

Labour, industry agree no need to change WorkSafeBC enforcement model

Special administrator examining systems in other jurisdictions

BY GORD HOEKSTRA, VANCOUVER SUN MAY 29, 2014



In Ontario compliance and enforcement — and serious investigations — are separated from workers' compensation boards. Inspection officers and investigators instead work directly for the government, normally in an occupation and health division within the labour ministry. Here, co-workers of a man killed at Sunrise Greenhouse Manufacturing Inc. gather outside a side door of the plant.

Photograph by: Nick Brancaccio

When provincial Labour Minister Shirley Bond apologized recently after Crown counsel rejected charges in the deadly 2012 Lakeland Mills sawmill explosion, she promised improvements in safety enforcement and better execution of complex investigations.

Bond appointed a special administrator, former senior B.C. bureaucrat Gord Macatee, who is tasked with examining WorkSafeBC's structure to see if enforcement should be separated from prevention as is done in many provinces in Canada. Macatee must deliver a plan by July 1.

Although labour and corporate views often differ, on this they agree: Rewriting WorkSafeBC's model would be a mistake.

The organization is responsible for all areas of workplace safety and benefits: It provides workers' insurance in the case of injury or death, and is responsible for education, prevention, inspection and

enforcement. That includes carrying out investigations into serious injuries and fatalities in the workplace.

Some provinces have similar systems, including Quebec, New Brunswick and Prince Edward Island.

But other provinces, such as Alberta, Saskatchewan, Manitoba and Ontario, do things differently. In those provinces, compliance and enforcement — and serious investigations — are separated from workers' compensation boards. Inspection officers and investigators instead work directly for the government, normally in an occupation and health division within the labour ministry.

There is some suggestion that separating compliance and enforcement outside the workers' compensation board duties of insurance and education is a more effective model because when an agency works closely with employers it may be less inclined to be aggressive on enforcement.

What approach WorkSafeBC might take is unknown as Macatee is not giving interviews, and WorkSafeBC would not make any other senior officials available to speak on the subject.

What is clear is that neither workplace inspection and enforcement model stands out as providing better results in preventing fatalities.

For example, Manitoba and Ontario have among the lowest workplace injury-fatality rates in the country, according to an analysis by The Sun comparing fatalities compiled by the Association of Workers' Compensation Boards of Canada and workforce numbers from Statistics Canada.

Inspection officers in those provinces work directly for the government.

But Alberta and Saskatchewan also separate compliance and enforcement from workers' compensation board responsibilities, and have much higher fatality rates.

Some of the differences in fatality rates may be explained by industry mixes in the provinces, particularly where oil and gas extraction and logging make up a greater proportion of the workforce.

However, the industries that traditionally have seen more serious injuries and deaths — farming, forestry, oil and gas, construction, manufacturing and transportation — account for similar portions of the workforce in most provinces. They range from a low of 23 per cent in Nova Scotia to a high of 34 per cent in Alberta, according to an analysis by The Sun.

And while only Ontario and Quebec have pursued a handful of criminal workplace negligence charges (B.C. has not), that action has taken place in straightforward cases involving individuals and small firms. None were comparable to the complex sawmill explosion investigations in northern B.C. in 2012. (Earlier in the year, Crown counsel had also rejected charges in a similar wood dust-fuelled sawmill explosion at Babine Forest Products.)

Workplace safety observers believe criminal charge pursuits in Ontario and Quebec may have more to do with lower charge thresholds — and the ability for police to lay charges — than a different workplace compliance and enforcement system.

In B.C., charges must be approved by Crown prosecutors and there must be a “substantial likelihood of conviction” before a charge is laid. In other provinces, police can lay charges if there’s a reasonable prospect of a guilty verdict.

B.C. Federation of Labour president Jim Sinclair has called for a much stronger focus on criminal prosecutions of companies and individuals in deadly workplace incidents, but he doesn’t believe WorkSafeBC is fundamentally flawed.

“To spend the next three years building a new system is a waste of time when we know what some of the problems are and we can fix them. I would rather put the time into fixing the problems, than restructuring (WorkSafeBC),” said Sinclair, whose organization represents 450,000 unionized workers.

Sinclair said there simply needs to be a stronger focus on enforcement and consequences, including bigger fines and court prosecutions in the most serious cases.

He would also like to see more front-line inspectors, noting that several years ago Ontario hired another 100 inspection officers. (Recently, WorkSafeBC doubled the number of officers inspecting sawmills for wood dust problems to 20 recently, and has increased its total prevention staff by 50 per cent in the last decade to 272).

Sinclair said he is concerned that under direct government control, inspection officers could be cut when budgets are slashed, and leave officers open to political influence.

While the WorkSafeBC system is not perfect, it is better to have inspection officers under a workers’ compensation board and therefore at arms length from government, said Sinclair.

Council of Forest Industries CEO James Gorman agrees.

Gorman said he believes many of the elements for a robust safety and enforcement system are in place, including regulations that make sense and are constantly updated, a suite of enforcement tools, inspections that are transparent and create trust, and coaching that improves safety. “Can they be tweaked? Of course they can be tweaked,” he said. “Every organization can improve.”

Phil Hochstein, president of the Independent Contractors and Businesses Association, said he believes leveraging the tragic sawmill explosions to make wholesale changes to the WorkSafeBC system is not a good idea.

He said the enforcement system is working, noting that injury rates are coming down in the construction sector.

“If you split it up and put more into government, the decisions are at risk of not being driven by what’s best for the system, but what’s politically expedient. That would be a terrible outcome,” said Hochstein.

Saskatchewan has separated enforcement from its Workers’ Compensation Board since the

inception of its workplace safety legislation in 1971.

“I think there are pluses in both models,” aid Mike Carr, Saskatchewan’s deputy minister of labour relations and workplace safety. “But our history here in Saskatchewan has been one that’s really focused on saying it’s the government’s job to regulate and to enforce. It’s the workers’ compensation board’s responsibility to provide benefits to injured workers and to really insure employers in the province from the liability that comes from employing individuals.”

In Alberta, there is a clear separation between the Workers’ Compensation Board, which is responsible for insurance, statistics and some awareness and education, and the legislative framework that sets rules for inspection and enforcement, said Alberta Labour Ministry spokeswoman Janice Schroeder. (In British Columbia, WorkSafeBC can develop its own regulations).

The Crown prosecutor then determines on the basis of public interest and the likelihood of conviction whether to proceed to court, said Schroeder.

In Alberta, as in many systems, employer payments fund the workers’ compensation system, she noted.

“There’s a policy question of if employers are paying the bill, does that change enforcement somehow,” she said, referring to Alberta’s separate enforcement model.

In Manitoba, enforcement and compensation are separated “to ensure that each side can enforce their legislation objectively and appropriately,” the government said in an email.

Recently, Manitoba took steps to further separate enforcement and prevention that were shared between the government and its workers’ compensation board.

There are other differences as well.

B.C. relies heavily on administrative penalties to push enforcement, but some other provinces rely almost solely on convictions through the court system.

That, however, can create problems as it is almost impossible to penalize employers without going to court, a time-consuming process.

In recognition of this, Alberta and Saskatchewan recently introduced penalty tickets for lesser infractions similar to speeding tickets. Those tickets can be handed out to workers and employers. That is a measure that B.C. could also examine, said Gorman, the forestry industry council CEO.

And in Manitoba, the province recently created the position of chief protection officer, meant to improve workplace injury and illness prevention and coordinate prevention activities between the government and the Workers’ Compensation Board.

However, University of Athabasca labour professor Bob Barnetson does not believe the model — whether inspectors work directly for the government or a workers’ compensation board — is the key

element that will make a difference in improving safety. Nor does he believe that aggressively pursuing convictions in fatality cases will necessarily drive down serious injuries and fatalities.

He said it is the day-to-day consequences that are important: Are workplaces being inspected on a regular basis? And are there significant consequences for breaking rules through actions such as stop-work orders or stiff fines?

“There has to be some consequence of operating unsafely,” said Barnettson.

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