

**REGULATION REVIEW AND DEVELOPMENT PROCESS
A Briefing Paper**

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REGULATION REVIEW AND DEVELOPMENT PROCESS ¹

A BRIEFING PAPER

I. INTRODUCTION

This briefing paper provides a discussion of the following areas relating specifically to occupational safety and health (OSH):

- The regulation review and development process at the B.C. Workers' Compensation Board;
- OSH regulation review and development in other jurisdictions; and
- Consideration of broader factors which affect the process.

II. OSH REGULATION DEVELOPMENT PROCESS IN B.C.

A. Background

The Workers' Compensation Board's primary regulation-making authority over OSH matters derives from Section 71(1) of the *Workers Compensation Act (WCA)* which states:

"The Board may make regulations, whether of general or special application and which may apply to employers, workers, and all other persons working in or contributing to the production of an industry with the scope of this Part, for the *prevention of injuries and industrial diseases* in employments and places of employments... . Before the adoption of a regulation a public

¹ This is one of several briefing papers that the Policy and Regulation Development Bureau is preparing on topics that may fall within the Royal Commission's terms of reference. The purpose of the papers is to give background information that will orient the Commission or others to some major issues. The Board does not expect the Commission to make decisions on the basis of these documents. Rather, the Commission will make its own inquiries.

The papers do not pretend to cover all the issues that the Commission or others might raise. The general nature of the papers also means that they cannot include detailed discussion of all the issues. There may be relevant factors that are omitted with regard to some issues. The explanations of some matters may be less than would be desired if the issues were being considered for decision.

The papers refer to sources of additional information where known. There has been no attempt to exhaustively research all the issues. The papers do not include recommendations for resolving issues, or take a position with respect to them. They may discuss known alternatives, particularly when other jurisdictions have adopted them.

hearing shall be held, and not less than 10 days before the hearing a notice of it shall be published in at least 3 newspapers, of which one shall be published in the city of Victoria and one in the city of Vancouver.” [italics added]

In addition, Section 4(1) of the *Workplace Act (WA)* provides the Board with similar regulation-making authority under that statute.²

After proposed regulations go to public hearings³ and are finalized based on the outcome of these hearings, they are “gazetted,” i.e., published in the B.C. Gazette, Part II. They are then printed and distributed. The proposed regulations are not officially enacted until they are gazetted.

British Columbia and Quebec are the only two jurisdictions where the OSH enforcement agencies have direct statutory authority to make regulations.⁴ In other Canadian jurisdictions, the Lieutenant Governor in Council or territorial commissioner (in essence, the cabinet) has the regulation-making mandate.⁵

Direct regulation-making authority implies greater independence or control over the regulation development process by the enforcement agency. Proposed regulations need not go through cabinet approval. Also, as noted by Ashford and Rest in their first *Administrative Inventory* on OSH:⁶

² The Board’s regulation-making power under the *Workplace Act* is distinguishable from its power under the *Workers Compensation Act*. Firstly, the *WA* extends the regulation-making power to issues of comfort. Secondly, the *WA* applies to factories, offices and shops -- in contrast to the power under the *WCA* to make regulations which apply to all places of employment.

³ British Columbia is the only jurisdiction in Canada required by statute to hold public hearings on its OSH regulations.

⁴ The B.C. Board has sole authority for regulation making. In Quebec, the regulation-making authority is split between the enforcement agency and the Government. Section 223 of Quebec’s *Act Respecting Occupational Safety and Health* confers regulation-making authority to the Commission de la santé et de la sécurité du travail (CSST) over most substantive areas of OSH. But Section 223.1 provides the “Government” with regulation-making powers to set criteria for certain exemptions (re: employer disclosure), and procedural rules for application of these exemptions and for the appeal process. In addition, Section 225 provides that the Government itself may adopt regulations “if the Commission fails to adopt them within the time it considers reasonable.”

⁵ The Lieutenant Governors of Alberta, Manitoba, New Brunswick, Newfoundland, Ontario, P.E.I., Nova Scotia and Saskatchewan, and the Governor in Council under the Federal Labour Code, have the authority for regulation making. The Commissioner in Council for the Yukon and the N.W.T. Commissioner on “recommendation of the Minister” exercise similar powers.

⁶ Ashford, Nicholas A. & Rest, Kathleen M. *Occupational Safety and Health in British Columbia: An Administrative Inventory*, 1992, p. 70. A second follow-up Administrative Inventory on the Prevention Division was completed by the authors and submitted to the WCB in February 1997.

“Unlike what happens in the U.S., ... Board regulations are not appealable in the courts, and workers and employers do not suffer the uncertainty of ... years of costly and acrimonious judicial proceedings... .”

Theoretically, this should contribute to a more efficient system.

In reality, a number of other factors can seriously affect timeliness and other outcomes. Factors, such as the prevailing political, economic climate and competing public interests in a jurisdiction, may impact the regulation development process. The process could stall, for instance, if the worker and employer communities are extremely polarized on key issues. This is a challenge in the B.C. situation, where employer and labour groups have strong voices and in the current review have been afforded significant participation in regulation development.

Since the early 1980s, the B.C. Board has made three attempts to revise its flagship *Industrial Health and Safety (IHS) Regulations* -- using a different regulation development approach each time. These different regulation development models will be reviewed.

The purpose of this paper is to provide a comparison of the regulation development process in B.C. with those of other jurisdictions. The intention is to present a discussion of various review models. No specific recommendations are included.

B. Recent History of Regulation Making

The B.C. Workers' Compensation Board has been responsible for developing and enforcing OSH regulations, since its inception in 1917. The first set of accident prevention and first aid regulations were adopted in 1918, and have been subject to review, revision, and expansion at different times ever since. The last comprehensive revision to the *IHS Regulations* was completed in 1978. Since then, there have been three attempts at revising the 1978 edition. These attempts to revise the *Regulations* reflect different models of regulation development.

1. Tripartite Model (1982-84)

A tripartite regulation development process was initially envisaged for this first attempt at revision of the 1978 edition of the *Regulations*. In early 1982, a project to set up a permanent Regulation Review Advisory Committee was started. The reason for a permanent, advisory committee was to enable a continuous and ongoing review of the *Industrial Health and Safety Regulations*. The intent was to revise these regulations, based on open consultation with the employer-worker communities.⁷

The 19-member committee consisted of:

- Seven employer representatives;
- Seven labour representatives; and
- Five “technical” specialists: three WCB representatives, one Medical Association representative and a Professional Engineers Association representative.

The initial tasks for the Committee were:

- To set review priorities;
- To review proposed changes to individual regulations;
- To develop a structure and process that would enable the Committee to recommend effective regulations; and
- To establish technical subcommittees to review assigned sections of the regulations and draft revisions.

The Advisory Committee was to operate by consensus, so as to ensure that all opinions would be recorded and presented to the Board. Its members would volunteer their time: no travel expenses or remuneration were provided.

This Committee disbanded when the labour representatives walked out in protest over the Board’s decision not to bring to public hearing many of Labour’s recommendations, especially regarding farm worker coverage.

Shortly after the Committee dissolved, “the Board drafted its own set of proposed regulations, which Labour contends was secretly circulated to the employer

⁷ The three prior reviews were also based on a tripartite model. However, the review committees were generally small. The 1966 and 1972 editions of the regulations apparently were completed with little controversy. The 1978 review, however, was completed with difficulty. It was during the 1978 regulation review that employer and labour groups asked for increased representation on review committees, and reportedly demanded a more “open” and consultative approach to regulation development.

community and officially withheld from labour.”⁸ When Labour objected to both the process and the content, the proposed regulations were dropped.

The tripartite review process unravelled for a number of reasons.⁹ Firstly, there were many labour and employer groups who felt that they should have been included on the Committee because of their size or nature of business. Secondly, the Committee itself found it extremely difficult to reach consensus. The following were some of the points of disagreement:

- Labour representatives wanted more prescriptive regulations (with specific legal requirements and sanctions for non-compliance), while employer representatives often favoured general rules (aimed at achieving general objectives).
- There was a tendency to take advocacy positions. The original intent was that employer and labour members be chosen on the basis of their personal experience, training and knowledge, *not* their organizational affiliations. But this did not work in practice.
- There were differences over whether a majority *opinion* of the Committee could be construed as a majority *decision* which the Board was bound to follow.

This polarization of viewpoints is also evident in the subsequent attempts at revising the regulations.

2. Administrative Model (1985-89)

In the mid-1980s, a second attempt was made to revise the regulations. Following the failure of the earlier attempt to review the regulations in open consultation, the Board moved to an “administrative” model.

Under this approach, WCB staff developed the first draft set of regulations, which were published in 1988 and widely distributed for comment. A second draft -- an attempt to address the submissions received from both labour and industry -- was prepared and circulated to some key stakeholders in October 1989. The stakeholder response was to put the second draft on hold, while the Munroe Advisory Committee recommendations on the structure of the WCB were being considered and implemented. No further action was ever taken on this draft.

3. Bipartite Model (1992-1995) and Tripartite Model (1995-Present)

⁸ Ashford and Rest, first Administrative Inventory, p. 72.

⁹ Background documentation provided by Regulation Review Section, WCB.

Upon coming into office in 1991, the Board of Governors took stewardship over the regulation review and development process, stating the revision of the OSH regulations as one of their first priorities. The resulting regulation review process has been the most extensive of the three since 1978, in both its scope and the degree of public consultation conducted.

In their second administrative inventory, Ashford and Rest observed that the “model used in the current regulation review process has been described differently by different parties, alternatively characterized as bipartite or tripartite.”¹⁰ The Board of Governors, however, identified the model as being bipartite, under which the employer and worker communities would develop and recommend changes to the content and format of the regulations. Board staff were to participate in an advisory capacity rather than as a party to the review.

The differences in perception of the review model as being alternatively bipartite or tripartite, may probably be a reflection on how the process has evolved over time. For instance, the role of the Vice President of the Prevention Division has changed over the course of the current review. In 1993, the Vice President (Prevention) was invited to participate on the GCRR (Governors’ Committee for Regulation Review) and the RAC (Regulation Advisory Committee), as a non-voting member.

After the Board of Governors was disbanded in 1995, the Panel of Administrators delegated the authority for overseeing the regulation review process to the Vice President of Prevention.

Since then, a number of substantive changes have been made to the process which reflect a transition from a bipartite to a more tripartite mode of operation. (Elaboration on these changes will follow in the paper.) Conceptually, it is therefore possible to divide the current review into two phases -- the first phase under the Board of Governors which was bipartite in structure, and a second phase under the Panel of Administrators which is tripartite in approach. The discussion below is on the basis of two such phases.

¹⁰ Ashford, Nicholas A. and Rest, Kathleen M. *Occupational Health and Safety In British Columbia: An Administrative Inventory of the Prevention Activities of the Workers’ Compensation Board*, Feb. 1997 (final submission), p.4-8.

a. Bipartite Model (1992-1995)

On January 7, 1992, the Governors issued their strategy for completing a comprehensive review of OSH regulations.¹¹

Scope.

In their strategy document (Decision 9), they defined the scope of the review to include:

- the Industrial Health and Safety Regulations;
- the Occupational Environment Regulations;
- the First Aid Regulations;
- the Workplace Hazardous Materials Information System (WHMIS) Regulations; and
- new areas not previously covered -- farming, fishing and silviculture.

The scope of the review was intentionally comprehensive. There were several reasons for this. It had been about 15 years, at the time, since the last review. The regulations were out of date in virtually all subject areas. Further, the *Industrial Health and Safety Regulations* -- the main body of regulations the Board administers -- was written with an emphasis on cross referencing among the parts. As a result, changes to any one part would result in the need for amendments to other parts. The new regulations are intentionally designed to eliminate such linkages, so that future review can be easily conducted on a part-by-part basis.

The WCB was also faced with problems of inconsistency in the language and/or format of the regulations under its jurisdiction. The Occupational Environment Regulations, which were transferred to Board jurisdiction in 1985 under the *Workplace Act*, were in a language and format distinctly different from other Board regulations. In addition, regulations for new areas of regulatory involvement, such as agriculture and fishing, could not be incorporated easily within the format of then-existing documents.

¹¹ See Decision 9 (8 WCR 53)

Structure.

The strategy included providing a structure for the regulation review process. The basic review structure was outlined as follows:

- A Governors' Committee for Regulation Review (GCRR) which was comprised of two employer and two worker governors, one public interest governor and the Chair. The Governors' Committee for Regulation Review was the superintending body for regulation review. The Chair of the Board of Governors lead the Committee. The GCRR's responsibilities were: "to oversee the process; to bring it, as far as possible, to a successful conclusion; to record and define differences; and to present a clear definition of the options where consensus has not been reached."¹² After the Governors were replaced in July 1995 with a Panel of Administrators, the supervision of the review process was delegated to the Prevention Division, under the administration of the Vice President.¹³
- A Regulation Advisory Committee (RAC) which consisted of the members of the Governors' Committee, seven worker and seven employer representatives. Members of the Regulation Advisory Committee (RAC) were selected by the Board of Governors on the advice of the Governors' Committee following consultation with labour and employer groups. The RAC operated with 21 members -- seven employer and seven worker representatives, six governors (the GCRR) plus the Coordinator of Regulation Review. The Chair of the Board presided over the RAC. In his absence, the public interest governor chaired the meetings.

The RAC was further broken down into two main working groups. A *General Conditions* subgroup worked on general requirements for places of employment, and a *Responsibilities* subgroup on defining duties of workplace parties.

The RAC functions were to: "review core area regulations..., advise on format of regulations; provide recommendations on creation and terms of reference for all subcommittees; advise the GCRR on the selection of participants on subcommittees; review subcommittee reports as they are developed; and review all draft regulations."¹⁴

¹² Ashford and Rest, second Administrative Inventory, p. 4-9.

¹³ As noted earlier, the Vice President of Prevention had participated in the process since March 1993, when the GCRR added him as a non-voting member.

¹⁴ Op. cit., Ashford and Rest, p. 4-9.

- Specialty subcommittees which comprised of representatives of the related industries. The role of specialty subcommittees was to “implement terms of reference on specialized areas” and to “liaise with other specialty subcommittees.” The subcommittees were to produce reports on their specialty areas, such as forestry and electrical safety. Members of the RAC participated on subcommittees where appropriate. Over 20 subcommittees and five smaller focus groups¹⁵ have participated to date.
- A Coordinator for Regulation Review and a Secretariat. The Coordinator of Regulation Review was “responsible to the Chair and the Governors’ Committee for overall implementation and completion of the regulatory review process,” and now reports to the Vice President, Prevention. The Secretariat, which serves as the administrative, advisory and resource centre for the regulation review process, is directed by the Coordinator.

b. Tripartite Model (1955-Present)

Changes In Structure.

The structure set up in 1992 changed, after the Panel of Administrators took over governance of the Board in July 1995. The Governors’ Committee (the GCRR) disappeared, and the Regulation Advisory Committee (RAC) was replaced by the Advisers on Regulation Review (ARR). This was similarly composed, but without the former governor members.¹⁶ (See Chart 1 in the Appendix for the current review structure.)

As mentioned, the Vice President of Prevention was delegated the responsibility of overseeing the review process in September 1995 and essentially assumed the functions of the GCRR.

The Secretariat is now the Regulation Review Section. Administratively, it comes under the Policy and Regulation Development Bureau, set up in early 1996. The Coordinator is now a Director in the Bureau. The Bureau reports directly to the Panel of Administrators through a Director-General. Presently, the

¹⁵ Focus groups were formed when the RAC had significant differences of opinion on the substantive recommendations of a subcommittee. A focus group typically comprised both RAC and subcommittee members. Both the working groups (of the RAC itself) and the focus groups were bipartite in nature. Focus groups were formed to look at issues related to: excavations, equipment safety, occupational hygiene, general conditions, and core requirements.

¹⁶ Prevention Division, *Operational Status Report*, dated November 19, 1996, p. 45. Prepared for submission to the Royal Commission.

Vice President of Prevention is also the acting Director-General of the Bureau. Therefore, the Coordinator (now a director in the Bureau) technically reports to the Vice-President of Prevention in his capacity as Director-General.

c. Status of Review

The Board of Governors' strategy originally allowed for a two-year period to complete the whole regulation review process. The process is not as yet finalized. However, all of the hearings have been held and the review of submissions from the latest round of hearings is expected to conclude in mid-1997, with effective new regulations targeted for early 1998.

About 1,500 substantive changes to the regulations are proposed, out of more than 4,000 regulations reviewed.¹⁷ The proposed new format is a condensed document with 33 parts. It would replace the current *IH & S Regulations* (49 parts), *Occupational Environment Regulations*, *WHMIS Regulations*, *Occupational First Aid Regulations*, *Agriculture Operations Regulations*, *Fishing Operations Regulations* and *Violence in the Workplace Regulations*.

Table 1 is a summary of the progress made to date. Four sets of public hearings were held during the tenure of the Governors, and one more set under the Panel of Administrators. Regulations approved so far (out of the 1,500 proposed changes) relate to:

- Violence in the Workplace
- 14 Permissible Concentrations (Occupational Hygiene)
- First Aid
- Agriculture
- Fishing
- Noise (Occupational Hygiene)
- Fall Protection

Consensus had been reached on all but about 20 items before the latest public hearings took place in 1996. Those items related to the more contentious issues. Still outstanding issues include:

¹⁷ The number of regulations is calculated on the basis of complete regulatory statements, and includes both sections and subsections of regulations. If only the sections of regulations are counted, the number is closer to 2,000.

- Rights and responsibilities of workplace parties (in the proposed Part 3 draft which would replace Parts 2, 4, 6 and half of Part 8 in the current *Industrial Health and Safety Regulations*);¹⁸ and
- Medical programs.

The Regulation Review Section reports that an interim agreement to Part 3 seemed imminent at one point, but then broke down. Because of the lack of consensus, Part 3 was not presented at the last round of public hearings held in September 1996. Labour would like a significant expansion on the rights and protections that are now provided under the current *IHS Regulations*. On the other hand, employers -- especially small employers -- feel that the proposed Part 3 would be onerous on them. A particularly contentious point is on the extent and means of training health and safety committee members, and worker health and safety representatives. (The Board is currently working on a modified workplace health and safety program for small business.)

Medical surveillance programs are not strictly required under the B.C. *Workers Compensation Act*.¹⁹ Labour and employer communities are divided on issues relating to such programs. The Medical Programs specialty subcommittee was unable to agree on a final report. Separate reports were filed by the chair of the committee and each of the employer and worker caucuses.

Core areas of disagreement relate to:

- 1) voluntary versus mandatory worker/employer participation in occupational health programs;
- 2) protective reassignment and precautionary leave of workers; and
- 3) the right to choose a physician.

As Ashford and Rest pointed out in their second administrative inventory, "the contentious nature of this issue has been long-standing."²⁰ Section 78 of the existing *IH & S Regulations* was the only section never gazetted. Thus,

¹⁸ In all the other Canadian jurisdictions and many international jurisdictions (such as the U.S.A. and the states of Australia), the rights and responsibilities are articulated in a separate OSH statute.

¹⁹ Section 6(5) of the *WCA* gives the Board discretionary power to require medical examinations "...in an industry in which an industrial disease has been shown to exist..." However, this section is rarely used for OSH enforcement purposes.

²⁰ Ashford and Rest, second Administrative Inventory, p. 4-16.

although printed, the regulations on medical examinations and investigations were never enforced.”²¹ The provincial *Mines Act*, however, provides for such programs with respect to mine workers.²²

d. Challenges To Current Process

As shown in Table 1, where considerable progress has been made, despite some obstacles to completing the regulation review process. The difficulties revolve around a small number of substantive issues over which worker and employer views are polarized. The present regulation development model strives to operate on the principle of consensus. Stalemate over certain key issues (such as rights and responsibilities) has hampered the timely conclusion of the review process. Certain mechanisms are now in place to help bring the process to a conclusion. (These will be further discussed in the section on operating procedures to follow.)

The Governors' stated time frame of two years for completion of the review has proved unrealistic. (See attached eight-stage process in the Appendix.)²³ The delay has been attributed to several factors:

- Number of Public Hearings

The original timeline assumed no more than two sets of public hearings. Given the high level of consultation built into the review structure, it was expected by the governors that public hearings would be minor exercises, with little formal involvement of the RAC and subcommittees.

In fact, there were four sets of public hearings on individual subject areas, and an extensive, initial round of public forums held during the

²¹ Sections 35.27 and 36.07 of the Regulations also provide for medical exams for asbestos and lead exposure respectively. But these sections are cross-referenced to Section 78 which was never enacted. Given the ambiguous status of Section 78, the Board does not enforce Sections 35.27 and 36.07.

²² Section 71(7) of the *WCA* explicitly excludes the WCB's jurisdiction over mining. Health and safety of mine workers in B.C. are covered under the *Mines Act*, administered by the Ministry of Employment and Investment's Energy and Minerals Division. Medical surveillance programs are specifically provided for under Part 2 of the Health, Safety and Reclamation Code for Mines in British Columbia, enacted under the *Mines Act*.

²³ See stages of OSH Regulation Development presented in *WCB Annual Report*, 1992, p.13.

Governors' tenure.²⁴ Furthermore, committee members participated on the hearing panels, taking time away from actual committee work.

Under the Panel of Administrators, the initial review process has been brought to completion through conduct of one further set of hearings on the overall document.²⁵

- RAC Deadlines

It was assumed that the RAC would conclude its preliminary review of core area requirements by the end of 1992, fine tune these agreements, and submit its report and recommendations by May 15, 1994.²⁶ Two working groups (i.e., the General Conditions and Responsibilities groups) were set up to increase the efficiency of RAC decision making. Specific milestones or deadlines, however, were not established for the RAC.

The RAC's discussions stalled over the issue of the internal responsibility system -- whereby workers and employers share the tasks of identifying and responding to occupational hazards. Essentially, it was unable to reach full agreement over the proposed Part 3 regulations which define rights and responsibilities of workplace parties.

- Subcommittee Reports

It was assumed that subcommittees would be set up on schedule and meet their mandated deadlines.

Most subcommittees were able to meet established deadlines -- Agriculture, Fishing, Silviculture and Electrical Safety. However, some subcommittees such as First Aid and Ergonomics were not able to meet deadlines because of a number of unresolved issues. The timelines were shifted, as these committees tried to achieve consensus. There were also delays in starting up a number of committees due to delays in nomination of representatives by one or both of the communities.

- Resolution of Non-Consensus Issues by GCRR

²⁴ The Regulation Review Section estimates that the preparation, conduct of each set of hearings and subsequent finalization of regulations takes between three to six months on average.

²⁵ The Panel of Administrators' decision not to hold the fifth set of hearings during the run up to the Spring 1996 provincial elections built in some delay.

²⁶ May 15, 1994 commitment as per Operating Protocol for the RAC, adopted May 15, 1992.

It was assumed that the GCRR, which had ultimate charge of the process, would resolve any disagreements at the RAC and subcommittee levels.

There was a further assumption that the stewardship of the Board would be stable and durable. This was not the case. There were a substantial number of resignations during the tenure of the Governors including the Chair. Ultimately, the Governors were disbanded.

As documented in the Korbin-O'Callaghan report, the Board of Governors, which also functioned on a consensual basis, was itself becoming increasingly dysfunctional and polarized. The Governors, therefore, were not in a position to resolve any deadlocks arising from the committee levels.²⁷

- Level of Consultation

The overall level or degree of consultation that was built into the process is noteworthy. The composition of the various committees and the public hearing format (which allows for submissions from all members of the public) reflect an attempt to provide as open and inclusive a process, as possible. This has, however, been achieved at the expense of time and effort.²⁸

A contrast may be drawn with the recently completed review of the Saskatchewan *Workers' Compensation Act*. The review committee was set up in April 1996 and submitted its report to the Minister of Labour by December 31, 1996. To meet this deadline, no public hearing was held. The Committee solicited written briefs (by invitation only) from groups, including employer, labour and injured worker groups. Invitations to submit were based on the Department of Labour's consultation list, plus the addition of Schedule 1 employers

²⁷ Korbin, Judi and O'Callaghan, Patrick, *The Workers' Compensation Board of British Columbia Board Governance Review - Report and Recommendations*, April 18, 1995.

²⁸ Ashford and Rest's second Administrative Inventory on OSH in B.C.(February 1997) noted that between 1992 and mid-1996, the RAC, its working groups and the successor ARR met for a total of 166 days. Some 170 persons representing more than 100 organizations (worker and employer) have participated in the review process to date, principally as members of specialty subcommittees. In addition, a recent estimate by the Regulation Review Section puts the time investment by representatives and WCB staff at 150,000 person-hours (83.3 person-years). See Ashford Nicholas A. & Rest, Kathleen M. *Occupational Health and Safety In British Columbia: An Administrative Inventory of the Prevention Activities of the Workers' Compensation Board*, Feb. 1997, p.4-11 and 4-12.

(federally-regulated employers in Saskatchewan).²⁹ “Those issues on which consensus was not reached (were) generally not reported.”³⁰ (It should be noted that the Saskatchewan *WCA* does not address health and safety, which is dealt with in separate legislation, the review of which has taken substantially longer.) This review of Saskatchewan’s *WCA* is being mentioned to illustrate a case where tight deadlines are met -- but at the price of public consultation and consensus-building, both of which would require more time commitment.

e. Strategies For Improving The Regulation Development Process

The preceding discussion of the third and current review of the existing OSH regulations describes a dynamic process that has evolved and changed in the course of its history. The change in governance at the Board was probably the most significant factor -- in terms of its impact on the structure and operation of the process.

While the original aim of the Board of Governors remains the same -- to develop regulations in full and open consultation with the various constituents, a number of changes have been introduced in the post-governor period under the Panel of Administrators. These changes relate to two areas: streamlining of the review process and development of a strategy for future on-going review.

Streamlining the Process.

As previously noted, the task of overseeing the review process was delegated by the Chair of the Panel of Administrators to the Vice President of the Prevention Division in September of 1995. Ultimate responsibility for approving new regulations remain with the Panel, the governing body. Since then, emphasis has been placed on bringing the initial regulation review process to a conclusion. The following is a summary of key changes in the process, since September 1995.

- **Strategy Respecting Non-Consensus.** When committee discussions stall, procedures are now put in place to help bring closure to the disagreement. When a stalemate arises, the discussion is taken out of the committee setting. The Regulation Review Section works with the

²⁹ Section 162 of the Saskatchewan *Workers’ Compensation Act* requires the Lieutenant Governor in Council to appoint a committee of review “...to review and report on all matters concerning this Act, the regulations...” at least once every four years.

³⁰ *Report of the Saskatchewan Workers’ Compensation Act Committee of Review (1996)*, p.5.

disagreeing parties. If consensus cannot be reached at this point, the worker and employer positions are recorded, options developed and recommendations provided to the Panel of Administrators by the Vice President of the Prevention Division/Interim Director-General, Policy and Regulation Development Bureau.³¹

- Establishing Decision Points. The change in procedures (described above) allows for direct internal input on substantive issues (via the Prevention Division) and final decision-making by the Panel of Administrators. In so doing, it allows for issues to be moved forward, despite a lack of consensus at the committee level.
- Moving Towards a Tripartite Model. Ashford and Rest noted, in their second administrative inventory, the differences in perception as to whether the review process was bipartite or tripartite. These differences in perception could be because changes to the review model have been gradual and incremental rather than drastic or sudden. As a result, the transition to a tripartite model may not have been as apparent to some.

This evolution of the model towards a tripartite mode reflects a gradual acceptance of the WCB's participation over time.³² Although some may disagree, it would appear that the clear transition point to a tripartite model was when the Vice President of the Prevention Division, the OSH enforcement arm of the WCB, assumed charge of the review process in September 1995.

³¹ These procedures to attain closure are similar to those used in the review of the *Mines Act* and its *Code* (which contains about two-thirds the number of Board regulations on OSH). The review (which took place under the former Ministry of Mines) operated under a tripartite Steering Committee (an equivalent of the RAC) and ten subcommittees. In this process, when consensus could not be achieved, the various positions were recorded but the Chief Inspector would make the final decision. The review, initiated in 1988, was completed by 1990. In 1990, the *Code* was again reviewed and appeared in revised form in June 1992. One advantage this process had over the Board's current review is that it dealt with a single industry.

³² At the start of the process, it was proposed that employers, workers and the WCB would be equal participants in the process. However, there was reportedly too much distrust of the Board at the time. Hence, the governors adopted a bipartite structure, with Board staff acting in a facilitating role.

Ashford and Rest commented that it is “not clear how one should characterize the recent Regulation Review process in B.C.”³³ However, the authors were less ambivalent in suggesting that a “more tripartite process -- which involves a third party... with no political allegiance to either labour or management and with a professional interest in the outcome -- could help minimize the political bickering and inject professional judgment and leadership into the determinations of the appropriate and necessary levels of protection.”³⁴

Strategy For Ongoing Review.

A strategy is being developed to support regulation review on an ongoing basis. An ongoing review process would help the Board avoid the monumental task in future, of a total overhaul of existing regulations.

The strategy which is being developed by the Regulation Review Section includes:

- assessing the strengths and weaknesses of the current review structure;
- identifying the adjustments needed for the structure; and
- developing criteria for determining which subjects will be further reviewed.

III. COMPARISON WITH OSH REGULATION REVIEW AND DEVELOPMENT IN OTHER JURISDICTIONS

A. Background

A survey of some selected jurisdictions shows that they basically operate on a bipartite (employer-worker), tripartite (employer-worker-government) committee model or in some cases, on an “administrative” model with limited public consultation. The outcomes have been varied in terms of timeliness and the extent of regulatory/legislative change achieved. There does not appear to be any consistent pattern in terms of these results.

An argument may, therefore, be made that the model *itself* is no guarantee of success or failure of the regulation review process. British Columbia’s “experiment” with all three basic models lends support to this argument. Its first

³³ Supra, Ashford and Rest, 1997, p. 4-18.

³⁴ Ibid., Ashford and Rest, 1997, p. 4-18 and 4-19.

two tries using the tripartite and administrative approaches failed. The current attempt with a bipartite approach, although making consistent progress, has met with challenges.

It may be deduced that outcomes of the regulation review process are determined not solely by the regulation development model used, but by a combination of factors. In addition, the way in which a basic model is run (for example, the operating procedures within a regulation development model) may also affect the process.

In other words, the efficiency and outcome of the regulation review and development process may be affected by:

- factors within the review model:
 - ⇒ committee levels;
 - ⇒ operating procedures;
 - ⇒ other considerations - who participates;
- remuneration of members.
- factors external to the review model:
 - ⇒ political;
 - ⇒ competing public interests.

The discussion which follows considers how these factors operate under the current B.C. regulatory development model, as compared to some other jurisdictions.

B. Factors Within The Review Model

1. Committee Levels

British Columbia.

The B.C. review structure, as outlined in the Governors' strategy document (Decision 9), specified three committee levels -- the Governors' Committee for Regulation Review (GCRR), the Regulation Advisory Committee (RAC) and specialty subcommittees. As the process evolved, the RAC formed two working groups within itself, and created smaller focus groups with specialty subcommittees to work on issues over which there was no consensus. The regulation review process was operating, therefore, on five layers of committee deliberation at one point. This was reduced to four levels when the GCRR disappeared. The breakdown into smaller groups was done to facilitate discussions within the group.

Other Jurisdictions.

Many of the other Canadian jurisdictions do not operate on as many levels of committees. Human Resource Development Canada (HRDC), which is responsible for developing and enforcing federal OSH regulations, uses two levels of committees. A bipartite Review Committee (chaired by a deputy or assistant deputy minister) identifies the areas of regulation to be reviewed. A bipartite Working Group, consisting of nominees of major employer and worker groups, works on proposed amendments. After reviewing these recommendations, the Review Committee sends them on to the Department of Justice for redrafting.

Nova Scotia has also adopted a two-level committee structure. There is a 12-member tripartite Council (the Occupational Health and Safety Advisory Council) consisting of equal numbers of worker, employer and government representatives. The Council appoints bipartite Working Groups, with non-voting technical representatives from the Ministry of Labour, to work on reports for each area under review.³⁵

Ontario's Ministry of Labour (MOL), which until recently had the OSH mandate, has alternatively used a one or two level committee structure.³⁶ The *Regulations for Mines and Mining Plants* were reviewed by a one-level, bipartite Mining Legislative Review Committee, with MOL staff providing technical and administrative support. Two levels of committee deliberation were used, however, for reviewing the *Regulations for Construction Projects*. A tripartite steering committee was formed, which in turn created tripartite working groups.

Both Manitoba and Saskatchewan allow for only one level of committee deliberation, which involved employers and workers. In Manitoba, the Advisory Council for Workplace Safety and Health advises the Minister of Labour on OSH, and may draft recommendations for regulations. Once drafted by the Department of Justice, proposed regulations go to an internal Regulation Review Committee which does not include stakeholders.

Saskatchewan, which started a comprehensive review of its OSH regulations in September 1993, employed 20 tripartite Working Groups in the initial level of

³⁵ Nova Scotia's new *Occupational Health and Safety Act* came into effect January 1, 1997. The revamped legislation is the result of a three-year regulatory review, in consultation with stakeholders.

³⁶ The OSH mandate was partially transferred to the Ontario Workers' Compensation Board in the second half of 1996. The Workplace Health and Safety Agency, which performs primarily training and outreach functions on OSH, now comes under the WCB umbrella. The new merged agency is still under transition. A new bill has been introduced to revamp the *Workers' Compensation Act* (Bill 99 - the "Workplace Safety and Insurance Act, 1996"); it is expected that the OH&S Act will also be revised. The Ministry of Labour presently retains the OSH enforcement function.

committee deliberation. As in Manitoba, the final review is by a legislative Regulation Review Committee which has no stakeholder representatives.

2. Operating Procedures

The manner in which committee proceedings are conducted can affect efficiency and timeliness. Operating procedures to consider include:

- whether there are set deadlines for completion of committee work;
- whether there are mechanisms to deal with discussions when they stall;
- where the decision points are (i.e., who makes the decisions); and
- whether there are terms of reference for operating the committee and defining accountability.

a. Set Deadlines

British Columbia.

Unless deadlines are set, there could be delays in concluding committee level discussions -- especially when its members represent divergent interests. However, holding to deadlines is extremely difficult if a system works on a strictly consensual model. Under the current B.C. regulation review, initial deadlines were set up for the different committee groups and sub-groups, to fall in line with the overall time frame of two years for the review process. In actual practice, some committees were not held to their original deadlines by the governors. In trying to arrive at consensus agreement, deadlines were sometimes extended, although it should be emphasized that the governors ensured the subcommittees were held accountable for the revised deadlines.

It should be noted that subcommittees dealing with primarily technical components of the regulations (re: general hazard and industry-specific aspects) did generally complete their tasks in a timely fashion. The process tended to stall over issues of a political nature, rather than over technical matters.

Other factors which contributed to extended timelines for some committees were:

- 1) delays in committees being formed because of delays by the respective communities in nominating employer or labour representatives;
- 2) availability of participants -- committees found participant schedules difficult to work around; and
- 3) allowance for wider consultation by representatives or others with their constituents -- this is often time consuming.

Other Jurisdictions.

The research for this paper did not extend to examining whether deadlines were met in other jurisdictions, at individual committee levels. It would appear that the present B.C. regulation review has taken relatively longer than a number of other legislative reviews, but less time in comparison to some others. There are also considerable variations with respect to scope.

Nova Scotia revised its *Occupational Health and Safety Act* in nearly three years, but this did not include the regulations.

Over the past several years, Manitoba has also undertaken a revision of its OSH regulations through a Legislative Review Committee. The purpose of the review is solely to examine regulations in terms of whether they are outdated, in conflict with other regulations, or could otherwise be deleted. To date, no changes have been made.

It should be noted that B.C. is the only Canadian jurisdiction *required* by statute to hold public hearings, the broadest type of public consultation. As previously noted, five sets of hearings have been conducted.

b. Mechanisms To Resolve Non-Consensus

British Columbia.

In order to successfully complete the review process, there should be procedures for dealing with stalemates which might occur. The question is how to proceed to the next step in the review process, despite the lack of consensus. It may be necessary to acknowledge the natural tension or conflict among stakeholder interests which makes consensus on certain issues unattainable.³⁷

As mentioned, the initial stages of the present B.C. review operated on the assumption that committee activity would continue until consensus was reached. As mentioned, procedures have been put in place so that when a stalemate occurs, the Regulation Review Section works with the disagreeing parties. If consensus cannot be reached at this point, the worker and employer positions are recorded, options and recommendations provided to the Panel of Administrators by the Vice President of the Prevention Division/Interim Director-General, Policy and Regulation Development Bureau.

³⁷ In the "Conduct of Meetings" section of the Operating Protocol for the RAC, it is stated: "In the absence of consensus, closure shall be brought to discussion and debate on any subject through voting...and carried by a majority of the votes cast..." In practice, voting was not used to settle non-consensus.

Other Jurisdictions.

The American Industrial Hygiene Association (AIHA) and the Chemical Manufacturers Association (CMA) commissioned an international review of procedures in setting occupational exposure limits (OELs). While the study was limited to examining the review process for establishing OELs, it is nevertheless useful in illustrating basic regulation-making styles.³⁸

Quebec and Ontario (which were the only three Canadian jurisdictions included in the study, along with Alberta) adopted distinctly different approaches on dealing with non-consensus.

In Quebec, a Joint Technical Committee (comprising of three employer representatives and three labour unions representatives) examines OELs on a case-by-case basis. Items on which consensus is immediately reached, go to the Board of Directors and then to be published in the Official Gazette for public review and comment. When there is no preliminary agreement on a certain substance, a consensus is reached by the group, conditional upon a study to be conducted on the impacts of higher OELs.³⁹

In Ontario, the Ministry of Labour used a bipartite, Joint Steering Committee on Hazardous Substances in Workplace (composed of nine labour and nine employer representatives plus Ministry staff). The bipartite committee was established in 1987 and disbanded in 1996. The committee set up a OEL task force, in 1988, which was similarly composed. The task force's mandate was to examine OELs in five other jurisdictions based on the following criteria:

- OELs must have a scientific basis;
- Both management and labour must have participated in establishing the OELs;
- These OELs have been enforced (i.e., are presumably enforceable).

If OELs did not meet these criteria, they were not used. If they were lower than Ontario's, they were considered for adoption. The task force examined new OELs for more than 200 substances. The lowest OELs of the other five jurisdictions were recommended.⁴⁰ In the first phase, 101 substances were proposed for change. However, ultimately the process was disbanded and

³⁸ Ariel Research Corporation, *An International Review of Procedures for Establishing Occupational Exposure Limits*, 1996.

³⁹ *Ibid.*, p.12 - 13.

⁴⁰ *Ibid.*, p. 16 -17.

exposure limits were changed for only 19 substances. After almost 10 years of work, this is the only outcome.

By contrast, the B.C. process involved a specialized subcommittee which dealt with all regulations related to chemicals, including OELs for over 700 substances. The entire review was completed within about two years of deliberations. This compares favourably with other jurisdictions particularly the Occupational Safety and Health Agency (OSHA) in the U.S., where after more than a decade of review, a revised limit has yet to be established for the one substance, methylene chloride.

In the case of the European Community, the adoption process is via a formal vote by a committee, comprising representatives from member countries.⁴¹

The International Labour Organization (ILO), which is responsible for a number of international instruments relating to OSH, uses a tripartite development model. Adoption is by formal vote on a clause-by-clause basis at a convention.⁴² This is the general process the ILO uses, and is not restricted solely to dealing with OELs.

c. Decision Points

British Columbia.

Who makes the decisions? This becomes an important question, particularly in situations when a stalemate develops. The current B.C. review process, started on the premise that disagreements at the RAC or Specialty Committee levels would be resolved by the Governors (GCRR).

As discussed, the Governors were often deadlocked themselves and unable to make the decisions necessary for moving the review process forward.

The recent change in procedures (described above), allows for direct internal input on substantive issues (via the Prevention Division) and final decision-making by the Panel of Administrators. The Panel is structured differently from

⁴¹ Ibid., p. 28.

⁴² The general review process for its conventions on various work health and safety matters may be described as follows: A first draft is produced by ILO staff and distributed to employer, worker and government representatives of the member countries for comment. A conference is called to discuss revisions to the draft. An equal proportion of worker, employer and government representatives attend. The draft is revised and the revisions brought back to a second conference for discussion and approval.

the review committees (unlike the Board of Governors whose composition mirrored that of the RAC).

Other Jurisdictions.

The current regulation review process in B.C. has run basically on a consensus model based on group decision-making. There was a lot of emphasis on the subcommittee level where most of the work was done, with the exception of the RAC. A great deal of the Board's focus has been on managing group dynamics, and finding ways to facilitate consensus. Much energy has been devoted also to preparing for and conducting public hearings -- in part to fulfill the legislative requirement under Section 71(1) but also because of the governors' decision to hold a substantial number of hearings.

The AIHA and CMA-commissioned review on OELs indicated that several jurisdictions do not conduct "full blown" public hearings. In many cases, the proposed regulations are published, and thus opened up for public comment. This method of public consultation was used in Quebec, Ontario, and Alberta.

Germany uses a two part process for the review of OELs. It classifies substances under two categories consisting of "urgent" and "non-urgent" cases. Changes for "urgent" cases are published in an "Advance Release Bulletin," after which a select Notice Group is notified of the changes.⁴³ In "non-urgent" cases, proposed changes are published and the Notice Group is given an opportunity to comment.⁴⁴

In Finland, OELs for substances and materials are assessed and published by the National Board of Labour Protection. The Board appoints a working group (the Chemical Labour Protection Committee) consisting of employers, labour unions and Ministry of Labour representatives. Health aspects are discussed by the group. Based on its recommendations to the Board, OELs are established and published.⁴⁵ No formal public consultation is built into the process.

d. Scope of Mandate (Terms of Reference)

British Columbia.

⁴³ The Notice Group comprises the: Federal Committee for Occupational Safety & Technical Security (LASI), Federation of German Industries, Central Association of Industrial Injuries Insurance Institute and German Trade Union Federation.

⁴⁴ Op. cit., p. 42-44.

⁴⁵ Ibid., p.33.

Terms of reference are a way of framing a committee's tasks, and keeping it on track with respect to its scope of work and timelines. All subcommittees were provided with clear terms of reference, but such terms of reference were never developed for the RAC itself. The intended role of the RAC, to the extent that this is defined in the Governors' Decision 9, is as providers of macro level advice through "recommendations to the governors on the general structure of regulations" and by "reviewing core area regulations."⁴⁶

As the review progressed, the RAC in fact took on more detailed tasks, and reportedly got involved in actual drafting of the regulations, and in debating on matters relating to OSH policy and administration. RAC members involvement on hearing panels, added to the time needed for other RAC deliberations.

Other Jurisdictions.

Many of the jurisdictions included in the above-mentioned OEL review established specific terms of references for its various committees. A common strategy was to set up an expert committee to discuss the technical issues, following which a different working group (or the entity spearheading the process) would evaluate or discuss economic and other implications.

While splitting the mandate into discrete areas may be less practical for more general types of reviews, the advantage to this strategy is fairly obvious. A well-defined scope helps a committee to manage and contain the focus of its discussions.

⁴⁶ See Decision 9 (8 WCR 56).

3. Other Considerations

a. Who Participates

British Columbia.

The players participating in the review process may affect the dynamics of the process. In the B.C. situation, for example, if the same participants were to take part in all three reviews of the regulations, the likelihood is that those who disagreed before, will disagree again -- making consensus or resolution difficult. In reality, however, it may not be possible to leave out certain key individuals or organizations from any of the reviews. There is usually a natural tension among participants because of differences in political interests or simply of personality.

Other Jurisdictions.

The scope of this paper does not include researching who the specific players are in the reviews of other jurisdictions. In general, these other jurisdictions also tried to balance worker-employer representation at the committee levels.

b. Remuneration

British Columbia.

Providing remuneration to committee members could inadvertently hinder the review process. It may be speculated that if committee members are provided with per diems, there is a built-in incentive to prolong committee deliberations. (The RAC was paid a per diem of \$175, in addition to travel and other reasonable expenses.) While it is evident that the progress of some of the committees have been slower than desired, it would be difficult to attribute it principally to remuneration, given other contributory factors to delay. (In the first review attempt, the committee members were not compensated for their participation. Progress was likewise difficult, and the review failed.)

An argument for covering travel expenses is that it helps ensure that worker and employer representatives from the various geographical areas of the province can participate. This is particularly helpful where industries are based in particular regions. The Board has decided to stop paying per diems for future review work. However, travel expenses will still be considered, to ensure geographical balance in representation.

Other Jurisdictions.

From available data, it appears that Saskatchewan does not pay any per diems or expenses for its Working Groups. Nova Scotia and New Brunswick will cover travel expenses, but do not generally provide a per diem (unless individuals were not paid by their employers for the day). The Federal Government does not pay per diems to committee members, but will cover travel expenses.

C. Factors External To The Review Model

A well-defined review model/structure is obviously essential to the success of any review process. However, it may be argued that factors external to the model could be equally or more influential. How these factors interplay will vary with the jurisdiction.

1. Political Factors

British Columbia.

Section 71(1) provides the Board with direct regulation-making power. OSH regulations may therefore be enacted without cabinet approval. However, this does not preclude the government from exercising legislative power via statutory changes. Whether and how willing a provincial government is to make such statutory changes, depends on its political platform and prevailing political sentiments in the jurisdiction.

Other Jurisdictions.

The political climate in a number of other jurisdictions has created a greater willingness on the part of the governments to intervene legislatively. Nova Scotia's government passed a new Occupational Health and Safety Act in 1996.⁴⁷ The Ontario government recently introduced Bill 99 (the "Workplace Safety and Insurance Act, 1996") intended to replace the current *Workers Compensation Act*, and is expected to overhaul the *Occupational Health and Safety Act* soon. Alberta Labour's OH & S Business Plan for 1996 to 1999 includes plans to review, amend or repeal current occupational health and safety regulations.⁴⁸ In Nova Scotia's case, the Westray mine disaster created political pressure to revamp the provincial OSH legislation.

⁴⁷ Nova Scotia's *Workers' Compensation Act* was also rewritten and came into effect in January 1996.

⁴⁸ See *Canadian Occupational Health and Safety News*, July 15, 1996, p. 3.

Ontario and Alberta currently operate under governments whose platforms focus on fiscal restraint. Cost containment, with respect to OSH and workers' compensation matters, is consistent with the latter two governments' political agendas.

2. Competing Public Interests

British Columbia.

Labour and employer interests in B.C. are different. This always poses challenges to OSH regulation review processes. Despite the Board's experiments with alternative review approaches over the years and the provision of an open, consultative process in the latest review, consensus cannot always be achieved. The impact of stakeholder dynamics on the outcomes of the review process can be considerable, depending on the issue.

Other Jurisdictions.

British Columbia's workers have traditionally had a stronger voice, compared to some of their Canadian counterparts. Current political and economic conditions in a number of other jurisdictions have probably contributed to much less worker participation than in British Columbia.

IV. BROADER CONSIDERATIONS

Some broader considerations may be raised with respect to the regulation review and development process.

A. Is the scope of the B.C. Board's regulation review too ambitious?

The B.C. Board's attempts at revising the 1978 *IH & S Regulations*, include working out core principles, such as those governing rights and responsibilities of workplace parties. A lack of consensus on these principles has been a major stumbling block to timely completion of the review process, since core principles are normally the foundation which support the balance of the regulations.

In other Canadian jurisdictions and many other countries,⁴⁹ these key principles are set out in their separate OSH statutes. Trying to agree on first principles is

⁴⁹ See the separate OSH acts enacted for the states of Australia, and the U.K.'s *Health & Safety at Work etc. Act 1974*.

arguably the hardest part of the process. An alternative is to establish these core principles by statute.

While revisions by statute would likely be quicker, the disadvantage of such change -- via a political decision -- is that this might result in less direct input from the administrative agency. (The administrative agency, as opposed to government, has the advantage of an integrated perspective, resulting from its technical expertise, and administrative and implementation experience with OSH matters.)

The current review could be seen as being ambitious in another sense. It is a complete review of virtually all OSH regulations under the WCB's ambit, possibly the broadest to be undertaken by a Canadian jurisdiction. Reasons for the breadth of the review were provided earlier in this document. A basic aim is to "catch up" on 20 years of unamended regulations and to develop regulations that lend easily to future amendment in an ongoing review framework. The attempt to draft regulations for new hazards, such as ergonomics, and emerging but not fully understood diseases, has added to the complexity of the task.

However, once this review and consolidation are complete, it will make it easier to update regulations, revise unworkable regulations and maintain currency with emerging safety and health hazards, new technology and work practices, *on an ongoing basis*. An efficient ongoing review process will reduce the need for major reviews of this magnitude in future. The redrafting of the regulations has been done in a matter to facilitate future review on a topic-by-topic basis.

Summary comment on B.C.'s regulation review process has been provided recently by Ashford and Rest who have conducted a detailed review of prevention activities and regulation review. They advise that "one must commend the openness and transparency of the process overall. While the process broke down at higher levels on a number of occasions, members of the employer and labour communities worked well together on many of the specialty subcommittees, most of which were able to produce consensus recommendations."⁵⁰

They go on to add that:

"Despite these problems, the overall outcome of the Regulation Review process is commendable. The product, i.e., the revised regulations are generally excellent and represent an important advance in workplace health and safety for the province."⁵¹

⁵⁰ Supra, 1997 administrative inventory, p. 4-13.

⁵¹ Ibid., also refer to p. 4-21.

B. Does the WCB's direct responsibility for regulation making affect the progress of regulation development?

It may be argued that having direct regulation-making powers makes the Board more vulnerable to lobbying by various stakeholder groups. In order to effectively carry out its main mandate as the enforcement body for OSH, the WCB needs to maintain good relationships with all its stakeholders. This need to maintain good relations puts pressure on the Board to favour "consensus" as the operating mode, over taking risks with "unpopular" decisions which might alienate a major interest group or groups.

However, direct control of the regulation-making process by government does not necessarily guarantee a more efficient regulation review process.

In the final analysis, no single factor can account for the success, failure, or timeliness of a regulation review and development process. The interplay of various factors in a particular environment, will result in a particular outcome.

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APPENDIX

CHART 1

ORGANIZATION OF REGULATION REVIEW January, 1996

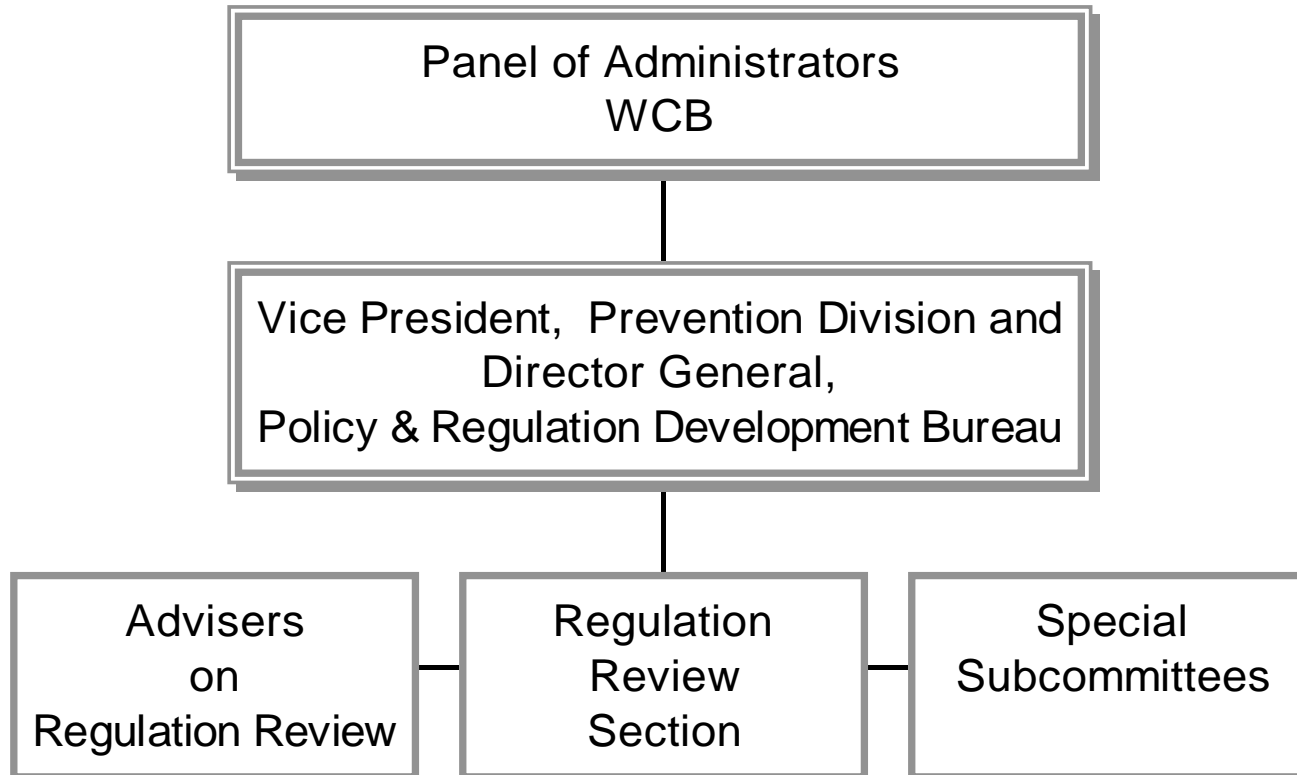


TABLE 1 - Status of Regulation Review

Committees	Report date	Hearing	Date of regulations
Violence in the Workplace (Regulation Advisory Committee)	None ⁵²	May 1993	Nov. 1, 1993
Occupational Hygiene (14 Permissible Concentrations)	Jan. 1993 ⁵³	May 1993	Nov. 1, 1993
First Aid	Jan. 1993	May 1993	Jan. 1, 1994
Agriculture	Feb. 1, 1993	Mar 1993	Apr. 28, 1993
Fishing	May 12, 1993	Jan. 1994	Jan. 1, 1995
Silviculture	May 20, 1993		
Equipment Safety	Sep. 30, 1993	Sep. 1996	
Ergonomics	Dec. 1993	Sep. 1994	
Responsibilities (Working Group of the RAC)	Dec. 10, 1993 ⁵⁴		
Electrical Safety	Jan. 15, 1994	Sep. 1996	
General Conditions (Working Group of the RAC)	Apr. 21, 1994 ⁵⁵	Sep. 1996	
Underwater Diving	Apr. 29, 1994	Sep. 1996	
Occupational Hygiene (Overall)	May 10, 1994	Sep. 1996	
Occupational Hygiene (Noise)	May 10, 1994	Sep. 1994	May 1, 1996
Fall Protection	None ⁵⁶	Sep. 1994	May 1, 1996
Blasting & Underground Workings	Oct. 1994	Sep. 1996	
Land Transportation & Traffic Control	Oct. 1994	Sep. 1996	
Wood Products Manufacturing	Oct. 1994	Sep. 1996	
Construction Safety	Oct. 18, 1994	Sep. 1996	
Firefighting & Emergency Rescue	Oct. 18, 1994	Sep. 1996	
Forestry Operations	Oct. 19, 1994	Sep. 1996	
Aircraft Operations	Apr. 1995	Sep. 1996	
Personal Protective Equipment	Apr. 1995	Sep. 1996	
Oil & Gas	Nov. 1995	Sep. 1996	
Medical Programs	None ⁵⁷		
Live Performing Arts	July 1996	Sep. 1996 -report ⁵⁸	
Movie, Video & Recorded Arts	Nov. 1996	Sep. 1996 - report	

⁵² Regulations were based on a review and agreements reached by the General Conditions Working Group of the Regulation Advisory Committee (RAC) in minuted discussions.

⁵³ New Permissible Concentrations (PCs): enflurane, halothane, nitrous oxide. Amended PCs: acetone, carbon monoxide, chlorine, cobalt, ethylene oxide, lead, nickel, nitrogen dioxide, perchloroethylene, styrene & sulfur dioxide.

⁵⁴ This report represented interim agreements. The RAC and its successor, the ARR (Advisers for Regulation Review), were unable to achieve (final) agreement on this area in the subsequent 2.5 years, sufficiently to merit revised regulations being brought forward to hearings.

⁵⁵ This report focussed on general working conditions.

⁵⁶ Regulations were based on the review by Board staff and the Regulation Advisory Committee of a report from the construction industry.

⁵⁷ The Medical Programs committee as a whole was unable to agree on a final report. Separate reports were filed by the committee chair & each of the employer and worker caucuses.

⁵⁸ Reports (rather than draft regulations) were submitted by the Live Performing Arts, and the Movie, Video and Recorded Arts subcommittees to the 1996 public hearings, to assist with further review/development of the draft regulations.

TABLE 2 - STAGES OF REGULATION REVIEW PROCESS

- Project Start-up
- Regulation Advisory Committee
- Creation of Preliminary Draft
- Finalization of Draft Regulations for Public Hearings
- Public Hearings
- Finalization of Regulations Based on Outcomes of Public Hearings
- Gazetting of Regulations
- Printing and Distribution