

COMPARISON OF OCCUPATIONAL HEALTH AND SAFETY STATUTES

A BRIEFING PAPER

I. INTRODUCTION

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.¹ This paper compares B.C. occupational health and safety (OHS) legislation with that of other Canadian jurisdictions and selected foreign jurisdictions. It discusses:

- the legislative framework governing occupational health and safety;
- the content of core statutes in various jurisdictions; and
- emerging trends and issues.

II. LEGISLATIVE FRAMEWORK

Generally, the legislative framework in most jurisdictions follows a common pattern, relying on:

- one or more basic enabling statutes which outline general principles and some specific requirements; and
- subsidiary legislation (such as regulations, codes of practice, decrees, orders) which sets out more detailed requirements for compliance with these general principles.

This is supplemented by non-legislated guidelines to varying degrees.

¹ 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.

In the Canadian system, separate occupational health and safety (OHS) statutes have been enacted in individual provinces. Similarly, there are separate OHS statutes for the various states of Australia. Other jurisdictions, such as the U.S.A., have a core federal statute which is binding nationally.² The basic OHS statute in each jurisdiction is supported by regulations or other subsidiary legislation.

The British Columbia Context

British Columbia is the only Canadian jurisdiction that does not have a stand-alone or framework statute dealing exclusively with OHS matters.

General jurisdiction over occupational safety and health is derived from the *Workers Compensation Act (WCA)* and secondarily, from the *Workplace Act (WA)* - both administered by the Workers' Compensation Board (WCB). All workers in British Columbia are covered under these two Acts *except* where jurisdiction falls under federal or other provincial legislation.

(i) Federal Law

The Board's authority is limited in some areas by the provisions of the constitution and by other federal acts and regulations. Part II of the *Canada Labour Code*, for instance, governs occupational health and safety in workplaces of federally-regulated employers and applies "to and in respect of employment...on or in connection with the operation of any federal work, undertaking or business."

"Federal work, undertaking or business," under the *Code*, covers enterprises such as interprovincial railways, aeronautics and banks.³ Where federal jurisdiction exists in one of these areas, the *Workers Compensation Act* and its regulations do not apply for OHS purposes.⁴

² The Occupational Safety and Health Administration (OSHA), a U.S. federal agency, administers the *Occupational Safety and Health Act*.

³ See section 2 of Part II of the Code.

⁴ "Board's Jurisdiction Over Occupational Safety and Health," Prevention Division, dated July 26, 1996, p.3 and 4. Also John H. Murphy, "Overview of the Legislative and Administrative Framework," *The Employer's Health and Safety Manual*, p. 1-2.

(ii) Provincial Legislation

Mine safety is covered under a separately-administered provincial statute, the *Mines Act*. Section 71(7) of the *WCA* explicitly excludes the Board's jurisdiction over mining.

Apart from this exception, there is generally nothing in the *WCA* and other provincial legislation which specifically limits the Board's authority with respect to areas covered by other B.C. statutes. However, another "specialized" statute may override the Board's jurisdiction to the extent of any conflict between them. Examples of such statutes are the *Elevating Devices Safety Act*, the *Power Engineers and Boiler and Pressure Vessel Safety Act*, and the *Railway Act*. Many of these acts aim at protecting the general public, as well as, workers.

The WCB became responsible in 1985 for *the Workplace Act* (which replaced the *Factory Act*.) There are some noteworthy distinctions between the jurisdiction granted to the Board under the *Workers Compensation Act* and the *Workplace Act*. Section 2(1) of the *WCA* states that Part 1 applies to "all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board." The scope of the Board's jurisdiction under the *WCA* is defined in terms of the kinds of persons covered. The *Workplace Act* specifically confines the WCB's inspection powers to the premises of a factory, office or shop, in Section 3. Jurisdiction under the *Workplace Act* is more restricted geographically.

On the other hand, Section 4 of the *WA* aims at the protection of the "health, safety and comfort of persons" in a factory, office or shop, whereas Section 71(1) of the *WCA* grants regulation-making authority for the purpose of "preventing injuries or industrial diseases" only. There is no jurisdiction to make regulations for the comfort of workers under the *WCA*. Hence, the *Occupational Environment Regulations*, which include provisions on heating and lighting in workplaces, are promulgated under the *Workplace Act*.

Such jurisdictional distinctions raise the issue whether there should be integration or consolidation of the two Acts. Broader but related questions are:

- whether there should be greater consolidation of provincial jurisdictions under one agency;
- whether provisions currently contained in regulations should be placed in the *WCA* or in a new occupational health and safety statute.

The present paper is not an attempt to answer the above questions. However, a comparative summary of OHS statutes as they currently exist, may assist in further exploration of such questions.

III. CONTENT OF CORE LEGISLATION

In the ensuing discussion, legislative provisions in the B.C. *Workers Compensation Act* primarily, the *Workplace Act*, and the *Industrial Health and Safety Regulations* (1978) will form the basis for the comparison with separate OHS statute(s) in other jurisdictions. (Refer to Table 1 in the Appendix for a listing of OHS statutes by jurisdiction and Table 2 for a summary of core legislative provisions for the various jurisdictions.)

A. POWERS OF INSPECTION

The authority to carry out inspections is essential to the exercise of an occupational health and safety mandate. Typical inspection powers include:

- the right of entry into work premises;
- the power to issue orders and directives; and
- the right to gather information through inquiry and examination of records.

British Columbia

Section 71(2),(3) and (8) of the *WCA* provides the WCB with the above-mentioned powers.⁵ Under the *Workplace Act*, Section 3 empowers the Board to conduct inspections.

In addition, Section 72 of the *WCA* offers the right to worker and employer representation on an inspection.

Other Jurisdictions

As indicated in Table 2, the OHS statutes in other jurisdictions contain similar powers of inspection to those in Section 71.

B. ENFORCEMENT

⁵ Section 3 of the *Workplace Act* provides an officer of the Board with similar powers to "inspect and inquire at a factory, office or shop with respect to a matter concerning the health, safety or comfort" of workers.

The authority to enforce legislated OHS standards, when they are not being met, is crucial. Enforcement could include:

- shutting down a work area; and/or
- penalizing the employer for non-compliance.

British Columbia

1. Closure Orders

Section 74(1) provides the authority to issue a closure order for “all or part of the employment or place of employment and the industry carried on there.” Such closure orders by the enforcement agency are to be distinguished from work refusals by workers - which may also result in work stoppages or closure of a work area.

2. Penalties and Offences

The *Workers Compensation Act* provides the B.C. system with two statutory means of enforcing occupational health and safety standards: (i) imposing an administrative penalty, and (ii) prosecuting. Section 73(1) states:

“Where the board considers that

- (a) sufficient precautions are not taken by an employer for the prevention of injuries and industrial disease;
- (b) the place of employment or working conditions are unsafe;
or
- (c) the employer has not complied with regulations, orders or directions made under section 71,

the board may assess and levy on the employer an additional assessment determined by the board and may collect the additional assessment in the same way as an assessment is collected.”

Where the employer is at fault, Section 73(2) also allows for the charging of claims costs in the case of an injury, death or disablement.

British Columbia is one of the few jurisdictions which has statutory power to levy such administrative penalties, and uses it as a primary means of enforcement. In practice, prosecutions are less frequently initiated, but

have been increasing. Prosecutions are conducted under Section 75 of the *Act*.

Other Jurisdictions

1. Closure Orders

Statutes for other jurisdictions contain variants of this provision by allowing for work stoppages by one or more workers, and partial or full closure of a work area.

2. Penalties and Offences

Most other Canadian jurisdictions are provided with only prosecutory authority. The Yukon is the only other Canadian jurisdiction which provides explicitly for administrative penalties in its OHS statute.⁶ An administrative levy is allowed under PEI's *Workers Compensation Act* for non-compliance with the *Occupational Health and Safety Act*.

Nova Scotia, which recently revamped its *Occupational Health and Safety Act*, has introduced some departures from the financial penalties usually imposed via prosecution.⁷ Section 75 of the rewritten statute provides the court with discretion to direct the offender to:

- publish the facts of the offence;⁸
- pay for public education on workplace health and safety;
- perform community service; and
- act to ensure there are no repeat offences.

Section 49 of Nova Scotia's new *Act* provides OHS officers with the same powers as a peace officer. The intention is to enable the officers to issue summary offense tickets, although this is not explicitly stated in the *Act*. The actual provisions for this "ticketing" system will be developed by regulation.⁹

⁶ Refer to Section 47.1(1)(2)(8) of Yukon's OHS Act.

⁷ Summary dated April 12, 1996 provided by Ministry of Labour, Nova Scotia. With the exception of Sections 22, 27, 28, 86 and 87, the new act was effective from January 1, 1997.

⁸ British Columbia's WCB currently publishes completed penalty actions in Prevention At Work, a bi-monthly publication of its Prevention Division.

⁹ The new Act also anticipates the option of an administrative penalty system. Section 82(1)(an) provides for regulations "respecting the administration of a system of administrative penalties."

Ticketing is a hybrid of the two main sanctioning methods - administrative penalties and judicial prosecutions. It is also practised in Ontario and Quebec, although the statutory authority does not come from their OHS acts.¹⁰

C. RIGHTS OF WORKPLACE PARTIES

A common characteristic of occupational health and safety acts is that they stipulate rights and responsibilities of workplace parties. However, there are some significant differences as to who is recognized in the statute as a workplace party. The scope of the rights and obligations of various workplace parties also varies among Canadian provinces and internationally.

Where a separate OHS statute exists, basic rights and responsibilities are usually outlined in the *Act* itself. In B.C.'s case, regulations are used instead as the legislative vehicle for articulation of these rights and responsibilities. Provisions related to such rights and duties are currently to be found in sections 2, 4, 6 and 8 of the *Industrial Health and Safety Regulations* issued in 1978. (The sections of the *Regulations* are referred to, interchangeably, by section or regulation number.)

British Columbia

1. Identification Of Workplace Parties

Workplace parties specifically mentioned in the existing 1978 regulations include employers, principal contractors, owners of workplaces, supervisors, workers, and occupational health and safety committees. However, Section 71(1) of the *WCA* and Reg. 2.02 which provide that regulations "apply to all employers, workers and *all other persons working in or contributing to the production of (an) industry* within the scope of Part I of the *Workers Compensation Act...*," would cover other workplace parties as well. [italics added]

2. Rights In The Workplace

The B.C. *Industrial Health and Safety Regulations* provide similar core rights to workers as in the other jurisdictions. However, in many respects,

¹⁰ Ontario's Construction Safety Branch can issue tickets under the *Provincial Offences Act*. In Quebec, a Notice of Violations can be issued for any infraction of any regulation. See Janet Sprout, "Ticketing in the Construction Industry: A Discussion Paper."

the current *Regulations* do not offer the same level of protection to workers, as in some jurisdictions.

- *Right To Know*

The *IH & S Regulations* recognize the worker's basic right to know. Reg. 2.14 requires the posting of inspection reports at the workplace, Reg. 2.18 provides for notices to workers, and Reg. 2.20 states that a copy of these regulations must be kept readily available at each place of employment.

The right to know includes a right to be informed about harmful substances. [See Reg. 12.01 and the Workplace Hazardous Materials Information System (W.H.M.I.S.) Regulations.]

- *Right To Participate*

Under the *Regulations*, workers are provided with the right to participate (i.e., as health and safety committee members or as safety representatives). Section 4.04 specifies that workers must be represented on IH & S committees.¹¹

Further, Section 4.02 of the *IH & S Regulations* requires that an industrial health and safety program be set up for a work force of 20 or more workers in an industry classified as an "A" or "B" hazard, and in a "C" hazard industry with 50 or more workers. Regulation 4.02(5)(g) stipulates that an Industrial Health and Safety committee must be part of such a program.

Smaller employers (that is, "A" and "B" hazard employers with less than 20 workers and "C" hazard employers with less than 50 workers) are required under Reg. 4.02(3) to hold monthly meetings with all workers.

¹¹ See Section 4.04 for detailed duties of IH & S committees.

- *Refusal of Unsafe Work*

The B.C. *Workers Compensation Act* does not contain any statutory provisions respecting disciplinary action taken against a work refusal. While it is stated in section 8.24(6) of the *Regulations* that “no worker shall be subject to disciplinary action because he has acted in compliance with this regulation or an order made by an officer of the Board,” no further appeal or other procedural mechanisms are enunciated.¹²

- *Protection From Discrimination*

Section 8.24(6) of the B.C. *Regulations* (referenced above) currently offers the only protection to workers. Mine workers are an exception. Section 14 of the B.C. *Mines Act* provides procedural remedies similar to those in other provincial OHS statutes. Section 14(3) provides the ability to issue order(s) requiring the employer to cease the discrimination, reinstate the worker or recompense him or her for wages lost or expenses incurred because of the discrimination.

- *Right To Protective Reassignment*

Regulation 8.24(7) offers a limited, indirect right to protective reassignment in B.C. by stating that “temporary assignment to alternative work at no loss to the worker...shall be deemed not to constitute disciplinary action.” There is no obligation on the employer to reassign.

Other Jurisdictions

1. Identification of Workplace Parties

Suppliers are recognized as a workplace party in a number of Canadian jurisdictions,¹³ architects in Ontario and Nova Scotia, licensees in

¹² Under the U.S. legislation, an employee has no explicit right under OSHA to refuse a work assignment because of what he or she feels is a dangerous working condition. However, the U.S. Secretary of Labour has issued an administrative regulation that interprets the *Act* as implying such a right under certain limited circumstances. The U.S. Supreme Court in *Whirlpool Corp. v. Marshall* has held the promulgation of that regulation to be a valid exercise of the Secretary's authority under the *Act*. (See *Patty's Industrial Hygiene and Toxicology*, “Job Safety and Health Law,” 3rd Edition, Vol. 3, Part A, p.744.)

¹³ Alberta, New Brunswick, Newfoundland, Nova Scotia, Ontario, P.E.I., Quebec and the Yukon.

Ontario, and engineers in Nova Scotia. These workplace parties could be covered under Section 71(1) of the *WCA* and Reg. 2.02 in their reference to "all other persons working in or contributing to" the production of an industry.

2. Rights In The Workplace

Below are some specific rights, where provisions in other jurisdictions may be contrasted with the B.C. regulations.

- *Right To Know*

Other jurisdictions provide workers with a similar right to know. Requirements, such as the posting of inspection reports and the provision of information on toxic materials, are usually stated in the respective OHS statutes.

- *Right To Participate*

The statutes in other jurisdictions provide for formation of a safety and health committee in larger workplaces and worker safety representatives in worksites with fewer employees. Variation occurs in terms of the number of workers specified. The common threshold number appears to be 20 or more workers for the establishment of an occupational health and safety committee, and less than 20 for a worker occupational health and safety representative.¹⁴ (Refer to Table 3 in the Appendix on health and safety committees.)

- *Refusal of Unsafe Work*

Where a framework occupational health and safety statute exists, comparatively greater detail is provided in the statute on procedures to follow, after a worker identifies what (s)he thinks is an unsafe, hazardous work condition.

In addressing work refusals, an occupational health and safety statute typically includes:

- Procedures for the reporting of the hazard by the worker;

¹⁴ Canadian jurisdictions using the 20 threshold number are New Brunswick, Nova Scotia, Ontario, Manitoba, Quebec, Yukon, Federal Government. The Danish *Working Environment Act* also requires a committee where there are 20 or more workers. In Saskatchewan and Newfoundland, the threshold number for a committee is 10. Under Sweden's *Work Environment Act*, a safety committee is required at worksites of 50 or more workers. The common threshold number for appointment of a safety representative appears to be 5 - New Brunswick, Nova Scotia, Ontario, Yukon and the Canadian Government.

- Appropriate actions that the supervisor or employer must take; and
- A requirement that a second worker chosen for a task be informed of previous work refusal by the first worker.

Some of the statutes provide a grievance or appeal process to settle disputes over the work refusal. The process also deals with undesirable outcomes, such as disciplinary action against the worker for the work refusal.¹⁵

- *Protection From Discrimination*

All the Canadian framework OHS statutes contain general provision(s) to protect the worker who is acting in compliance with occupational health and safety legislation. (As mentioned above, some jurisdictions include procedural remedies specifically relating to disciplinary actions arising from a work refusal.)

In the Quebec occupational health and safety statute, general protection from disciplinary actions is extended to occupational health and safety committee members and safety representatives in performing their respective roles.

- *Right To Protective Reassignment*

Protective reassignment is a significant issue with respect to certain types of occupational hygiene exposure, as in the case of pregnant and lactating women for example. Among Canadian statutes, only the Quebec OHS Act specifically provides for protective reassignment of women who are pregnant or breastfeeding. A female employee is also entitled to similar protective reassignment under Swedish law.¹⁶

¹⁵ The Ontario, Quebec, Newfoundland and Prince Edward Island statutes provide for settlement of work refusal issues under existing collective agreements, if any. The Manitoba and Ontario statutes and the *Canada Labour Code* provide for arbitration by the respective labour relations boards. An arbitrator may be appointed by the administrative agency under the New Brunswick and Prince Edward Island statutes. Some other Canadian jurisdictions provide a complaint or appeal mechanism within the administrative agency.

¹⁶ See Sections 40 to 48 of Quebec's OHS Act. The Swedish principal OHS statute, the *Work Environment Act* does not contain any special provisions for expectant women. However, Section 18 of its *Parental Leave Act* stipulates that a female worker "who is pregnant, has recently given birth or is breastfeeding is entitled to be transferred to other work while retaining her employment benefits" where a notice is issued in accordance with Chapter 4, Section 6 of the *Work Environment Act*.

D. RESPONSIBILITIES OF WORKPLACE PARTIES

All identified workplace parties are assigned specified responsibilities by statute or in British Columbia, by regulation. The types of responsibilities that are assigned to each workplace party are reflective of differences in enforcement styles and strategic emphases with respect to the OHS mandate.

Responsibilities assigned to the various workplace parties will likely vary, depending on how strongly the jurisdiction relies on enforcement by the OHS agency, as opposed to emphasizing internal responsibility for workplace safety. "Internal responsibility" implies that employers and workers (and other relevant workplace parties) will share the tasks of identifying and responding to occupational hazards. Internalization of this responsibility raises other issues on how to balance duties or obligations among employers, workers and other workplace parties.

Despite the aforesaid, there are some basic responsibilities that are stated in the various statutes *primarily* as employer duties: the duty to promote safety and health, and the duty to provide training.

British Columbia

- Duty To Promote Health And Safety

Section 8 of the *Industrial Health and Safety Regulations* specifies the employer's duty to maintain safe premises and operations, to carry out inspections, provide use of protective clothing and equipment, and otherwise promote safety and health.

- Duty To Provide Training And Safety

Training is specified in Sections 8.18 and 8.20 as being the responsibility of every employer and supervisor respectively. However, these regulations provide for training with respect to work itself. They do not require training for occupational health and safety committees.

- Occupational Health/Medical Programs

The B.C. *Workers Compensation Act* and its *Industrial Health & Safety Regulations* do not provide for occupational health or medical programs.

- Confidentiality of Information

As a provincial public body, subject to B.C.'s *Freedom of Information and Protection of Privacy Act (FIPPA)*, the WCB has a general obligation to protect personal privacy. However, unlike other Canadian jurisdictions, there is no specific provision in its core statute (the *WCA*) on confidentiality of information collected for *OHS purposes*.¹⁷

Other Jurisdictions

- Duty To Promote Health And Safety

As shown in Table 2, all the jurisdictions specify the promotion of safety and health as being a key employer duty.

- Duty To Provide Training

Not all jurisdictions specify an employer duty to provide training. For instance, there is no stipulation in the Alberta, Northwest Territories, Saskatchewan and USA statutes that the employer should provide training.

- Occupational Health/Medical Program

A number of Canadian jurisdictions provide for occupational health/medical surveillance or monitoring programs. Provinces with such programs are Ontario, Quebec, Newfoundland and Saskatchewan.

- Confidentiality of Information

Most other Canadian jurisdictions are also subject to their own privacy acts. In addition, a specific confidentiality provision is written into their OHS statutes.

¹⁷ Section 95 of the *WCA* was amended to restrict disclosure of information in a claim file or materials pertaining to a worker's claim. The provision does not include information gathered for OHS purposes.

IV. EMERGING TRENDS AND ISSUES

A. INTERNAL RESPONSIBILITY

Until recently, Ontario's OHS statute pushed internal responsibility further than most Canadian jurisdictions with its provisions for self-inspection.¹⁸ This continues to be a focus in Ontario, and appears to be an emerging emphasis in other provinces. With the overhaul of Nova Scotia's *Occupational Health And Safety Act*, this jurisdiction now explicitly declares self-responsibility as a statutory objective. Section 2 of the revised statute states:

"The foundation of this Act is the Internal Responsibility System which

- (a) is based on the principle that
 - (i) employers, contractors, constructors, employees and self employed persons at the workplace, and
 - (ii) the owner of a workplace, a supplier of goods or provider of an occupational health or safety service to a workplace or an architect or professional engineer, all of whom can affect the health and safety of persons at the workplace,

share the responsibility for the health and safety of persons at the workplace."

Section 2(b) assigns "the primary responsibility for creating and maintaining a safe and healthy workplace" to the above parties "to the extent of each party's authority and ability to do so." It is further stated in section 2(d) that the Occupational Health and Safety Division of the Department of Labour would have a supplementary role:

"...which is not to assume responsibility for creating and maintaining safe and healthy workplaces, but to establish and clarify the responsibilities of the parties under the law, to support...and to intervene appropriately when those responsibilities are not carried out." [italics added]

Financial and political factors may be contributory drivers for this trend in jurisdictions, such as Ontario and Nova Scotia, which have large unfunded liabilities in their compensation systems - the financing source for OHS

¹⁸ Section 8 of the Ontario Act provides powers of inspection and information-gathering to health and safety representatives; and Section 9 provides comparable powers to health and safety committees.

activities.¹⁹ However, other provinces are also promoting internal responsibility, not necessarily for financial or political reasons. Many provinces are encouraging workplace parties to take on greater responsibility for self-monitoring and compliance. This allows the enforcement agencies to target scarce resources on high-risk industries and poor safety performers.

B. LEGISLATIVE CHANGE

Some jurisdictions have decided to make significant changes to legislation. As already discussed, Nova Scotia has completely revamped its *Occupational Health and Safety Act*.²⁰ In the wake of the report released in July 1996 by Cam Jackson, then Ontario's Minister Without Portfolio Responsible For Workers' Compensation Reform, it is expected that Ontario will overhaul both its Workers Compensation and OHS acts shortly.

The recently introduced Bill 99 (the "Workplace Safety and Insurance Act, 1996") is intended to replace the current *Workers Compensation Act*. A proposed change to the OHS provisions is the elimination of occupational health and safety clinics, although the Ontario government appears to now be backing down on this proposal.²¹

New Zealand undertook a major industrial reform process, following the 1990 election of a national government. The resulting *Health and Safety in Employment Act 1992*, *The Employment Contracts Act*, *Accident Rehabilitation and Compensation Insurance Act 1992* and the *Industrial Training Act 1993* were part of an integrated review of legislation governing the workplace environment. *The Health and Safety in Employment Act of 1992* is a good example of a major consolidation of OHS legislation; it repealed and replaced 12 statutes and most of their associated regulations.²²

C. ADMINISTRATIVE CONSOLIDATION

¹⁹ Funded ratios for the Ontario and Nova Scotia WCBs were 37% and 35% respectively at December 31, 1994. (As reported in "Funding Principles/Investment Strategies", a paper presented at AWCBC Workers Compensation College in October 1996 by Gylles Binet, CSST Quebec.

²⁰ Nova Scotia's *Workers' Compensation Act* which was also rewritten, came into effect in January 1996.

²¹ *Canadian Occupational Health and Safety News*, Oct. 28, 1996, p.2.

²² Information provided by the Occupational Safety and Health Service, Policy and Evaluation, Department of Labour; and the Accident Rehabilitation & Compensation Insurance Corporation (ACC), Policy and Legislation, NZ. Also ACC Annual Report, 1995, p.24-25.

According to the Association of Workers' Compensation Boards of Canada, most WCBs had responsibility for occupational health and safety enforcement at one time. In the 1970s and 1980s, this combined role was perceived as a conflict of interest by many provincial governments. The OHS function was transferred to the provincial governments, except in British Columbia and Quebec.

There is, however, a recent trend towards a more integrated approach. Workers' compensation and OHS functions are now viewed as being complementary rather than conflicting. This has resulted in a number of re-mergers of these functions. The Yukon Board assumed responsibility for the OHS function in 1992. The function was transferred to the New Brunswick WCB in 1994. Ontario, Prince Edward Island (P.E.I.) and the Northwest Territories assigned the accident prevention or OHS function to their respective workers compensation boards in 1996, bringing the total to seven jurisdictions - where a WCB administers both functions.

The P.E.I. merger was effected with minor administrative amendments to the *Occupational Health and Safety Act*.²³ In contrast, revisions to the relevant Ontario statutes are expected to be substantial, so as to accommodate significant program reforms, including the merger.

D. HARMONIZATION

The key purpose behind harmonization (or uniformity) is to develop standards that are consistent among countries and/or within countries. In recent years, harmonization initiatives with respect to occupational health and safety legislation can be observed in the European Union,²⁴ Canada and Australia.

(i) Regional Harmonization

At the supranational level, the impetus for harmonization of occupational health and safety standards arises from concerns that different national rules would likely distort trade and erode the competitive position of a country, in relation to trading partners with less stringent standards. This is seen as a problem, particularly for

²³ *An Act to Amend the Occupational Health and Safety Act*, 1996 (Bill No. 10).

²⁴ The European Union was created by the Treaty on European Union (TEU), popularly known as the Maastricht Treaty, which came into being on November 1, 1993. It subsumes the original three European Communities consisting of the European Coal and Steel Community (ECSC), the European Community (EC, formerly the European Economic Community) and the European Atomic Energy Community (EAEC). Legislation enacted by all three Communities constitutes EU legislation. See Philip Raworth, "Regional Harmonization of Occupational Health Rules: The European Example," *American Journal of Law & Medicine* 21(1) 1995.

trading blocs, resulting in some attempts to set common standards within regional arrangements. However, the European Union has gone further than other regional arrangements in setting out a harmonized set of rules for its member states.²⁵

The *Single European Act (SEA)* which came into effect in 1987 inserted a new Article 118a into the Treaty Of Rome.²⁶ “Article 118a enabled the European Union to adopt safety and health directives by means of qualified voting amongst member states in the Council of Ministers....Since the introduction of Article 118a it has proved more difficult for individual states to resist new safety and health directives, having lost the power of veto.”²⁷

The key European directive is the Framework Directive (89/391/EEC) which establishes a set of general principles that directly regulate major aspects of occupational health. The details, in relation to discrete areas of work activity, are provided by a series of daughter directives.²⁸ While these directives are binding upon each member state, as to the result to be achieved, they leave the implementation and translation into national law to national authorities.²⁹

(ii) National Harmonization

There have been some attempts at harmonization at the national level. In the Canadian context, an OHS harmonization project originated from a meeting of Ministers of Labour and Ministers responsible for occupational health and safety in the spring of 1992. The ministers agreed to setting up a cooperative intergovernmental and tripartite initiative for the purpose of increasing harmonization in OHS standards and procedures across

²⁵ Ibid., Raworth p.7.

²⁶ Treaty establishing the European Economic Community (1957), amended by SEA and the Treaty on European Union.

²⁷ *Encyclopedia of Health and Safety At Work*, vol. 1, p.16010/1.

²⁸ Directives are the sole form for workplace-related health and safety legislation at the Community level. See Kenneth S. Kilimnik (ed.), *Health and Safety Regulations: International and National Laws*, vol 1, p.116.

²⁹ For example, the U.K. has chosen to implement European Health and Safety directives by means of regulations made under section 15 of the *Health & Safety at Work etc. Act 1974*, its framework statute for occupational safety and health.

Canadian jurisdictions. An Intergovernmental Working Group (IWG) was formed, to act as the steering committee for the project.³⁰ Human Resources Development Canada provided a project secretariat.

Australia offers a parallel example of harmonization efforts at the national level.³¹ The National Occupational Health and Safety Commission, a tripartite body, was established by the Federal Government to develop, facilitate and implement a national safety and health strategy.

Some anticipated benefits to national harmonization are:

- More effective use of limited resources by reducing the duplication of effort in regulatory and enforcement matters;
- Greater consistency and equity of protection for workers across jurisdictions;
- Reduction in training expenses;
- Other cost efficiencies through the pooling of expertise and information; and
- Reduced complexities for suppliers, if there is only one set of rules nationally.³²

On the other hand, the harmonization process could become prolonged and costly because of polarization of competing stakeholder interests.

³⁰ The Ministers of Labour meet annually as a body called the Canadian Association of the Administrators of Labour Legislation (CAALL). CAALL-OSH was established as the association's working subcommittee on occupational health and safety. The Ministers asked CAALL-OSH to investigate means to improve the regulation development process. CAALL-OSH formed the interprovincial working group, the IWG, to spearhead the project. The IWG includes representatives from Human Resources Development Canada, Ontario, New Brunswick, Manitoba, Alberta, Quebec and British Columbia. See "Overview of Project on Harmonization of Occupational Safety and Health in Canada" by the OSH Harmonization Secretariat, November 1993, p.1.

³¹ The two countries operate similarly in that responsibilities for occupational health and safety are basically organized on a sub-national level. In both systems, the federal jurisdiction is primarily restricted to federally-regulated undertakings and/or its own employees.

³² See discussion paper prepared for Canadian Association of Administrators of Labour Legislation meeting (CAALL), May 6, 1993, Hull, Quebec. Note attachment (Annex 1) on Benefits of Harmonization of Occupational Safety and Health In Canada.

From the labour perspective, the main concern is that harmonization could lead to standards catering to the lowest common denominator.

Conversely, employers may worry that harmonization would increase protective provisions, leading to higher costs.

From the governmental perspective, the individual province or state may be concerned about losing freedom of action as a jurisdiction.
33

Some of these challenges led the Canadian project to be quietly dropped in October 1996.

³³ Draft Options Paper on the Harmonization of Occupational Safety and Health prepared for the IWG, dated June 23, 1992, p. 5.

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APPENDIX

Table 1**PRINCIPAL OCCUPATIONAL HEALTH & SAFETY STATUTES**

JURISDICTION	STATUTES
Federal	Canadian Labour Code - Part II
Alberta	Occupational Health and Safety Act
British Columbia	Workers Compensation Act Workplace Act
Manitoba	The Workplace Safety and Health Act
New Brunswick	Occupational Health and Safety Act
Newfoundland	Occupational Health and Safety Act
Nova Scotia	Occupational Health and Safety Act
Northwest Territories	Safety Act
Ontario	Occupational Health and Safety Act
Prince Edward Island	Occupational Health and Safety Act
Quebec	An Act Respecting Occupational Health and Safety
Saskatchewan	Occupational Health and Safety Act
The Yukon	Occupational Health and Safety Act
U.S.A.	Occupational Safety and Health Act

TABLE 2

*COMPARISON OF CORE LEGISLATIVE PROVISIONS FOR OHS

	Federal	AB	BC**	MN	NB	NFLD	NS	NWT	ON	PEI	QUE	SK	YK	USA
INSPECTION														
• Right of Entry	•	•	WCA	•	•	•	•	•	•	•	•	•	•	•
• Issue Orders & Directives	•	•	WCA	•	•	•	•	•	•	•	•	•	•	•
• Power to Obtain Information	•	•	WCA	•	•	•	•	•	•	•	•	•	•	•
ENFORCEMENT														
• Closure Orders	•	•	WCA	•	•	•	•	•	•	•	•	•	•	•
• Administrative Penalties			WCA							WCA			•	•
• Prosecution	•	•	WCA	•	•	•	•	•	•	•	•	•	•	•
• Ticketing							***		♦		♦			
RIGHTS & DUTIES														
• Right to Know	•	•	WCA	•	•	•		•	•	•	•	•	•	•
• Right to Participate	•	•	WCA&R	•	•	•	•	•	•	•	•	•	•	•
• Right to Refuse Unsafe Work	•	•	R	•	•	•	•	•	•	•	•	•	•	
• Protection from Discrimination	•	•	R	•	•	•	•	•	•	•	•	•	•	•
• Protective Reassignment	•	•	R	•	•	•	•	•	•	•	•	•	•	
• Duty to Promote Health & Safety	•	•	WCA	•	•	•	•	•	•	•	•	•	•	•
• Duty to Provide Training	•		R	•	•	•	•		•	•	•		•	
• Occupational Health/Medical Programs		•		•	•	•			•	•	•	•	•	•
• Confidentiality of Information	•	•		•	•		•	•	•	•	•	•	•	•

Notes: * Unless otherwise indicated, provision is in the respective OHS statute.

Comparison of Occupational Health and Safety Statutes

- ** B.C.: Provisions in Workers Compensation Act (WCA) and/or regulations (R).
- *** Nova Scotia: Provisions to be developed by regulation.
- ◆ Ontario & Quebec: Ticketing authority derived from other legislation.

TABLE 3

JOINT HEALTH AND SAFETY COMMITTEES (JHSC)

	Federal	AB	BC*	MN	NB	NFLD	NS	NWT	ON	PEI	QUE	SK	YK
Mandatory JHSCs	Yes	No (not mandatory in all workplaces)	Yes	Yes	Yes	No (May be required by Minister)	Yes	No	Yes	No	Yes If establishment is an industry categorized as requiring committees	Yes	Yes
Number of employees for JHSCs to be required	20	N/A	20-50	20 (except construction)	20	10	20	N/A	20	N/A	20	10	20
Number of JHSC members required	2 (Min.)	3-12	4 (Min.)	4-12	N/A	2-12	N/A	N/A	2 or 4 (Min.) depending on size of workplace	N/A	(3-22)	2-12	4-12
Duty to perform workplace inspections	Yes	Yes	Yes	Yes	No (Committee may undertake these activities)	Yes	Yes	No, but duty to investigate work refusals	Yes	No (Participation in MoL inspections)	Yes	Yes	Yes
Required frequency of meetings	Once a month	Once a month	Once a month	Every three months (or monthly if required by Director)	Once a month (except for low hazard sites)	Once every 3 months	No time line	Every 3 months	Once a month	N/A	No time line	Every 3 months	Once a month
Duty to perform accident investigations	Yes	No	Yes	No	No (JHSC may undertake these activities)	No (But JHSC must have access to results)	Yes	No	Yes	No	Yes	Yes	Yes
Duty to ensure training	No	No	No	Yes	Yes (Employer must grant leave)	No	Yes	No	Yes (At least one employer and one worker must be certified)	No	Yes	No	Yes

* Based on existing IH&S Regulations. Compiled by Regulation Review Section, WCB.