

## COMPENSATION PRACTICE AND QUALITY DEPARTMENT

### INTERIM PRACTICE DIRECTIVE # C12-10

**TOPIC:** *Suspected Violations of the Law*

**ISSUE DATE:** December 9, 2011

### Objective

This Practice Directive is intended to provide guidance to WorkSafeBC officers when they encounter possible violations of the *Workers Compensation Act* (the “Act”), the *Occupational Health and Safety Regulation* (the “OH&S Regulation”), or other provincial or federal legislation.

### Law & Policy

Under Section 96 of the *Act*, WorkSafeBC is responsible for investigating and adjudicating claims for compensation. In performing these functions, WorkSafeBC operates on an inquiry basis, which means that the WorkSafeBC officer gathers sufficient evidence to perform those functions (see Policy item #97.00, *Evidence*, in WorkSafeBC’s *Rehabilitation Services and Claims Manual*, Vol. II”).

Section 111(2) (b) of the *Act* grants WorkSafeBC the power to undertake inspections, investigations and inquiries on all matters of occupational health and safety.

Section 113 of the *Act* allows WorkSafeBC to inquire into and investigate matters under Part III of the *Act*, *Occupational Health and Safety*.

Sections 95 and 156 of the *Act* allows WorkSafeBC, under certain circumstances, to report breaches of the *Act*, the Occupational Health & Safety Regulation and other Provincial or Federal legislation if WorkSafeBC is of the view it is a necessary part of its function and mandate.

Sections 25, 33.1(1) and 33.2 of the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*”) provides that WorkSafeBC may disclose personal information under certain circumstances<sup>1</sup>. Disclosure may occur where another provincial or federal statute or regulation authorizes or requires its disclosure, or where compelling circumstances exist that affect anyone’s health or safety exist.

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<sup>1</sup> E.g., where, disclosure is clearly in the public interest, there is a threat of harm to someone or an overt criminal act has been or will be committed.

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WorkSafeBC's Prevention Manual Policy item #D1-108-1 (in reference to Prevention Officers) provides that: "[i]f Board officers observe or identify 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*."

### **Administrative Guidelines<sup>2</sup>**

While administering or adjudicating a claim, a WorkSafeBC officer may come across information that suggests there may be a violation of:

- i) the *Act*;
- ii) the *Occupational Health and Safety Regulation* (the "*OH&S Regulation*"); or,
- iii) another Provincial or Federal statute or regulation (e.g., *the Environment Management Act*; *the Hazardous Waste Regulation*; and/or *the Criminal Code*).

The matter in question may be claim-related or it may arise outside of the officer's ordinary administrative or adjudicative duties. In some cases, the officer may know that there is a violation of the *Act*, *OH&S Regulation* or another Provincial or Federal statute or regulation (based on his/her knowledge) or may suspect a violation of one. To identify whether a matter should be reported, the officer should consider the following:

- Do I have information that leads me to believe that there has been a breach of a legal requirement(s) under the *Act*, the *OH&S Regulation* or another agency's statute/regulation or that there has been a criminal or fraudulent act committed?

### **PLEASE NOTE:**

**There is no expectation that an officer become an expert on other statutes or regulations or that he or she should conduct research as to whether there is or has been a violation of a statute or regulation.**

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<sup>2</sup> These guidelines apply only to WorkSafeBC initiated contacts or reports. Contact from other agencies or investigative bodies are managed through FIPPA protocols or other policies, and should be referred to WorkSafeBC's Freedom of Information Office, Legal Services Department or Human Resources.

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**If an officer believes there is a matter that should be reported, or is uncertain if the matter should be reported, the officer should discuss it with his or her manager. The manager will help determine whether the matter needs to be referred to Prevention Services and/or Legal Services.**

The following table provides examples of possible violations<sup>3</sup> that an officer should discuss with his or her manager (the list is not exhaustive):

| SITUATION   | APPLICABLE LEGISLATION   |
|---|--|
| A worker or bystander reports that an animal or animals have been culled, and from the details provided, animal abuse or cruelty is suspected.  | <i>The Prevention of Cruelty to Animals Act, the Criminal Code of Canada</i> |
| An injured roofer advises that fall protection equipment is not being provided or used on the jobsite by workers.   | <i>The Workers Compensation Act, the OH&amp;S Regulation</i>                 |
| There are no “tie-offs” or anchorage points available for a roofer to attach his fall protection gear, yet the employer insists the work continue despite the risk of injury or death.                                    | <i>The Workers Compensation Act, the OH&amp;S Regulation</i>                 |
| Drug or alcohol use in situations that are safety critical or where, for example, heavy machinery is being operated.  | <i>The Workers Compensation Act, the OH&amp;S Regulation</i>                 |
| An employer has removed the safety “guards” from machinery which poses immediate danger to workers (who could lose a finger, hand or arm).  | <i>The Workers Compensation Act, the OH&amp;S Regulation</i>                 |
| Equipment is poorly maintained (e.g., ventilated air contains welding fumes, dust and other contaminants because the welding fume extractor has not been fitted with an air cleaner and is not being exhausted properly). | <i>The Workers Compensation Act, the OH&amp;S Regulation</i>                 |
| Evidence of claim or claim cost suppression.  | <i>The Workers Compensation Act</i>  |
| The claimant is selling his/her medication.   | <i>The Criminal Code of Canada, the Controlled Drugs and Substances Act</i>  |

<sup>3</sup> The list of examples is not exhaustive.

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|---|---|
| Toxic waste is being dumped in a lake or river.   | The <i>Environmental Management Act</i> , the <i>Hazardous Waste Regulation</i> |
| A worker admits to driving without insurance or a license, or whilst impaired and continues to do so. | The <i>Motor Vehicle Act</i> , the <i>Criminal Code of Canada</i>               |

Matters relating to occupational health and safety (“OH&S”) generally, or to a violation of either Part 3 of the *Act* or the *OH&S Regulation*, should be referred to Prevention Services for investigation/inspection (**see Section A below for the specific procedures**).

Matters relating to a violation or suspected violation of another provincial or federal statute or regulation should be referred to Legal Services (**see the Section B below for specific procedures**).

\*\*If the matter is claim-related (i.e., it involves a breach of the OH&S Regulation resulting in injury)<sup>4</sup>, a memo should be placed on the claim file detailing what has transpired and the reasons for referring the matter to Prevention Services and/or Legal Services. If fraud is suspected, then this should not be captured and the any discussion/investigation should be conducted outside of the claim. Equally, if a violation of other legislation is suspected, the discussion should also not be document on the file.

### (A) Procedure - Referral to Prevention Services

A referral to Prevention Services for investigation (or an inspection of an employer premises or worksite)<sup>5</sup> regarding a possible violation of the *Act*, *OH&S Regulation* or another provincial or federal statute and/or regulation, may be made by either:

- **calling** the ‘Prevention Line’ at local **3100**, and speak with the Prevention Officer of the day who will log your inquiry into the ‘Action Request’ system. Include a **request for a “call back”**<sup>6</sup>;
- **e-mailing** the ‘[Action Requests \(SM\)](#)’ shared mailbox with details concerning the (suspected) violations, and include the name and location of the employer;
- **contacting** the administrative assistant to the Regional Prevention Manager in their geographic area (see “**Prevention Field Operations**” on WSN).

<sup>4</sup> I.e., where the worker has engaged in serious and willful misconduct (e.g., failing to wear a hard hat or other PPE).

<sup>5</sup> The referral may involve a possible violation of the *Act*, *OH&S Regulation*, or another provincial or federal statute or regulation (e.g., the *Environmental Management Act* or the *Hazardous Waste Regulation*).

<sup>6</sup> Only if the matter affects the adjudication or administration of a worker’s claim.

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- The administrative assistant will complete an 'E074 - Action Request'<sup>7</sup> form with the details the officer provides.
- Then, an Occupational Safety Officer or an Occupational Health Officer ("Prevention officer") will be dispatched to investigate the issue (or will conduct an inspection of the employer and/or its worksite); or,
- **completing** the '[E074 – Action Request](#)' form (located on WSN's 'Forms & CMS Library'). The officer includes his or her contact details on the 'Additional Details' screen so that the Prevention officer can contact them. The officer also records details of the suspected violation(s), in the 'Incident Descriptions' text box and **requests a 'call back'**<sup>8</sup>.

### **PLEASE NOTE:**

**The claims officer should have more than just vague suspicions of a violation in order to refer the matter to Prevention Services. There has to be some evidence that the matters of concern are real and have some "substance". If the request is urgent, please indicate this at the time the Action Request is made so that the Prevention officer can respond sooner.**

Additionally, if the outcome of the Prevention officer's investigation may have an impact on the adjudication of claims issues (i.e., the request is claim-related), the officer may wish to create a 'manual task' in CMS (see *WPM procedure #25100201*) to prompt him or her to follow-up through the Prevention line or by contacting the administrative assistant to the Regional Prevention Manager (as above).

In appropriate cases, the Prevention officer may also forward information, obtained through their investigation or inspection, directly to an external agency, body or organization (e.g., the RCMP or municipal police force; provincial or federal government Ministry; Safety Authority, etc.). The Prevention officer may also refer the information to Legal Services for their review and advice. Under no circumstances will personal information be disclosed, to any agency, body or organization, except in accordance with WorkSafeBC's obligations as a public body under *FIPPA* and only with Legal Services' review and approval<sup>9</sup>.

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<sup>7</sup> Available on WSN's '[Forms & CMS Library](#)'.

<sup>8</sup> Only if the matter affects the adjudication or administration of a worker's claim.

<sup>9</sup> This also applies to Prevention Services and Investigations when they are reporting to an external agency, body or organization.

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### ***(B) Procedure - Referral to Legal Services***

Serious legal violations<sup>10</sup> outside of WorkSafeBC's OH&S jurisdiction (i.e., it is not a violation of occupational health and safety) should be referred to Legal Services for advice by calling local **3121**, or by e-mailing the '[Legal Query Request](#)' mailbox.

WorkSafeBC does not have legal authority or responsibility to investigate activities beyond its health and safety, assessments and claims mandate. Information may come to a WorkSafeBC officer's attention that suggests that a participant in a claim is a danger to themselves or others or has or may commit a serious crime. In those cases the officer should first consult with their manager. The manager may consult with Legal Services and make a decision about whether or not a report to another investigative body is appropriate.

Factors that will be considered are:

- The nature of the potential crime or offence;
- Whether the appropriate agency is already involved;
- The relevance and reliability of the information giving rise to WorkSafeBC's concern;
- Issues of privacy and confidentiality;
- The extent to which the information suggests a claim participant or any other person is at risk; and,
- Is the information about an event that has occurred or about a possible future event?

If the potential crime appears imminent or there is a threat to anyone's health and safety, the consultation should be dealt with on an urgent basis.

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| <b>CROSS REFERENCES:</b> | <i>See also Practice Directive C12-1 Disclosure of Personal Information; Practice Directive C12-2 Part 3 Violations – Guidelines for Claims Staff; and Practice Directive C12-9 Responding to a Risk or Threat of Suicide.</i> |
| <b>HISTORY:</b>          | None   |
| <b>APPLICATION:</b>      | This Practice Directive clarifies current practice.  |

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<sup>10</sup> I.e., where an individual's well being is imperiled, or where an overt criminal act (e.g., a robbery) has been or will be committed.