

Providing Effective Input into the BC OH&S Regulation – Clarity and Balance

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Kent Hillman CIH, Industrial Hygienist, Metro Vancouver

Agenda

1. Regulatory Context and Major Stakeholders
2. Historical Stakeholder Positions and Interests
3. Two Clarifications Courtesy of WSBC
4. Compensation Act and Dr. Alice Hamilton
5. Some Commonly Voiced Issues in the OHSR
6. Brief Review of Regulation Review Process
7. Providing Influential Input into Regulation Review
8. Why Care about Good Safety Regulation?

In a Perfect World

- The B.C. Occupational Health & Safety Regulation would contain technically perfect regulations
- Regulations would be a risk-justified balance of performance-based and prescriptive requirements
- Regulations would restrict workplace decision-making only to the extent necessary to address hazards

In Our World

- The OHSR is an unplanned mixture of performance and specification regulations and strange hybrids
- Occupational safety risk management remains an important objective, but not the only objective driving safety regulation

Safety Regulation Review History

1. Prior to 1991 - ad hoc consultation with workers and employers when amending health & safety regulations
2. The WCB (now WorksafeBC) began more structured consultation with stakeholders on OSH Regulations in 1992 using a Regulation Advisory Committee
3. Part 3 of the Workers' Compensation Act became effective in 1999 to better define the duties of workplace parties

Clarifying Regulatory Requirements (Courtesy of Dr. Alice Hamilton)

Four Categories of safety regulations that require the recognition, evaluation and control workplace safety hazards.

1. Regulations that do not recognize or address any specific a hazard, are administrative or purely performance based (“general duty clause”)
2. Regulations that specify recognition of certain hazard, but do not specify the means for evaluation and control. Ex. Adequate evacuation training
3. Regulations specifying both the hazard and the means of evaluation. Ex. Exposure Limits
4. Regulations that completely specify the recognition, evaluation and control of the hazard are purely prescriptive regulations. Limits of Approach, Excavations

Degrees of Regulatory Prescription

APPENDIX A — FOUR CATEGORIES OF REGULATIONS

DUTY	Performance (1)	Performance- Based Program Requirements (2)	Prescriptive Program Requirements (3)	Prescriptive (4)
HAZARD RECOGNITION	Left to workplace discretion	Prescribed in regulation	Prescribed in regulation	Prescribed in regulation
RISK EVALUATION	Left to workplace discretion	Left to workplace discretion	Prescribed in regulation	Prescribed in regulation
RISK CONTROL	Left to workplace discretion	Left to workplace discretion	Left to workplace discretion	Prescribed in regulation



Increasing Prescription, Decreasing Flexibility

(Shaded duties are prescribed in Regulation.)

Historical Employer Concerns

1. There are too many OSH regulations
2. Costs of compliance are not proportional to risk
3. Regulations are unnecessarily complex and difficult to interpret, especially for small employers
4. Regulations are inconsistently enforced
5. Regulations do not reflect real workplace hazards or prevailing industry standards
6. OSH regulations with labour relations components or objectives are generally inappropriate

Historical Worker Concerns

1. Workplace power balance disadvantages workers in applying performance-based regulations
2. Regulations are unclear and too complex for some workers to interpret
3. Performance-based regulations foster confusion and inconsistency

Historical WSBC Concerns

1. Lack of consensus among stakeholders makes consultation and regulation changes difficult to administer
2. Performance-based regulations place a large onus of risk assessment on employers. In particular, smaller employers are not well-prepared for those duties.
3. Enforcement and administration of performance-based regulations is difficult.
4. Performance-based regulations often require complex supporting documentation by the regulator.

WSBC Mandate

Section 111 of the WCA requires WSBC to maintain “reasonable standards for the protection of health and safety of workers in British Columbia and the occupational environment in which they work.”

WSBC Tools

Section 111 authorizes WSBC to use consultative and educational tools as well as regulation to support health & safety. WSBC determines appropriate tools with questions like:

1. Is new regulation the most effective way to accomplish the objective?
2. Is there a need to allow workplace flexibility?
3. Are the costs of compliance warranted?

Features of Good Regulation

The Regulation Review Strategy of 1992 introduced criteria for effective regulations. Regulations should:

1. Clearly address hazards
2. Be technically competent
3. Be in plain language
4. Address the diversity of the workplace, and
5. Restrict workplace activity only to the extent necessary

Features of WSBC Regulation Review

The WorksafeBC Regulation Review Process:

1. Is responsive and relies heavily on stakeholder input
2. Is resource constrained
3. Is impoverished with respect to local industry hazard data
4. Interprets stakeholder silence as agreement

A Clarifying Macro Analysis for Regulations Imposing Duties in the WCA (Part 3)

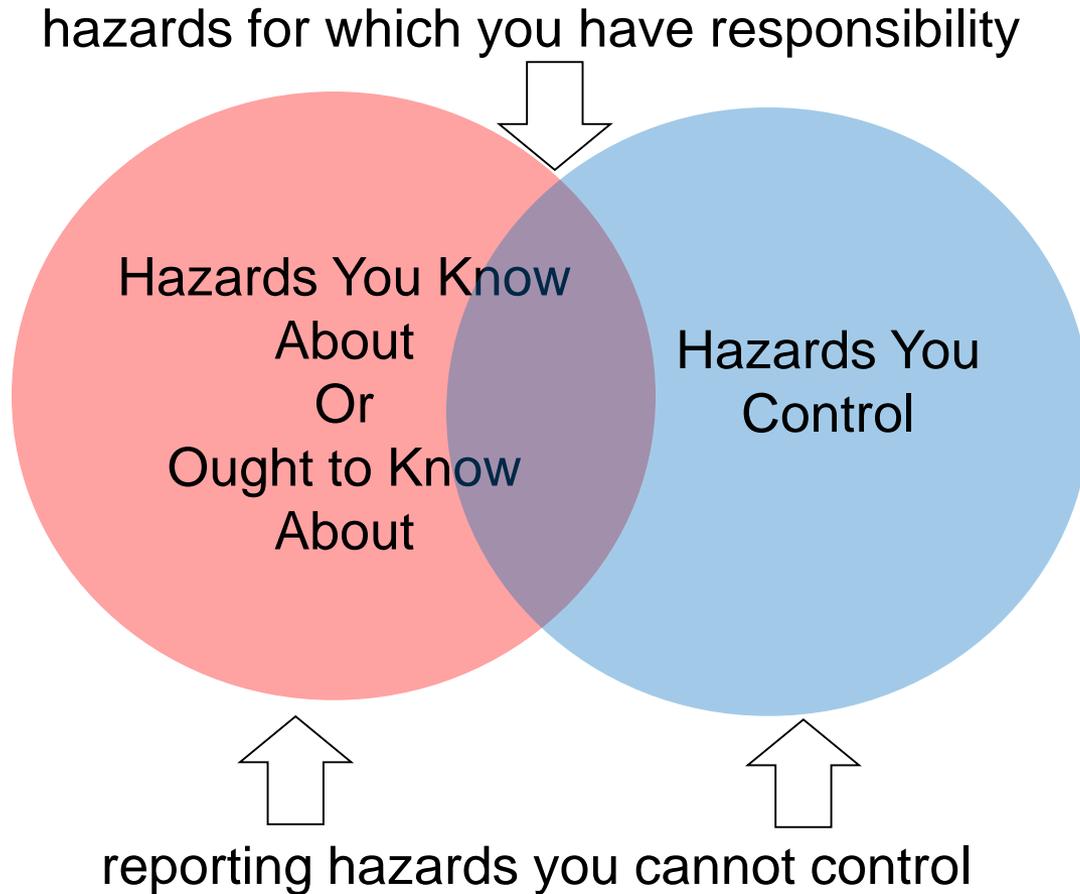
Section 107 (2)(e) – The “Behavioral General Duty” Clause Underpinning Part 3 of the WCA

- To ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party’s authority and ability to do so

Worker Compensation Act Sections 115 - 121

- Applies the “behavioral general duty” clause to generate key responsibilities for employers, workers, supervisors, multi-employer worksites, owners, suppliers and directors of corporations

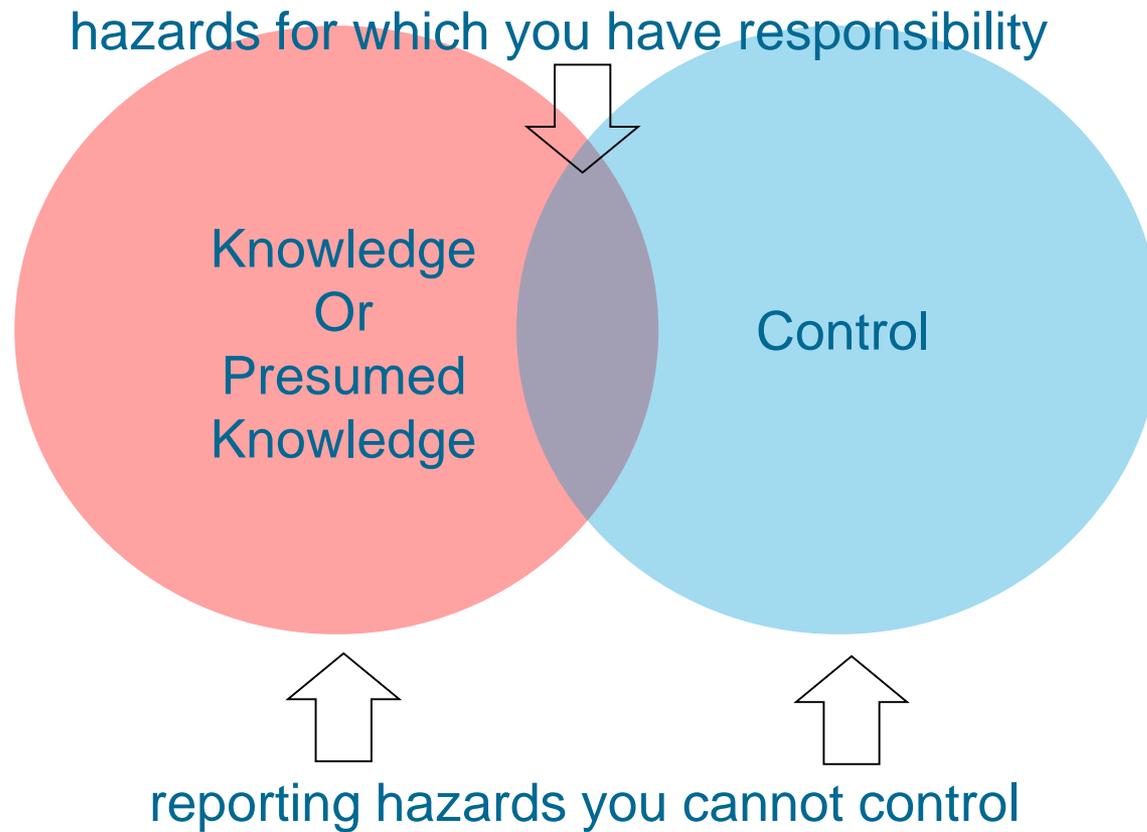
Safety Accountability = Knowledge + Control



Example - What Owners Know/Control

Assumed Knowledge	Assumed Control	Corresponding Duties
The state of their own lands and premises	Upkeep and maintenance of their own lands and premises	Provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace
Current hazards associated with their own lands and premises	Upkeep and maintenance of their own lands and premises	Give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace

Knowledge and Control of Workplace Hazards



Degrees of Regulatory Prescription

APPENDIX A — FOUR CATEGORIES OF REGULATIONS

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Increasing Prescription, Decreasing Flexibility

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Some Issues in the OHSR

Part 9 – Confined Spaces – definition

1. Defining criteria for confined spaces do not include any reference to potential for atmospheric hazards.
2. Prescriptive requirements then require pre-entry testing and ventilation of all confined spaces.
3. Prescriptive requirements also require specific isolation practices that are not possible in a majority of confined spaces entered by BC Workers.

Part 9 – Confined Spaces – Ex. 2

Internal inconsistency between a “type 3” and type 4 approaches requiring both:

- Hazard assessment by a qualified person, and
- Specified control measures without regard for the results of the required hazard assessment

Some Other Common Issues with Requirements of the OHSR

1. Internally inconsistent asbestos exposure control requirements
2. Conflicting exposure control requirements for newly-designated ALARA substances
3. Medically unsupported triggers for prescriptive mould remediation requirements in guidelines
4. Confusion regarding the application of medical monitoring programs in ECPs

Degrees of Regulatory Prescription

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WSBC Regulation Review Process

1. WCA Section 228 requires ongoing consultation and regulation review by WSBC

2. WCA Section 226 generally outlines the required process;
 - a) Notice of proposed regulation in the Gazette and in at least 3 newspapers; one in Victoria and one in Vancouver
 - b) At least one public hearing
 - c) Additional consultations with persons who may be affected by the proposed regulation

3. WCA Section 227 requires that regulations specify when they come into force. The effective date must be at least 90 days after deposit with the Office of the Registrar of Regulations, Ministry of the AG.

WSBC Regulatory Agenda

1. Requests for regulatory change are received from a variety of sources and prioritized in annual WSBC workplans. Sources include:
 - a) WSBC's Board of Directors
 - b) Internal WSBC staff
 - c) The Provincial Government
 - d) External Stakeholders, and
 - e) BC Coroner's Service Judgments of Inquiry
2. Review of Draft Workplan by the Policy, Practices and Consultative Committee
3. Presentation of the Workplan for BOD Approval

WSBC Regulation Review Steps

1. Pre-consultation with SMEs nominated by PPCC
2. Draft amendments by PRD
3. BOD approval to consult
4. Public consultation on drafts
5. Revision of drafts
6. BOD approval for public hearing
7. Revision of draft amendments
8. BOD Decision
9. Notification
10. Deposit
11. Change becomes effective

Providing Better Input to WSBC

1. Make your concerns known to the WSBC via:
 - a) Correspondence with the Policy and Regulation Division
 - b) Pre-consultation via PPCC if possible
 - c) Public consultation regarding draft amendments
 - d) Public hearings on final draft amendments

2. Focus on what you know about industry standards, workplace hazards and control measures

3. Resonate with WSBC's objective that regulations should;
 - a) Clearly address hazards
 - b) Be technically competent
 - c) Be in plain language
 - d) Address the diversity of the workplace, and
 - e) Restrict workplace activity only to the extent necessary

Connecting with Other Stakeholders' Interests

Remember that WSBC must:

1. Balance employer and worker concerns in regulation review, and
2. Harmonize safety recommendations with other stakeholders interests/concerns to the extent possible

Why Get Involved in Safety Regulation?

1. Good OSH regulations help employers and workers manage risks and costs
2. Public consultation on OSH regulation provides employers an opportunity to help improve risk management in the workplace
3. Your practical workplace experience can inform and assist public consultations
4. Inappropriately selected regulations can be ineffective, confusing, wasteful and even detrimental to safety and health
5. Employers and workers in BC will live with the amendments under consideration for a long time.