

**RE: Application of Part 3 -  
Where Jurisdictional Limits Exist**

**ITEM: D2-108-1**

## **BACKGROUND**

### **1. Explanatory Notes**

The Canadian Constitution, the *Workers Compensation Act* and other federal and provincial legislation place certain limits on the Board's authority to take measures to prevent workplace injuries and illnesses.

In some cases, the Board may be totally excluded from inspecting certain types of operations. These include operations covered by Part II of the federal *Canada Labour Code*, mines covered by the provincial *Mines Act*, and railways covered by the provincial *Railways Act*.

In other cases, the Board may not be excluded from a particular type of operations, but certain equipment or activities may be covered by a statute or regulation administered by another agency.

These limits are largely matters of general law over which the Board has no control. They are also too complex to state in this Item. Jurisdictional information is available from the Prevention Division and in the OHS Guidelines. Reference works on constitutional law and the consolidated federal and provincial statutes may also be of assistance.

The purpose of this Item is to provide general guidance on how Board officers will exercise their powers in situations where it has been established that there are jurisdictional limits on those powers.

### **2. The Act**

Section 108:

- (1) Subject to subsection (2), this Part applies to
  - (a) the Provincial government and every agency of the Provincial government,
  - (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and
  - (c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily

within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

- (2) This Part and the regulations do not apply in respect of
  - (a) mines to which the *Mines Act* applies,
  - (b) railways to which the *Railway Act* applies, or
  - (c) subject to subsection (3), the operation of industrial camps to the extent their operation is subject to regulations under the *Health Act*.
- (3) The Lieutenant Governor in Council may, by regulation, provide that all aspects of this Part and the regulations apply to camps referred to in subsection (2)(c), in which case this Part and the regulations prevail over the regulations under the *Health Act* to the extent of any conflict.

[Note - As of the date of this policy, the federal government had not submitted to the application of Part 3 of the *Act* under section 108(1)(c). Nor had the Lieutenant Governor in Council made regulations relating to camps under section 108(3).]

Section 114:

- (1) Without limiting section 8.1, the board may enter into agreements or make arrangements respecting cooperation, coordination and assistance related to occupational health and safety and occupational environment matters with the Provincial government, the government of Canada or the government of another province or territory, or an agency of any of those governments, or with another appropriate authority.
- (2) In relation to an agreement or arrangement under subsection (1), the board may
  - (a) authorize board officers to act on behalf of the other party to the agreement or arrangement, and
  - (b) authorize persons appointed by the other party to the agreement or arrangement to act as an officer under this Act, subject to any conditions or restrictions established by the board.

## **POLICY**

**(a) Where, for jurisdictional reasons, the Board is totally excluded from inspecting an operation**

Board officers will not knowingly issue an order or exercise another Board power under Part 3 with respect to an operation in this situation.

If Board officers observe what they believe to be a violation of a statute or a regulation administered by another agency, they will:

- notify the other agency of the observation; and
- cooperate with that agency in dealing with the situation to the extent this is consistent with the Board's mandate and the officers' duties under the *Workers Compensation Act*.

**(b) Where the Board is not totally excluded from inspecting an operation, but certain equipment or activities included in the operation are covered by a statute or regulation administered by another agency**

Board officers will not issue an order or exercise another power to directly enforce a statute or regulation of another agency in this situation.

Board officers may issue an order or exercise another power under the *Workers Compensation Act* where:

- the situation violates the *Workers Compensation Act* or a regulation under that Act; and
- the order or exercise of another power is not in conflict with an applicable statute or regulation administered by the other agency.

If the order or exercise of another power appears to be in conflict with an applicable statute or regulation administered by the other agency, Board officers will seek direction from their managers before proceeding.

If Board officers observe what they believe to be a violation of a statute or a regulation administered by another agency, they will:

- notify the other agency of the observation; and
- cooperate with that agency in dealing with the situation to the extent this is consistent with the Board's mandate and the officers' duties under the *Workers Compensation Act*.

**(c) Authority under another statute or regulation or an agreement under Section 114**

In some situations, the specific terms of another statute or regulation or an agreement with another agency under section 114 of the *Workers Compensation Act* may authorize Board officers to exercise authority under other statutes or regulations that would not generally be permitted.

**PRACTICE**

For any relevant PRACTICE information, readers should consult the Prevention Division's OHS Guidelines available on the WCB website.

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<b>EFFECTIVE DATE:</b>	October 1, 2001
<b>AUTHORITY:</b>	s.108, <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	See also s. 114, <i>Workers Compensation Act</i>
<b>HISTORY:</b>	
<b>APPLICATION:</b>	This Item applies to situations arising on and after _____.