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Grant McMillan, President

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Your Input is Needed!

WorkSafeBC plans to implement a program called the High Risk Strategy for the Construction Industry. The strategy includes a four-month intensive campaign with their officers visiting construction sites. During those visits, the officers will inspect a total of 200 companies and will ask 24 questions of the Prime or General Contractor with respect to the contractor's responsibilities under Section 118 of the Workers' Compensation Act

COCA has been contacted by contractors from Victoria and Vancouver who have become aware of this new project from WorkSafeBC and are also very concerned. I have summarized their concerns below. This may help with any communication with your members.

The project would involve the Survey Questions being asked of representatives from 200 Prime Contractors and 600 Sub Contractors. Any company that has done a project of \$3 million or more in 2006 would be possibly subject to the process. These mid-large contractors are more likely to be BCCA members.

I also provide more details under Background.

### Highlights -- Reasons for Concern about WorkSafeBC High Risk Strategy

1. The Construction Industry has been progressing under the more cooperative approach taken by WorkSafeBC – until this project. The High Risk Strategy appears to be a return to the former emphasis on inspections, orders and penalties.
2. WorkSafeBC has said it is modeling the Construction High Risk Strategy on the Forestry project, which had a similar survey. However, no evidence has been presented that the Forestry Strategy worked. In any case, the Forestry Industry is quite different from the Construction Industry in its dynamics. The Forestry Industry had little or no history of coordination. The Construction Industry has had a history of coordination. This coordination should be built upon in a more positive manner.
3. The process is likely to be quite time-consuming and paper-oriented and will take away from the actual business of safeguarding the site.
4. The survey method tends to play off the Prime Contractor against the Sub Contractor and is divisive. The Survey reinforces a growing concern that the focus needs to be spread over the key parties.  
The responsibility for worker safety is a team effort of Prime, Sub, the Supervisor and the Worker.
5. The questions will intimidate site personnel and undermine morale. The process is potentially disruptive and counter-productive.
6. There could be more positive change effected by focusing on falls, struck bys and the other primary agents of injury within the Construction Industry – there should be a focus on what is injuring workers.
7. Rather than using the Survey questions as an educational tool, the WorkSafeBC process will result in orders being written.

### Background

The WorkSafeBC High Risk Strategy for the Construction Industry will start in September, 2007. WorkSafeBC Officers will visit construction sites throughout BC.

The officers will interview the Prime contractor and three subcontractors on each site and ask them eleven questions, designed to verify the answers given by the Prime Contractor.

When the officer finds that there is noncompliance, they will write orders. These orders may also lead to penalties.

### Industry Response

The construction industry has already demonstrated a strong negative response to the WorkSafeBC plan. There is great concern that WorkSafeBC is “turning back the clock” to the 1990’s era of confrontation that prevailed under the previous government and previous WorkSafeBC administrations.

The contractors have noted that for the period 2002 to the present day 2007, WorkSafeBC and the Construction Industry have evolved a positive and effective working relationship. The broad-based Construction Safety Association of BC was formed. Duration of claims has significantly declined. The Injury Rate had declined and was flat until very recently. (It is highly likely that the increase in the Injury Rate is due to the rapid influx of new and non-traditional workers into the industry to meet the sharp and sustained increase in construction activity.)

The target group of Prime contractors is exactly the group that is most engaged in the CSABC safety COR program and the most involved in collaborative projects with WorkSafeBC.

This positive relationship is now endangered because of what is perceived to be a return to the old philosophy of enforcement and inspection.

WorkSafeBC has stated that Section 118 initiative was first used in the Forestry industry and that it was successful there.

However that may be, there are very significant differences between the

Construction Industry and the Forestry Industry. Construction has long evolved, defined relationships between Prime Contractors and Subcontractors. Construction employers need to communicate to coordinate and complete building activities. Forestry has not had this history of close communication.

The data from WorkSafeBC does not appear to statistically demonstrate the claim that the 2005 Forestry safety initiative had a positive impact.

In fact, the data on fatal injuries -- which was widely publicized in the media-- does not appear to demonstrate any pattern at all.

	<b>Fatal Claims Accepted, Regardless of Year of Injury</b>
1997	31
1998	19
1999	19
2000	21
2001	28
2002	25
2003	15
2004	12
2005	34
2006	14

The data shows a wide fluctuation between the number of Fatalities on a year by year basis. The 2005 year was high and media attention was focused on it. But the number of Fatalities for the year 2003 was 15; for 2004 was 12. It does not seem reasonable to conclude that the drop in the number of Fatalities in 2006 – 14 – was the result of the WorkSafeBC initiative. The immediately preceding years of 2003 and 2004 – with no initiative in place, were either close to the 2006 number or lower.

The Short Term Disability Claims show a steady decline in claims reported – in fact there is no sharp decline for 2005-2006 that is any greater than the changes from previous years. (See Appendix 3, below)

The Serious Injury Claims fluctuate in a way that is similar to the Fatal claims. There is a fluctuation from 2005-2006 but it is no greater than the fluctuation from 1997-1998 or from 1999 to 2000. (See Appendix 3)

The above data does not seem to make a statistically significant case for a

successful outcome from the Forestry initiative.

Industry has requested that WorkSafeBC to review its data and work cooperatively with us in taking an evidence-based approach to improving workplace safety.

### What COCA Recommends

1. We strongly support the need for improved workplace safety.
2. We believe that enhanced workplace safety will result only when all of the parties – employers, supervisors, workers and WorkSafeBC recognize and act upon their joint responsibilities.
3. We believe that this WorkSafeBC plan should be modified to return to the successful approach of consultation and education.
4. The necessary modifications are:
  - 4.1 Meet with contractors in the four regions of BC – Lower Mainland, Vancouver Island, North and Interior – to explain that this project is focused on research to enhance workplace safety by improving communication and workplace coordination between General Contractors and Subcontractors. This process will provide WorkSafeBC with valuable feedback from contractors.
  - 4.2 Treat the surveys and the visits as a Safety Audit – an opportunity for a collaborative approach to occupational health & safety. The process would focus on consultation, education and improvement.
  - 4.3 Officers write orders only when there is a situation that threatens the immediate health & safety of a worker or workers. (Note that the Workers’ Compensation Act states that the Officer may write orders. See Appendix 2, below.) These orders, when needed, would apply to employers, supervisors and workers as appropriate.
  - 4.4 Officers review the survey (Safety Audit) results with the General Contractor and Sub Contractors to ensure that they understand the requirement for site safety coordination. Where needed, assist the participants with any questions they may have.

4.5 Officers recommend that the contractors seek assistance through a construction industry safety association and provide contact information.

5. When the survey period is complete at the end of 4 months, WorkSafeBC will share and review the information with the Construction Industry and plan the next steps.

6. Officers do follow-up with companies that have significant deficiencies.

## **Appendix 1**

### **Coordination at multiple-employer workplaces**

**118** (1) In this section:

**"multiple-employer workplace"** means a workplace where workers of 2 or more employers are working at the same time;

**"prime contractor"** means, in relation to a multiple-employer workplace,

(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or

(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.

(2) The prime contractor of a multiple-employer workplace must

(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.

(3) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

## **Policy Item D3-118-1 RE: General Duties - Multiple-Employer Workplaces**

### **BACKGROUND**

1. Explanatory Notes **Section 118** sets out responsibilities at a "multiple employer workplace". It provides that the "prime contractor" is responsible for the coordination of activities at these workplaces and defines "prime contractor" for this purpose.

2. The Act **Section 118(1)**:

In this section: **"multiple-employer workplace"** means a workplace where workers of 2 or more employers are working at the same time;

**"prime contractor"** means, in relation to a multiple-employer workplace,

- . (a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or
- .
- . (b) if there is no agreement referred to in paragraph (a), the owner of the workplace.

**Section 118(2)**:

The prime contractor of a multiple-employer workplace must

- . (a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and
- .
- . (b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.

**Section 118(3)**:

Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

## **POLICY**

For sake of clarity, the following apply in determining whether there is a "multiple-employer workplace" under **section 118**:

- . Two or more adjacent workplaces do not constitute a "multiple-employer workplace", even though the activities at one workplace might affect the health and safety of workers at an adjacent workplace.■
- . It does not matter whether:
  - . workers of different employers are present at the same time working on different projects; or
  - . workers of different employers are present at the same time working on the same project.
- . In both cases, the workplace will generally be a "multiple-employer workplace".■
- . In determining whether "workers of 2 or more employers are working at the same time", the phrase "at the same time" will be given such fair, large and liberal construction as may best attain the objectives of **section 118**. "At the same time" does not mean that, at any precise point in time, there are workers of 2 or more employers present in the workplace. Rather, it means that, over an appropriate interval, there are workers of 2 or more employers present in the workplace, whether or not the 2 or more groups of workers are actually present together in the workplace at any precise point in time at all. The duration of the interval of time to be considered will depend upon the circumstances of the individual workplace.■
- . Whether the workers of the one employer come into actual contact with the workers of the other employer does not generally affect the determination of whether the workplace is a "multiple-employer workplace". An employer, the employer's workers and their activities could well affect the health and safety of another employer's workers who come into the workplace later in the day or on another day, even though there may be no actual contact between the two groups of workers. However, the degree to which the activities of the first employer and its workers affect the health and safety of the second employer's workers will generally affect the determination of the responsibilities of the prime contractor and of the two employers under Part 3 and the regulations.■
- . Virtually all workplaces will be visited by workers of other employers. For example, workers may deliver or pick up mail, goods or materials or enter to inspect the premises. Short term visits of this type, even if regular, do not make the workplace a "multiple-employer workplace" for purposes of **section 118(1)**.

The written agreement referred to in **section 118(1)** must be made available within a reasonable time if requested by a Board officer.

There can be only one "prime contractor" at a workplace at any point in time. If an owner enters into more than one agreement purporting to create a "prime contractor" for the same period of time, the owner is considered to be the prime contractor.

## **PRACTICE**

There is no PRACTICE for this Item.

## **Appendix 2**

### Authority to make Orders is discretionary

(Excerpts from Act)

**187** (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by this Part or the regulations, and may require that the order be carried out immediately or within the time specified in the order.

**188** (1) An order may be made orally or in writing but, if it is made orally, must be confirmed in writing as soon as is reasonably practicable.

(2) An order may be made applicable to any person or category of persons and may include terms and conditions the Board considers appropriate.

(3) If an order relates to a complaint made by a person to the Board or an officer, a copy of the order must be given to that person.

(4) An officer of the Board may exercise the authority of the Board to make orders under this Part, subject to any restrictions or conditions established by the Board.

## Appendix 3

QuickTime™ and a  
TIFF (Uncompressed) decompressor  
are needed to see this picture.

### WorkSafeBC Posts High Risk Strategy Plan on Website

The controversial High Risk Strategy, developed by WorkSafeBC, has now been posted on their website. The plan can be viewed ay:

<http://www2.worksafebc.com/Portals/Construction/WCBInitiatives.asp?ReportID=34547>

You may also access it through the [www.worksafebc](http://www.worksafebc.com) web address and then follow the link on the High Risk Strategy in the Home Page.

COCA has attended numerous meetings on this subject, spoken with a wide variety of WorkSafeBC staff and requested more information of the rationale for the plan, including the data which WorkSafeBC has used to support the plan.

WorkSafeBC will be holding information sessions on the plan, as described in the web page.

It is important that your views be heard. You may attend any of the information sessions without registering.

Please contact Grant McMillan of COCA if you need more information.