appropriateness of pursuing an injunction, which include

- the level of risk that might result from further non-compliance;
- the impact of the non-compliance on WorkSafeBC's ability to carry out its health and safety mandate; and
- the effectiveness of other tools to obtain compliance in the circumstances.

In comparison to other enforcement tools (e.g. administrative penalties and prosecutions), injunctions have the advantage of timeliness and broad application. If necessary, an injunction can be obtained quickly and can apply both to individuals and to corporations.<sup>97</sup> The injunction itself and the need to appear before the court may result in a higher level of compliance than from a WorkSafeBC order alone. A further advantage is that non-compliance with an injunction (contempt of court) can be dealt with fairly quickly and can result in significant consequences, including fines or jail. However, injunctions are used quite rarely.<sup>98</sup> WorkSafeBC typically only uses injunctions when other remedies, such as penalties, have been unsuccessful in getting compliance.

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<sup>94</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 198(2).

<sup>95</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 198(3).

<sup>96</sup> WorkSafeBC, Prevention Manual Policy Item [D12-198-1](#), "Occupational Health and Safety Injunctions" (1 December 2011).

<sup>97</sup> Since section 198 applies to a person, the person subject to the injunction cannot avoid the effect of the injunction by starting up a new company or joining another company.

<sup>98</sup> WorkSafeBC, Prevention Manual Policy Item [D12-198-1](#), "Occupational Health and Safety Injunctions" (1 December 2011).

## vii. Prosecutions

Prosecutions for offences in the courts are conducted under Division 15 of the *WCA*. Any person (which includes corporate and individual employers, owners, supervisors, suppliers, and workers, etc.) who contravenes a provision of Part 3 of the *WCA*, the OHSR, or an order commits an offence.<sup>99</sup> The decision to proceed to prosecution must have leave of the Board but is made by the Crown prosecutor in the Criminal Justice Branch.<sup>100</sup> An employer cannot be prosecuted under the *WCA* if an administrative penalty has been imposed on the employer for the same violation.<sup>101</sup>

As with administrative penalties, a defence of due diligence is available regarding offences.<sup>102</sup>

For a first offence, individuals and corporations are liable upon conviction to a fine of up to \$664,662.65 per contravention, and to a further fine in the case of a continuing offence of up to \$33,233.16 for each day or part of day that the offence continues; six months in jail; or both fines and imprisonment. For a subsequent offence, they are liable to a fine of up to \$1,329,325.28 per contravention, with a further fine in the case of a continuing offence of up to \$66,466.27 for each day or part of day that the offence continues; one year in jail; or both fines and imprisonment.<sup>103</sup>

The court also has discretion to make additional orders on conviction. If the offender benefited monetarily from the offence, the court can require an additional fine equal to that benefit.<sup>104</sup> The court also has the power to order creative sentencing, such as an order for community service or a payment for OHS research or public education.<sup>105</sup> As well, under the *Offence Act*, a court can order probation instead of, or in addition to, a fine or imprisonment.<sup>106</sup>

Prosecutions are also available under the *Criminal Code*, particularly for negligence of a corporation and its directors and officers per the Westray amendments.

WorkSafeBC pursues few prosecutions primarily because of the availability of significant administrative penalties under the *WCA*. However, penalties are only available against employers. They are not applicable if the violator is an independent operator with no employees, a worker, or some other person who is not an employer. Furthermore,

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<sup>99</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 213.

<sup>100</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 214(2).

<sup>101</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492 s. 196(7).

<sup>102</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 215.

<sup>103</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 25.2, 217. As with the administrative penalty amounts, the amount of offence fines is adjusted each year. These numbers are as of January 1, 2014.

<sup>104</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 218.

<sup>105</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 219.

<sup>106</sup> [Offence Act](#), R.S.B.C. 1996, c. 338, ss. 89-89.6

prosecutions result in increased publicity or have other consequences that may make them a more effective sanction in some circumstances.

## C. Jurisdictional Comparison

Other jurisdictions employ similar enforcement tools to BC, and many have additional tools that are not available in BC. A table outlining the enforcement tools available in each of the other Canadian jurisdictions is provided in Appendix H.

### i. Compliance Orders

All of the jurisdictions across Canada have provisions that allow them to issue compliance orders to workplace parties where there has been a violation of the OHS provisions of their respective Acts or regulations.

### ii. Orders to Stop Use or Supplying

Most of the other jurisdictions have similar provisions to BC to allow officers to issue orders to stop the use of unsafe equipment, tools, appliances, products, etc.<sup>107</sup> Several of these jurisdictions also allow officers to issue orders to stop suppliers from supplying unsafe items.<sup>108</sup>

### iii. Orders to Stop Work

The legislation in all of the other jurisdictions in Canada allows officers to issue stop work orders. As in BC, most of the jurisdictions state that a stop work order may be issued where there is a contravention of the OHS legislation that poses a risk to the health or safety of workers.

Several provinces have less restrictive stop work provisions than BC.<sup>109</sup> For example, Alberta, Ontario, and Quebec's provisions for ordering stoppage of work do not contain the same language around immediacy of the danger or likelihood of injury found in BC. In Alberta, work can be stopped simply if it is being carried out in a manner that is unhealthy or unsafe, and a worksite can be closed if there is a danger to health or safety.<sup>110</sup> In Ontario, a stop work order can be issued where a contravention poses a danger or hazard to the health or safety of worker. In Quebec, work may be shut down if an inspector considers a worker's health or safety is endangered.

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<sup>107</sup> The exceptions are Manitoba and Saskatchewan.

<sup>108</sup> These are Alberta, Manitoba, New Brunswick, Newfoundland & Labrador, Nova Scotia, Quebec, Saskatchewan, and Canada (federal).

<sup>109</sup> Alberta, Saskatchewan, New Brunswick, Ontario, and Quebec.

<sup>110</sup> [Occupational Health and Safety Act](#), R.S.A. 2000, c. O-2, ss. 9, 10.

Stop work orders are issued with much greater frequency in these jurisdictions than in BC. In 2012, 70 stop work orders were issued in BC, while Alberta issued 1,193, Ontario issued 8,438, and Quebec issued 4,887. BC's stop work tool is heavily constrained by the requirement that the danger must be immediate.

#### iv. Warning Letters

No other jurisdiction has a compliance tool equivalent to BC's warning letters. Alberta does allow officers to issue an immediate verbal compliance directive where work is being carried out in a manner that does not meet the requirements of the legislative standard or is unsafe to workers on site, and the employer agrees to comply and is able to achieve compliance immediately.<sup>111</sup> Unlike BC's warning letters, which are an alternative to imposing an administrative penalty, a verbal compliance directive is an alternative to issuing a written compliance order.

#### v. Administrative Penalties

Currently, four other jurisdictions besides BC use administrative penalties for OHS violations: Alberta<sup>112</sup>, Manitoba<sup>113</sup>, Nova Scotia<sup>114</sup>, and the Yukon<sup>115</sup>. Unlike BC, in these four jurisdictions, all persons governed by the legislation are subject to administrative penalties.<sup>116</sup>

In all four jurisdictions, administrative penalties may be imposed where anyone subject to the legislation fails to comply with the provincial health and safety Act or regulations or with an order. In Alberta, Nova Scotia, and the Yukon, penalties may be imposed by officers while in Manitoba, penalties are imposed by the Director of the Workplace Safety and Health Branch<sup>117</sup>.

As in BC, the amount of the penalty will depend on the circumstances of the contravention. The maximum penalty that can be imposed for a first offence is \$10,000 in Alberta<sup>118</sup>, \$5000 in Manitoba<sup>119</sup> and the Yukon<sup>120</sup>, and \$2000 in Nova Scotia<sup>121</sup>.

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<sup>111</sup> Government of Alberta, Occupational Health and Safety Operational Procedure [Policy Item L-01a, "Compliance Policy and Enforcement Procedures"](#) (12 September 2013).

<sup>112</sup> [Occupational Health and Safety Act](#), R.S.A. 2000, c. O-2, s. 40.3. Administrative penalties in Alberta are very new; the amendments came into effect on October 1, 2013.

<sup>113</sup> [Workplace Safety and Health Act](#), C.C.S.M., c. W210, s. 53.1.

<sup>114</sup> [Occupational Health and Safety Administrative Penalties Regulation](#), N.S. Reg. 291/2009, s. 4.

<sup>115</sup> [Occupational Health and Safety Act](#), R.S.Y. 2002, c. 159, s. 45(1).

<sup>116</sup> This includes corporate and individual employers, owners, supervisors, contractors, suppliers, self-employed persons, and workers/employees.

<sup>117</sup> [Workplace Safety and Health Act](#), C.C.S.M., c. W210, s. 53.1(2).

<sup>118</sup> [Occupational Health and Safety Act](#), R.S.A. 2000, c. O-2, s. 40.3(3).

<sup>119</sup> [Workplace Safety and Health Act](#), C.C.S.M., c. W210, s. 53.1(4).

<sup>120</sup> [Occupational Health and Safety Act](#), R.S.Y. 2002, c. 159, s. 45(1)(a).

<sup>121</sup> [Occupational Health and Safety Administrative Penalties Regulation](#), N.S. Reg. 291/2009, ss. 5-6.

## vi. Injunctions

Currently, injunctions are available to enforce compliance with OHS legislation in British Columbia, Alberta, Ontario, Prince Edward Island, the Yukon, and under the federal regime (Canada). In these jurisdictions, the relevant authorities may apply to the court for an injunctive order requiring persons to comply with an OHS order, and/or restraining persons from contravening the OHS Acts or regulations. It is the court's decision whether or not to grant an injunction.

The specific conduct or contraventions for which injunctions may be used varies across these jurisdictions. Generally speaking, injunctions ensure compliance or restrain contraventions of OHS statutes, OHS regulations, OHS orders, or some combination of these three things. In the Yukon, injunctions are available to enforce compliance with both the Act and regulations.<sup>122</sup> Under the federal regime, injunctions may be used to enforce compliance with the OHS provisions of the Act only.<sup>123</sup> In Alberta, Ontario, and Prince Edward Island, on the other hand, injunctions are available to enforce compliance with OHS orders; in Alberta, injunctions may be used to enforce compliance with any order made under the Act,<sup>124</sup> whereas in both Ontario<sup>125</sup> and Prince Edward Island<sup>126</sup> injunctions are available only with respect to stop work and stop use orders.

## vii. Prosecutions

Prosecutions are an enforcement tool for OHS offences in all of the provinces, territories, and under the federal regime.

In addition to fines and/or imprisonment (except for Quebec, where jail for individual offenders is not available), just over half of the jurisdictions grant the court some discretion to also impose creative sentences (as in BC). Where a person is convicted of an OHS offence in Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and Quebec, the courts may supplement or substitute the fines imposed with creative sentencing orders. Examples of creative sentencing are an order for community service or payments for OHS research or public education.

## viii. Ticketing

Tickets are on-the-spot penalties given out following an infraction of the law. Tickets are a subset of prosecutions; where ticketing is available, it is simply an alternative means of prosecuting certain OHS offences. When an offender receives a ticket, they

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<sup>122</sup> [Occupational Health and Safety Act](#), R.S.Y. 2002, c. 159, s. 47.

<sup>123</sup> [Canada Labour Code](#), R.S.C. 1985, c. L-2, s. 152.

<sup>124</sup> [Occupational Health and Safety Act](#), R.S.A. 2000, c. O-2, s. 42.

<sup>125</sup> [Occupational Health and Safety Act](#), R.S.O. 1990, c. O-1, s. 60.

<sup>126</sup> [Occupational Health and Safety Act](#), R.S.P.E.I. 1998, c. O-1.01, s. 9(2).

may choose to plead guilty by paying the set fine and avoid going to court. The set fines are generally substantially smaller penalties than the maximum that could be levied against the offender if they chose to go to trial and was convicted via the normal court process.

Currently, the Canadian jurisdictions that allow ticketing for certain OHS offences are Ontario, Nova Scotia, Saskatchewan<sup>127</sup>, the Northwest Territories and Nunavut, and Alberta.<sup>128</sup> Ticketing is also used in jurisdictions outside of Canada, such as New South Wales and Victoria. Ticketing is not available in BC.<sup>129</sup>

In the Canadian jurisdictions that allow ticketing, not all OHS offences can be ticketed; tickets can be handed out only for those specific offences prescribed by the respective Acts and regulations. In the Northwest Territories and Nunavut, there are only four narrow OHS offences regarding smoking in the workplace that can be ticketed. The prescribed offences in the other jurisdictions vary, but generally speaking the other jurisdictions have a broader variety of OHS offences that can be ticketed. The tickets are not limited to employers.<sup>130</sup>

The amount of the ticket varies across jurisdictions:

- In Alberta, tickets for employers are \$300 or \$500 and for workers are \$100, \$200, or \$500, depending on the offence.<sup>131</sup>
- In the Northwest Territories/Nunavut, tickets for employers are \$5,750 and for workers are \$575.<sup>132</sup>
- In Nova Scotia, the fines are set at \$462.41 or \$812.41, depending on the type of offence.<sup>133</sup>
- In Ontario, the maximum fine resulting from a ticket or summons is \$1,000,<sup>134</sup> though most violations are subject to a set fine of either \$195 or \$295.<sup>135</sup>
- In Saskatchewan, fines range from \$250 to \$1000 for a first offence.<sup>136</sup>

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<sup>127</sup> Saskatchewan's regulation came into effect on January 1, 2013, but the government is allowing a transition period and it is not until July 1, 2014 that tickets will be issued.

<sup>128</sup> In Quebec, all prosecutions for provincial offences are initiated by tickets-like forms called a "statement of offence". However, Quebec's *Code of Penal Procedure* does not distinguish between full form prosecutions and ticket-type prosecutions, therefore they are not included in this discussion.

<sup>129</sup> Under the *BC Offence Act*, only prescribed offences can be ticketed; OHS infractions are not listed as one of the types of offences that can proceed by way of violation tickets: see s. 14 of the *BC Offence Act* and the associated [Violation Ticket Administration and Fines Regulation](#), B.C. Reg. 89/97.

<sup>130</sup> Tickets can also be issued to workers in Alberta; workers and supervisors in Ontario; and workers, supervisors, contractors, owners, suppliers, and self-employed persons in Nova Scotia and Saskatchewan.

<sup>131</sup> Alberta Human Services, [OHS Ticketable Provisions](#) (September 9, 2013). This document summarizes the [Procedures Regulation](#), Alta. Reg. 233/1989, Schedule 2, Parts 13.1 and 13.2.

<sup>132</sup> Northwest Territories & Nunavut Summary Conviction Procedures Regulations, ss. 6-7, Sch. A.

<sup>133</sup> [Summary Offence Ticket Regulations](#), N.S. Reg. 281/2011, note 207, ss. 5(1)(a), 6(1)(a), Sch. 26.

<sup>134</sup> [Provincial Offences Act](#), R.S.O. 1990, c. P.33, s. 12(1).

<sup>135</sup> [Provincial Offences Act](#), R.S.O. 1990, c. P.33, ss. 1 "set fine", 9.

## D. Gaps

### i. Risk-Based Management

Risk-based management protocols have inspection resources deployed on a priority basis to worksites where there is higher risk, potential for serious injury, a history of above normal claims, or a history of non-compliance. A Prevention Officer's work is split between proactive calls and response to complaints. Some officers devote up to 95% of their time to response work. While response work is important, with limited resources and a very large number of worksites, there needs to be a managed balance between these two activities.

### ii. Timeliness of Penalties

Timeliness of penalties enhances both the effectiveness and fairness of penalties. Currently, it takes an average of one year from when an officer finds a contravention of the *WCA* or *OHSR* for a penalty order to be issued. This lack of a timely response to a violation of the *WCA* or *OHSR* lessens the impact of administrative penalties as a tool to motivate compliance and achieve deterrence.

Part of the delay stems from the current vetting process for penalty orders. WorkSafeBC's current process for levying administrative penalties (i.e. an officer prepares a recommendation for sanction that must be reviewed by an Investigations Legal Officer) is cumbersome and time-consuming. As noted above, this process was instituted to help reduce the incidence of these orders being overturned on review or appeal and to ensure legal issues are addressed prior to a penalty order being imposed. While this process was introduced for an understandable reason, it has negatively impacted the effectiveness of penalties as a deterrence tool.

The delay also stems from the legislative requirement to determine if the employer has exercised due diligence prior to imposing a penalty. Section 196(3) of the *WCA* states that an administrative penalty must not be imposed if the employer exercised due diligence. The current interpretation of this section puts the onus on WorkSafeBC to determine if the defence of due diligence exists prior to issuing a penalty order. Review of an employer's due diligence can greatly slow down the penalty process.

In order to be effective, the OHS penalty policies must make the penalty process more consistent and more efficient. However, there are some issues with the current policies that are resulting in challenges with imposing penalties.

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<sup>136</sup> [Summary Offences Procedure Regulations, 1991](#), R.R.S. c. S-63.1 Part 2 of the Appendix, Tables 49 and 50.

### iii. Amount of Penalties

Administrative penalties, when necessary, must have a significant deterrent effect to ensure employers are brought into compliance with OHS requirements. WorkSafeBC must have the ability to issue penalties in amounts that are appropriate to the violation and will have the necessary deterrent effect.

### iv. Collection of Penalties

Where WorkSafeBC imposes an administrative penalty for violations of OHS requirements, it faces the issue of collecting the penalty from the employer. Employers, who sometimes owe hundreds of thousands of dollars, continue to operate their businesses, putting persons at risk and unfairly competing with those employers who follow the *WCA* and OHSR and pay their assessments. The chronic offenders typically operate on the fringe, without assets, with a transient or uneducated labour force, and are virtually judgment proof.

In extreme cases the Board can seek injunctive relief under Section 46 of the *WCA* to have the employer restrained from operating until such time as the assessments are paid. Injunctive relief under section 46 is currently ineffective as it is employer specific. Once the injunction is granted, the person can simply declare bankruptcy and set up an alternate corporate identity and continue to operate. Occupational health and safety penalties are collected as assessments. In some cases, those penalty assessments are never collected.

Section 46 of the *WCA* could be strengthened by having it apply to directors, officers, and persons who are the directing mind of the employer. If individuals were held personally accountable and prevented from operating in an industry, this would prevent situations where wilful, chronic, and reckless violators were able to avoid paying penalties while continuing to operate in BC.

### v. Repeat Offenders and Wilful Non-Compliance

On occasion, WorkSafeBC experiences employers and persons who are flagrant, wilful and serial violators of both the *WCA* and the OHSR. They refuse to pay assessments and penalties. They also put persons at risk by creating environments where injury, disease and death may occur, all the while unfairly competing in the marketplace with those employers who abide by the legislation.

Injunctions are an important enforcement tool that can be used to deal with chronic or wilful non-compliance by employers. However, the disadvantage of the current injunction provision in the *WCA* is that it is situation specific, and therefore, limited in scope. This tool can only be used to restrain a person from committing a violation or to

require a person to comply with the WCA, OHSR, or an order. A stronger response is required to deal with employers who have shown a blatant disregard for occupational health and safety.

## vi. Enforcement Tools for Workers

WorkSafeBC is currently very limited in the enforcement actions it can impose on workers who violate OHS requirements. An order can be written to a worker; however, orders to workers have no real impact or force behind them. No other tools are available to address worker non-compliance.<sup>137</sup>

Administrative penalties can only be issued to employers, not to workers or other workplace parties. This limitation reflects the view that employers are considered to have overall responsibility for the workplace. However, other workplace parties also have responsibilities to ensure their health and safety and that of others. The interim report of the Royal Commission on Workers' Compensation in British Columbia noted that, in order to enhance workplace safety, both employers and workers must be held accountable for safety breaches. The report stated that direct worker accountability through an administrative penalty mechanism was a necessary deterrent against unsafe worker conduct.<sup>138</sup> This recommendation was not implemented when the amendments to WCA were introduced in 1999.

## vii. On-the-Spot Penalties

BC does not currently issue on-the-spot penalties (i.e. tickets or citations) for violations of the WCA or the OHSR. Where a violation is found, WorkSafeBC's only mechanism for imposing a direct financial penalty is the levying of an administrative penalty.<sup>139</sup>

The main elements of an on-the-spot penalty are that notice is provided to a party alleged to have committed an offence and that party is required to pay a fixed monetary penalty. Usually, on-the-spot penalties are issued for violations that are relatively minor and for situations where the circumstances of the breach are clearly defined and the evidence is hard to dispute.

On-the-spot penalties have the advantage of being a highly efficient method for penalizing workplace parties who contravene OHS requirements. They are low cost, quick, and easy to apply in comparison with other ways of achieving prevention

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<sup>137</sup> Workers can be prosecuted for violations of the WCA or the OHSR, however this tool is rarely used.

<sup>138</sup> Royal Commission on Workers' Compensation in British Columbia, *Report on Sections 2 and 3(a) of the Commission's Terms of Reference* (Victoria: October 31, 1997) (Chair: Gurmail Gill), at 72.

<sup>139</sup> Administrative penalties are imposed outside of the court system. Administrative penalties allow certain entities to levy civil financial penalties against persons for regulatory violations without the need to engage the formal court process.

outcomes (such as administrative penalties). These sanctions require minimal resources to achieve outcomes.

In addition, on-the-spot penalties provide an immediate consequence for a contravention of OHS requirements and therefore may have a greater deterrent effect than enforcement tools that require more time to impose. Since the monetary penalty associated with on-the-spot penalties is generally a relatively small amount, there is a suggestion that these sorts of penalties will have a greater impact for individuals and for small businesses; even a relatively small fine will have a greater impact on the financial situation of individuals and small companies than on that of a larger employer. However, there is literature that indicates that relatively small fines can impact larger employers as well. Studies show that citations from an enforcement agency can achieve behavioural change in employers by pointing out the discrepancies between the behaviour of the employer and their legally mandated responsibilities. Furthermore, on-the-spot penalties have been shown to be effective in generating improved safety performance in larger companies because of the potential impact on the company's reputation.<sup>140</sup> This is consistent with Deloitte's research on this issue.<sup>141</sup>

On-the-spot penalties have been shown to be less effective with companies for whom safety is a low priority.

A concern with on-the-spot penalties is that they may have a disproportionate impact on individuals and smaller employers compared to larger employers. The fines associated with a violation would be prescribed in legislation or policy, which may not allow for the amount to be varied according to the circumstances of the offender (e.g. income or ability to pay).

There is also a concern that, due to the ease with which they can be issued, on-the-spot penalties may be overused. For example, officers could immediately move to this sanction in situations where a warning would be effective, or where the focus should be on education/consultation. There is the concern that these sorts of sanctions could be imposed inconsistently by different officers.

### ***OHS Tickets vs. OHS Citations***

If BC were to introduce on-the-spot penalties for OHS violations, this could be done in one of two ways: formal tickets could be issued under the *BC Offence Act* or citations could be issued under section 196 of the *WCA*.

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<sup>140</sup> National Occupational Health and Safety Commission, [\*On-the-spot fines and preventative OHS behaviour – research report\*](#) (January 1, 2000).

<sup>141</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 13-14. See Appendix J.

Under the *BC Offence Act*<sup>142</sup>, only prescribed offences can be ticketed. OHS infractions are not listed as one of types of offences that can proceed by the way of violation tickets. Obtaining the authority to do so would require amendments to the *BC Offence Act*.

If tickets were to be issued under the *Offence Act*, once a ticket was issued by a WorkSafeBC officer, it would become the responsibility of the Crown. Appeals of OHS violation tickets would proceed through the court system. This could result in added burden on the Crown and on the courts, which may mean tickets are not fully prosecuted. This option is not recommended.

WorkSafeBC has the authority, under section 196 of the *WCA*, to impose administrative penalties against an employer. Under this section, WorkSafeBC could impose on-the-spot penalties, called citations, for contravention of the requirements of the *WCA* or of the OHSR. WorkSafeBC does not, however, currently employ citations as an enforcement tool.

Citations would be issued under the *WCA* and would be administered by WorkSafeBC (as opposed to Crown), which would allow WorkSafeBC to retain responsibility for enforcing the citations. Appeals of citations would proceed through WorkSafeBC rather than the court system.

Under the current wording of section 196, citations could only be imposed on employers. The *WCA* does not allow administrative penalties to be imposed on workers or other workplace parties.

### ***Workplace Parties to be Subject to On-the-Spot Penalties***

In considering whether to introduce on-the-spot penalties for OHS violations, consideration must also be given to the workplace parties who should be subject to these penalties. The use of on-the-spot penalties as an enforcement tool could be restricted to employers or could be issued against both employers and workers.

Restricting on-the-spot penalties to employers would be consistent with the principle that the employer has ultimate control of the workplace and is therefore responsible for any OHS violations that occur at the workplace. Employers have the ability to initiate disciplinary procedures against workers who breach safety rules, therefore they could be held responsible even if the OHS violation is committed by the worker. However, this approach would be inconsistent with the view that all workplace parties share in the responsibility for safety at the workplace.

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<sup>142</sup> R.S.B.C 1996, c. 338.

Imposing on-the-spot penalties on the workplace party who committed the violation, whether it is the employer or the worker, would be more consistent with the view that all parties have a responsibility for safety at the workplace. Direct worker accountability through an on-the-spot penalty system would provide an additional deterrent against unsafe worker conduct especially where continued employer efforts to promote safety are ineffective.

### **viii. Restrictions on the Issuing of Stop Work Orders**

WorkSafeBC officers have the ability to issue orders to stop work at unsafe workplaces. These orders have immediate impact and are powerful enforcement tools. However, under the *WCA*, stop work orders can only be issued when there is an immediate danger that would likely result in serious injury, serious illness or death to a worker. The existing provision does not address situations where the danger may not be immediate but poses a high risk of death, serious injury, or serious illness in the future if it continues. The existing provisions also do not address activities that are not limited to one workplace and where a shut down workplace results in a non-compliant employer moving to another location and conducting the same activity (for example, non-compliant asbestos consultants or roofers may work at a variety of worksites and use the same practices at each).

## **E. Observations**

A world class OHS regime takes a risk based approach to enforcement. Inspection and enforcement activities are determined by looking at the compliance history of individual operators and at the regulator's experience with the operator. These activities are focused on those operators who are not complying with their OHS requirements and are creating a high risk to workers.

Leading practices suggest that OHS requirements must be enforced, but enforcement must be balanced. Workplaces must be safe, while the business environment must also be prosperous and sustainable.<sup>143</sup>

Where enforcement tools are necessary, they are intended to compel immediate and sustained compliance with the regulations, together with general and specific deterrence. General deterrence means all workplace parties are aware of their OHS requirements and believe that the consequences for not meeting these requirements are real. Specific deterrence means those who violate their OHS requirements are dealt with firmly and immediately to ensure they quickly move back into compliance. Compliance and deterrence are best achieved when the enforcement tools are meaningful, and any penalties are timely.

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<sup>143</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 6. See Appendix J.

WorkSafeBC has a number of enforcement tools that can be used to motivate compliance with Part 3 of the WCA and the OHSR. However, there are gaps in the spectrum of enforcement tools.

WorkSafeBC requires more tools at the lower end of the spectrum (such as tools to encourage proactive compliance and on-the-spot penalties for some OHS violations). The availability of more tools will help to bring workplace parties into compliance with OHS requirements sooner and without the need to resort to stronger tools. This is supported by the Deloitte report which found that, relative to other jurisdictions, WorkSafeBC officers leverage fewer enforcement tools and mechanisms than their peers.<sup>144</sup>

In addition, the stronger enforcement tools currently available to WorkSafeBC (e.g. stop work orders, penalties, injunctions) should be strengthened to ensure that they serve their purpose as a deterrent for the worst offenders. When it becomes necessary to use these tools, they must have a strong and immediate impact.

When enforcement tools are employed, the tool chosen in a particular circumstance should be the least onerous one that will achieve compliance. Where compliance is not achieved, enforcement activities should be escalated as necessary.

## F. Recommendations

### i. **WorkSafeBC should review its risk-based model for the allocation of work and the setting of priorities with respect to inspection and enforcement activities.**

- Inspection and enforcement activities should focus on high risk activities and individual operators who have a history of being out of compliance with OHS requirements. WorkSafeBC should continue to explore the dangers associated with unaligned risks.
- Managers always need to take a proactive role in setting priorities for the deployment of inspection resources based on risk analysis and strategy. There also needs to be a more strategic approach to the allocation of resources between planned inspections and response work.

### ii. **Develop a hierarchy of enforcement tools.**

- A model should be developed that specifies the escalation of enforcement tools. The tool selected by an officer should be the least onerous one which can be expected to achieve the desired behaviour. Escalation of enforcement should move

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<sup>144</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 19. See Appendix J.

to the next available tool that can be expected to result in compliance; this should not, however, rule out moving one or more steps up the ladder when necessary. The proposed new model for escalation of enforcement tools/activities is as follows:



**Guiding Principle:** *select the least onerous tool expected to achieve compliance*

### iii. Amend the WCA to introduce an Assurance of Compliance (AC) tool.

- Where circumstances permit, and there is no immediate risk to health or safety, there is room for a voluntary undertaking of corrective action. The tool should create a record of both the issue and the outcome. The undertaking must come from a senior level of the organization. This type of tool is used by some other organizations, such as the Canadian Federal Government.<sup>145</sup>
- An AC could be issued by an officer where an employer has violated Part 3 of the WCA or the OHSR but is prepared to make a formal undertaking for corrective action within a specified period of time.
- The AC should detail the infraction and the corrective measures required. The most senior executive or manager present at the time of the infraction should be required to sign the AC. The employer should report to WorkSafeBC on the actions taken to correct the violation within the time period specified in the AC.

<sup>145</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 14. See Appendix J.

- Failure to take the corrective actions agreed to in the AC should result in a repeat inspection and escalation of enforcement as deemed appropriate.
- An AC should only be issued once for a specific infraction within a 12 month period.

**iv. Introduce OHS citations, with escalating fine provisions, to be imposed on employers who violate certain OHS requirements.**

- On-the-spot penalties, in the form of citations, should be introduced. Section 196 of the WCA already allows WorkSafeBC to issue administrative penalties to employers, which can include citations.
- For specified infractions, the fine associated with the citation might be revoked if specified conditions are met within a fixed time period. The employer would be required to provide evidence that the conditions have been met in the form requested. The evidence of compliance should be signed off by the President, CEO, Chair, or majority owner of the business to ensure that health and safety violations come to the attention of, and are dealt with at, the highest levels of management. If the conditions have been met, the monetary fine may be revoked. If the conditions have not been met, the monetary fine must be paid in full.
- For more serious infractions, a citation could be issued which is not revocable. Fixed monetary penalties would be set for each infraction and the amounts would increase with each repeated infraction.
- An OHS enforcement policy should be developed to specify the types of violations that will result in a citation, as well as the amount of the fine.
- An OHS enforcement policy should also be developed to provide guidance on the use of citations as an enforcement tool. The policy should include information on when to issue a warning and when to proceed with a citation. Having a policy in place will help to ensure citations are being applied appropriately and consistently by WorkSafeBC officers.
- The money collected from the citations could be placed into a special fund, such as an education and training fund. This will ensure that citations are not viewed as a revenue raising device.

**v. WorkSafeBC should undertake a consultation process with industry and labour to consider whether a limited citation model should be introduced for workers who fail to wear personal protective equipment. Recognizing the fact that employers have ultimate control over the workplace, the consultation should also consider whether a citation to a worker would trigger an equivalent or larger citation against the employer.**

- Tickets are used as an enforcement tool for workers in other jurisdictions. There is an important concept of shared responsibility for health and safety in the workplace. Personal protective equipment (PPE) is the most fundamental tool for protecting health and safety in the workplace and regulating its use would be comparable to existing regulations for seatbelts and motorcycle helmets.
- Introducing citations against workers would be a controversial concept and would require significant consultation with stakeholders as well as significant policy development to ensure there are appropriate safeguards for workers who are required to do work without PPE. The tool would be intended for workers who have access to PPE and are aware of the requirements but are unwilling to comply.
- If worker citations were to be introduced, this would require an amendment to the WCA. Currently, the WCA does not allow administrative penalties to be imposed on workers.

**vi. Amend the WCA to create three circumstances where stop work orders may be issued.**

- Section 191 of the WCA should be amended to establish three criteria for issuing stop work orders. The first is to address situations where there is danger that is not immediate but involves a high risk of serious consequences. The second is to have a stop work order apply to multiple worksites that are performing the same function in the same way (for example, roofing companies). The third is to escalate enforcement where orders, citations, and/or penalties have been ignored.

**vii. Significantly shorten the timelines for the issuing of administrative penalties.**

- The process for imposing administrative penalties must be revised and streamlined to ensure that penalties are issued within a reasonable period of time after a violation. A maximum time period of six months is proposed.
- The officer who observes a violation should maintain responsibility for the file through to completion. The Investigations Legal Officer's role should be advisory. The officer remains responsible for completing and issuing the penalty order within the permitted time frame.
- WorkSafeBC should institute a performance management system to assess outcomes/performance on penalties. This system should assess the timeliness of completion of the penalty process.
- Section 196(3) of the WCA creates the requirement that WorkSafeBC cannot impose a penalty if the employer has exercised due diligence; the section states "*An administrative penalty must not be imposed under this section if an employer*

*exercised due diligence to prevent the circumstances described in subsection (1)".* WorkSafeBC has interpreted this language to put the onus on the regulator to determine whether due diligence was exercised by the employer before a penalty order can be issued. This adds a significant amount of time to the process of issuing a penalty. The onus for proving due diligence should rest on the employer. It is recommended that WorkSafeBC revise its policy and add an additional step to the penalty process. When a penalty order is complete, WorkSafeBC should issue a "Notice of Intent to Penalize" to the employer. There should be a stipulated time period for the employer to provide evidence that due diligence was exercised. A period of ten days is proposed, with provision for extensions if there are extenuating circumstances. If a due diligence case is put forward, WorkSafeBC would make a decision to rescind the order or to proceed. If evidence of due diligence is not provided within the permitted time period, the penalty would proceed.

- WorkSafeBC should continue its review of the penalty policies to ensure they are clear and consistent and contribute to an efficient and timely penalty process. WorkSafeBC should move forward with its amendments to the high risk policy (D12-196-2). The proposed amendments to the policy should be released for public consultation.

**viii. Ensure that when administrative penalties are imposed, the amount of the penalty is proportional, with consideration of the circumstances of the incident and the size of the employer.**

- WorkSafeBC should move forward with its plans to review the penalty amounts policies (D12-196-6 and D24-73-1).

**ix. Amend the WCA to improve the ability to pierce the corporate veil to address situations of non-payment of administrative penalties by an employer.**

- Section 46 of the WCA should be amended to allow injunctive relief to pierce the corporate veil and restrain the company, director, officer, and/or person who is the directing mind of the employer from carrying on an industry until all assessments made by WorkSafeBC, including penalties, have been paid.

**x. Amend the WCA to improve injunctive powers to address egregious and ongoing violations of the WCA and/or OHSR.**

- Section 198 of the WCA should be amended to give a BC Supreme Court judge the power to grant an injunction restraining a person from carrying on in an industry, or an activity in an industry, indefinitely or until further order of the Court. This would provide a mechanism to deal with individuals who commit egregious and ongoing violations of the WCA and/or OHSR.

- xi. WorkSafeBC should continue to pursue prosecutions for regulatory violations, using major case management and the appropriate evidence gathering and interviewing techniques.
- xii. WorkSafeBC should consider publishing additional information regarding employer non-compliance to increase transparency. WorkSafeBC should consult with industry and labour stakeholders on this issue.
  - Other jurisdictions publish enforcement details to act as a deterrent by drawing attention to the impact of non-compliance. Publishing this information can also impact a company's brand, reputation, and competitiveness.<sup>146</sup>

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<sup>146</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 21. See Appendix J.

## 14 – Hazard Alerts

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### A. Background

Hazard alerts provide important safety messages for employers and workers. They are issued after a workplace incident has occurred, or when WorkSafeBC has identified a potential risk or hazard in its research, to ensure all employers and workers are made aware.

As an example, in 2013, WorkSafeBC issued a hazard alert when a worker died after falling through a gap in a metal roof. WorkSafeBC's investigation into the incident determined that the worker's lifeline cable broke because the lifeline was used incorrectly. The investigation also concluded that the worker was not properly oriented and trained before starting work and that the employer's fall protection plan was inadequate.

WorkSafeBC's hazard alert outlined the circumstances of the incident and provided safe work practices for the use of fall protection equipment. The hazard alert provided valuable information for workers and employers to prevent similar incidents from occurring.

Hazard alerts are posted on WorkSafeBC's website.

### B. Gaps

WorkSafeBC's hazard alerts are important and valuable tools to inform workplace parties of risks to health and safety and educate them on how to prevent incidents from occurring. However, there is currently a lack of clarity on the hierarchy of priorities with respect to the issuing of hazard alerts. The general practice has been to issue a hazard alert after WorkSafeBC has completed its investigation into a workplace incident. This preserves the integrity of a WorkSafeBC investigation and ensures the hazard alert reflects the totality of the information regarding the incident.

In some situations, however, it may be necessary to issue the hazard alert before the investigation has been completed. When an incident occurs and there is reason to believe that a contributing factor to the incident could exist and pose a risk at other workplaces, the first priority must be to inform employers and workers of the risk.

There are occasional situations where investigators identify an act of negligence which could warrant prosecution but where there is also an immediate risk of serious injury at other worksites. For example, a defective piece of equipment which has caused a serious injury or fatality on one worksite may also be in use on other sites. A hazard alert may be considered necessary to protect workers, even if issuing the alert may put the likelihood of successful prosecution in jeopardy.

The Memorandum of Understanding with Police Services establishes that police have control of an investigation of a fatal injury first and transfer the file to WorkSafeBC after *Criminal Code* prosecution has been ruled out. If WorkSafeBC believes a hazard alert may be necessary during the period of time when police still have control of the investigation, there needs to be a protocol for considering the circumstances and making a hazard alert decision.

## C. Recommendation

- i. **The Memorandum of Understanding with Police Services should be expanded to provide guidance where a hazard alert may be necessary and to include an agreed upon procedure for making such a determination.**
  - Where there has been a workplace incident, and there is reason to suspect that a contributing factor to the incident poses an imminent risk of death or injury at other worksites, the first priority must be to inform employers and workers of the risk. This information must be shared even if doing so will result in sacrificing the ability to successfully prosecute workplaces parties for violations that contributed to the incident. The information should also be shared even if the full cause investigation has not been completed; the hazard alert could be updated as necessary as the investigation proceeds.

# 15 – Employer Incident Investigations

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## A. Employer Incident Investigations and Reports

The *Workers Compensation Act* (WCA) requires employers to immediately undertake an investigation into the cause of any accident or other incident that

- resulted in serious injury to or the death of a worker;
- involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation;
- involved the major release of a hazardous substance;
- was an incident required by the OHSR to be reported or investigated;
- resulted in an injury to a worker that required medical treatment; or
- did not involve injury to a worker, or involved only minor injury, but had the potential for causing serious injury to a worker (i.e. a near miss).<sup>147</sup>

The employer's investigation must determine the cause of the incident; identify any unsafe conditions, actions or procedures that contributed to the incident; and recommend corrective actions to prevent similar incidents.<sup>148</sup>

The employer must also prepare an incident investigation report and provide a copy to WorkSafeBC.<sup>149</sup> The WCA does not specify a timeframe for completion of the investigation or for submission of the incident investigation report to WorkSafeBC.

## B. Jurisdictional Comparison

Aside from BC, seven other jurisdictions require investigations to be conducted into certain workplace incidents.

Alberta<sup>150</sup> and Newfoundland<sup>151</sup> do not specify a timeframe for when the investigation must be completed. Saskatchewan<sup>152</sup> and Manitoba<sup>153</sup> require the investigation to be completed as soon as reasonably possible but do not prescribe a specific time limit. In Quebec, investigation reports must be prepared within 48 hours of the incident.<sup>154</sup> Ontario requires investigations to be completed within 2 days (where a person is killed or critically injured) or

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<sup>147</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 172 & 173.

<sup>148</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 174(2).

<sup>149</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 175.

<sup>150</sup> [Occupational Health and Safety Act](#), R.S.A. 2000, c. O-2, s. 18.

<sup>151</sup> [Occupational Health and Safety Act](#), R.S.N.L. 1990, c. O-3, ss. 54-57.

<sup>152</sup> [Occupational Health and Safety Regulations](#), 1996, R.R.S. c. O-1 Reg. 1, ss. 29 & 31.

<sup>153</sup> [Workplace Safety and Health Regulation](#), M.R. 217/2006, s. 2.9.

<sup>154</sup> [Regulation respecting industrial and commercial establishments C.Q.L.R. c S-2.1, r 2](#), s. 14.1.1.

4 days (where a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire, or incident of workplace violence) depending on the type of incident.<sup>155</sup> The Government of Canada requires investigations to be completed within 72 hours where there has been damage to a boiler or pressure vessel that results in its rupture or any damage to an elevating device that renders it unserviceable. For all other incidents that require an investigation, the investigation must be completed within 14 days.<sup>156</sup>

## C. Gaps

The incident investigation provisions of the *WCA* are important for helping to ensure that, when an incident does occur, the employer takes timely steps to ensure that it does not happen again. A shortcoming of the requirements around employer incident investigations is that the *WCA* does not currently specify a timeframe for when incident reports must be completed or submitted to the Board. If the investigation is not completed immediately, a potentially unsafe condition could remain unresolved.

## D. Observations

When an incident occurs at a workplace, the main priority should be to ensure that any continuing risks to health and safety are addressed and that the incident does not occur again. The first step in meeting this goal is for the employer to do an investigation to determine the cause of the incident. In order to ensure risks to health and safety are addressed as soon as possible, the employer's investigation must be completed without delay. At the same time, enough time must be provided to ensure that the investigation is thorough, evaluates all factors, and makes an informed conclusion with respect to cause.

## E. Recommendations

### i. Amend the *WCA* to specify timelines for employer incident investigations.

- Section 173 of the *WCA* should be amended to state that an employer must complete a preliminary investigation into an incident within 48 hours.
- Section 173 of the *WCA* should be amended to require that a full employer incident investigation must be completed within 30 days of the incident, with the potential for an extension in certain circumstances (e.g. complicated investigations). The timeframe should be set at 30 days to ensure that the investigation is completed in a

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<sup>155</sup> [Occupational Health and Safety Act R.S.O. 1990, c. O-1](#), ss. 8-12.

<sup>156</sup> [Canada Labour Code R.S.C 1985, c. L-2](#), s. 125 and [Canada Occupational Health and Safety Regulations, S.O.R. 90/97](#), ss. 15.4-15.8.

timely fashion while also providing employers with enough time to do a thorough investigation.

- Section 175 of the *WCA* should be amended to require that the employer submit the incident investigation report to WorkSafeBC within 30 days of the incident.

## 16 – Enforcement Presence

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A world class occupational health and safety (OHS) regime creates an expectation that any violations of OHS requirements have a high likelihood of being discovered and addressed. An important aspect of achieving compliance with OHS requirements is that workplace parties believe that if they do not comply, they will be caught. Compliance requirements must remain top of mind for employers and workers as they make decisions, implement new processes, and conduct their daily activities. There must be real threat that a WorkSafeBC officer will discover violations no matter when they are being committed, whether it is normal business hours, late night, or weekends. The best way to ensure this is for WorkSafeBC officers to have a presence at BC workplaces at all times.

Often times, workers who work weekends and late night hours are those with the least seniority, experience, authority, and training. It is important that WorkSafeBC officers attend worksites during these hours to ensure compliance with OHS requirements. Presence requires that some inspections be conducted on evenings and weekends.

Deloitte's best practice review outlines initiatives to help WorkSafeBC increase its visibility and presence with the employer:

- Use of self-monitoring and self-reporting practices so audits and inspections can be done without being onsite.
- Conduct environmental scans of organizations through use of internet, social media, police incident data, hospital injury information, and other channels to gather intelligence about emerging risks within specific sectors and organizations.
- Schedule some officers to work during evenings and weekends to provide additional presence and align with sector specific business operating hours.
- Leverage other provincial or local inspection authorities that may also be conducting other regulatory inspections at the same worksites to gather onsite information that may be relevant for occupational health and safety standards.
- Consider opportunities to leverage continuous monitoring technologies to provide ongoing, real-time information regarding the compliance status of an organization without requiring the physical presence of an inspector.<sup>157</sup>

### A. Recommendation

- WorkSafeBC should routinely schedule some Prevention Officers to conduct inspections on weekends and evenings to create an ongoing and effective level of presence in the workplace.**

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<sup>157</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 20-21. See Appendix J.

## 17 – Review and Appeal

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### A. History of WorkSafeBC's Review and Appeal Functions

Prior to 2002, reviews and appeals of prevention decisions were handled by Reviewing Officers or by the Appeal Division. The 2002 *Core Services Review of the Workers' Compensation Board* found that the appeal processes and structures needed to be reformed. The former system was unclear and complex, with different review/appeal processes to be followed (with differing time frames, standards of review, and levels of appeal depending on the issues in dispute). Furthermore, the time involved for the appeal process to be completed was found to be excessive, especially for claims issues.<sup>158</sup> The review and appeal processes were revised on the basis of the comments in the 2002 report.

### B. WorkSafeBC's Current Review and Appeal Processes

WorkSafeBC's current review and appeal process was established in 2002 as a result of amendments to the *Workers Compensation Act (WCA)*. The changes established two levels of appeal for decisions made by the Board under the *WCA*.

The first level is internal, involving a review by a Review Officer in the Review Division. The second level of appeal is to the independent Workers' Compensation Appeal Tribunal (WCAT).

Any person who is directly affected by a decision or order of WorkSafeBC may apply for a review or appeal, including an employer, a worker, an owner, a supplier, a union, or a member of a deceased worker's family.<sup>159</sup>

A person may apply to the Review Division for a review of prevention orders and certain other prevention decisions, such as refusals to make an order, cancellations of orders, and suspensions and cancellations of certificates issued under the *WCA*.<sup>160</sup> The decision of the Review Officer on these issues is final; there are no further appeal rights within the workers' compensation system.<sup>161</sup>

Administrative penalties may also be taken for review to the Review Division. Decisions of a Review Officer on administrative appeals may be appealed to WCAT.<sup>162</sup> Determinations

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<sup>158</sup> Alan Winter, [Core Services Review of the Workers' Compensation Board](#) (March 11, 2002), at 26.

<sup>159</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, ss. 96.3 and 241.

<sup>160</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 96.2(1)(c).

<sup>161</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 239.

<sup>162</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 239.

about discriminatory actions<sup>163</sup> and failure to pay wages are also appealable directly to WCAT.<sup>164</sup>

An application for an internal review must be made within 90 days after the order or decision that is the subject of the review was made.<sup>165</sup> The review must be completed within a further 150 days unless the complexity of the matter makes this impracticable.<sup>166</sup> Any further appeal to WCAT must be made within 30 days.<sup>167</sup> WCAT must make its final decision on an appeal within 180 days unless this timeframe is impracticable due the complexity of the case.<sup>168</sup>

Where a person has exhausted their review and appeal rights within the workers' compensation system, their remaining recourse is to request a judicial review of the prevention order or decision.

Review officers conduct reviews in one of three ways: a paper-based read and review; a read and review with additional inquiries; or a review involving an oral hearing.

In 2013, the Review Division received 204 requests to review prevention decisions; this included review of orders (86) and penalties (81),<sup>169</sup> and 140 of the reviews were completed. Approximately 66% of the penalty decisions were confirmed by the Review Division, while approximately 11% were cancelled and 23% were varied. Of the 140 penalty reviews that were completed, 31 were appealed to WCAT.

The average time to complete a prevention review in 2013 was approximately 205 days. This is less than 2011 (273 days) and 2012 (244 days) but still above the statutory maximum of 150 days. The delay is due to the complexity of prevention reviews. Furthermore, for prevention reviews, employers have the option of oral hearings. Oral hearings require more time than the other methods of conducting a review, which also contributes to the length of the process.

## C. Jurisdictional Comparison

All of the other Canadian jurisdictions provide appeal rights under their occupational health and safety (OHS) legislation. A table outlining the appeal rights in each of the other Canadian jurisdictions is provided in Appendix I.

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<sup>163</sup> "Discriminatory action" includes any act or omission by an employer or a union that adversely affects a worker with respect to any term or condition of employment or membership in a union.

<sup>164</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 240.

<sup>165</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 96.2(3).

<sup>166</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 96.4.

<sup>167</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 243(1).

<sup>168</sup> [Workers Compensation Act](#), R.S.B.C. 1996, c. 492, s. 253.

<sup>169</sup> The remaining 37 requests for review were terminated.

In most of the jurisdictions, the first level of appeal is the Director responsible for OHS in the province or equivalent. The second level of appeal is generally the Labour Relations Board for the province or the courts.

The other jurisdictions all provide time limits for applying for an appeal of an order or decision of an OHS officer. The time limits range from 7 days to 30 days. None of the jurisdictions provide 90 days, as is the case in BC. The time limit for the second level of appeal also falls in the 7 to 30 day range.

Unlike BC, the other jurisdictions do not provide a time limit for when a decision must be made on the appeal. The only exception is the Northwest Territories/Nunavut, which provides the Chief Safety Officer must decide the appeal within 30 days.<sup>170</sup>

## D. Gaps

The current timeframe for completion of prevention reviews is too long. By the time a penalty order is issued and reviewed, it could be two to three years after the violation.

## E. Observations

The review process was revised in 2002 to make it more efficient and to ensure decisions were issued in a timely fashion. The new process, with its timelines and procedures, was intended to apply to reviews of compensation, assessment, and prevention decisions. While the process and timelines appear to be working for compensation and assessment reviews, prevention reviews present unique challenges that must be addressed. None of the other Canadian jurisdictions provide as much time as BC for requesting a review of a Board order or decision.

## F. Recommendations

### i. WorkSafeBC should conduct an assessment of the internal OHS review processes.

As part of the assessment, WorkSafeBC should consider

- discontinuing the practice of holding oral hearings for internal OHS reviews;
- seeking an amendment to the *WCA* to shorten the timeframe for order reviews;
- seeking an amendment to the *WCA* to shorten the timeframe for penalty order reviews; and
- seeking an amendment to the *WCA* to reduce the time limit to apply for an order or penalty order review from 90 days to 10 days.

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<sup>170</sup> [Safety Act](#), R.S.N.W.T. 1988, c. S-1, s. 16(2).

**ii. Amend the *WCA* to introduce an expedited review process for OHS citations as an alternative to existing review options.**

- The *WCA* should be amended to specify the review rights with respect to citations to employers. Citations should be limited to a review by the Review Division, similar to reviews of orders. The time limits to apply for a review of citations and for the review to be completed should also be reduced to make the process more efficient.

## 18 – WorkSafeBC Performance Management

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Robust performance measurement and management are critical to gauge the effectiveness of an OHS regulatory framework and associated prevention and enforcement strategies. As outlined in the Deloitte report, OHS performance has traditionally been assessed using measures related to injury frequency and severity or fatalities. These historical indicators are critical components of a performance monitoring program. However, most jurisdictions have highlighted the need to shift towards a more comprehensive and proactive approach to performance tracking that involves leading indicators as well.<sup>171</sup>

As further outlined in the Deloitte report, for performance management frameworks to be effective, organizations require an understanding of the high level ‘cause-effect’ linkages between their policies or initiatives and their desired outcomes. Performance measures need to be regularly tracked and communicated, and the organization needs to be able to act on observed results. Leading indicators in occupational health and safety provide the opportunity to adjust prevention-focused tactics and influence safety performance.

WorkSafeBC has a well developed set of performance measures, which should continue. There may be opportunities to further develop leading indicators by exploring some of the metrics and measures that have been used by other jurisdictions.

### A. Recommendation

#### i. WorkSafeBC should develop and implement performance measures to assess

- the “health and safety awareness” levels among workers, with the understanding that workers who understand safety requirements and are aware of their rights and obligations are less likely to be injured;
- the “health and safety culture” of the business enterprise, including such factors as corporate leadership, clarity of expectations, adequate resourcing, effective monitoring and controls, and risk tolerance;
- the effective engagement of WorkSafeBC officers, including the design and implementation of peer review mechanisms to ensure appropriate use of enforcement tools; and
- the effectiveness of compliance activities, including the uptake of proactive compliance activities and the escalating application of enforcement tools.

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<sup>171</sup> Deloitte, *WorkSafeBC Leading Inspections and Investigations Practices* (June 20, 2014) at 17-18. See Appendix J.

## 19 – Culture Change

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WorkSafeBC executive, management, and staff are fully committed to the goal of a province free from workplace injury, disease, and death. The pursuit of this goal can be strengthened by driving an ideal health and safety culture within the organization. An ideal health and safety culture is one that includes the following elements:

- The primary focus is on encouraging proactive compliance through education, information sharing, and training as a foundation for a safe and healthy workplace.
- Enforcement tools are applied evenly, fairly, firmly, and in a businesslike manner.
- A safe and healthy workplace is the priority. There are no incentives or quotas to issue citations or penalties. The least onerous enforcement tool that will succeed at achieving compliance is the correct one.
- Value is placed on innovation and continuous improvement, and new ideas and new technology are embraced.
- When prosecution is necessary, it is done professionally and successfully.
- WorkSafeBC staff and management share information with each other and partner agencies openly, within the limits of what is legally permitted.
- WorkSafeBC staff and management provide peer support to encourage consistency of enforcement practices, knowledge transfer, and skills development.
- Internal communication is robust and flows up, down, and sideways effectively.
- WorkSafeBC is respected by employers, workers, and government.
- WorkSafeBC is trusted by the general public.
- WorkSafeBC employees are proud of the work they do and of their contribution to safe and healthy workplaces.

## A. Recommendation

### i. Develop strategies to enhance the corporate culture with focus on the following attributes:

- A culture of collaboration, openness, and ownership across the prevention functions of WorkSafeBC (i.e. Prevention Services, Investigation Services, and Industry and Labour Services).
- A culture of collaboration with other regulatory entities including Police Services, the Criminal Justice Branch, the Office of the Fire Commissioner, the Coroner's Office, the Transportation Safety Board, the BC Safety Authority, and others engaged in workplace health and safety.
- A culture of ongoing engagement and collaboration at all levels of WorkSafeBC with stakeholders in labour and industry.
- An enhanced culture of embracing innovation and the use of technology to improve occupational health and safety compliance.
- A culture of incremental escalation in the use of enforcement tools, to drive compliance with the least onerous tool which is able to effect the desired change in behavior.

## 20 – Internal and Stakeholder Communication

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The Babine and Lakeland sawmill incidents revealed some challenges with internal communication procedures that require attention. The flow of information up and down the organization, and between WorkSafeBC and its external stakeholders, was at times inadequate.

In his report, Mr. Dyble noted a lack of processes for effective internal communication at WorkSafeBC.

Effective communication is a strategic tool that supports change management, engagement (both internal and external), consistency, culture change, and dissemination of critical information. Transparency is a key feature of a world class occupational health and safety (OHS) regime. There must be a principle of being as open as possible with respect to regulations, policies, procedures, and employer safety records.

External stakeholders in both the labour and employer communities have an important role in advising WorkSafeBC on regulatory priorities, effectiveness of enforcement activities, OHS performance measures, timeliness of penalties and reviews, training and education programs, and effectiveness of prevention efforts. There is a clear desire to increase the level of engagement with stakeholders and the quality of dialogue.

Stakeholder engagement to date has emphasized the compensation and assessment functions of the business. There should be an increased focus on engagement with respect to the OHS function of WorkSafeBC.

Improving its internal and external communications is a priority for WorkSafeBC. WorkSafeBC has reviewed its communications strategy and identified a number of enhancements that will improve internal and stakeholder communication. The strategy will ensure information is accessible, accurate, current, and relevant. Specifically, initiatives will look at fostering employee engagement by ensuring an understanding of and alignment with WorkSafeBC's mission, vision, principles and strategies. Further improvements in communication approaches and mechanisms for information access and sharing across the different levels of the organization and across multiple departments and locations are also being developed.

The stakeholder communication strategy should be updated to provide opportunities for ongoing dialogue, sharing of industry best practices for emerging issues, and ongoing feedback about quality, process, and other issues.

## A. Recommendation

- i. Evaluate internal and external communications with a view to:
  - improving the flow of information between internal levels and departments;
  - establishing and formalizing clear points of contact with key external stakeholders;
  - establishing a forum for external stakeholders to have an ongoing dialogue with WorkSafeBC on OHS issues; and
  - increasing direct communication between WorkSafeBC and both the Criminal Justice Branch and the Ministry.

## 21 – Anticipation and Prediction of Emerging Hazards

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### A. Technology, Tools and Data

WorkSafeBC recognizes the value of using technology, tools and data to anticipate and predict emerging hazards. As an innovator in this area, WorkSafeBC is constantly looking to leverage new technology to improve access to data and to determine emerging issues.

An example of this is WorkSafe Everywhere (WSE), a new tool that was implemented in February of this year. WSE provides the foundation to improve the effectiveness of strategic and operational data-driven decision making. It provides a platform to link other WorkSafeBC systems to enhance data mining and business intelligence capabilities, and predictive analysis. This tool facilitates the real-time sharing of information to guide planning, targeting and workforce deployment. The technology platform incorporates best in class principles of visualization using geo-coded data, increasing public transparency and access to information, and the integration of external data sources to help with compliance targeting and the detection of emerging issues.

As an organization responsible for occupational health and safety (OHS) and compensation matters, WorkSafeBC has the advantage of being able to use both OHS and claims data to drive its prevention mandate. The Business Intelligence Center provides managers and staff with the ability to collaborate, discover, and manage the information they need to drive the business forward. Users are empowered with the right business insights enabling them to make informed decisions and to plan ahead.

### B. Risk Analysis Unit

WorkSafeBC has proactively adopted an approach to round out its effective coverage of occupational health and safety risks by formalizing and fortifying its strategy and operations with respect to those risks that do not align well with a claims-oriented model. The Risk Analysis unit at WorkSafeBC monitors six categories of risk and designs strategies to mitigate these risks.

1. **Serious non-monetary losses** — Fatalities and permanent disabilities where the magnitude of harm may be poorly reflected in the claim costs
2. **Slow-acting harms** — Where there are many years between initial cause of harm and its onset (e.g., occupational disease)
3. **Catastrophic risks** — Risks that seldom materialize but have the potential to cause widespread damage or loss of life

4. **Invisible risks** — Risks that are not fully revealed and may be hard to detect
5. **Conscious opponents** — Risks created by people who deliberately seek to avoid regulatory control measures
6. **Emerging risks** — Long-term, uncertain trends that are not yet urgent but may be important

## C. Sharing with Other Jurisdictions

Valuable insights could be obtained by sharing data with other jurisdictions. Access to this data would not only highlight areas for improvement but would also highlight areas in which WorkSafeBC is world class. However, the ability to share data with other jurisdictions is limited due to the lack of foundational systems that would allow this.

There is an opportunity for WorkSafeBC to take the lead in moving towards greater sharing of data with other jurisdictions.

## D. Recommendations

- i. **WorkSafeBC should continue to leverage new and innovative technology that will help identify emerging occupational health and safety issues.**

This will be consistent with other jurisdictions that are integrating risk modelling into the delivery of their prevention and enforcement activities and the use of predictive analytics as key prevention tools for regulators.<sup>172</sup>

- ii. **WorkSafeBC should take the lead in creating agreements and developing technology and processes that would make data sharing between partners and jurisdictions possible.**

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<sup>172</sup> Deloitte, *WorkSafeBC: Leading Inspections and Investigations Practices* (June 20, 2014), at 16. See Appendix I.

## 22 – Enhanced Training for Prevention and Investigation Personnel

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### A. Prevention Officers

Prevention Officers will be required to have full responsibility for orders, citations, and administrative penalties. They will need enhanced training on penalty process management, use of citations, evidence collection, report writing, and data entry. Training should focus on achieving a level of consistency across the system in the use of enforcement tools.

### B. Investigation Officers

In accordance with the Dyble recommendations, WorkSafeBC is taking steps to enhance the training of Investigation Officers with respect to major case management and regulatory investigations and prosecutions. Staff from the Criminal Justice Branch attended WorkSafeBC training in March 2014 and provided information on a variety of topics, including legal issues in regard to fraud and *Ling* and *Jarvis*. Training on additional topics is planned for later this year.

With the recommended introduction of Investigation Officers with Special Provincial Constable status, training will also need to be provided to these officers on the management of sensitive files.

### C. Technology

A challenge facing WorkSafeBC is the move to a technology platform that will replace many paper-based approaches. The new WorkSafe Everywhere system opens up a wide range of new tools for creating inspection reports, storing photos, tracking orders and penalties, building historic profiles, and sharing information between officers. Some current staff will need time and support to learn how to make full use of this tool and to enter information in the correct way to support strategic planning, deployment of resources, and measurement of performance. The change management process will require resources be committed to training, technical support, engagement auditing, knowledge transfer between officers, and further refinements over time.

### D. Collaboration

The requirement for improved collaboration with police, the Criminal Justice Branch, and other regulators will require training and on-going change management efforts.

## E. Recommendations

- i. Commit to enhanced training of WorkSafeBC officers and managers in the areas of penalty process management, administration of enforcement tools, major case management, investigation techniques, interviewing skills, report writing, use of new IT systems and tools, and collaboration skills.
- ii. Management should always take a proactive role in setting training priorities (both corporate and individual), for vetting the quality of training programs, and ensuring all staff take part on a regular basis.

## 23 – CEO Attributes and Recruitment

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The process of filling the role of President and CEO will re-start after this report has been submitted.

The search for a new President and CEO will need to recognize the unique skill sets required by this position. WorkSafeBC is a quasi-governmental organization, is an insurance business handling thousands of claims each year, is an investment management company handling billions of dollars, and is a regulatory, enforcement, and investigation organization. These are very different lines of business and none is less important than the others.

In addition, the desire to achieve a world class occupational health and safety regime requires a person who is far above average amongst his or her peers, has a deep understanding of the business, has a strong vision for the future, and has an ability to move quickly to stay at the forefront of innovation and change.

WorkSafeBC's President and CEO must have the following attributes:

- Stakeholder relations

There have been times in the past when the relationship between WorkSafeBC and its stakeholders has been less than ideal. WorkSafeBC has worked hard in recent years to improve stakeholder relations and respect for the organization. The new leader will need to sustain and strengthen stakeholder relations, particularly with labour, industry, government, and other regulators. The ideal candidate will have strong interpersonal skills, excellent communication skills, and an ability to inspire trust.

- Commitment to customer service

WorkSafeBC provides critical service to workers, employers, families, and the general public: keeping workplaces safe, providing financial support to injured workers and their families, keeping insurance costs low, investing money wisely, and contributing to a thriving economy. The President and CEO must have a strong service orientation and an ability to keep service at the forefront in each of WorkSafeBC's lines of business, including the regulatory function.

- Strong leadership skills

The President and CEO must be a strategic visionary who is able to run the organization efficiently and effectively; engage, inspire, and empower staff; and be accountable to staff and stakeholders.

- Change management

The President and CEO will be required to embrace and implement an on-going change management process, partly driven by this review and more so in future as WorkSafeBC positions itself as a world class leader in health and safety. He or she must have the ability to grasp opportunities, define a world class future, inspire people to embrace change, and have determination to stay the course.

- Experience managing a large organization

WorkSafeBC is a large, complex organization, with approximately 3000 staff and over \$15 billion invested. The President and CEO must have senior level experience leading a large organization with multiple lines of business, diverse customer needs, regional operations, and large financial responsibilities.

- Public sector expertise

WorkSafeBC is a quasi-government entity. Its President and CEO must have the ability to work in a complex public sector environment. Previous experience dealing with senior government and a good understanding of policy and regulation development processes is important.

## A. Recommendation

- Re-engage with the search firm immediately and expand the criteria to address the unique attributes the position of President and CEO will require.**

## 24 – Legislative Changes

Several of the recommendations in this report will require amendments to Part 3 of the *Workers Compensation Act (WCA)*. Part 3 was introduced in 2002 in order to address gaps and strengthen BC's occupational health and safety (OHS) requirements. The current provisions have been successful in improving the state of OHS in BC, as is evident in the fatality and injury rates (see Appendix B). However, some provisions would benefit from updating to address changing circumstances and emerging compliance issues.

Recommendation	Legislative Amendment	Potential Policy Amendment
Enhance the OHS expertise of the BOD by adding two new members, one who is a person with legal or regulatory expertise (ideally with investigation or prosecution experience) and one who is an occupational health and safety professional.	This will require amendments to section 81 of the <i>WCA</i> . The structure of the BOD is set out in legislation and cannot be changed without a legislative amendment.	No.
Introduce an Assurance of Compliance tool.	This tool can be introduced through a legislative amendment.	This tool could be introduced through policy.
Introduce OHS citations to be imposed on employers who violate certain OHS requirements.	A legislative amendment is not required. Section 196 of the <i>WCA</i> already allows administrative penalties to be imposed on employers; this can include on-the-spot penalties in the form of citations. However, the tool may have more force if it is included in the legislation. Furthermore, some of the provisions that apply to administrative penalties may not be appropriate for citations.	This tool could be introduced through policy.

Recommendation	Legislative Amendment	Potential Policy Amendment
Conduct consultation to consider Introducing OHS citations for workers who fail to wear personal protective equipment.	A legislative amendment would be required to allow penalties to be imposed on workers; this is not currently permitted under the <i>WCA</i> .	No.
Allow stop work orders to be issued where there is a danger that is not immediate, but is high risk and requires attention.	A legislative amendment would be required, as the criteria for issuing a stop work order are prescribed in section 191 the <i>WCA</i> .	No.
Allow stop work orders to be applied to prevent an employer from resuming non-compliant activities at another worksite.	A legislative amendment would be required, as the criteria for issuing a stop work order are prescribed in section 191 the <i>WCA</i> .	No.
Allow stop work orders to be used to address situations where previous orders have been ignored.	A legislative amendment would be required, as the criteria for issuing a stop work order are prescribed in section 191 the <i>WCA</i> .	No.
Shift the onus to prove due diligence on to the employer.	This could be done through a legislative amendment. The language in the provision could be clarified.	This could be achieved through policy.
Improve the ability to address situations of non-payment of administrative penalties by allowing injunctive relief to restrain the company, director, officer, and/or person who is the directing mind of the employer from carrying on an industry until all assessments made by WorkSafeBC, including penalties, have been paid.	A legislative amendment would be required. Section 46 of the <i>WCA</i> is currently employer specific; this section would need to be amended to allow the injunction to be applied to an individual and to allow penalty orders to remain in force after bankruptcy.	No.

Recommendation	Legislative Amendment	Potential Policy Amendment
Improve the ability to address egregious and ongoing violations of the <i>WCA</i> and/or OHSR by giving a BC Supreme Court judge the power to grant an injunction restraining a person from carrying on in an industry, or an activity in an industry, indefinitely or until further order of the Court.	A legislative amendment would be required. Section 198 is currently limited to specific violations and conduct; this would need to be broadened to prohibit carrying on in an industry.	No.
Specify that a preliminary investigation must be completed within 48 hours and that the full investigation must be completed, and the report submitted to WorkSafeBC, within 30 days.	A legislative amendment would be required. Currently the <i>WCA</i> is silent on this issue.	No.
Conduct an assessment of the review processes for OHS matters.	A legislative amendment would be required to change the review mechanism or to shorten the timeframes for applying for a review.	No.
Implement an expedited review process for OHS citations.	A legislative amendment would be required.	No.

## 25 – Summary of Recommendations

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The following is a summary of all of the recommendations included in this report. These recommendations are intended to enhance WorkSafeBC's status as a world class occupational health and safety regulator.

### *Dyble Recommendations*

1. The Memorandums of Understanding with Police Services and the Memorandum of Understanding with the Criminal Justice Branch should be signed [p. 41].
2. WorkSafeBC should develop a policy to guide referrals to the Criminal Justice Branch for prosecution. The decision to refer a file for prosecution is made independently by WorkSafeBC; however, development of this policy should be informed by consultation with the CJB [p. 41].

### *Investigations*

3. WorkSafeBC should proceed with towards the adoption of a major case management protocol and system in its investigations [p. 45].
4. Implement a new investigation model that preserves the ability to conduct both cause investigations and prosecution investigations [p. 45].

### *Combustible Dust*

5. Move forward with the development of occupational health and safety policies to specify reasonable steps for employers, workers, and supervisors to take to address combustible dust hazards [p. 52].
6. Implement the sustained compliance plan for sawmills as outlined in the report [p. 53].
7. Develop a plan for ongoing inspection of other wood product manufacturers and pellet mills by WorkSafeBC Prevention Officers, with appropriate enforcement efforts to bring this sector into sustained compliance [p. 53].
8. WorkSafeBC should assist the wood product manufacturing industry to create a Health and Safety Association, or expand the scope of an existing one, to address occupational health and safety issues in that industry in future [p. 53].
9. The Fire Inspection and Prevention Initiative should be extended, with continued funding from WorkSafeBC, and efforts made to find a permanent host at the municipal level [p. 53].

10. WorkSafeBC should consider developing a Memorandum of Understanding with the appropriate agencies to ensure WorkSafeBC is notified when there is a fire at a workplace in BC [p. 54].

### ***Organizational Change***

11. Changes should not be made to the fundamental structure of WorkSafeBC at this time. WorkSafeBC should continue to monitor the effectiveness of its current model [p. 56].
12. The Worker and Employer Services Division should be re-structured to ensure that departments carrying out similar functions fall under the same reporting structure [p. 56].
13. Investigation Services must be re-structured to accommodate the recommended dual team model for investigations [p. 57].

### ***Governance***

14. Amend the *Workers Compensation Act* to enhance the occupational health and safety expertise of the Board of Directors by adding two new members, one who has legal and/or regulatory experience and one who is an occupational health and safety professional [p. 68].

### ***Regulation Making Model***

15. WorkSafeBC should retain the ability to develop and approve occupational health and safety regulations [p. 73].
16. Enhance industry and labour involvement in the setting of regulatory priorities [p. 73].
17. WorkSafeBC should update and publish its occupational health and safety workplans annually to increase transparency and improve stakeholder involvement [p. 74].

### ***Education, Consultation, and Proactive Compliance***

18. WorkSafeBC should continue to put a priority on education and proactive compliance and provide resource allocations accordingly [p. 76].

### ***Enforcement***

19. WorkSafeBC should review its risk-based model for the allocation of work and the setting of priorities with respect to inspection and enforcement activities [p. 97].

20. Develop a hierarchy of enforcement tools [p. 97].
21. Amend the *Workers Compensation Act* to introduce an Assurance of Compliance tool [p. 98].
22. Introduce OHS citations, with escalating fine provisions, to be imposed on employers who violate certain OHS requirements [p. 99].
23. WorkSafeBC should undertake a consultation process with industry and labour to consider whether a limited citation model should be introduced for workers who fail to wear PPE. Recognizing the fact that employers have ultimate control over the workplace, the consultation should also consider whether a citation to a worker would trigger an equivalent or larger citation against the employer [p. 99].
24. Amend the *Workers Compensation Act* to create three circumstances where stop work orders may be issued [p. 100].
25. Significantly shorten the timelines for the issuing of administrative penalties through continuous ownership of the penalty order, instituting a performance management system to assess outcomes, shifting the onus around due diligence requirements, and reviewing WorkSafeBC's penalty policies [p. 100].
26. Ensure that when administrative penalties are imposed, the amount of the penalty is proportional, with consideration of the circumstances of the incident and the size of the employer [p. 101].
27. Amend the *Workers Compensation Act* to improve the ability to pierce the corporate veil to address situations of non-payment of administrative penalties by an employer [p. 101].
28. Amend the *Workers Compensation Act* to improve injunctive powers to address egregious and ongoing violations of the *Workers Compensation Act* and/or the Occupational Health and Safety Regulation [p. 101].
29. WorkSafeBC should continue to pursue prosecutions for regulatory violations, using major case management and the appropriate evidence gathering and interviewing techniques [p. 102].
30. WorkSafeBC should consider publishing additional information regarding employer non-compliance to increase transparency. WorkSafeBC should consult with industry and labour stakeholders on this issue [p. 102].

## ***Hazard Alerts***

31. The Memorandum of Understanding with Police Services should be expanded to provide guidance where a hazard alert may be necessary and to include an agreed upon procedure for making such a determination [p. 104].

## ***Employer Incident Investigations***

32. Amend the *Workers Compensation Act* to specify timelines for employer incident investigations. The employer should be required to complete a preliminary investigation within 48 hours. The full investigation must be completed, and report submitted to WorkSafeBC, within 30 days with an extension available in some circumstances [p. 106].

## ***Enforcement Presence***

33. WorkSafeBC should routinely schedule some Prevention Officers to conduct inspections on weekends and evenings to create an ongoing and effective level of presence in the workplace [p. 108].

## ***Review and Appeal***

34. WorkSafeBC should conduct an assessment of the internal OHS review processes and give consideration to discontinuing the practice of holding oral hearings for OHS reviews; seeking an amendment to the *WCA* to shorten the timeframe for order reviews; seeking an amendment to the *WCA* to shorten the timeframes for penalty order reviews; and seeking an amendment to the *WCA* to reduce the time limit to apply for an order or penalty order review from 90 days to 10 days. [p. 111].
35. Amend the *Workers Compensation Act* to introduce an expedited review process for occupational health and safety citations as an alternative to existing review options [p. 112].

## ***WorkSafeBC Performance Management***

36. Develop and implement performance measures to assess the “health and safety awareness” levels among workers; the “health and safety culture” of the business enterprise; the effective engagement of WorkSafeBC officers; and the effectiveness of compliance activities [p. 113].

## ***Culture Change***

37. Develop strategies to enhance a corporate culture with focus on the following attributes: collaboration, ownership, and openness across the prevention functions of

WorkSafeBC; collaboration with other regulatory entities; ongoing engagement of and collaboration with stakeholders in labour and industry; embracing innovation and technology to improve occupational health and safety compliance; and incremental escalation in the use of enforcement tools [p. 115].

### ***Internal and Stakeholder Communication***

38. Evaluate internal and external communications with a view to improving the flow of information between levels and departments; establishing and formalizing clear points of contact with key external stakeholders; establishing a forum for external stakeholders to have an ongoing dialogue with WorkSafeBC on occupational health and safety issues; and increasing direct communication between WorkSafeBC and both the Criminal Justice Branch and the Ministry [p. 117].

### ***Anticipation and Prediction of Emerging Hazards***

39. WorkSafeBC should continue to leverage new and innovative technology that will help identify emerging occupational health and safety issues [p. 119].
40. WorkSafeBC should take the lead in creating agreements and developing technology and processes that would make data sharing between partners and jurisdictions possible [p. 119].

### ***Enhanced Training for Enforcement and Investigation Personnel***

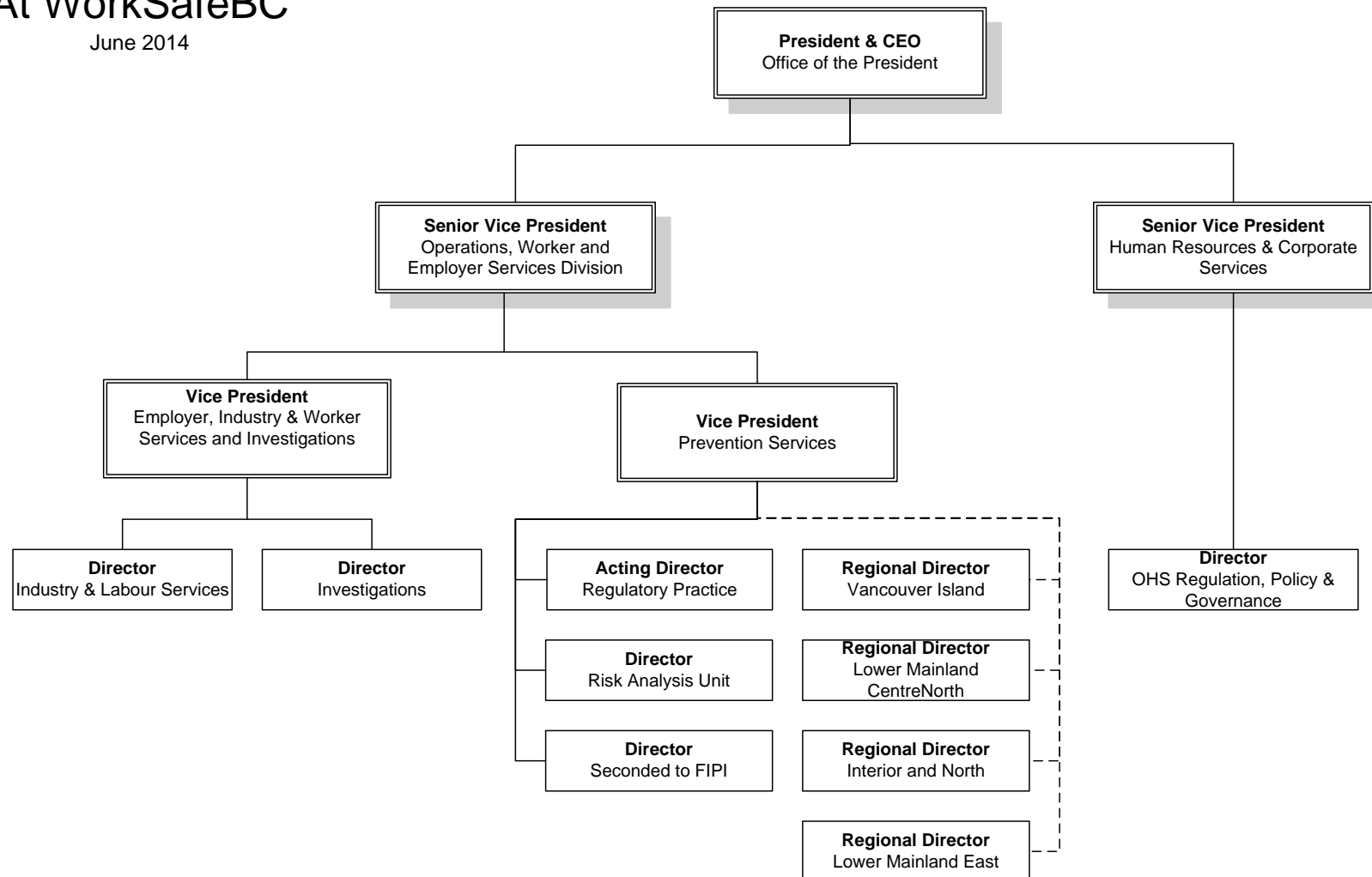
41. Commit to enhanced training of WorkSafeBC officers and managers in the areas of penalty process management, administration of enforcement tools, major case management, investigation techniques, interviewing skills, report writing, use of new IT systems and tools, and collaboration skills [p. 121].
42. Management should always take a proactive role in setting training priorities (both corporate and individual), for vetting the quality of training programs, and ensuring all staff take part on a regular basis [p. 121].

### ***CEO Attributes and Recruitment***

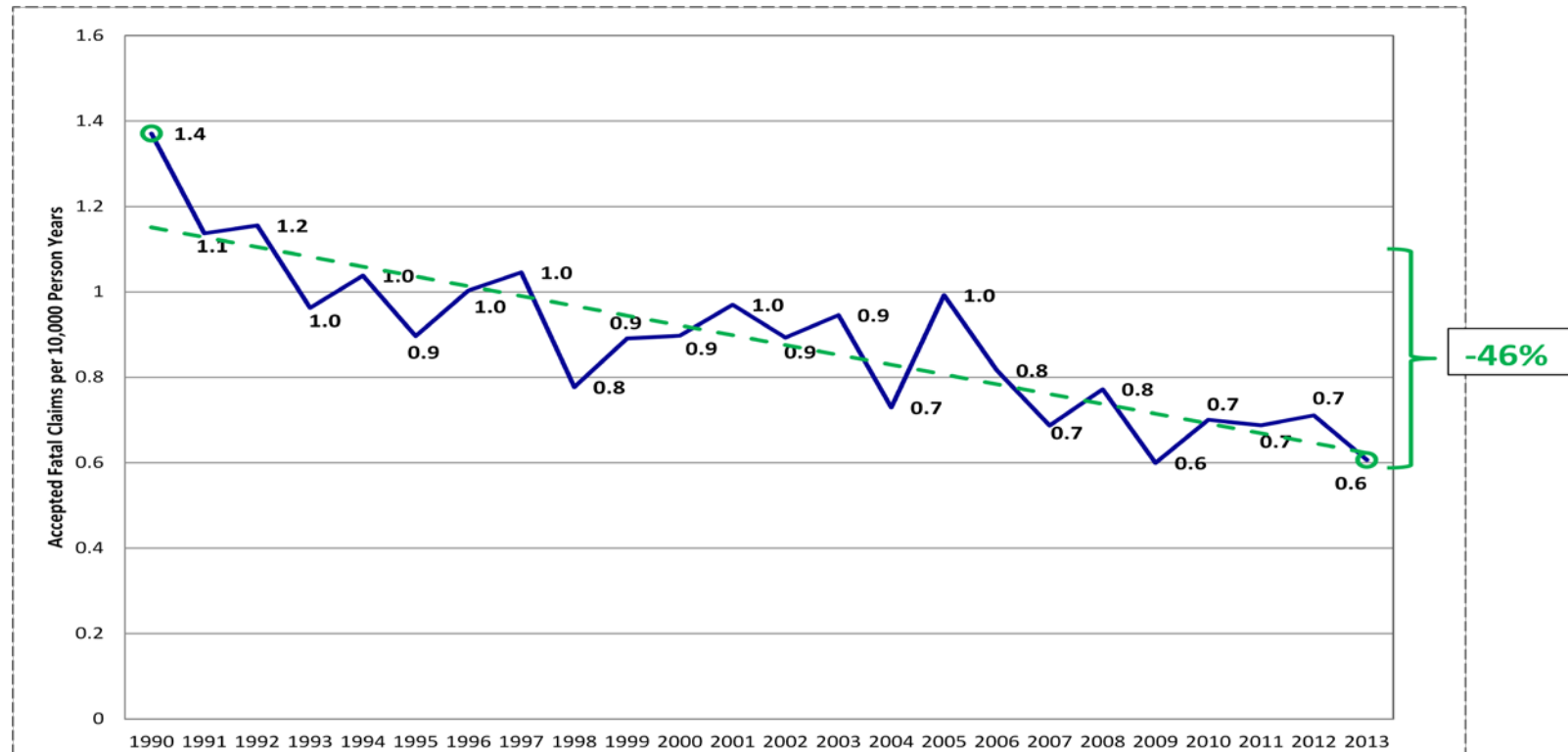
43. Re-engage with the search firm immediately and expand the criteria to address the unique attributes the position of President and CEO will require [p. 123].

# Prevention Functions At WorkSafeBC

June 2014

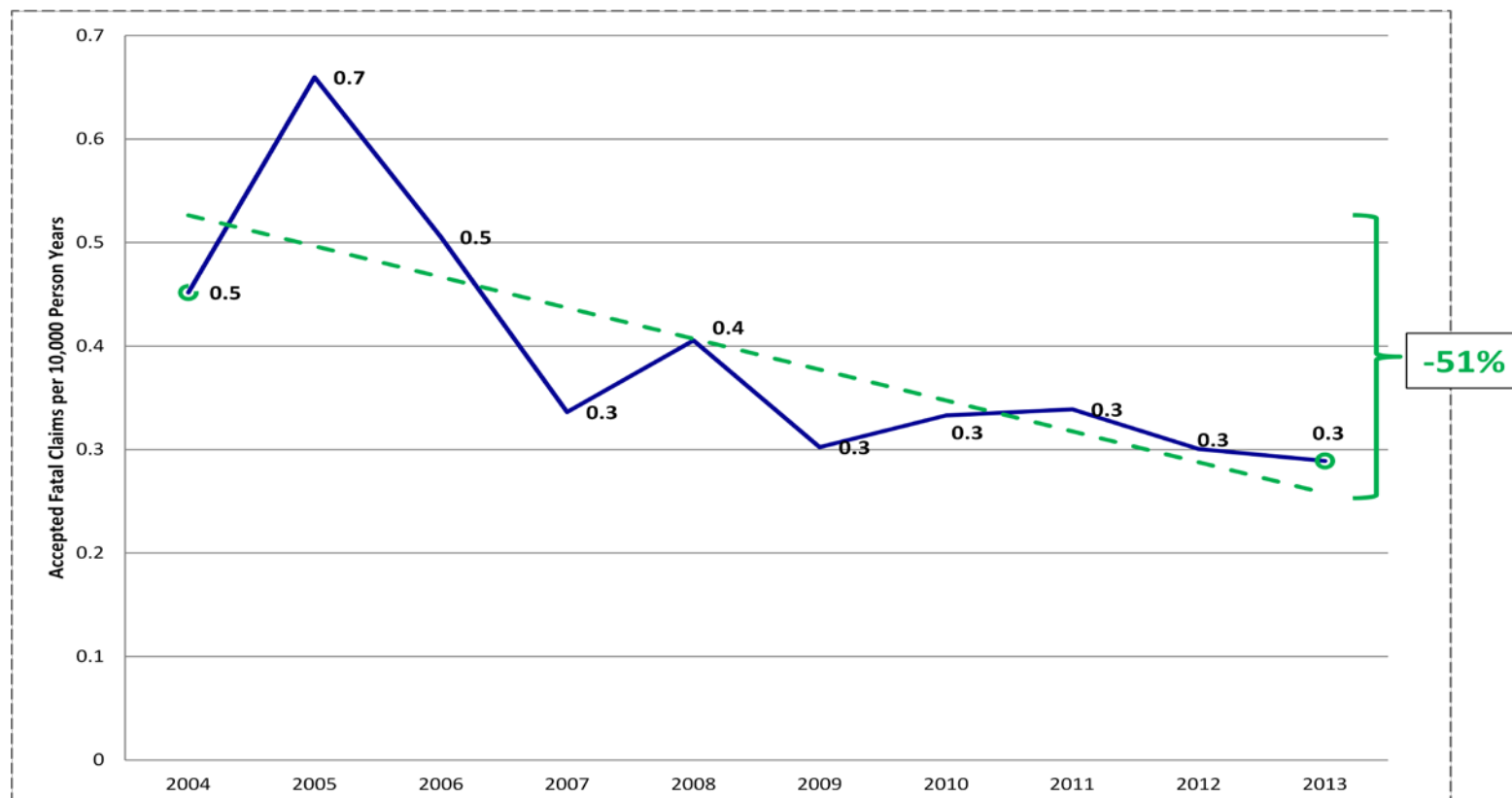


## Work Related Deaths



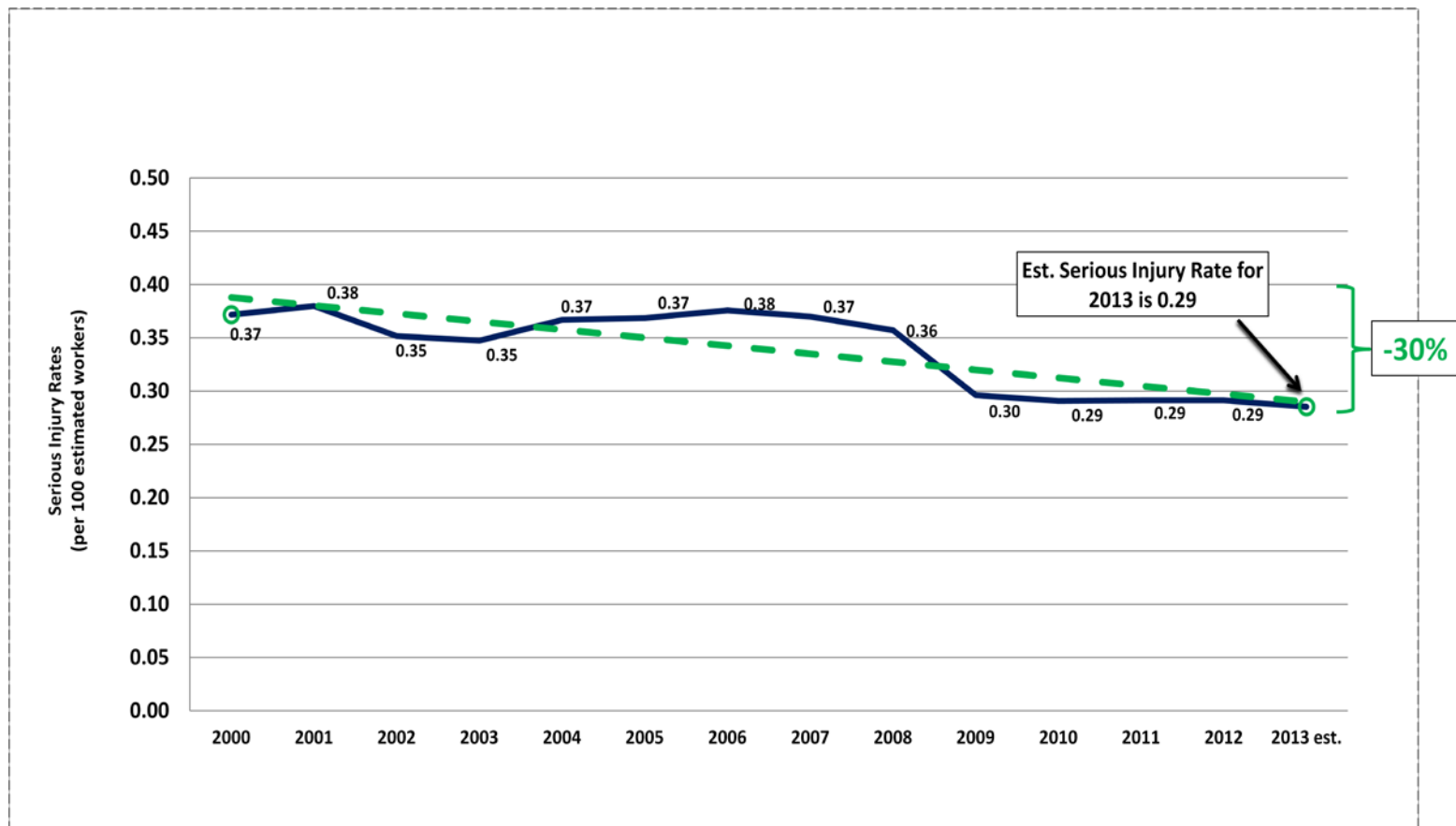
The rate of work-related deaths has declined 46% from 1990 to 2013 based on the trend line.

# Work-related Death Rate due to Injury (motor vehicle incidents and all other injuries)

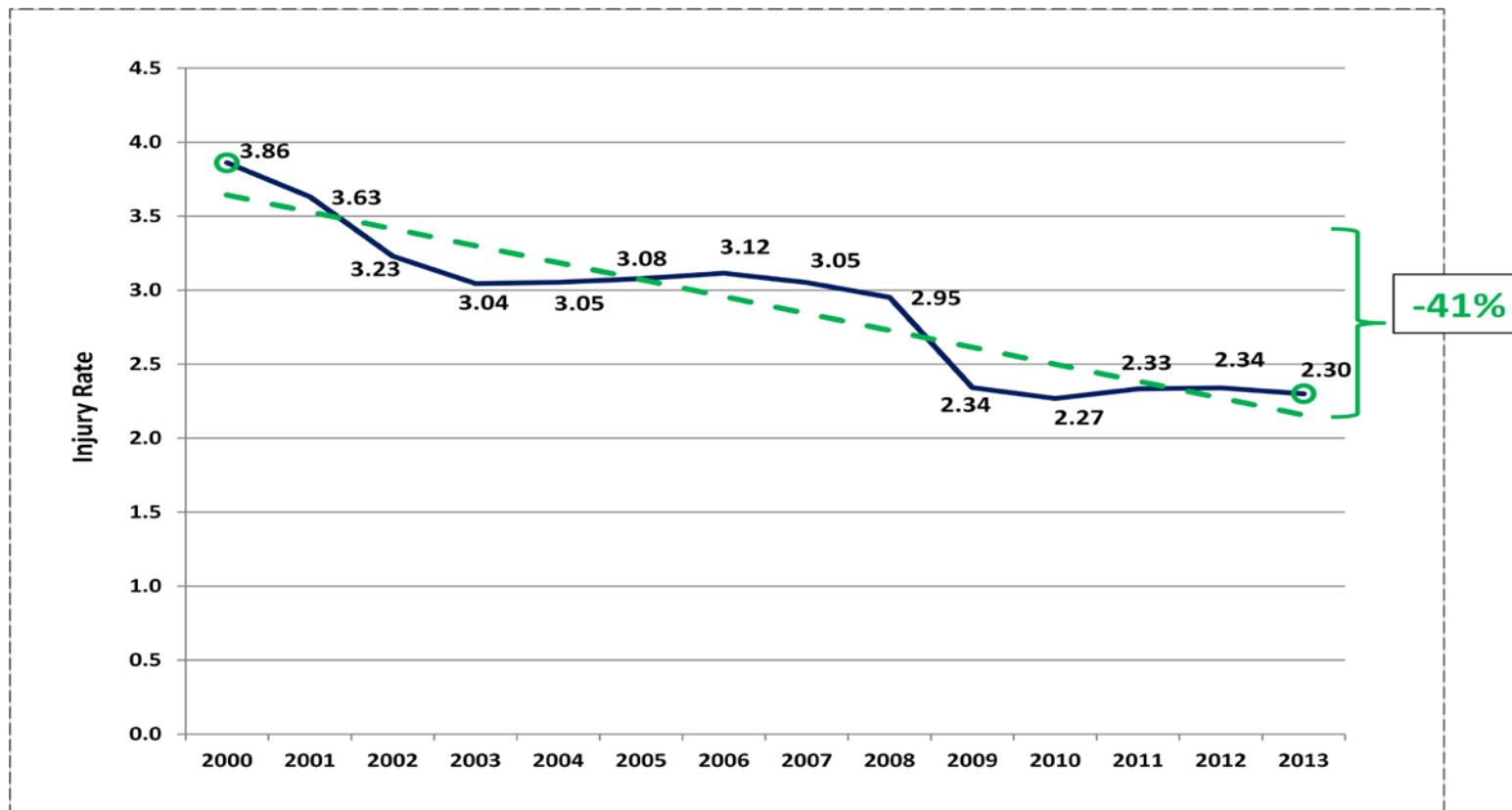


The rate for work-related deaths due to injury has shown a declining trend over the past 10 years, falling from 0.45 to 0.28 work-related deaths due to injury per 10,000 person years from 2004 to 2013, a decrease of 51% based on the trend line from 2004 to 2013.

## Serious Injury Rate



## Injury Rate

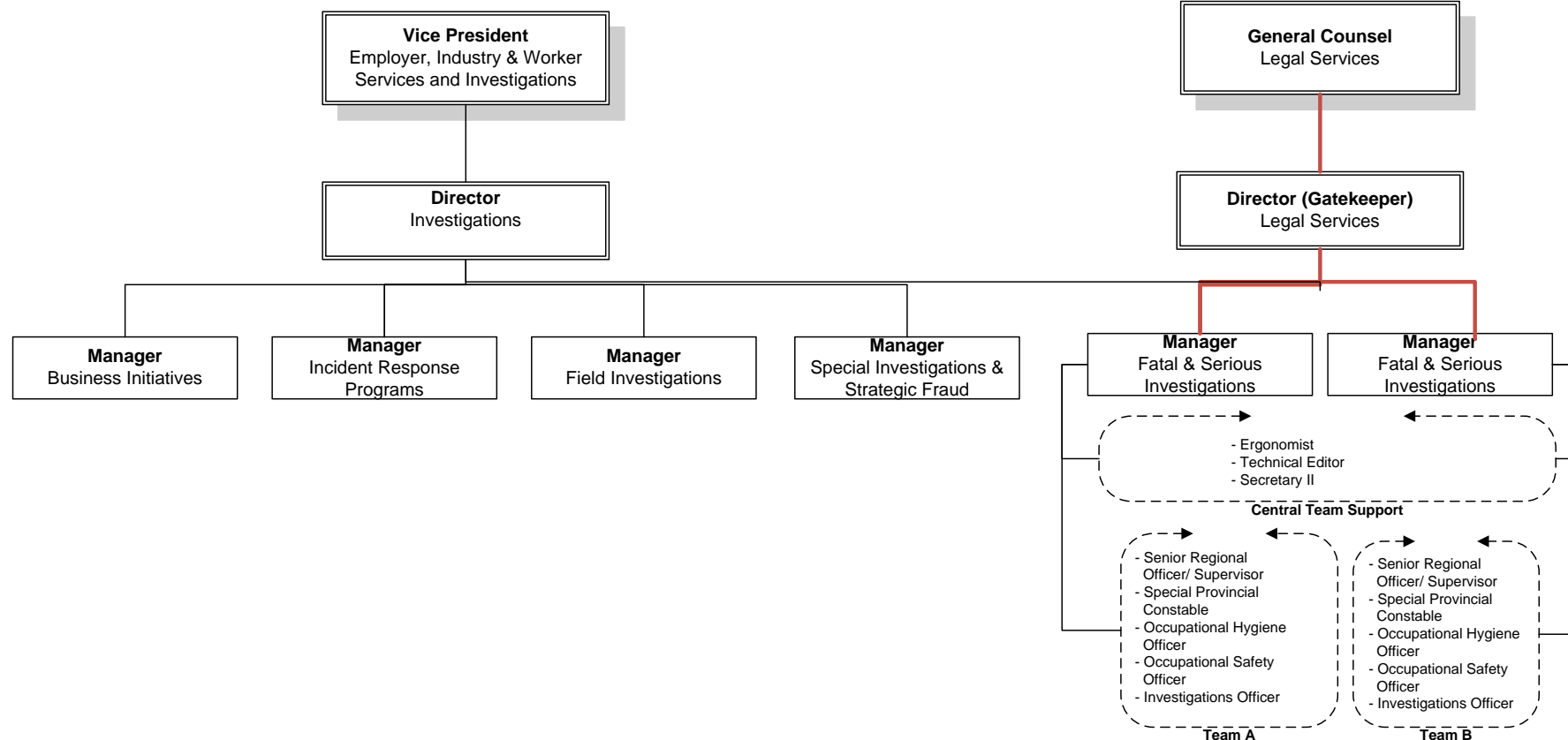


# Proposed Investigations Organizational Structure

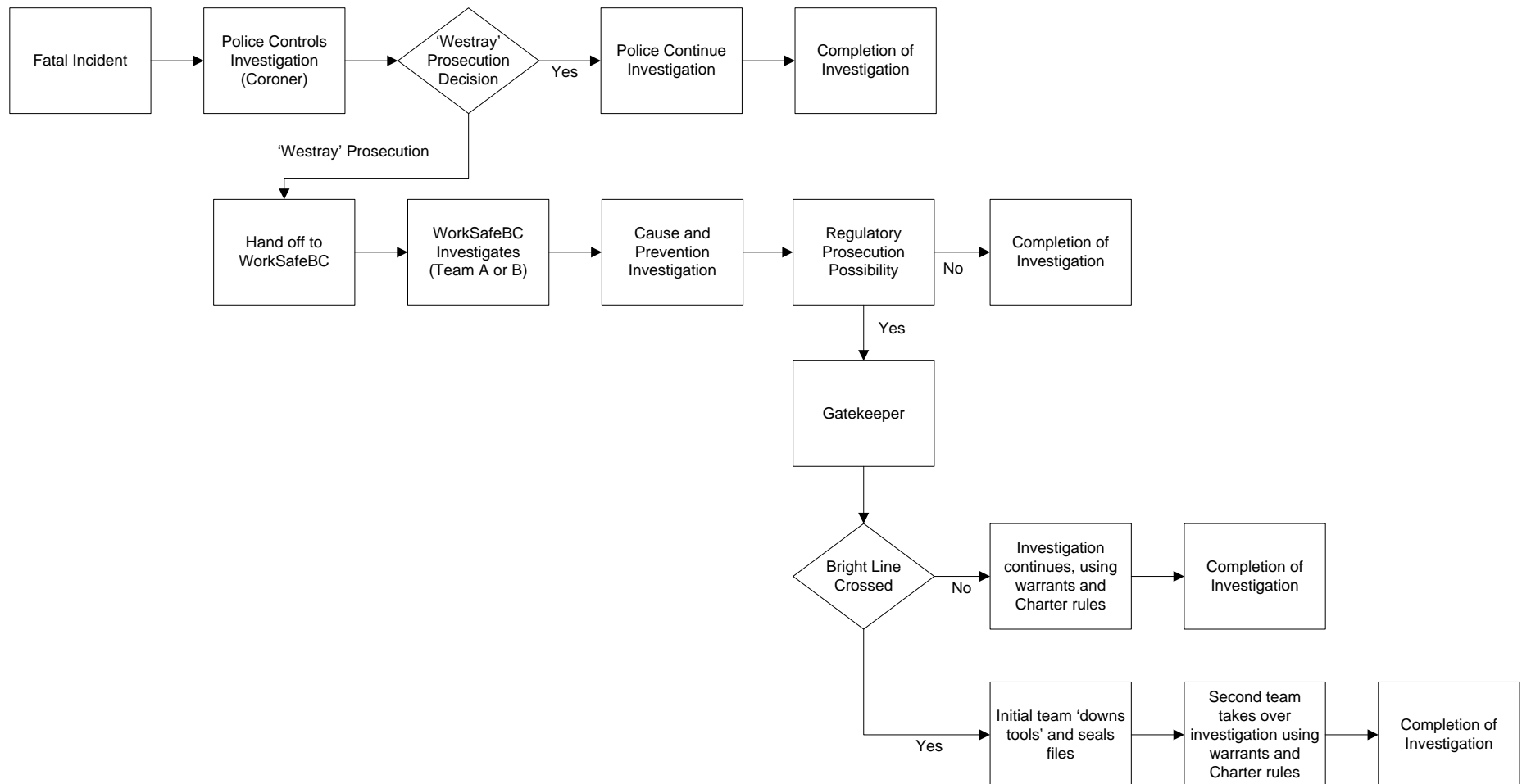
## Investigations Services

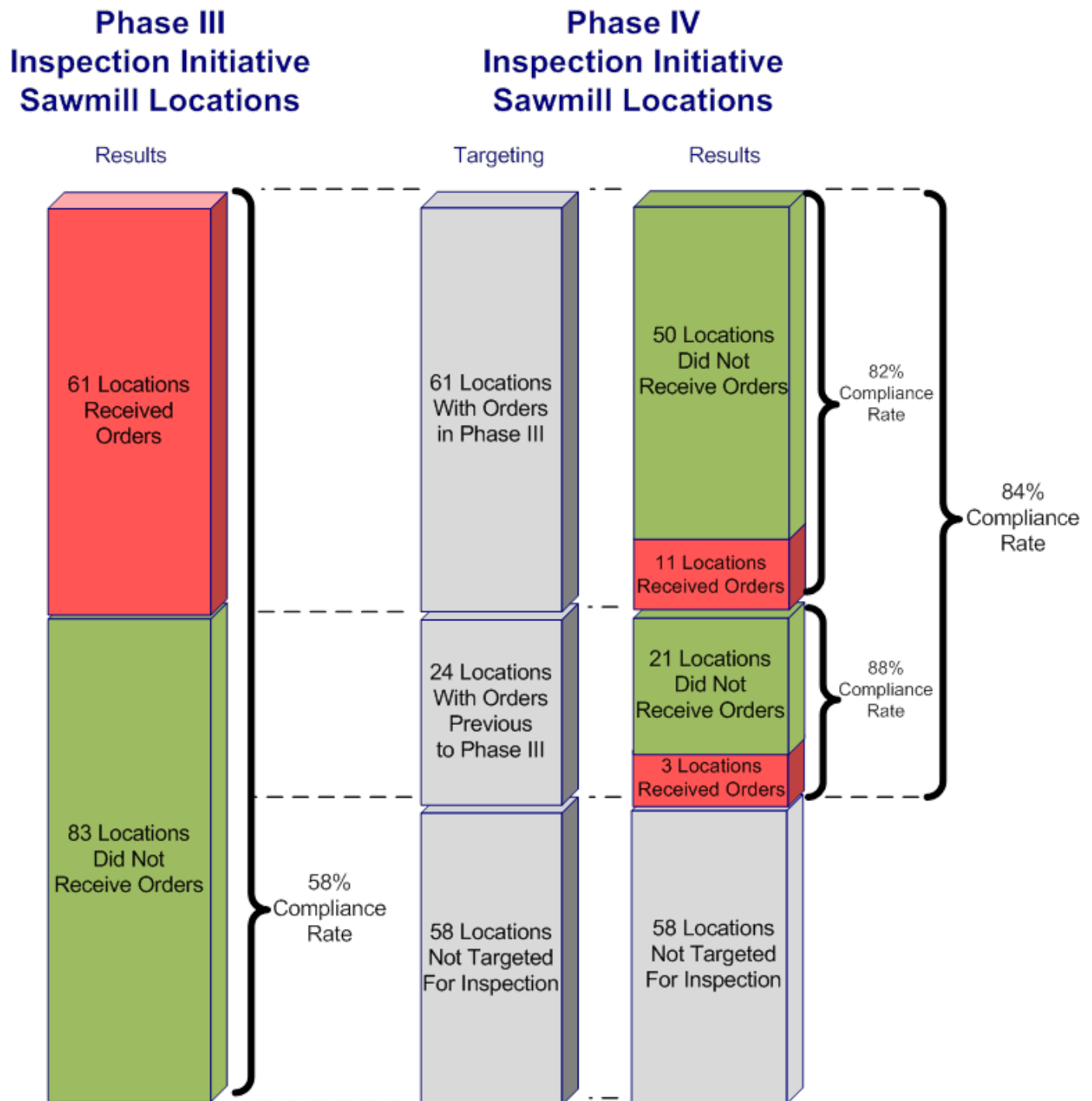
Proposed Model  
June 2014

Reporting Structure Changes  
once 'Bright Line' is crossed



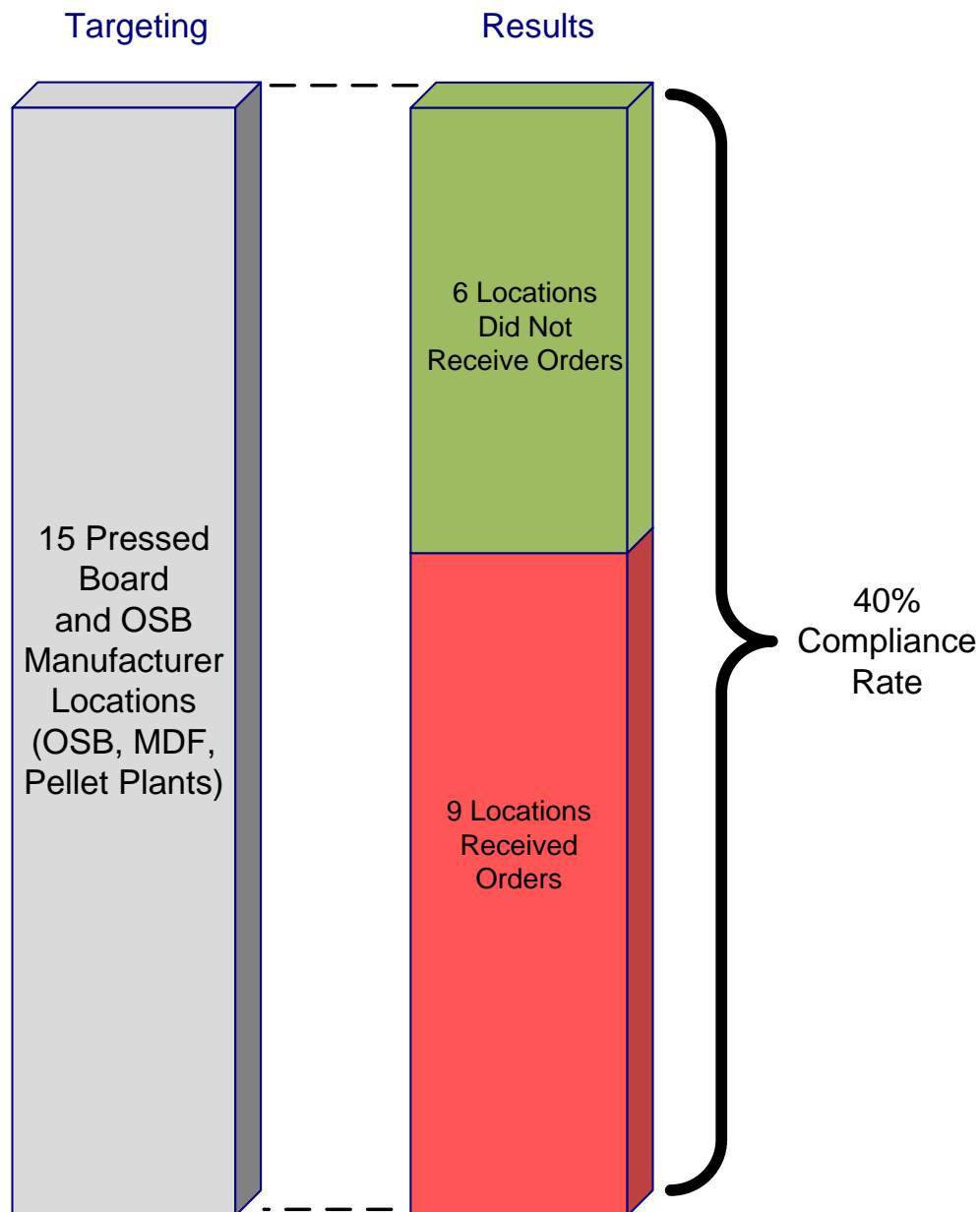
## Proposed Investigations Model





Note: The total operating locations changed slightly from 144 to 143 between Phase III and Phase IV, as one location ceased operations.

## Phase IV Inspection Initiative Wood Product Manufacturers



	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT
Total Number of Directors/Members <sup>1</sup>	8 [s. 81]	11 [s. 5]	11 [s. 50.2]	12 or more [s. 8]	12 [s. 4]	8 [s. 84]	10 [s. 151]	9-11 <sup>2</sup> [s. 162]	# not specified <sup>3</sup>	16 [s. 140]	Up to 5 <sup>4</sup> [s. 9]	6-8 [s. 98]
Responsible for OHS/Enforcement	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes	No	Yes
<b>Composition</b>												
Chair	Yes [s. 81]	Yes [s. 5]	Yes [s. 50.2]	Yes [s. 8]	Yes [s. 4]	Yes [s. 8]	Yes [s. 151]	Yes [s. 162]	Yes [s. 19]	Yes [s. 140]	Yes [s. 9]	Yes [s. 98]
Vice/Deputy Chair	-	-	-	Yes [s. 8]	-	-	Yes [s. 151]	-	-	-	-	-
Worker Representatives	1 [s. 81]	Up to 3 [s. 5]	3 [s. 50.2]	4 or more [s. 8]	3 [s. 4]	2 [s. 84]	Up to 4 [s. 151]	Yes – # not specified	Yes – # not specified	7 [s. 141]	Up to 2 [s. 9]	2-3 [s. 98]
Employer Representatives	1 [s. 81]	Up to 3 [s. 5]	3 [s. 50.2]	4 or more [s. 8]	3 [s. 4]	2 [s. 84]	Up to 4 [s. 151]	Yes – # not specified	Yes – # not specified	7 [s. 141]	Up to 2 [s. 9]	2-3 [s. 98]
Public Interest Representatives	2 [s. 81]	Up to 3 [s. 5]	3 [s. 50.2]	No	3 <sup>5</sup> [s. 4]	2 [s. 84]	No	-	No	No	No	No
Health Care Representative	1 [s. 81]	No	No	No	No	No	No	-	No	No	No	No
Actuary	1 [s. 81]	No	No	No	No	No	No	-	No	No	No	No
Investigation/ Prosecution	No	No	No	No	No	No	No	-	No	No	No	No
Other	No	No	No	No	No	No	No	Yes <sup>6</sup>	No	No	No	No

<sup>1</sup> Including President/CEO and other non-voting members, where they are part of the Board under the relevant Act.

<sup>2</sup> The Act requires a minimum of 7 and a maximum of 9 members representative of workers, employers, and such others as the LG in Council considers appropriate. Currently 10 members.

<sup>3</sup> Act (s. 19) requires Board be composed of a chairperson and as many members, equal in number, representative of workers and employers, as the LG in Council may determine. There are currently four worker representatives and four employer representatives.

<sup>4</sup> Currently 3 members.

<sup>5</sup> One must represent injured workers.

<sup>6</sup> Act (s. 162) allows the LG in Council to appoint such others as considered appropriate, but does not specify the background required.

	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT
President/CEO	Yes (non-voting)	Yes (non-voting)	Yes (non-voting)	Yes (non-voting)	Yes (non-voting)	Yes (non-voting)	No	Yes	No	Yes [s. 140]	No	Yes (non-voting)
Chief Appeals Commissioner	No	No	No	Yes (non-voting)	No	No	No	No	No	No	No	No
Other Ex-officio	No	No	No	No	Yes <sup>7</sup>	No	No	No	No	No	No	No
Observers	No	No	No	No	No	No	No	No	No	Yes <sup>8</sup> [s. 145]	No	No
<b>Appointment</b>												
Directors Appointed By	LG in Council [s. 81]	LG in Council [s. 5]	LG in Council <sup>9</sup> [s. 50.2]	LG in Council [s. 8]	LG in Council [s. 4]	Minister <sup>10</sup>	LG in Council [s. 151]	LG in Council [s. 162]	LG in Council [s. 19]	Government	LG in Council [s. 9]	Comm. In Exec. Council [s. 98]
Consult with stakeholders	Yes [s. 81]	No	Yes [s. 50.1]	No	Yes [s. 4]	Yes [s. 84]	Yes <sup>11</sup>	No <sup>12</sup>	Yes [s. 19]	Yes [s. 141]	Yes [s. 9]	Yes [s. 98]
<b>Terms (years)</b>												
Chair	5 [s. 81]	3 [s. 6]	4 [s. 50.2]	Up to 4 [s. 9]	LG to set [s. 4]	Up to 3 [s. 86]	5 years [s. 152]	Not specified	3 [s. 19]	5 [s. 143]	5 [s. 11]	3 [s. 98]
Vice-Chair	-	-	-	4 [s. 9]	-	-	5 years [s. 152]	-	-	-	-	-
Members	3 [s. 81]	3 [s. 6]	4 [s. 50.2]	4 [s. 9]	LG to set [s. 4]	Up to 3 [s. 86]	4 years [s. 152]	Not specified	3 [s. 19]	2 [s. 144]	4 [s. 11]	3 [s. 98]
Re-appointments?	Yes [s. 81]	Yes [s. 6]	Yes [s. 50.2]	Yes [s. 9]	-	Yes [s. 87]	Yes	-	Yes	Yes	Yes	Yes

<sup>7</sup> Employee of the department designated by the Minister.

<sup>8</sup> Appointed by the Minister. Participates in all meetings of the Board of Directors, with no voting rights.

<sup>9</sup> In making appointments to the board, the LG in Council is required to ensure that no more than one-third of the appointments expire in any year [s. 50.2(3.1)].

<sup>10</sup> Minister of the Government of NWT responsible for the *Workers' Compensation Act* in consultation with the Minister of the Government of Nunavut responsible for the *Workers' Compensation Act*.

<sup>11</sup> Not legislated, but the Workers' Compensation Board of Nova Scotia's Governance Manual states that stakeholders have input into Board appointments.

<sup>12</sup> LG is required to consult with the chair and other Board members but not stakeholders [s. 162(2)].

	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT
Maximum years/terms	Chair – 10 years; Member – 6 years [s. 81]	3 terms [s. 6.1]	-	2 terms [s. 9]	-	9 years [s. 87]	-	-	-	-	-	-

## Legislation

BC: *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

AB: *Workers' Compensation Act*, R.S.A. 2000, c. W-15.

MB: *The Workers Compensation Act*, C.C.S.M., c. W200.

NB: *Workplace Health, Safety and Compensation Commission Act*, S.N.B. 1994, c. W14.

NL: *Workplace Health, Safety and Compensation Act*, R.S.N.L. 1990, c. W-11.

NT/NU: *Workers' Compensation Act*, S.N.W.T. 2007, c. 21.

NS: *Workers' Compensation Act*, S.N.S. 1994-95, c. 10.

ON: *Workplace Safety and Insurance Act*, S.O. 1997, c. 16.

PE: *Workers' Compensation Act*, R.S.P.E.I. 1988, c. W-7.1.

QC: *An Act respecting occupational health and safety*, C.Q.L.R. c. S-2.1.

SK: *Workers Compensation Act*, S.S. 2013, c. W-17.11.

YT: *Workers Compensation Act*, S.Y. 2008, c. 12.

	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT	Canada
<b>Authority to make OHS regulations</b>	Yes [s. 225] <sup>1</sup>	No [s. 40]	No [s. 18]	No [s. 51]	Subject to approval [s. 20.6] <sup>2</sup>	Subject to approval [s. 25] <sup>3</sup>	No [s. 82]	No [s. 70]	Subject to approval [s. 46] <sup>4</sup>	Subject to approval [s. 223] <sup>5</sup>	No [s. 44]	No [s. 51]	No [s. 264]
<b>How often amend regulations</b>	Annually	5 years	5 years	As required	As required	As required <sup>6</sup>	5 years	As required	As required	As required	5 years	As required	<i>Not known</i>

## Legislation

BC: *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

AB: *Occupational Health and Safety Act*, R.S.A. 2000.

MB: *Workplace Safety and Health Act*, C.C.S.M., c. W210,

NB: *Occupational Health and Safety Act*, S.N.B. 1983, c. O-0.2.

NL: *Occupational Health and Safety Act*, R.S.N.L. 1990, c. O-3.

NS: *Occupational Health and Safety Act*, S.N.S. 1996, c. 7.

NT/NU: *Safety Act*, R.S.N.W.T. 1988, c. S-1.

ON: *Occupational Health and Safety Act*, R.S.O. 1990, c. O-1.

PE: *Occupational Health and Safety Act*, R.S.P.E.I. 1998, c. O-1.01.

QC: *An Act respecting occupational health and safety*, R.S.Q., c. S-2.1.

SK: *Saskatchewan Employment Act*, S.S. 2013, c. S-15.1.

YT: *Occupational Health and Safety Act*, R.S.Y. 2002, c. 159.

Federal: *Canada Labour Code*, R.S.C. 1985, c. L-2.

<sup>1</sup> The Board has the authority to make and approve OHS regulations.

<sup>2</sup> The Commission may make regulations subject to the approval of the Lieutenant Governor in Council.

<sup>3</sup> The Board may make regulations subject to the approval of the Lieutenant Governor in Council.

<sup>4</sup> The Board may make regulations subject to the approval of the Lieutenant Governor in Council.

<sup>5</sup> The Commission may make regulations, however every draft regulation must be submitted to the Government for approval.

<sup>6</sup> The NWT/Nunavut are currently in a 9 year project to review their regulations.

	2009	2010	2011	2012	2013
<b>Orders – all</b>	70,044	75,130	63,845	62,130	68,481
<b>Orders to workers</b>	419	348	323	301	274
<b>Orders - Stop work (s. 190)</b>	45	58	54	70	56
<b>Orders - Stop use (s. 191)</b>	42	33	26	38	67
<b>Warning letters</b>	300	389	453	441	458
<b>Penalties – Recommended</b>	200	286	359	313	426
<b>Penalties - Number imposed</b>	211	256	352	260	233
<b>Penalties - Amounts imposed</b>	\$ 4,454,347	\$ 3,136,898	\$ 4,850,306	\$ 2,909,968	\$ 2,850,147
<b>Prosecutions – Completed</b>	0	0	1	2	0

	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT	Canada
<b>Compliance Orders</b>	Yes [s. 187]	Yes [s. 9]	Yes [ss. 26-35]	Yes [s. 31]	Yes [s. 28]	Yes [s. 12(1)]	Yes [s. 55]	Yes [s. 57]	Yes [s. 8(1)]	Yes [s. 182]	Yes [s. 3-38]	Yes [s. 38]	Yes [s. 145(1)]
<b>Stop Use/Supply Orders</b>	Yes [s. 190]	Yes [s. 11]	No	Yes [s. 32(4)]	Yes [ss. 29, 30]	Yes [ss. 12, 14]	Yes [ss. 51, 55]	Yes [s. 57(6)]	Yes [s. 8(4)]	Yes [ss. 190, 218]	No	Yes [ss. 39, 40]	Yes [s. 145]
<b>Stop Work Orders</b>	Yes [s. 191]	Yes [ss. 9, 10]	Yes [ss. 26, 36(1)]	Yes [s. 32(1)]	Yes [s. 27]	Yes [ss. 12, 14]	Yes [s. 55]	Yes [s. 57(6)]	Yes [s. 8(4)]	Yes [ss. 186, 188, 218]	Yes [ss. 3-40, 3-41]	Yes [ss. 39, 40]	Yes [s. 145]
<b>Warning Letters/ Verbal Compliance Directive</b>	Yes [Policy D12-196-11]	Yes [Policy L-01a]	Yes [s. 26(2)] <sup>1</sup>	No	No	Yes [s. 12(2)] <sup>2</sup>	No	No	No	No	No	No	No
<b>Administrative Penalties</b>	Yes [s. 196]	Yes [s. 40.3]	Yes [s. 53.1]	No	No	No	Yes <sup>3</sup> [s. 4]	No	No	No	No	Yes [s. 45(1)]	No
Maximum \$ (1 <sup>st</sup> offence)	607,297.58	10,000	5000	-	-	-	2000	-	-	-	-	5000	-
<b>Injunctions</b>	Yes [s. 198]	Yes [s. 42]	No	No	No	No	No	Yes [s. 60]	Yes [s. 9(2)]	No	No	Yes [s. 47]	Yes [s. 152]
<b>Prosecutions</b>	Yes [s. 213]	Yes [s. 41]	Yes [s. 54]	Yes [s. 47]	Yes [s. 67]	Yes [s. 281]	Yes [s. 74(1)]	Yes [s. 66]	Yes [s. 43(1)]	Yes [s. 236]	Yes [s. 3-78]	Yes [s. 44]	Yes [s. 148]
Maximum \$ (1 <sup>st</sup> offence)	664,662.65	500,000	250,000	250,000	250,000	50,000/ 500,000 <sup>4</sup>	500,000	25,000/ 500,000 <sup>5</sup>	250,000	3,000/ 60,000 <sup>6</sup>	20,000	250,000	1 million

<sup>1</sup> Permits officer to give warning that stop work order may be issued. No other legislation or formal publicly available policy governing general warning letters.

<sup>2</sup> Permits officer to give warning that stop use order may be issued; stop use order cannot be issued without this warning first. No other legislation or policy governing general warning letters.

<sup>3</sup> Provision is in [Occupational Health and Safety Administrative Penalties Regulation](#), N.S. Reg. 291/2009.

<sup>4</sup> Workers are liable up to \$50,000; employers and suppliers are liable up to \$500,000.

	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT	Canada
<b>Ticketing</b>	No	Yes	No	No	No	Yes	Yes	Yes	No	Yes <sup>7</sup>	Yes	No	No
Maximum \$ (1 <sup>st</sup> offence)	-	500	-	-	-	575/ 5,750	812.41	1,000	-	-	1,000	-	-

## Legislation

BC: *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

AB: *Occupational Health and Safety Act*, R.S.A. 2000.

MB: *Workplace Safety and Health Act*, C.C.S.M., c. W210,

NB: *Occupational Health and Safety Act*, S.N.B. 1983, c. O-0.2.

NL: *Occupational Health and Safety Act*, R.S.N.L. 1990, c. O-3.

NS: *Occupational Health and Safety Act*, S.N.S. 1996, c. 7.

NT/NU: *Safety Act*, R.S.N.W.T. 1988, c. S-1.

ON: *Occupational Health and Safety Act*, R.S.O. 1990, c. O-1.

PE: *Occupational Health and Safety Act*, R.S.P.E.I. 1998, c. O-1.01.

QC: *An Act respecting occupational health and safety*, R.S.Q., c. S-2.1.

SK: *Saskatchewan Employment Act*, S.S. 2013, c. S-15.1.

YT: *Occupational Health and Safety Act*, R.S.Y. 2002, c. 159.

<sup>5</sup> Individuals are liable up to \$25,000; corporations are liable up to \$500,000.

<sup>6</sup> Individuals are liable up to \$3,000; corporations are liable up to \$60,000.

<sup>7</sup> All prosecutions start with ticket-like form.

	BC	AB	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT
<b>First level</b>	Review Division [s. 96.2]	OHS Council [s. 16(1)]	Director <sup>198</sup> [s. 37(1)]	Chief Compliance Officer [s. 37(1)]	Assistant Deputy Minister [s. 32(1)]	Chief Safety Officer [s. 16(1)]	Director <sup>199</sup> [s. 67(1)]	Labour Relations Board [s. 61(1)]	Director of OHS [s. 10(1)]	Commission [s. 191.1]	Director of OHS [s. 3-53(4)]	Board [s. 26(1)]
<b>Time Limit to apply</b>	90 days [s. 96.2(3)]	30 days [s. 16(2)]	14 days [s. 37(2)]	14 days [s. 37(1)]	7 days [s. 32(1)]	30 days [s. 16(1)]	14 days [s. 67(1)]	30 days [s. 61(1)]	-	10 days [s. 191.1]	15 days [s. 3-53(2)]	21 days [s. 26(2)]
<b>Time limit for decision</b>	150 days [s. 96.4(6)]	-	-	As soon as practicable [s. 37(1)]	- <sup>200</sup>	30 days [s. 16(2)]		-	-	-	-	-
<b>Second level</b>	Appeal <sup>201</sup> [s. 239]	Court of QB [s. 16(5)]	Labour Board [s. 39(1)]	Appeals Tribunal [s. 21 <sup>202</sup> ]	Labour Relations Board [s. 33(1)]	Supreme Court [s. 17(1)]	Labour Board [s. 69(1)]	-	Workers Compensation Board [s. 11(1)]	Commission of occupational injuries [s. 193]	Adjudicator [s. 3-56]	-
<b>Time Limit to apply</b>	30 days [s. 243]	30 days [s. 16(6)]	14 days [s. 39(2)]	7 days [s. 21(2)]	30 days [s. 33(1)]	10 days [s. 17(1)]	21 days [s. 69(2)]	-	30 days [s. 11(1)]	10 days [s. 193]	15 days [s. 3-56]	-
<b>Time limit for decision</b>	180 days [s. 253]	-	-	-	-	-	-	-	-	-	-	-

## Legislation

BC: *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

<sup>198</sup> This is the Director of the Manitoba Workplace Safety and Health Branch.

<sup>199</sup> This is the Executive Director of OHS.

<sup>200</sup> No time limit for decision, but the investigation must begin within 24 hours of receipt of the appeal [s. 32(3)].

<sup>201</sup> Appeal only available for administrative penalties or suspension of certificates.

<sup>202</sup> *Workplace Health, Safety and Compensation Commission Act*.

AB: *Occupational Health and Safety Act*, R.S.A. 2000.

MB: *Workplace Safety and Health Act*, C.C.S.M., c. W210,

NB: *Occupational Health and Safety Act*, S.N.B. 1983, c. O-0.2.

NL: *Occupational Health and Safety Act*, R.S.N.L. 1990, c. O-3.

NS: *Occupational Health and Safety Act*, S.N.S. 1996, c. 7.

NT/NU: *Safety Act*, R.S.N.W.T. 1988, c. S-1.

ON: *Occupational Health and Safety Act*, R.S.O. 1990, c. O-1.

PE: *Occupational Health and Safety Act*, R.S.P.E.I. 1998, c. O-1.01.

QC: *An Act respecting occupational health and safety*, R.S.Q., c. S-2.1.

SK: *Saskatchewan Employment Act*, S.S. 2013, c. S-15.1.

YT: *Occupational Health and Safety Act*, R.S.Y. 2002, c. 159.

## **Appendix J: Deloitte Report**



WorkSafeBC

# Leading Inspections & Investigations Practices



June 20, 2014

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# Executive Summary

## Background

Following the outcome of the WorkSafeBC investigations of the 2012 Babine and Lakeland Mills explosions in northern British Columbia, the Hon. Shirley Bond, Minister of Jobs, Tourism and Skills Training requested that the Interim Administrator (Mr. Gordon Macatee) initiate a six-point action plan for WorkSafeBC. Included in this action plan were the instructions to:

1. Review workers' compensation boards in other jurisdictions to understand the merits of and determine best practices in organizational structures specifically relating to the separation of enforcement vs. regulation; and to
2. Develop a plan for implementing a world-class inspection and investigation regime, incorporating best practices, a workforce review and enhanced training.

The Minister requested that Mr. Macatee provide a consolidated status update and plan, including the above two items, by July 1, 2014. To support the Administrator in developing such a plan, Deloitte was engaged to conduct a jurisdictional review of inspection, investigation and enforcement models in similar organizations in other jurisdictions (including other regulatory bodies that are recognized as demonstrating leading practices in their subject areas). The purpose of this review was to identify the characteristics of "world-class" compliance and enforcement organizations, and identify leading practices for consideration by the Administrator as he evaluates options to enhance these functions. Our work was conducted during the period of May 15 to June 20, 2014.

## Scope & Approach

In order to support the above requests, our approach was designed to identify leading practices related to inspections, investigations and enforcement within, and external to, the occupational health and safety (OHS) industry across Canada and internationally. This involved the following four phases:

Phase 1 – Project initiation and definition of world-class principles

Phase 2 – Jurisdictional scan and analysis of leading practice

Phase 3 – High-level WorkSafeBC Assessment

Phase 4 – Reporting

We focused our research on key trends that are relevant to the two action plan items listed above, and the issues outlined in the report issued by Mr. John Dyble (Deputy Minister to the Premier) on February 6, 2014 entitled "Babine Explosion Investigation: Fact Pattern and Recommendations"<sup>1</sup>.

## World-class principles

One of the objectives of this assessment was to identify world-class principles adopted by workers' compensation organizations across Canada and internationally, in order to support an assessment of opportunities for WorkSafeBC. To accomplish this, a scan of the principles adopted by leading workers' compensation organizations, and of leading regulatory agencies in other fields, was conducted. This was augmented by a high-level review of relevant literature (including peer-reviewed literature and publications by government and non-government organizations). Based on this, the following principles for a world-class regulatory organization were identified:

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<sup>1</sup> Dyble, J. 2014. Babine Explosion Investigation: Fact Pattern and Recommendations. 36 pp.  
[http://www.labour.gov.bc.ca/wab/pdf/Babine\\_report\\_Web\\_140211.pdf](http://www.labour.gov.bc.ca/wab/pdf/Babine_report_Web_140211.pdf)

1. Supports a prosperous and sustainable business environment
2. Viewed by all key stakeholders to be credible and trusted
3. Top of mind for employers and employees
4. Implements clear and transparent enforcement policies and procedures
5. Driven by outcomes-based performance measures
6. Appropriately balances prevention and enforcement
7. Leverages a risk-based approach to inspections
8. Responsive and timely in its actions
9. Attracts, develops and retains high quality professionals
10. Leverages science and technology

Based on these world-class principles, and an understanding of WorkSafeBC's current state, a number of enhancement opportunities were developed for consideration by the Administrator.

## Enhancement opportunities

It was noted that WorkSafeBC's current state aligns well with many of the world-class principles identified. Based on our scan, there were, however, some opportunities for improvement that were identified to address the specific challenges outlined in Mr. Dyble's report, and to enhance existing inspection, investigation and enforcement practices at WorkSafeBC. These opportunities are described in greater detail in the body of this report, but are summarized as follows:

- Implement additional enforcement tools to support graduated enforcement actions;
- Consider adjustments to the investigations branch and related procedures to support appropriate separation of "for cause" and "for fault" investigations;
- Improve the timeliness of enforcement lifecycle activities to maximize impact on deterrence;
- Increase the visibility and presence of WorkSafeBC;
- Consider dedicated Crown counsel for investigation oversight and prosecution;
- Enhance automation, integration and analytics to drive internal efficiencies and employer engagement;
- Develop further partnerships with complementary agencies to share work and data;
- Consider publishing information regarding non-compliance; and
- Utilize targeted leading and lagging indicators to drive continuous improvement and behavioural change

## Conclusions

The governance structures, organizational structures, tools, technologies and processes used to regulate occupational health and safety (OHS) vary significantly across jurisdictions both across Canada and around the world. Operational practices within the regulatory bodies have also undergone substantial change over the past decade as OHS regulators seek to find the optimum equilibrium between enforcing compliance and proactively supporting employers and employees to maintain safe, productive workplaces. As noted in other jurisdictions, this is an ongoing evolution that often shifts abruptly due to emerging trends, issues and incidents within different industries. While it is clear that there is no one ideal OHS regulatory model for inspections and investigations, it is also evident that a number of consistent world-class principles have emerged and that several leading OHS organizations are employing similar practices to drive improved health and safety performance within their jurisdictions. These include effective graduated enforcement models, consistent, timely and proportionate enforcement actions and the presence of competent, well trained professionals with strong working relationships with other agencies and employers.

Mr. Dyble's February 2014 report on this issue identified a number of specific challenges related to investigations and prosecutions that must be addressed by WorkSafeBC. Our report details a number of opportunities related to organizational structure, technology, policies and procedures to address these challenges, and provides examples of leading practices in other jurisdictions for reference, while continuing to support the conclusion that effective prosecution is a critical element of an effective,

graduated enforcement model. Additional enhancement opportunities related to technology, performance management, predictive analytics and partnerships are also provided to support WorkSafeBC as it continually strives to refine existing practices and capabilities as a best in class OHS regulator.

WorkSafeBC already demonstrates many characteristics of a world-class regulator today. As a result of this conclusion and our independent research and analysis, we believe that embarking on substantial reform of the regulator or its role is likely no more effective in terms of achieving the Minister's objectives than focusing efforts on building upon the organization's existing capabilities, strengths, enforcement tools and operating model. This is not to imply that the solutions are quick nor simple, particularly given the complex legal and policy environment in which WorkSafeBC operates, but they are achievable in a reasonable timeframe with the support of all key stakeholders.

# Introduction

## Background

Following the outcome of the WorkSafeBC investigation of the 2012 Babine and Lakeland Mills explosions in northern British Columbia, the Hon. Shirley Bond, Minister of Jobs, Tourism and Skills Training requested that the Interim Administrator (Mr. Gordon Macatee) implement a six-point action plan at WorkSafeBC. Included in this action plan, were the following two instructions:

1. Review workers' compensation boards in other jurisdictions to understand the merits of and determine best practices in organizational structures specifically relating to the separation of enforcement vs. regulation; and to
2. Develop a plan for implementing a world-class inspection and investigation regime, incorporating best practices, a workforce review and enhanced training.

To support the Administrator in developing such a plan, Deloitte was engaged to conduct a jurisdictional review of inspection, investigation and enforcement models in similar organizations in other jurisdictions (including non-OHS organizations that are recognized as demonstrating leading practice in these areas). The purpose of this review was to identify the characteristics of "world-class" compliance and enforcement organizations, and identify leading practices for consideration by the Administrator as he evaluates options to enhance these functions.

## Scope & objectives

Deloitte was engaged under the guidance and direction of the Administrator to perform independent research and analysis to support the above requests, specifically to support the following objectives:

1. To define the features of a world-class Occupational Health & Safety (OH&S) inspection & investigation regime
2. To evaluate models in other jurisdictions or industries that are recognized as leading practice and/or have separated enforcement and regulation
3. To determine leading practices around OH&S regulations, policies and procedures

The overall objective of our review was to conduct a jurisdictional scan to identify leading practices, and provide options for consideration to improve the current inspection, investigation, and enforcement policies and practices within WorkSafeBC.

## Approach

The findings presented in this report are primarily drawn from a review of publicly available literature on worker safety, consultations with thought leaders in the fields of workers' compensation and regulatory enforcement in Canada and Australia, and interviews with subject matter experts from select regulatory organizations in Canada and the UK.

The organizations were chosen based on a variety of considerations with each of the organizations meeting one or more of the following criteria:

- an international reputation as a leader;
- a referral by one or more other organization;
- engaged in worker safety;

- engaged in other regulatory enforcement; or
- recognized for innovative or progressive models for inspections and investigations.

Our approach to this review comprised the following phases and key activities:

Phases	Key Activities
<b>Phase 1 – Project Initiation and Definition of World-Class Principles</b>	<ul style="list-style-type: none"> <li>• Developed definitions and assessment criteria for world-class principles</li> <li>• Identified target jurisdictions and key contacts for interviews</li> <li>• Identified subject matter experts for interviews</li> <li>• Identified relevant literature for review</li> </ul>
<b>Phase 2 – Jurisdictional scan and analysis of leading practice</b>	<ul style="list-style-type: none"> <li>• Conducted review of publically-available literature</li> <li>• Conducted over 15 interviews with thought leaders and subject matter experts from select organizations across Canada and internationally</li> <li>• Documented relevant practices and observations and summarized key findings</li> <li>• Identified leading practices for regulatory enforcement at select organizations</li> <li>• Assessed leading practices and operating models to refine the world-class principles initially developed in Phase 1, in the context of WorkSafeBC</li> </ul>
<b>Phase 3 – High-level WorkSafe BC Assessment</b>	<ul style="list-style-type: none"> <li>• Completed high-level evaluation of WorkSafeBC against world-class principles</li> <li>• Identified opportunities to strengthen or enhance inspections and investigations operations</li> </ul>
<b>Phase 4 – Reporting</b>	<ul style="list-style-type: none"> <li>• Prepared draft report of consolidated findings and recommendations for validation</li> <li>• Incorporated feedback and submitted final report</li> </ul>

Our work focused on leading practices pertaining to inspections, investigations and enforcement that are relevant to two items noted under “Background” above and the issues identified in Mr. Dyble’s report. Our review was conducted during the period May 15, 2014 to June 20, 2014.

# Defining World Class

A key priority outlined by the Minister was to “develop a plan for implementing a world class inspection and investigation regime.” Our review of workers’ compensation organizations and other similar regulatory bodies in jurisdictions, both across Canada and globally, provided insights into what constitutes a “world class” inspection and investigations workers’ compensation organization. We also validated these principles against published research.

For the purposes of this review, we have defined world class as “being of the highest calibre in the world”<sup>2</sup>, or more specifically, “a workers’ compensation organization that innovates and draws on the leading practices of other leading jurisdictions, and is looked to as the benchmark or leading organization by others in the industry”. We also identified specific research by economic, policy and academic organizations regarding what makes a world class regulatory organization.

In our research to identify world-class principles, it was evident that no single principle or operating model is adopted by all organizations. Policies and procedures adopted by organizations are based on their primary areas of focus (e.g., deterrence vs. compliance), the regulatory environment in which they operate and the specific requirements of the industries within their jurisdictions. The objective of identifying these world-class principles is to highlight key attributes, policies and practices of organizations that are achieving positive outcomes related to OHS performance and compliance.

## Attributes of a world class inspections and investigations organization

Based on our review and analysis, ten principles of a best-in-class workers’ compensation inspection and investigations organization were identified, as follows:

### **1) Supports a prosperous and sustainable business environment.**

Regulations are designed to balance complex social, environmental and economic objectives. An effective health and safety regulator supports this balance by providing a “level playing field” for all regulated organizations and supporting the highest possible level of compliance, while reducing administrative burdens and costs for companies demonstrating strong health and safety performance. Research exists to indicate that organizations that operate under the jurisdiction of an effective regulator, and therefore in locations with strong OHS performance, also tend to be more profitable, rank high in employee satisfaction, and demonstrate environmentally friendly practices<sup>3</sup>.

### **2) Viewed by all key stakeholders to be credible and trusted.**

A common thread amongst all world-class regulatory and enforcement workers’ compensation bodies is the high level of credibility and trust afforded to these organizations by employers, employees and the general public. This allows the creation and enforcement of rules and regulations, through appropriate consultation mechanisms, without unreasonable challenge and interference. Regulators that provide information and advice, suggest cost-effective remedies on site, and increase the organization’s understanding of, and ability to meet, regulations are viewed as credible and trusted partners by their stakeholders.

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<sup>2</sup> Merriam-Webster Dictionary (2014). <http://www.merriam-webster.com/dictionary/>

<sup>3</sup> Sarah Kim, 2005. The investment reasons for OH&S. AMP Capital Investors. 29 pp.

### **3) Top of mind for employers and employees.**

A world-class regulatory and enforcement agency cannot (and should not) inspect each and every business operator under supervision<sup>4</sup>. The agency must rely on multiple strategies and tools to ensure that workplace safety still remains top of mind for employers and employees at all times as they make strategic and tactical decisions, implement new processes and conduct their daily activities. World class regulatory agencies invest significant resources to promote and facilitate compliance, self-monitoring, and self-reporting by employers and employees.

### **4) Implements clear and transparent enforcement policies and procedures.**

A workers' compensation organization perceived as world class will have developed clear and transparent enforcement policies, procedures and processes. The rationale behind them and the mechanisms for deployment are well understood by all parties, and processes exist to address stakeholder input where appropriate. Employers and employees are also regularly informed of their roles, rights, and obligations related to inspections and enforcement processes through active dissemination of information through all available channels, including traditional media and social media.

### **5) Driven by outcomes-based performance measures.**

In all leading jurisdictions and industries studied, the long-term vision and actions of enforcement organizations are measured based on leading indicators and historical performance measures. The linkage between regulator interventions (in support of prevention and deterrence) and key health and safety measures is understood and monitored to support transparent performance reporting and continuous improvement. Indicators range from wider economic measures (such as the attraction and growth in compliant, profitable businesses) to deployment statistics for key prevention strategies, to health and safety-related metrics (such as reductions in loss-time injury claims and fatalities) and enforcement measures (such as the number of penalties and prosecutions).

### **6) Appropriately balances prevention and enforcement.**

A world-class workers' compensation organization will appropriately balance the goals of education, collaboration and other prevention-focused activities with the need to enforce and penalize those organizations that choose not to comply. Enforcement tools are used sparingly and in direct proportion to the nature of the offense and the track record of the employer and/or employee. The range of tools available to the inspector allows for the gradual escalation of enforcement actions and penalties if requests to rectify issues and maintain a safe working environment are ignored.

### **7) Leverages a risk-based approach to inspections.**

Across all jurisdictions and industries, we found the leaders consistently used a risk-based methodology to identify, target and weight inspection activities towards higher risk offenders. Risk is determined through a variety of measures, including the inherent risk of the industry as a whole, the risk associated with a specific process or activity and the risk associated with the individual operator (based on historical performance). Risk measures are also dynamic in order to account for changing conditions within a given industry or region and to enable the regulator to focus limited inspection resources on the highest-risk activities and operators. In addition, in some jurisdictions, the same enforcement activities available to address safety accidents and incidents were also available to address the risks that would enable such incidents to occur.

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<sup>4</sup>OECD, 2014. Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy, OECD Publishing. [www.oecd-ilibrary.org/governance/regulatory-enforcement-and-inspections\\_9789264208117-en](http://www.oecd-ilibrary.org/governance/regulatory-enforcement-and-inspections_9789264208117-en)

Applying the same enforcement tools (at the same level of severity) in cases where the risk of an event was observed was noted to have a strong deterrence effect and to change behavior.

**8) Responsive and timely in its actions.**

Leading organizations have established targets for the timeliness of some of the activities they undertake, including time to validate a complaint, conduct an investigation, complete legal review, process a penalty and process appeals. In addition, world-class enforcement agencies are proactive in scanning the business environment for emerging key risks. They will adjust their focus as early warning 'triggers' indicate a growing safety-related risk event, in effect becoming a learning organization that course-corrects for changing conditions. Improving this ability to react greatly improves the effectiveness of prevention activities that are designed to prevent an injury, illness or fatality. Supporting this responsiveness to changing market conditions is the need for streamlined enforcement and appeals processes, rapid communications and education for other at-risk organizations, and timely updates to reporting and regulations.

**9) Attracts, develops and retains high quality professionals.**

A common factor amongst leading enforcement bodies is the ability to recruit and train high-quality professionals. These are competent, trusted personnel trained to lead and support all levels of inspection, initiate enforcement activities, lead investigations and ultimately to oversee legal and prosecution activities as required. It is understood that, even with appropriate training, there is an ongoing need for training and development. This is accomplished through regular assessments of performance, identification of successes and lessons learned and incorporation of these lessons into training and improved processes and tools. This ensures the required standards, tools and processes are followed by all inspectors and investigators.

**10) Leverages science and technology.**

Science and technology are critical to support the leaders in the industry as they deliver on their regulatory mandates. These organizations continue to leverage research and innovation to support improvements to their inspections and investigations programs. This includes initiatives to improve the effectiveness of training for inspectors, providing inspectors with new tools to keep them informed and connected, using emerging technologies to support the identification, monitoring and investigation of emerging risks, incorporation of predictive and visual information analytics to support decision making and automation of compliance and enforcement processes (e.g. scheduling and assignment of high risk inspections, triaging of incoming complaints based on risk and potential impact and generation of reminders and notifications based on business rules).

# Summary of Observations

We researched the inspection, investigation and enforcement practices in several jurisdictions where OHS regulatory bodies were viewed as leaders in their field (see Appendix A). We also conducted a high-level scan of related literature (academic and government-issued) and conducted several interviews with subject matter experts. This section summarizes the key observations from this research. The findings represent observations from publicly-available resources, and are also informed by anecdotal information gathered through the interview process.

In terms of identifying the most critical trends in this industry, it should be noted that it is difficult to quantitatively link the good enforcement and prevention practices of workers' compensation organizations directly to reported health and safety outcomes, which are arguably the most important measures of success. This is due to the dynamic and widely varied nature of activities performed by regulated organizations, the critical role that employers, employees and other stakeholders (such as industry associations) play in influencing health and safety performance and the complex cause and effect relationship between prevention activities and health and safety outcomes. However, we have attempted to highlight those findings related to world-class principles and leading practices that are widely viewed to have had a strong impact on health and safety measures based on the literature and feedback from subject matter experts and representatives in the different jurisdictions.

## Key Observations

Based on our analysis of regulatory inspection and investigations organizations in other jurisdictions and industries, the following key observations were noted.

### **1) Regulatory agencies around the world are undergoing significant transformation to enable oversight of increasingly complex industries and numerous best practices or principles are emerging.**

The focus of this report is on identifying the world-class characteristics of OHS regulatory bodies and frameworks. This is a theme that many leading jurisdictions are addressing as they transform their regulatory frameworks in response to the increasing complexity and scale of regulated organizations. There is a recognition that improving the efficiency and effectiveness of these regulatory processes, and ensuring they are delivered in a risk-based, consistent and proportionate manner, can reduce the compliance burden on business, target limited resources where they are most required and result in better regulatory outcomes<sup>5</sup>.

Governments are seeking leading practice related to enforcement models in a range of regulatory disciplines (e.g., occupational health and safety, financial services, environmental management). Recent efforts have been focused on defining the characteristics of best-practice regulation in order to inform these initiatives and several common themes have emerged. Examples include:

- 1) OECD Best Practice Principles for Regulatory Policy (Regulatory Enforcement and Inspections)<sup>6</sup> – developed through research and surveys conducted with OECD member countries to support reforms related to inspection and enforcement regimes. The document highlights 11 common principles of effective regulatory regimes.

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<sup>5</sup> OECD, 2014. Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy, OECD Publishing. [www.oecd-ilibrary.org/governance/regulatory-enforcement-and-inspections\\_9789264208117-en](http://www.oecd-ilibrary.org/governance/regulatory-enforcement-and-inspections_9789264208117-en)

<sup>6</sup> Ibid.

- 2) New Zealand Best Practice Regulation Model<sup>7</sup> – initially developed by the New Zealand Treasury, the model describes 7 principles of best practice regulation. The framework was later published to support reviews and enhancements to regulatory models across sectors in the New Zealand government.
- 3) The Council of Australian Governments Best Practice Regulation publication<sup>8</sup> – designed to provide standard-setting bodies in Australia with best practices on regulation-making.

While each of these examples highlights a range of best practices related to regulation and enforcement, a number of common themes emerge. These include: clarity, proportionality, utilizing a risk-based approach, consistency and transparency as well as the need for regulatory bodies to have competent, appropriately trained and resourced professionals. It was also noted that regulatory regimes should support growth and economic development by not unnecessarily burdening industry.

These themes apply specifically to regulatory frameworks; however, there is a great degree of alignment between them and the principles of a world-class OHS regulatory body described earlier in this report. The world-class OHS principles developed through this initiative are consistent with the themes being developed across regulatory regimes in numerous jurisdictions internationally.

## 2) The structures for entities engaged in OHS regulation vary widely but the integration of prevention and enforcement activities within one organization is common amongst the leaders.

There is a strong interest in identifying leading practices for the structure of entities engaged in workers' compensation and OHS regulation. We noted a wide range of organizational models and approaches across the jurisdictions studied. The fundamental difference in these models was the way in which accountability for prevention and enforcement activities were allocated between government and workers' compensation organizations. The four models observed are described below:

- i. **“Combined” model** – this is the most commonly-adopted model in Canada, and involves one entity having accountability for prevention, enforcement and the delivery of workers' compensation services. This model is in place in British Columbia, Quebec, Northwest Territories/Nunavut, New Brunswick, Prince Edward Island and the Yukon Territory. In New South Wales and Victoria, Australia, the workers' compensation organizations have accountability for both prevention and enforcement. They also administer premiums and policies, with claims handled via private sector agents.
  - a. Additionally, in British Columbia, New Brunswick, the Northwest Territories/Nunavut, Prince Edward Island, Quebec and the Yukon, the workers' compensation organization is also responsible for regulation making. In other jurisdictions where regulation-making is the responsibility of government, mechanisms have been created to support consultation with, and input from, stakeholders. For example, in the UK, the Department for Work and Pensions is responsible for the creation of, and updates to, health and safety regulations. However, the Health and Safety Executive coordinates public consultations and provides direct input into the regulation-making process. This supports alignment between regulations and emerging issues and trends in industry, and ensures key stakeholder input is gathered as regulations are developed.
- ii. **Government-led enforcement** – in some provinces, the workers' compensation organization has accountability for prevention and insurance, with all enforcement activities being delivered by government. This model has been adopted in Nova Scotia and Newfoundland and Labrador.
- iii. **Shared prevention role, government-led enforcement** – in this model, the mandate for prevention activities is shared between the workers' compensation organization and

<sup>7</sup> New Zealand Treasury, 2012. The best-practice regulation model: principles and assessments. 21 pp. <http://www.treasury.govt.nz/economy/regulation/bestpractice>

<sup>8</sup> Council of Australian Governments, 2007. Best practice regulation: A guide for Ministerial Councils and national standard setting bodies. 32 pp. [http://www.coag.gov.au/sites/default/files/coag\\_documents/COAG\\_best\\_practice\\_guide\\_2007.pdf](http://www.coag.gov.au/sites/default/files/coag_documents/COAG_best_practice_guide_2007.pdf)

government, and enforcement is led by government. Saskatchewan and Manitoba have adopted this model.

- iv. **Prevention and enforcement delivered by government** – under this model, workers' compensation is managed by a dedicated organization and prevention and enforcement activities are delivered by government. This model is in place in Alberta and Ontario.

In our research, we found that the workers compensation organizations in the majority of the jurisdictions studied were accountable for the management of the compensation system, the delivery of prevention-related services and the enforcement of their respective legislation. Similar results were observed in an earlier report issued by the Royal Commission on Workers Compensation in BC<sup>9</sup>; which although somewhat dated, highlighted this trend emerging across Canada and internationally. Given the wide range in regulations and industry composition in different jurisdictions, it is difficult to highlight one of the models described above as “leading practice”. However, through interviews with representatives in each of these jurisdictions, some benefits and challenges associated with some of the above models were noted.

In jurisdictions where prevention and enforcement are delivered by separate entities, it was noted that each organization benefits from a separate and clear mandate. Dedicated prevention teams can establish good working relationships with industry while enforcement activities are delivered by a completely separate entity with minimal potential for conflicts of interest. Separation of these functions can also create greater clarity for employers and workers, as the mandate of each organization is clearly defined and there is minimal overlap.

Similarly, a number of benefits have been associated with a more integrated approach to OHS regulation, with all functions being performed by a single entity. Some jurisdictions noted improved alignment between regulations and emerging issues and trends within industry. They also noted the ability to directly monitor the impacts of changes to regulation on OHS performance (through the ability to monitor and analyse claims data directly). Similarly, where a single entity has ongoing relationships with employers and workers and is familiar with current and emerging compliance trends and issues, the potential exists to have an improved understanding of key gaps or opportunities for improvement within the regulatory model. Others noted that updates to regulations were timelier where one entity managed the consultation and regulation-making processes.

There are clear benefits associated with each of the above models, and it should be noted that in many cases, the different models observed have developed in response to jurisdiction-specific regulations, mixes of industry and historical health and safety performance. As a result, there is no clear evidence to suggest that one model delivers improved health and safety outcomes in absolute terms over the others; however, the integrated or combined model is commonly observed across Canada and internationally.

### **3) In many jurisdictions specialized investigations teams have been established. These are commonly separate from the inspection function and supported by professional advisors and dedicated legal counsel.**

The structure of investigations and inspections teams varies across jurisdictions, due in large part to the regulatory environment, industry mix and OHS enforcement model in each jurisdiction (see #2 above). In some instances a single team of inspectors is employed, and members of this team are able to conduct investigations as required. In these jurisdictions, it was noted that all inspectors receive the necessary training required to conduct investigations and that a single pool of resources enabled efficient and flexible deployment of staff and minimized downtime (see Appendix C for a high-level overview of team structures and related pros and cons).

In other jurisdictions, separate teams of investigators have been created. In many cases, it was stated that the separation of inspections and investigations allowed each team to focus on their top priorities (inspectors focus primarily on prevention-related activities and investigators focus on post-incident assessments to identify root causes and also support enforcement activities, where

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<sup>9</sup> Royal Commission on Workers Compensation in BC, 1998. Comparative Review of Workers Compensation Systems and Governance Models. 24 pp. <http://www.qp.gov.bc.ca/rcwc/research/perrin-thorau-compar.pdf>

appropriate). Representatives from these jurisdictions noted that this enabled specialized training and recruiting for these two critical functions. Examples of these structures include:

- WorkCover New South Wales – As noted in a recent study<sup>10</sup>, WorkCover New South Wales created a new structure in 2008 under which inspectors worked with a new “Response Management Team”, which was created to manage reactive investigations into serious breaches. It includes the Strategic Assessment Centre (SAC) and the Strategic Investigations Unit (SIU). The SAC is a centralized function that processes all complaints and incidents received by WorkCover and refers incidents involving serious injuries or fatalities to the SIU. The SIU operates separately from the inspectorate and is comprised of specialist investigators in a select number of cities. Inspectors initially visit a site and then seek guidance from (or refer cases to) the SIU. The SIU then establishes whether there are grounds for prosecution and gathers evidence for a court case.
- WorkSafe Victoria – As noted in the same study<sup>11</sup>, WorkSafe Victoria has a “Central Investigations Unit” comprised of investigators, lawyers and support staff. This team is responsible for investigating potential breaches of OHS legislation, with a goal of obtaining evidence to support prosecution. Health and Safety Investigators work directly with prosecutors on incidents involving serious injuries and fatalities.
- The Ontario Securities Commission has developed and implemented a completely separate investigations team (the Joint Serious Offences Team, or JSOT) to support criminal and quasi-criminal prosecutions. The team includes individuals appointed as Special Constables, and as a result these investigators are able to utilize investigative techniques allowed under the criminal code. The team is located in separate, access-controlled offices, and operates on a separate IT environment to reduce the potential for gaining access to evidence collected by other teams that could impact the success of their prosecution activities.

A number of benefits associated with the separation of these functions were noted through interviews with representatives of these jurisdictions. These include:

- This structure can reduce or remove the potential conflict (real or perceived) where one individual acts as both advisor and enforcer when dealing with regulated organizations
- It can reduce tensions between inspectors and regulated entities, and improve the potential for a collaborative, prevention-focused interaction
- It supports an improved standard of investigations by supporting targeted training and ongoing development (the same is true for prevention-related competencies in the inspections teams)

A final characteristic of many investigations teams is the fact that they benefit from ongoing access to dedicated legal counsel to support investigation and prosecution processes. In many cases, in-house counsel was teamed with investigators to evaluate cases and support the structuring of a case for prosecution. In jurisdictions where prosecutions are common, a variety of structures was observed. These included instances where prosecutors were part of the same organization (e.g., New South Wales), where individuals were seconded from the Ministry of the Attorney General to the OHS regulator (e.g., Ontario<sup>12</sup>) or where legal counsel is located at the Ministry but dedicated to OHS investigations and prosecutions (e.g., Nova Scotia, where a dedicated OHS prosecutor has just been appointed to the special prosecutions section of the Public Prosecution Service<sup>13</sup>). Whether these resources are co-located with the investigations team or housed in a separate organization, ready access to lawyers with specific OHS regulatory experience was highlighted as a critical success factor for investigations and prosecutions.

#### **4) Many jurisdictions rely heavily on prevention and a collaborative approach to driving OHS compliance, with prosecution reserved for exceptional cases.**

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<sup>10</sup> Schofield, T., Reeve, B. and McCallum, R. 2014. Australian workplace health and safety regulatory approaches to prosecution: Hegemonising compliance. *Journal of Industrial Relations*. Published online January 17, 2014.

<sup>11</sup> Ibid

<sup>12</sup> <http://www.labour.gov.on.ca/english/legal/>

<sup>13</sup> <http://novascotia.ca/news/release/?id=20140617004>

The majority of OHS regulatory frameworks in place today are based on the principle that employers and employees are responsible for creating and maintaining safe working environments, and that the most effective approach to regulation is to focus on prevention while maintaining the ability to enforce and prosecute where needed. This approach was first formally described in a 1972 publication entitled “Safety and Health at Work”<sup>14</sup>, the principles of which form the foundation for many OHS regulatory frameworks internationally today. Historically, this shift in focus to prevention in Canada was also noted in the report of the Royal Commission on Workers Compensation in BC, which highlighted that many jurisdictions across Canada increased their focus on prevention as a means to improve health and safety performance and also reduce the overall costs of the compensation system. This report also noted that these functions (prevention and workers compensation) were typically delivered by separate entities in the 1970s and 1980s, but there was a trend beginning in the 1990s to transfer responsibility for OHS back to workers compensation organizations<sup>15</sup>.

While this signalled a major shift in the balance away from an enforcement-based approach to OHS, the focus on enforcement has continued to evolve across many of the jurisdictions surveyed. Most jurisdictions have experienced periods of significant investment in enforcement and prosecution activities (typically in response to a serious incident), and many studies have noted that there is little consensus in the academic literature, regarding the optimal balance between prevention and enforcement<sup>16</sup>. However, recognizing the significant time and cost burden of a prosecution-focused model, and the benefits of a collaborative, prevention-focused approach, most jurisdictions retain prosecution as a tool of last resort to support deterrence where needed (the availability of strong enforcement tools at the upper end of an escalating enforcement model is critical for such a model to be effective). As noted under observation 6 below, this principle is typically stated in each jurisdiction’s compliance and enforcement policy, and the triggers for significant enforcement action are clearly defined and communicated.

## **5) Enforcement tools are evolving to support a more responsive and flexible approach to regulation.**

As noted above, a common principle adopted in many leading regulatory environments is that of proportionality. The primary goal is to reduce the risk of workplace illness and injury through compliance by supporting companies that are actively seeking to comply, while retaining strong enforcement tools for those who are repeat poor performers or who have acted recklessly. To accomplish this, a broad suite of enforcement tools is needed to enable regulators to take a measured and escalating approach as required. An effective suite of tools allows regulators to apply the lowest level of penalty needed to support compliance, while also enabling significant enforcement action where it serves the public interest and/or has a strong deterrence effect for the most serious contraventions.

In our scan of other jurisdictions, the items below were noted as emerging or unique enforcement tools or practices that support a flexible, escalating approach to compliance. In some cases, these are widely utilized, and in others they are employed in only one or a few jurisdictions.

- **Tickets** – Tickets have been implemented in several jurisdictions (e.g., New South Wales, Quebec, Ontario, Nova Scotia and more recently in Alberta and Saskatchewan). Depending on how they are employed, they can offer several potential benefits as an enforcement tool. They can have a strong deterrence effect as they tie the observed breach of compliance to an immediate penalty. Also, in some jurisdictions, ticketing can be applied to both employees and employers, thus providing the added effect of highlighting the shared responsibility for workplace safety and deterring individual workers from non-compliance where appropriate (with the understanding that workers must be provided a safe work environment and the appropriate tools and equipment to operate in a safe manner).

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<sup>14</sup> Safety and Health at Work: Report of the Robens Committee 1972

<sup>15</sup> Royal Commission on Workers Compensation in BC, 1998. Comparative Review of Workers Compensation Systems and Governance Models. 24 pp. <http://www.qp.gov.bc.ca/rcwc/research/perrin-thorau-compar.pdf>

<sup>16</sup> Schofield, T., Reeve, B. and McCallum, R. 2014. Australian workplace health and safety regulatory approaches to prosecution: Hegemonising compliance. *Journal of Industrial Relations*. Published online January 17, 2014.

<sup>17</sup> Gunningham, N. 2007. Prosecution for OHS offences: deterrent or disincentive. *Sydney Law Review* 29, pp. 359-390.

Through our interviews and research<sup>18</sup>, some notable challenges associated with ticketing were observed. These included a lack of consistency in the way tickets are issued across inspectors, insufficient administrative support through the appeals process and the relatively significant impact of such fines on small businesses vs. larger organizations. Further, some jurisdictions noted significant resistance among inspectors to adopt ticketing, and identified the need to engage the inspection team actively in order to ensure consistent use of the tool.

- **Creative sentencing** – Several jurisdictions in Canada (BC, Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Quebec) support creative sentencing, which provides discretion to the courts to impose alternative penalties, typically aimed at funding education and awareness programs related to specific OHS issues. The rationale for creative sentencing is that funds typically collected by the government through fines are instead directed to organizations that are focused on prevention. Such investments in prevention-related activities (training, creation of specialized workplace health and safety resources, etc.) reduce the likelihood of a similar event recurring, and also provide a clear connection between the offense and the financial penalty. In many cases, such sentences can also reduce the potential for a lengthy trial.
- **Fee for Intervention** – In October, 2012, the UK Health and Safety Executive introduced a Fee for Intervention scheme under the Health and Safety (Fees) Regulation. This regulation requires that the HSE recover the costs it incurs for inspection, investigation and enforcement activities related to employers found to be in “material breach of health and safety law”. This scheme enables the HSE to shift some of the costs of health and safety regulation to companies that continually violate health and safety laws, and can also act as a significant deterrent for poor performance.
- **Flexibility in the allocation of penalties** – In many jurisdictions, it was observed that officers have the ability to apply a range of enforcement tools to multiple levels within an organization (e.g., workers, managers, directors, the corporate entity), and to multiple organizations working at a given site (employers, suppliers and contractors). This flexibility enables the officer to work with other stakeholders to ensure those enforcement actions, and the resulting deterrence effect, are targeted at the actual offenders, and that accountabilities for safety on the work site are clearly communicated and understood. While this flexibility is beneficial, there must be clear guidelines to ensure that each party is aware of their rights (e.g., the right of workers to refuse unsafe work), clearly-defined conditions for when different enforcement tools are applied and an effective mechanism for appeals.
- **Voluntary compliance** – In cases where a minor infraction is noted by an officer (and there is no imminent threat of harm), some regulators can provide organizations with the option to rectify the issue within a given timeframe prior to issuing a penalty. For example, federal Health and Safety Officers who identify a violation of a provision of the Canada Labour Code at a work site may accept a written commitment to address the issue within a specified period (referred to as an “assurance of voluntary compliance”). In such instances, there is a requirement for the officer to follow up to ensure that the actions have taken place, and in cases where compliance has not been attained, the option exists to utilize a more significant enforcement tool.
- **Ability to issue significant penalties based on risk** – In discussions with some jurisdictions it was noted that officers could utilize significant enforcement options where they observed conditions that exposed someone to a *risk* of death or serious injury (rather than as a *result* of a serious injury or fatality). For example, in New South Wales, under the Workplace Health and Safety Act, fines (and even imprisonment) can be imposed on individuals or corporations that create such conditions. Under the most serious circumstances, fines for individuals can reach \$600,000, with a prison term of up to five years, and fines for a corporate entity can reach \$3,000,000 where risky and reckless behaviour are observed. When combined with the ability to publish the details of convictions, it was noted that this ability provided a significant

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<sup>18</sup> See for example: Safe Work Australia, 2000. On-the-spot fines and preventative OHS behaviour. 84 pp.  
<http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/acrr2000spotfinesandpreventativeohsbehaviour>

deterrent effect in New South Wales, particularly in industries where compliance was an ongoing challenge.

**6) Published protocols and policies support consistency and transparency in regulation and incident response.**

Consistency was noted as a common principle in leading regulatory regimes. It was observed that many jurisdictions utilized inspection and investigation protocols, as well as clearly defined enforcement policies to support the consistent application of prevention and enforcement tools. Examples include WorkSafe New South Wales' Compliance Policy and Prosecution Guidelines<sup>19</sup>, WorkSafe Victoria's Compliance and Enforcement Policy<sup>20</sup> and the UK Health and Safety Executive's Enforcement Management Model<sup>21</sup>. These documents typically include an overview of each organization's enforcement priorities and a description of enforcement tools and key considerations for deploying them. Such references serve to guide the activities of inspectors and investigators and, while they retain professional discretion, these protocols support consistency in their interactions with industry.

Transparency was also noted as a key principle in leading jurisdictions, and in each of the above cases, these documents are available to the public. This supports a common understanding between the regulator and industry regarding priorities and inspection and enforcement methods.

Finally, in instances where multiple agencies may be involved in incident response, formal protocols outlining each organization's role and responsibilities can support more efficient response and avoid confusion, duplication of effort and conflicting priorities during the critical period following an incident (for an example, see the UK Health and Safety Executive's "Work-related deaths: a protocol for liaison"<sup>22</sup>).

**7) Risk-based approaches are consistently employed, and organizations are getting more effective at using data and technology to support risk-based regulatory activities.**

Many jurisdictions were observed to integrate risk into the delivery of their prevention and enforcement activities. Most jurisdictions factored in the inherent risk of individual industries and specific processes or activities when assessing risk in order to prioritize the activities of their prevention and enforcement teams. Some jurisdictions augment this analysis by incorporating historical performance data for individual companies into their risk models (see, for example, Alberta's OHS index, which is used to target inspection and enforcement activities<sup>23</sup>). This enables further refinement of risk profiles and more targeted deployment of resources to address poor performers within an industry.

The ability to proactively identify and respond to emerging OHS risks was highlighted as a priority across many jurisdictions included in this review. Factors such as shifts in the mix of dominant industries in some jurisdictions, the evolution of workplace technologies, processes and materials and the emergence of global supply chains have resulted in substantial changes to the risk profile of many workplaces. In response, organizations have begun evaluating potential emerging workplace health and safety risks and options for proactively assessing and managing them from an operational and regulatory perspective. For example, the European Agency for Safety and Health at Work has defined a framework for emerging OHS risks, and this has been identified as a key policy and research priority for their 2014-2020 strategic program<sup>24</sup>. They have defined emerging risks as being both "new"

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<sup>19</sup> WorkCover NSW, 2012. Compliance policy and prosecution guidelines. 35 pp.  
[http://www.workcover.nsw.gov.au/formspublications/publications/Documents/compliance\\_policy\\_prosecution\\_guidelines\\_2012\\_4437.pdf](http://www.workcover.nsw.gov.au/formspublications/publications/Documents/compliance_policy_prosecution_guidelines_2012_4437.pdf)

<sup>20</sup> WorkSafe Victoria, 2010. Compensation Compliance and Enforcement Policy. 27 pp.  
[https://www.worksafe.vic.gov.au/\\_data/assets/pdf\\_file/0020/10595/INFORMATION\\_ABOUT\\_COMPENSATION\\_COMPLIANCE\\_AND\\_ENFORCEMENT\\_POLICY.pdf](https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0020/10595/INFORMATION_ABOUT_COMPENSATION_COMPLIANCE_AND_ENFORCEMENT_POLICY.pdf)

<sup>21</sup> Health and Safety Executive, 2013. Enforcement Management Model – Operational Version 3.2. 46 pp.  
<http://www.hse.gov.uk/enforce/emm.pdf>

<sup>22</sup> <http://www.hse.gov.uk/pubns/wrdp1.pdf>

<sup>23</sup> <http://work.alberta.ca/documents/OHS-proactive-programs-strategy.pdf>

<sup>24</sup> European Agency for Safety and Health at Work, 2013. Annual Report 2013. 66 pp.  
<https://osha.europa.eu/en/publications/corporate/2013full>

(the risk did not exist or was not previously recognized) and “increasing” (in terms of likelihood and/or impact) and regularly publish and support research into such risks in a range of industries<sup>25</sup>.

Strategies for identifying and addressing emerging risks include enhanced, targeted surveillance, ongoing monitoring of the academic and trade literature and monitoring of incidents in other jurisdictions with similar industries. The New Zealand Department of Labour has recognized emerging OHS risks as a high priority, and has published research into types and causes of emerging risks, along with options for addressing them from a regulatory and surveillance perspective<sup>26,27</sup>.

Predictive analytics are also emerging as a key prevention tool both for regulators (who have large volumes of OHS compliance information) and individual organizations. While the full potential of these tools to predict high-risk practices or work sites and support proactive interventions has yet to be realized, early results indicate that predictive analytics offer significant benefits to regulators in this space.<sup>28</sup> Additional examples of the potential for predictive analytics can be found in New York City. The city has recently appointed a Chief Analytics Officer and analytics team who have demonstrated the potential of predictive analytics to more efficiently triage incoming complaints for building code violations and to target limited inspection resources more effectively<sup>29</sup>. A similar approach was utilized to enhance the existing risk-based fire inspections model to provide more accurate predictive capabilities regarding fire risk, thus enabling the Fire Department of New York to more effectively allocate inspection and disaster recovery resources<sup>30</sup>. Finally, Deloitte has worked with numerous organizations to develop predictive models for health and safety risk at individual work sites, by integrating information from multiple corporate and publicly-available data sets and identifying the key predictors of safety risk based on historical performance. This approach has proven particularly effective in the resource and energy sectors and does support the potential of applying a predictive approach to OHS risk and opportunity identification from a regulatory perspective.

## **8) Effectively managing change in regulatory transformation.**

Many jurisdictions contacted through this research stated that their prevention and/or enforcement teams were undergoing, or had recently completed, significant changes in the way they deliver their services. Changes related to organizational structures, enforcement tools and regulations were ultimately viewed as positive developments, but most jurisdictions noted that they had underestimated the scale of the change management effort required and the impact on their people. It was also reported that the impact of internal changes on other stakeholder groups had in some cases been underestimated, leading to challenges with implementation and frustration for both front-line staff and employers and employees. While these challenges are common in any change or transformation program, it is worth noting that most jurisdictions highlighted the need to actively engage internal stakeholders in the planning process and to consult with external stakeholders, where possible, to enhance the potential for successful implementation.

## **9) Use of innovative, flexible workforce options to support complex or time sensitive activities.**

With workplace safety requirements becoming more complex and with sustained increases in complex, high-risk industrial activities, the trend of sharing the work-load for regulatory control functions, and leveraging outside expertise, has led to growing use of the private sector or other public sector partners. Through cloud, social and collaboration technologies, agencies are tapping into vast pools of experts and resources that may be available outside of the organization. Some

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<sup>25</sup> See for example: European Agency for Safety and Health at Work. 2014. Foresight on new and emerging risks associated with new technologies by 2020: Workshop for EU Focal Points. 39 pp. <https://osha.europa.eu/en/publications/reports/foresight-on-new-and-emerging-risks-associated-with-new-technologies-by-2020-workshop-for-eu-focal-points>

<sup>26</sup> The Evolving Work Environment in New Zealand: Implications for Occupational Health and Safety - NOHSAC Technical Report 10. 142 pp. <http://www.dol.govt.nz/publications/nohsac/techreport10/index.asp>

<sup>27</sup> The Evolving Work Environment in New Zealand: Implications for Occupational Health and Safety - Report to the Minister of Labour. 32 pp. [http://www.dol.govt.nz/publications/nohsac/evolving\\_workplace/index.asp](http://www.dol.govt.nz/publications/nohsac/evolving_workplace/index.asp)

<sup>28</sup> See for example: Predictive Analytics in Workplace Safety: Four Safety Truths that Reduce Workplace Injuries (a whitepaper summarizing recent research conducted at Carnegie Mellon University in collaboration with a private company, Predictive Solutions, Inc. Note that these results do not appear to have been presented in the peer-reviewed literature).

<sup>29</sup> Bloomberg, M. and Michael Flowers, 2013. NYC Analytics – NYC by the numbers – annual report 2013. 26 pp. [http://www.nyc.gov/html/analytics/downloads/pdf/annual\\_report\\_2013.pdf](http://www.nyc.gov/html/analytics/downloads/pdf/annual_report_2013.pdf)

<sup>30</sup> <http://www1.nyc.gov/office-of-the-mayor/news/163-13/mayor-bloomberg-fire-commissioner-cassano-new-risk-based-fire-inspections-citywide#8>

agencies are also relying on self-certification for low-risk sectors to share the workload directly with the employer.

#### **10) Performing independent third-party audits of inspection and enforcement activity.**

In some sectors including construction and health, third-party or independent reviews are conducted regularly on inspection or enforcement activity to ensure these activities are being carried out consistently and that there is a mechanism to identify opportunities for improvement and incorporate them into training and/or changes to processes, technology or tools. One Canadian OHS regulator conducts a random review of 5-10% of inspections annually to assess alignment with policy, and incorporates any observations regarding deviations into subsequent training for inspectors. Third-party reviews can also be used to examine critical, high-risk aspects of operations and help ensure the proposed corrective actions are sound and in compliance with required codes and standards.

#### **11) Timely, consistent and appropriate instruments for conflict resolution and appeals.**

Across the jurisdictions reviewed, the availability of consistent and appropriate conflict resolution and appeals mechanisms was noted. These mechanisms provide potential remedies for persons and employers who consider themselves adversely affected by enforcement agency decisions. Two notable features of leading conflict-resolution systems include:

- **Dedicated mechanisms outside the main court system** – A separate entity, similar to the Workers' Compensation Appeal Tribunal in BC, is responsible for appeals.
- **Conflict resolution carried out by knowledgeable professionals** – The efficiency and fairness of appeal decisions is improved through the use of professional regulators and industry professionals that participate in specialized conflict resolution bodies.

#### **12) Performance management using appropriate leading and lagging indicators.**

There is clear recognition within the OHS field that robust performance measurement and management is critical to gauge the effectiveness of an OHS regulatory framework and associated prevention and enforcement strategies. OHS performance has traditionally been assessed using measures related to injury frequency and severity or fatalities. These indicators, while lagging, are critical components of a performance monitoring program. However, most jurisdictions have highlighted the need to shift towards a more comprehensive and proactive approach to performance tracking that involves leading indicators as well. Many organizations track both leading and lagging indicators and have published their performance scorecards or frameworks online (see for example Ontario's System-Wide Performance Management Framework<sup>31</sup>, the balanced scorecard approach developed by Saskatchewan's Workers' Compensation Board<sup>32</sup> and the Northwest Territories and Nunavut's performance measures framework<sup>33</sup>).

There are two key requirements for such performance management frameworks to be effective. First, organizations require an understanding of the high level 'cause-effect' linkages between their policies or initiatives and their desired outcomes. Tools such as logic models or results chains are often used in program evaluation to identify the relationship between a policy or initiative and the desired outcomes that they are designed to produce<sup>34,35</sup>. These models highlight the cause-effect relationships between an initiative and its immediate, intermediate and ultimate outcomes. Outcomes are often quantitative and measurable, and can therefore be used to design a comprehensive measurement framework that incorporates leading indicators (for immediate and intermediate outcomes) and lagging indicators (for ultimate outcomes).

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<sup>31</sup> Ontario Ministry of Labour, 2013. Healthy and safe Ontario workplaces – a strategy for transforming occupational health and safety. 44 pp. <http://www.labour.gov.on.ca/english/hs/pdf/strategy.pdf>

<sup>32</sup> Saskatchewan Workers' Compensation Board, 2014. Strategic and operational plan 2015-2017. 22 pp. <http://www.wcb.sask.com/wp-content/uploads/2014/04/2015-2017-SOP-Public-Plan.pdf>

<sup>33</sup> Workers' Safety and Compensation Commission, 2011. 2012-2014 Strategic Plan. 11 pp. [http://www.wcb.nt.ca/YourWSCC/Documents/WSCC\\_StrategicPlan\\_Dec2011.pdf](http://www.wcb.nt.ca/YourWSCC/Documents/WSCC_StrategicPlan_Dec2011.pdf)

<sup>34</sup> See for example: Treasury Board Secretariat, 2001. Guide for the development of results-based management and accountability frameworks. 44 pp. <http://www.tbs-sct.gc.ca/cee/tools-outils/rmaf-cgrf/guide-eng.pdf>

<sup>35</sup> Australian Department of Employment and Labour Relations, 2005. Guidance on the use of positive performance indicators. 43 pp. [http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/150/GuidanceOnUseOfPPIs\\_2005\\_PDF.pdf](http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/150/GuidanceOnUseOfPPIs_2005_PDF.pdf)

Second, the success of a performance management model, once implemented, depends on the ability of an organization to act on observed results. This requires that such performance metrics are regularly tracked and communicated, and that the culture of the organizations supports and encourages an appropriate response. This is particularly true for leading indicators which provide the opportunity to adjust prevention-focused tactics and influence safety performance.

# Enhancement Opportunities

Based on the identified world-class principles and leading practices of similar organizations, a high-level assessment of WorkSafeBC practices associated with inspection and enforcement operations was conducted. As a result, a number of enhancement opportunities were identified for consideration. These opportunities are detailed below based on leading practices in other jurisdictions and our own observations.

## **1) Implement additional enforcement tools to support graduated enforcement actions.**

Relative to some other jurisdictions, WorkSafeBC inspectors have access to fewer enforcement tools and mechanisms than their leading industry peers. There are opportunities to implement additional enforcement tools that are proportionate to the level of the infraction or risk. Specific enforcement mechanisms or enhancements that could be considered include:

- Compliance assurance programs (e.g., assurance of voluntary compliance) such that more significant penalties may be waived with a commitment to achieve compliance within a specified period. This allows the inspector to reinforce messaging and provide early warning signals to first-time non-compliant employers.
- Tickets or citations that can be immediately written by inspectors, with graduated financial penalty levels for employers that continue to breach minor safety requirements. These would allow the inspector to appropriately penalize specific contraventions and create an immediate and direct link between the safety issue and the associated penalty.
- Employee ticketing or citations for specific non-compliance issues, such as failure to wear appropriate protective equipment. Through our research and interviews, it was noted that there are several factors that must be considered to support successful deployment of employee ticketing. These include limiting ticketable offences to those that are within an employee's control (i.e., wearing personal protective equipment, assuming all necessary equipment and training has been provided), clearly communicating the launch of the ticketing program and providing resources regarding when and how tickets are used and providing a responsive appeals process to support individuals should they choose to appeal the decision.
- Consider expanding the use of the Stop Work Order or Stop Use Order to provide inspectors with more authority to prevent the further escalation of risk, and therefore remove the potential for a serious injury or fatality while the situation is remediated.
- Consider the potential to seek a court injunction, a restraint of trade order or other mechanism (such as temporary removal of business license) that would prevent the employer from continuing business. This would likely be reserved as a last resort for repeat offenders who continue to operate in a manner that puts employees at risk regardless of the nature and extent of other penalties applied.
- Consider implementing a "fee for intervention" penalty in cases where a serious breach of regulation is identified, and WorkSafeBC staff time is spent in assessing the breach, assisting in correcting it and following up to ensure compliance.

## **2) Consider adjustments to the investigations branch and related procedures to support appropriate separation of “for cause” and “for fault” investigations.**

A key challenge that impacted the ability of the Criminal Justice Branch to initiate prosecution after the Babine and Lakeland Mills explosions was the inadmissibility of evidence collected through the “for cause” investigations. There are both procedural and structural options that could be employed to address these challenges. For example, some organizations (such as the Ontario Securities Commission) have implemented structurally separate investigations teams for major cases. This involves teams that operate in separate physical and technical environments to avoid any potential for “contamination” of evidence from other investigation activities. Such structures may also enable a controlled approach to serious cases with potential for prosecution while also allowing ongoing investigation for “cause”, where appropriate.

Similarly, training and clear procedural guidelines should be considered for investigations into serious incidents to improve the consistency of these investigations and also ensure the appropriate triggers are in place regarding referral for formal prosecution. A formal set of triggers and procedures for referral will also ensure that such decisions are consistently evaluated and that there is visibility to, and involvement of, the right functions (e.g., legal) and levels of seniority within the organization.

Finally, as noted in other jurisdictions, formal protocols for engagement of multiple agencies (first responders, police, fire departments, etc.) in serious incidents have proven useful in clarifying roles and responsibilities and related procedures. It is understood that WorkSafeBC is pursuing such protocols currently with the Criminal Justice Branch and other agencies. This aligns with leading practice in comparable organizations, and WorkSafe BC may consider reviewing similar protocols from these jurisdictions as these protocols are developed.

## **3) Improve the timeliness of enforcement lifecycle activities to maximize impact on deterrence.**

Most organizations are struggling with delays in responding to incidents, investigating incidents, imposing enforcement actions, conducting reviews and adjudicating appeals. Several jurisdictions had highlighted this as an area of focus, and had invested in lean process improvement initiatives, established (and reported on) performance targets for turnaround time on key enforcement processes, built timeliness of these processes into their internal performance management program and invested in technology to improve workflow and process efficiency.

WorkSafeBC should consider process enhancements to address current timeliness challenges associated with enforcement actions (e.g., streamlining the process for Administrative Monetary Penalties). This includes processes internal to WorkSafeBC as well as those processes where third parties, such as the Criminal Justice Branch, are engaged in these actions. The impact of these enhancements could then be monitored using targeted performance metrics in order to assess the effectiveness of these changes, and to further refine these processes over time.

## **4) Increase the visibility and presence of WorkSafeBC.**

Leading regulatory and enforcement organizations identified in our research were very visible and in the forefront of the employer and employee’s minds when it came to both major and minor decisions impacting health and safety. It is understood that all employers should not be inspected with the same frequency, as inspections should be based on risk. WorkSafeBC may increase its visibility and presence with employers through the following initiatives:

- Use of self-monitoring and self-reporting practices so audits and inspections can be done without being onsite.
- Conducting environmental scans of organizations through use of internet, social media, police incident data, hospital injury information and other channels to gather intelligence about emerging risks within specific sectors and organizations.
- Schedule inspectors to work during evenings and weekends to provide additional presence and align with sector-specific business operating hours.

- Leverage other provincial or local inspection authorities that may also be conducting regulatory inspections at the same work sites to gather information that may be relevant for occupational health and safety.
- Consider opportunities to leverage continuous monitoring technologies (perhaps in partnership with employers) to provide ongoing, real-time information regarding the compliance status of an organization without requiring the physical presence of an inspector.

#### **5) Consider dedicated Crown counsel for investigation oversight and prosecution.**

As noted in Mr. Dyble's report, there is a need for more effective interactions between the Criminal Justice Branch and WorkSafeBC. Many jurisdictions have successfully utilized dedicated Crown counsel to provide oversight for investigations and to conduct prosecutions where warranted. Recognizing that an MOU between the two organizations is being created, and that formal prosecutions are relatively rare, the two organizations may consider the potential for dedicated legal counsel to oversee serious investigations and prosecutions.

#### **6) Enhance automation, integration and analytics to drive efficiencies and employer engagement.**

WorkSafeBC is already a leader in its use of technology and automation to drive business process efficiencies in the office and field. Continued use of modern technologies for mobile and portals can help reduce internal/external hand-offs, automate tasks, improve employer self-service capabilities and increase the number of no-touch decisions.

Further, as noted above, the use of predictive analytics is gaining acceptance as a key tool for identifying emerging issues, quantifying risk based on predictive modeling and supporting effective allocation of limited inspection and prevention resources. WorkSafeBC already has an initiative underway to implement a risk analytics group, and this represents a significant opportunity to build on current capabilities and create a world-class analytics function. Advanced analytics capabilities would provide additional insight regarding health and safety performance trends and cause-effect relationships (based on historical WorkSafeBC data), would provide significant potential for additional insights when incorporating data from other agencies, and as demonstrated elsewhere, could enable predictive risk models that would support the allocation of scarce resources to truly high-risk work sites.

#### **7) Develop further partnerships with complementary agencies to share work and data.**

WorkSafeBC should continue to extend its partnership model by aligning with other provincial, local, or private-sector organizations to increase the number of employer touch points and types of data collected. Other organizations that also have permitting, inspection or audit responsibility for the same employers can provide another channel to gather and assess workplace health and safety performance. In addition, as highlighted above, the complementary data collected by those agencies can assist WorkSafeBC in developing and refining its risk assessment models.

#### **8) Consider publishing information regarding non-compliance.**

WorkSafeBC should consider publishing the results of its compliance and enforcement actions as an additional tool within its deterrence program (this could include formal press releases, website updates, the use of social media and other forms of communication). A number of jurisdictions noted that the publication of enforcement details was done to act as an additional deterrent as it draws attention to the impact of non-compliance and has the potential to significantly impact a company's brand, reputation and competitiveness (for both business and employees). The publication of such information also acts as an effective tool for training and for raising awareness of key health and safety issues within a given region or industry.

#### **9) Utilize targeted leading and lagging indicators to drive continuous improvement and behavioural change.**

As noted above, many jurisdictions are enhancing their performance management frameworks to ensure they can monitor the impact of their activities and interventions (leading indicators) on critical health and safety outcomes (lagging indicators). They are also incorporating these performance measures into internal employee performance frameworks to ensure alignment of effort with strategic priorities. Recognizing that WorkSafeBC is embarking on a number of enhancement initiatives arising from the recommendations of the Administrator, it is recommended that specific leading and lagging performance metrics be identified to assess the impact of these initiatives on health and safety performance and to support refinement and continuous improvement over time. Targeted performance monitoring will also support the necessary change management activities required to ensure effective implementation of these recommendations.

Tools such as results chains or logic models could be used to develop performance models to link these enhancement initiatives to desired health and safety outcomes. Sources of data for these metrics may include field observations (data on effectiveness and consistency of service delivery), quality management information (data on internal performance with respect to service standards and expectations), audit results (data from periodic internal audits) and surveys (input from staff, regulated entities and other stakeholders).

# Conclusions

The governance structures, organizational structures, tools, technologies and processes used to regulate occupational health and safety (OHS) vary significantly across jurisdictions both across Canada and around the world. Operational practices within the regulatory bodies have also undergone substantial change over the past decade as OHS regulators seek to find the optimum equilibrium between enforcing compliance and proactively supporting employers and employees to maintain safe, productive workplaces. As noted in other jurisdictions, this is an ongoing evolution that often shifts abruptly due to emerging trends, issues and incidents within different industries. While it is clear that there is no one ideal OHS regulatory model for inspections and investigations, it is also evident that a number of consistent world-class principles have emerged and that several leading OHS organizations are employing similar practices to drive improved health and safety performance within their jurisdictions. These include effective graduated enforcement models, consistent, timely and proportionate enforcement actions and the presence of competent, well trained professionals with strong working relationships with other agencies and employers.

Mr. Dyble's February 2014 report on this issue identified a number of specific challenges related to investigations and prosecutions that must be addressed by WorkSafeBC. Our report details a number of opportunities related to organizational structure, technology, policies and procedures to address these challenges, and provides examples of leading practices in other jurisdictions for reference, while continuing to support the conclusion that effective prosecution is a critical element of an effective, graduated enforcement model. Additional enhancement opportunities related to technology, performance management, predictive analytics and partnerships are also provided to support WorkSafeBC as it continually strives to refine existing practices and capabilities as a best in class OHS regulator.

WorkSafeBC already demonstrates many characteristics of a world-class regulator today. As a result of this conclusion and our independent research and analysis, we believe that embarking on substantial reform of the regulator or its role is likely no more effective in terms of achieving the Minister's objectives than focusing efforts on building upon the organization's existing capabilities, strengths, enforcement tools and operating model. This is not to imply that the solutions are quick nor simple, particularly given the complex legal and policy environment in which WorkSafeBC operates, but they are achievable in a reasonable timeframe with the support of all key stakeholders.

# Appendix A – Jurisdictional scan approach

This section describes our approach to the jurisdictional research and the organizations involved. The section begins with an overview of our approach. This is followed by a summary of the jurisdictions studied, including a brief comparison of the functions performed by these organizations, in order to provide the necessary context for the interpretation of our observations.

## Approach

Information for this scan was collected via desktop research using publicly-available information. Where possible, representatives from the target organizations and subject matter experts from within Deloitte and WorkSafeBC were consulted to obtain a more detailed understanding of current practices, priorities, challenges, lessons learned and future opportunities.

Figure 1, describes the framework for our research and the structure of our observations. For each jurisdiction, we assessed practices across a number of functions (prevention, inspections, investigations, enforcement and regulation making) and for each function, we researched a number of themes.



Figure 1 - Framework for jurisdictional research

## Overview of jurisdictions

The goal of this jurisdictional scan was to identify leading practices related to inspections, investigations and enforcement in other jurisdictions, and in some cases, in regulatory bodies working in other sectors. To support this, initial research was conducted on a number of jurisdictions across Canada and internationally. Based on this initial scan, a number of organizations were identified for further analysis, including interviews where possible.

The following provides an overview of the jurisdictions included in this review. This information is useful in interpreting the observations included in this section, and also in assessing their applicability to WorkSafeBC.

## Canadian Jurisdictions

Practices were evaluated across Workers Compensation organizations in Canada, and where appropriate, across the related government organization in each jurisdiction (Ministry of Labour, or equivalent). These organizations were included to highlight commonalities and differences related to the structure, governance and accountabilities related to OHS regulation and the prevention of workplace injuries and illness. They were also included to highlight examples of relevant leading practice across Canada that could inform recommendations for WorkSafeBC. A subset of these jurisdictions was identified for further review, based on relevance to the objectives of this report highlighted above.

While there are many similarities in the ways each jurisdiction approaches the regulation of occupational health and safety, there are some notable differences across the provinces and territories with respect to governance and accountability for prevention, inspections, investigations, enforcement and regulation making. Figure 2 provides a summary of accountabilities by jurisdiction<sup>36</sup>.

	Regulation Making	Prevention	Investigation	Enforcement	Prosecution	Insurance
Alberta	Government	Government	Government	Government	Government	WCB
BC	WorkSafe BC	WorkSafe BC	WorkSafe BC	WorkSafe BC	Government	WorkSafe BC
Manitoba	Government	SAFE Manitoba (Gov't/WCB partnership)	Government	Government	Government	WCB
New Brunswick	WorkSafe NB	WorkSafe NB	WorkSafe NB	WorkSafe NB	Government	WorkSafe NB
Newfoundland & Labrador	Government	WHSCC	Government	Government	Government	WHSCC
Northwest Territories / Nunavut	WSCC	WSCC	WSCC	WSCC	Government	WSCC
Nova Scotia	Government	WCB	Government	Government	Government	WCB
Ontario	Government	Government	Government	Government	Government	WSIB
Prince Edward Island	WCB	WCB	WCB	WCB	Government	WCB
Quebec	CSST	CSST	CSST	CSST	Government	CSST
Saskatchewan	Government	WS SK	Government	Government	Government	WCB
Yukon	WCB	WCB	WCB	WCB	Government	WCB

**Figure 2 - Accountability for OHS regulation and related functions for provinces and territories in Canada<sup>37</sup>**

<sup>36</sup> Association of Workers' Compensation Boards of Canada, 2013. Occupational Health and Safety: Who is responsible. 4 pp. [http://awcbc.org/wp-content/uploads/2013/12/Who\\_is\\_Responsibile.pdf](http://awcbc.org/wp-content/uploads/2013/12/Who_is_Responsibile.pdf)

<sup>37</sup> CSST - Commission de la santé et de la sécurité du travail

WCB – Workers Compensation Board

WHSCC - Workplace Health, Safety & Compensation Commission

WSCC – Workers' Safety & Compensation Commission

WSIB – Workplace Safety and Insurance Board

WSSK – WorkSafe Saskatchewan (a partnership between Saskatchewan WCB and the Saskatchewan Ministry of Labour Relations and Workplace Safety)

## International Jurisdictions

### *WorkSafe New Zealand*

WorkSafe NZ is a standalone Crown agent focused on workplace health and safety issues. WorkSafe NZ officially started operations in December, 2013, and took over the workplace health and safety roles previously assigned to the Ministry of Business, Innovation and Employment. The establishment of a standalone regulatory agency for workplace health and safety was a key recommendation of the Royal Commission on the Pike River Coal Mine Tragedy<sup>38,39</sup> and a recent Independent Taskforce on Workplace Health and Safety.<sup>40</sup>

The Ministry of Business, Innovation and Employment retains accountability for regulation making, and will work with WorkSafe New Zealand to support alignment with trends and issues in industry. WorkSafe NZ will also work with the Accident Compensation Corporation (ACC), which oversees premiums and compensation for no-fault personal injury insurance for all residents of New Zealand and for all visitors to the country.

### *WorkCover NSW*

The WorkCover Authority of New South Wales or WorkCover NSW is a New South Wales Government agency established in August 2012 with the aim of increasing the competitiveness of the NSW economy through productive, healthy and safe workplaces. The agency forms part of the Safety, Return to Work and Support Division established pursuant to the Safety, Return to Work and Support Board Act, 2012 (NSW).<sup>41</sup>

### *WorkSafe Victoria*

WorkSafe Victoria, also known as the Victorian Workcover Authority, is a government authority for the state government of Victoria, Australia. WorkSafe's corporate mission is working with the community to deliver outstanding workplace safety, together with quality care and insurance protection to workers and employers. Although it is active in carrying out workplace safety inspections across the state and prosecuting breaches of workplace health, safety and workers compensation laws, a significant focus of WorkSafe's activity includes communication with internal and external stakeholders, media (including publishing details of significant incidents and prosecutions), and the general public.

### *Health and Safety Executive (UK)*

The Health and Safety Executive (HSE) is the national regulator for workplace health and safety in the United Kingdom (UK). It operates as a non-departmental public body established under the Health and Safety at Work Act, sponsored by the Department for Work and Pensions. In partnership with Local Authority enforcement agencies the HSE is responsible for prevention, inspection, investigation and prosecutions across the UK. The HSE's mission is to prevent death, illness and ill health to those at work and those affected by work activities<sup>42</sup>

### *Occupational Safety and Health Administration (USA)*

The United States Occupational Safety and Health Administration (OSHA) is an agency of the United States Department of Labour. OSHA's mission is to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The OSH Act covers most private sector employers and their workers, in

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<sup>38</sup>Royal Commission on the Pike River Coal Mine Tragedy, 2012. Royal Commission on the Pike River Coal Mine Tragedy – Volume 1. 44 pp. [http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-One/\\$file/ReportVol1-whole.pdf](http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-One/$file/ReportVol1-whole.pdf)

<sup>39</sup> Royal Commission on the Pike River Coal Mine Tragedy, 2012. Royal Commission on the Pike River Coal Mine Tragedy – Volume 2. 404 pp. [http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/\\$file/ReportVol2-whole.pdf](http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/$file/ReportVol2-whole.pdf)

<sup>40</sup> Independent Task Force on Workplace Health and Safety, 2013. The report of the Independent Task Force on Workplace Health and Safety. 153 pp. <http://hstaskforce.govt.nz/documents/report-of-the-independent-taskforce-on-workplace-health-safety.pdf>

<sup>41</sup> <http://www.workcover.nsw.gov.au/aboutus/Pages/default.aspx>

<sup>42</sup> DWP/HSE Framework Document <http://www.hse.gov.uk/aboutus/howwework/management/dwphse.pdf>

addition to some public sector employers and workers in the 50 states and certain territories and jurisdictions under federal authority.<sup>43</sup>

## **Related organizations**

### *Ontario Securities Commission*

The Ontario Securities Commission (OSC) administers and enforces financial securities law in Ontario. Its mandate is to protect investors from unfair, improper or fraudulent practices, and foster fair and efficient capital markets and confidence in capital markets.<sup>44</sup> The OSC is responsible for enforcement, compliance, investigations and prosecution of contraventions to the Securities Act.

### *Canadian Food Inspection Agency*

The Canadian Food Inspection Agency (or CFIA) is a regulatory agency that is dedicated to the safeguarding of food, animals, and plants, which enhance the health and well-being of Canada's people, environment and economy. The CFIA enforces policies and standards, set by Health Canada, governing the safety and nutritional quality of all food sold in Canada. The CFIA verifies industry compliance with federal acts and regulations through activities that include the registration and inspection of abattoirs and food processing plants, and the testing of products.<sup>45</sup>

### *Transportation Safety Board of Canada*

The Transportation Safety Board of Canada (TSB) is an independent agency, created by an Act of Parliament and provides the legal framework that governs TSB activities. TSB's mandate is to advance transportation safety in the marine, pipeline, rail and air modes of transportation by conducting independent investigations, including public inquiries when necessary, into selected transportation occurrences in order to make findings as to their causes and contributing factors. As part of its ongoing investigations, the TSB also reviews developments in transportation safety and identifies safety risks that it believes government and the transportation industry should address to reduce injury and loss.<sup>46</sup>

### *National Transportation Safety Board (USA)*

The National Transportation Safety Board (NTSB) is an independent federal agency mandated to investigate every civil aviation accident in the U.S. and significant incidents in other modes of transportation, including railroad, highway, marine and pipeline. The NTSB determines cause for each accident and issues safety recommendations aimed at preventing future accidents.<sup>47</sup> The NTSB does not make or enforce regulations, nor does it investigate for prosecution purposes. Its primary function is to investigate to determine cause for the purpose of improving safety.

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<sup>43</sup> <https://www.osha.gov/about.html>

<sup>44</sup> [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_sn\\_20140403\\_11-769\\_rfc-sop-fiscal-2014-2015.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20140403_11-769_rfc-sop-fiscal-2014-2015.htm)

<sup>45</sup> <http://www.inspection.gc.ca/>

<sup>46</sup> <http://www.tsb.gc.ca/eng/qui-about/index.asp>

<sup>47</sup> [http://www.nts.gov/about/strategic\\_plan/about\\_ntsb.html](http://www.nts.gov/about/strategic_plan/about_ntsb.html)

# Appendix B – Comparison of available enforcement tools

## An overview of the types of enforcement tools

A significant number of enforcement tools are being used in other jurisdictions to enable effective graduated enforcement and corrective action. We have grouped the various tools using the terminology most relevant to WorkSafeBC and have listed them in increasing order of severity, identifying the spectrum of typical penalties applied, in the following table:

Type	Description	Range of Penalty
Compliance Order	The purpose of a Compliance Order is to remedy non-compliant behaviour. It typically carries no penalty, but in the event of continued non-compliance the health & safety regulator can often apply to the courts for assistance, where the court may order compliance with some or all of the conditions of the order.	No immediate penalty other than the need to rectify the non-compliant behaviour.
Warning Letter or Letter of Caution	Where it is in the public interest, in limited circumstances for relatively minor offences, a Letter of Caution or Warning Letter may be issued as an enforcement tool.	No immediate penalty.
Tickets (Employer)	Tickets, or citations, are issued by an inspector for simple, observable and clearly prescriptive violations. Ticketable offenses are typically clearly charted and communicated and have specific fines attached to them. The inspector may require Peace Officer certification in some jurisdictions (where tickets are issued under an Offence Act). While not criminal in nature, they may become key evidence of a consistent repeat offender in a criminal prosecution or in evaluating future employer experience ratings.	Tickets typically impose a stipulated penalty of anywhere from \$100-\$500 depending on the severity and repeat nature of the offense.
Tickets (Employee)	An Employee Ticket is almost identical in nature to the Employer ticket (and sometimes carries a matching employer fine or penalty for not preventing or allowing the employee to perform their duties in an unsafe manner). It often relates to very specific actions that are usually completely within the control of the employee (such as wearing personal protective equipment).	Tickets are typically slightly less than an Employer Ticket (often in the \$100-\$300 range).
Stop Use Order	When an inspector deems equipment to be unsafe, or when the Officer is of the opinion that the use of equipment has the potential to seriously injure workers, the Officer will stop the use of the equipment until the appropriate corrective action is taken. The Officer issues a written Stop Use Order	Cessation of the use of the equipment, and fines may be imposed if the Stop Use Orders are not obeyed.

on the equipment to prohibit any person from using the equipment.

Stop Work Order	An officer or inspector may issue a Stop Work Order if they deem that the work is being carried out in a manner that is unhealthy or may endanger the health or safety of workers or visitors. Work typically resumes once the inspector is satisfied the issue has been rectified.	Cessation of work and fines may be imposed if the Stop Work Orders are not obeyed.
Administrative Penalties	Monetary penalties or fines can be imposed on the organization when an officer or inspector observes that there has been a breach to the legislation or non-compliance with an order.	Administrative Penalties can reach several hundred thousand dollars, depending on the nature of the violation.
Court Injunction	May order the organization to cease any particular conduct or action that constitutes a contravention of the act. If an employer fails to comply with an injunction, they could be held in contempt of court and may face fines, jail sentence or other terms imposed by the court.	Requirement to cease conduct or business activity, with potential risk of fines or imprisonment.
Creative Sentencing	Sanctions chosen as an alternative to fines collected by government. Creative sentences typically involve a financial penalty in the form of a contribution to a prevention-focused organization to support training or related activities	Fines allocated to health and safety organizations, often for prevention-related activities.
Criminal Prosecution	Ability to undertake prosecution or refer for the case for criminal prosecution.	Prosecution may result in significant monetary penalties and/or imprisonment.

## A jurisdictional comparison of the use of enforcement tools

The following table provides a summary of the enforcement tools utilized across the jurisdictions included in this review.

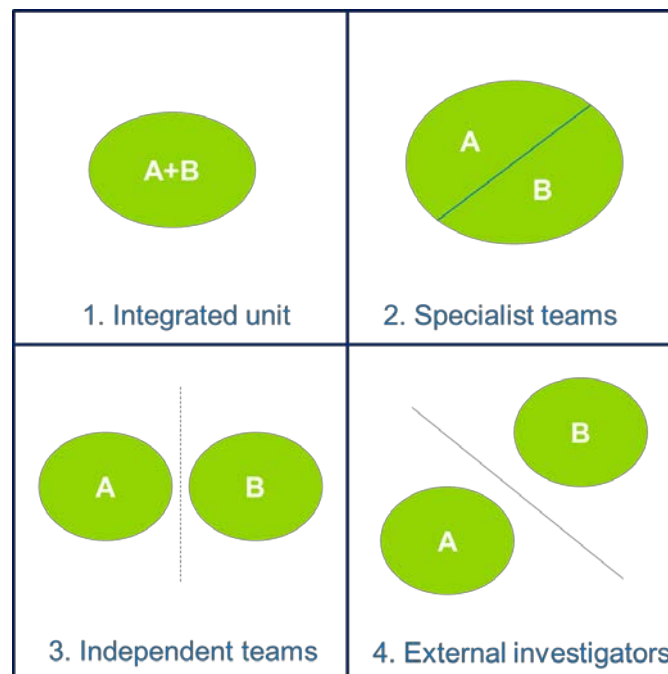
Enforcement Tool Type	Canadian Jurisdictions												Foreign Jurisdictions				Other Regulators	
	BC	AB	SK	MB	ON	QC	NB	PEI	NS	YT	Nfld	NT/NU	NZ	VIC	NSW	HSE	CFIA	TSB
Compliance Order	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓
Warning Letter	✓	✓		✓								✓	✓	✓		✓	✓	✓
Tickets (Employer)		✓	✓		✓	✓			✓			✓		✓	✓			
Tickets (Employee)		✓	✓		✓				✓			✓		✓	✓			
Stop Use Order	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Stop Work Order	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Administrative Penalties	✓	✓		✓					✓	✓			✓	✓			✓	
Court Injunction	✓	✓			✓			✓		✓			✓	✓	✓			✓
Creative Sentencing	✓	✓	✓			✓		✓	✓		✓							
Criminal Prosecution	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

# Appendix C – Analysis of potential Inspection/Investigation Models

## Overview of the Potential Models

Through our jurisdictional scan it was noted that there was a range of models used to structure inspection and compliance functions within workers' compensation organizations, and within similar regulatory bodies in other fields. The purpose of this section is to provide additional detail regarding these models for reference purposes, and also to describe innovative models used elsewhere to deal with the challenges identified in the Dyble Report (particularly those related to "Ling" and "Jarvis" issues associated with evidence collection and admissibility for the purposes of prosecution).

At a high level, four structural models related to inspections and investigations were observed. These are described below.



Model	Overview	Key Benefits	Key Challenges
<b>Integrated Unit</b>  (e.g., Saskatchewan Ontario Ministry of Labour)	<ul style="list-style-type: none"> <li>There is one pool of officers that act as both inspectors and investigators. These individuals conduct routine compliance inspections and incident investigations.</li> <li>Individuals are trained in both inspection and investigative techniques, and relevant legal requirements and they rely on their experience and knowledge to determine when to escalate</li> </ul>	<ul style="list-style-type: none"> <li>Lowest cost environment to operate due to effective resource allocation, flexibility and operational economies of scale</li> <li>Staff are engaged in a variety of work ranging from routine inspections to serious injury/fatality investigation, thus providing a significant breadth of experience and exposure</li> </ul>	<ul style="list-style-type: none"> <li>Increased risk of violating principles related to Ling and Jarvis for evidence gathering and submission. To address this, it was observed that jurisdictions approach all investigations as potential prosecutions, and securing legal advice early in the process to avoid these types of issues</li> <li>Potential for tension between industry and inspectors,</li> </ul>

Model	Overview	Key Benefits	Key Challenges
	<p>an inspection to enforcement.</p> <ul style="list-style-type: none"> <li>The staff member or team initiating the assessment will typically manage the review through to completion, with the support of supervisors, technical specialists and lawyers, as required.</li> </ul>		<p>recognizing that inspectors could initiate an investigation while on site for prevention purposes</p> <ul style="list-style-type: none"> <li>Potential for conflict of interest (real or perceived) where an inspector acts as both advisor and enforcer</li> </ul>
<b>Specialized Teams</b>  (e.g., WorkSafe BC Alberta WorkCover NSW WorkSafe Victoria)	<ul style="list-style-type: none"> <li>The general inspections team is separate from the investigations team.</li> <li>The inspections team is focused on prevention, compliance and complaints. Inspectors may also act as the 'first response' to incidents, subsequently calling in an investigations team as required</li> <li>The specialized investigations team is typically engaged when serious or fatal workplace accidents occur. The team aims to establish whether there are grounds for prosecution and gathers evidence for a court case if necessary.</li> <li>This is the most common model across most other jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>Inspectors and investigators become specialized and experienced in their respective areas thus improving efficiency, quality and consistency of work.</li> <li>Reduced tension between inspectorate and industry as the focus of their work is on prevention</li> <li>Reduced perception of conflict of interest as prevention and investigation duties are conducted separately</li> </ul>	<ul style="list-style-type: none"> <li>Some risk of violating Ling and Jarvis principles for evidence gathering and submission as either the inspection team or investigation team could initiate evidence collection for "cause"</li> <li>Requires inspections personnel to be trained to recognize when to step back and introduce the specialist investigations personnel</li> <li>Inspectors are limited to providing advice and addressing complaints instead of engaging in more challenging investigative work</li> <li>Depending on the type of organization, the investigations team can face periods of high and low work volumes</li> <li>Potential exists for conflicting evidence between the inspection and subsequent investigation.</li> </ul>
<b>Independent Teams with a gatekeeper function</b>  (e.g. OSC – Joint Serious Offences Team)	<ul style="list-style-type: none"> <li>Inspections and investigation teams are set up as separate teams that operate with clear physical and ethical separation between the inspections and investigations.</li> <li>A gatekeeper or assessment unit is typically used to transfer information between inspections and investigations team to ensure independence</li> <li>In the event that the inspection team encounters a situation that may result in criminal prosecution they step back and allow the investigations team to enter the organization to independently perform their own interviews and investigation in a manner that is conducive to effective evidence preservation to support possible prosecution.</li> </ul>	<ul style="list-style-type: none"> <li>Significantly increases the likelihood of effective and reliable evidence gathering</li> <li>Increased independence and objectivity built into the process</li> <li>Increases speed of enforcement as investigations unit is able to conduct investigations while the inspections team is determining cause</li> <li>Minimizes risk of violating Ling and Jarvis principles</li> <li>Inspectors and investigators become specialized and experienced in their respective areas thus improving efficiency, quality and consistency of work.</li> <li>Improves prosecution results as investigation and case processing become core activities</li> <li>Provides clarity to employers regarding role of each team</li> </ul>	<ul style="list-style-type: none"> <li>Increased cost from duplication of investigation effort and operational overhead</li> <li>Risk of inefficient deployment of resources. In this model, where the specialized team focuses entirely on significant investigations, there is the potential for periods of downtime when few investigations are underway</li> <li>Requires a gatekeeper to adjudicate and direct investigations</li> <li>Creates risk of silo behaviors and isolation within the investigation group as they are prevented from communicating with other teams, except on a limited basis</li> </ul>
<b>External Investigators</b>  (e.g. NTSB)	<ul style="list-style-type: none"> <li>The investigations relating to potentially prosecutable offenses are directed to External investigators, where they can conduct their investigations free from perceived conflict and the risk of contamination of evidence for a potential prosecution.</li> </ul>	<ul style="list-style-type: none"> <li>Provides low potential for conflict of interest.</li> <li>Enables effective and reliable process for evidence gathering.</li> <li>Minimizes risk of violating Ling and Jarvis requirements</li> <li>Allows for considerable specialization within each organization.</li> </ul>	<ul style="list-style-type: none"> <li>Difficult to manage and coordinate in challenging investigations.</li> <li>Increased risk of conflicting evidence, reputational risk and territorial behaviours.</li> <li>Entirely duplicative cost structure.</li> <li>Limited sharing of information and lessons learned</li> </ul>

Model	Overview	Key Benefits	Key Challenges
		<ul style="list-style-type: none"> <li>Provides clarity to employers regarding role of each organization</li> </ul>	

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This analysis has been provided for consideration based on our findings in other jurisdictions and industry regulators as WorkSafeBC considers the optimal investigations model into the future. A variety of other critical factors specific to WorkSafeBC, the nature of criminal prosecutions in BC, and other relevant factors should also be considered in determining which of these models, or potentially others, might be most appropriate.