A COMPARISON OF FUNDAMENTAL RIGHTS AND DUTIES
IN CANADIAN OCCUPATIONAL HEALTH AND SAFETY
STATUTES

Issues Paper #6

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INTRODUCTION
This issues paper compares the fundamental rights and duties as set out in Canadian OHS statutes that have been assigned to employers, workers and other persons with a major role to play in protecting worker health and safety. We begin by describing the common, less common and unique duties which exist, and then consider (in separate parts) the worker’s right to know, joint worksite OHS committees, safety representatives, the right to refuse and protection from reprisals. From that foundation, we identify those subjects which are not addressed in BC’s primary OHS legislation, the WCAct and the IH&S Regulations. We end this paper by proposing that certain types of provisions be included in a new OHSAct for British Columbia.

1) The Comparison Table
Appendix “A” is a table comparing the rights and duties of employers, supervisors, contractors, owners, suppliers and workers that have been expressly set out in Canadian OHS statutes. These are described as “fundamental rights and duties” because they represent the core or basic rights and duties of workplace parties that Canadian and other governments have recognized as essential to achieving the objective of safer workplaces, and therefore have enshrined those rights and duties in their OHS statutes.

In the left hand column are a series of headings and brief summaries of the particular right, duty or related provision under each heading. These are the criteria we have developed so that we could compare the different provisions in the Canadian OHS statutes that address the fundamental OHS rights and duties of employers, workers and other persons.

There is no standard OHSAct which the 13 Canadian jurisdictions could adopt such as to establish uniform rights and duties across Canada. Instead, the OHS statutes have evolved over time, with jurisdictions borrowing provisions from each other’s legislation, adapting them to their needs and, on occasion, developing new and innovative provisions. For these and other reasons, there are some similarities in certain rights and duties, but there are also many noteworthy differences. This lack of uniformity or harmonization in OHS legislation generally, but in relation to fundamental rights and duties in particular, makes it difficult to compare the Canadian OHS statutes to each other.

We believe that the criteria we have developed allow for a meaningful comparison across all 13 jurisdictions in an equal or neutral fashion, rather than basing the comparison on the provisions of one particular jurisdiction's OHS legislation. In this way, it is possible to compare “apples to oranges to bananas”.¹

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¹ Quebec’s OHS statute is the most different of all the Canadian statutes in this area. Quebec’s statute speaks to creating occupational health services and establishing links with that province’s public health programs. It contains the most number of provisions, making it the largest OHS statute in Canada. Many of its provision are very detailed, addressing matters that other jurisdictions have or would likely place in their regulations. These features are perhaps reflective of Quebec’s civil law tradition, but it does make it difficult to compare Quebec’s legislation to other Canadian OHS statutes.
Our criteria evolved during our review and analysis of the OHS legislation, but is also based in part upon the following sources:

the comparison criteria prepared by J. Matthias Consulting in a 1987 Labour Canada report titled *Occupational Safety and Health Legislation: Key Provisions and Future Trends in Selected Jurisdictions*;

a description of basic elements of Canadian OHS legislation offered by the Canadian Centre for Occupational Health and Safety, *Occupational Health and Safety Legislation*, an undated document available at the Centre’s internet address;

the commentary on employers’ and workers’ duties and rights found in the CCH Canadian Ltd. three volume, loose-leaf reference *Canadian Employment Safety and Health Guide* (the “CCH Guide”).

We have focused our analysis on the duties set out in the various Canadian OHS statutes. With the exception of BC’s *IH&S Regulations*, no attempt has been made to consider the rights and duties which may be set out in the numerous OHS regulations from other Canadian jurisdictions.

As noted in our August 17th paper, *Commentary on Specific Enforcement Problems with the IH&S Regulations...*, the *IH&S Regulations* are deficient in that those provisions only occasionally specify who is responsible to meet specified requirements. Therefore, in some instances, we have had to assign a duty created by a specific provision in a regulation to the person we believe should shoulder it. For example, section 2.04 of BC’s *IH&S Regulation* states: “Notwithstanding the absence of a specific regulation, all employment and work shall be carried out without undue risk of injury or industrial disease to any person subject to these regulations.” As no one has been specifically identified as the party responsible for complying with the duty implied by this general provision, we have concluded that this provision is a duty that held by both employers and workers.

Finally, references in the BC column of the comparison table are to the section numbers of the *IH&S Regulation*, unless prefaced with “Act” which denotes a reference to a provision in the WCAct.

2) Rights versus Duties: An Overview
Two types of rights may be created by legislation:

expressed rights, whereby the legislation declares that someone has a particular right, or

implied or corresponding rights, whereby the legislation places a duty on person A to do or not do something which directly benefits person B who in turn may be able to require or rely on person A to fulfill that duty.
For example, section 10 of Quebec’s OHS statute declares the worker’s expressed “right to know”:

... the worker is entitled... to training, information and counselling services in matters of occupational health and safety, especially in relation to his work and his work environment, and to receive appropriate instruction, training and supervision...

In contrast, the other Canadian OHS statutes state that it is the employer’s duty to ensure that its workers are provided with information and training concerning the workplace hazards they will face. An example of a legal duty that creates an implied right can also be found in Quebec’s OHS statute at section 51(9):

[The employer] must... give the worker adequate information as to the risks connected with his work and provide him with the appropriate training, assistance or supervision to ensure that he possesses the skill and knowledge required to safely perform the work assigned to him.

The legal duty imposed on employers to inform and train workers created by this type of provision establishes an implied right to be informed and trained that workers in Quebec can rely on.

Legal duties in legislation can be created in two ways:

- a statute or regulation will expressly state that someone must or must not do something;
- if someone has been granted an expressed legal right and it is clear who must either not interfere with that right or assist that person in realizing that right, such a provision creates an implied duty on the latter person.

If there is no legal duty expressly given to person A to do or not do something for the clear benefit person B, it is not possible to conclude that person B has an implied or corresponding right flowing from that duty of person A. Conversely, if a legislative right does not identify that someone is responsible for upholding or not interfering with a right granted to person C, it would be difficult to conclude that any particular person would hold the corresponding implied duty owed to person C.

To complicate matters further, there are also conditional duties and rights. A conditional duty would be one that can be activated at the discretion or through the actions of another person, or by some other triggering event. For example, an employer may have a duty to disclose information to an officer, but that duty is only activated if the officer first asks that employer to provide that information. If no request is made, the employer’s duty is not triggered.

All of the expressed rights and duties granted to certain parties (see below) that can be found in the Canadian OHS statutes and the IH&S Regulations have been referenced in
the comparison table. With a few exceptions noted in the table, all of the remaining implied OHS rights and conditional duties found in the OHS legislation have not been so referenced.

3) Parties Not Compared
Every Canadian OHS statute and the IH&S Regulations set out the duties (and rights) of employers and workers, albeit differently across the jurisdictions. A number also speak to the duties of supervisors, contractors (principal contractors or constructors), owners and suppliers. These are the six major parties that are considered in this comparison.

A few jurisdictions set out the duties of particular persons who are not found in any other statute or in just one or two others.

For example, Ontario’ OHSAct prescribes general duties for persons who hold tree harvest licenses (s.24), mine owners (s.29(2)) and directors/officers of a corporation (s.32). It also imposes a duty on professional engineers and architects not to provide negligent or incompetent advice (s.31(2)).

Quebec’s legislation requires that occupational health physicians (to be appointed by the worksite joint committee) be in charge of health services and implement that program. Quebec’s OH physicians are also required to notify workers of situations where they are in danger. A number of jurisdictions require physicians to notify the OHS agency if they determine that their patient has a reportable occupational disease.

Nova Scotia’s OHSAct places a general duty on persons who provide an OHS service to ensure the service they provide does not endanger workers and that their information is accurate and complete (s.20). Section 21 creates a duty on professional engineers and architects to act competently, a duty similar to the one in Ontario’s legislation.

Owing to the fact that most jurisdictions have not established duties for these types of persons, we have not included them in this comparison.

4) Duties of Narrow Application
Sometimes a qualification or a limit has been attached to the corresponding right or duty which narrows its application to particular types of persons within a general group. For example, an employer may have a duty to do something but only if it is a business operating in a certain industry or using a particular hazardous processes or substances. Other employers (perhaps most others) would not hold that same duty.

For the purpose of our review, it was not practical to try to create separate categories for the particular duties that are held by specific sub-classes of the different worksite parties. Instead, we have assigned a duty that may have narrow application to one particular type of employer as a duty that all employers may have. For example, an employer of a construction company may have a duty to ensure that a joint worksite committee is
established at his construction site if he has 50 or more workers at that site. Other types of employers may not have that same duty, or their duty may be triggered by a different number of workers.

Another example would be the following. Some jurisdictions require the employer at a coal mine to do things which are not required of other employers, such as obtaining approval for work plans, procedures and equipment before they are employed in the mine, and subjecting every person who enters the mine to a personal search.

Regardless of such difference, we generally have placed the narrow duty in the cell that would apply to all employers. Fortunately, there are relatively few of these sorts of right and duties; most apply to all parties or with no limitations or few substantial qualifications attached. Nonetheless, caution must be exercised in concluding that the section numbers in the comparison table means that the corresponding right or duty always applies to all types of employers, for example. The original section should be referenced for the purposes of more detailed analysis and comparison.

A COMPARISON OF DUTIES AND RESPONSIBILITIES

Based upon the information set out in the comparison chart, we offer the following observations about the Canadian OHS statutes in terms of the duties or responsibilities that are common to most if not all statutes, and the ones which are less common if not unique to one statute. The Canadian provisions governing workers’ right to know, joint worksite committees, safety representatives, the right to refuse and protection from reprisals are dealt with separately in subsequent parts of this paper.

1) Common duty provisions

All or at least a majority (i.e. over half) of the Canadian OHS statutes contain certain common duty provisions:

A declaration of the employer’s general duty to take reasonable precautions to ensure the workplace is safe and that workers are protected from harm.

This broadly stated general duty applies even if there were no other specific or more detailed duties set out in the statute or regulations. This general duty provision is an over-arching duty that requires the employer to do what ever is reasonable in the circumstances to ensure worker health and safety; to take measures to ensure workers are protected from workplace hazards. Indeed, as noted in the CCH Guide, such a general duty provision may require the employer to exceed the specific standards set out elsewhere in the legislation, if the circumstances require such action. Thus, while the regulations may prescribe certain specific duties, this general duty to protect workers can require the employer to comply with a higher standard than might otherwise be the case. Finally, a breach of any provision of the

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legislation would likely be encompassed within this general duty, so a prosecution would be framed by reference to the general duty and to any specific provision that was also breached.

We note that the common law may also impose general duties on employers to take reasonable care to protect workers. However, as most Canadian workers are statute-barred from suing their employer (due to the effect of the various compensation statutes), the employer’s common law duty is probably dormant and, at best, has been codified within the OHS legislation.³

In addition to the above over-arching duty, it is common for Canadian OHS statutes to set out a number of other, general duties for employers:

- a duty to establish an OHS policy or program to address workplace health and safety in general or specific hazards;
- a duty to inform workers of their legal rights and duties or post a copy of the applicable Act and regulations;
- a duty to warn workers concerning workplace hazards in general (e.g. WHMIS⁴) or in relation to specific hazards, including providing necessary information, posting notices and similar actions;
- a duty to ensure workers are properly trained, experienced or supervised to perform their work safely;
- a duty to supply personal protective equipment (as may be required by the legislation), sometimes also at no cost to the worker (unless addressed in collective agreements) and to ensure workers know how to use that equipment;
- a duty to cooperate with the joint worksite committee, safety representative, workers in general, including providing information when so requested.

These further duties would not limit the employer’s general duty (discussed in #1, above), but they do provide more detailed guidance to an employer. In some provinces, most notably Ontario, the list of these further duties within the OHS statute is fairly extensive and explicit. In those provinces with a relatively brief list of further duties, more extensive and detailed duties can be found scattered throughout the regulations.

Another common duty assigned to employers in OHS statutes is to report to the applicable agency serious injuries, illnesses or accidents, linked to a duty to investigate those events and take remedial measures. (This duty may be broader than the one under

³ In the unreported Ontario case of R. v. Canron Inc, (Ont. Ct. J. Prov. Div.), June 6, 1994, the court found that employer’s general duty to take reasonable measure to protect workers as set out under Ontario’s OHSAct implies that the employer must also provide proper safety instructions to workers.

⁴ Because WHMIS was introduced across Canada at about the same time, it is common for there to be specific duties requiring an employer to provide worker education and training in relation to hazardous materials covered under WHMIS rules.
compensation statutes requiring the employer to report compensatable injuries and illnesses.)

Employers are also commonly required to keep records of injuries, illnesses or accidents. These types of provisions are apparently designed in the hopes that the employer, workers and others will take notice of workplace hazards and take corrective action, albeit after-the-fact.

Employers are also commonly required to cooperate with the agency, in particular to allow an officer to conduct investigations, etc. or (at least) not to interfere with such investigations, etc.

Owners, contractors (or principal contractors or constructors) have been assigned general duties to comply with the legislation or ensure those who will be at their worksites will comply. More often, the focus of these general duties has been on requiring the owner, contractor, etc. to ensure the actions of others are coordinated so that health and safety can be maintained. An example of this type of duty can be found in Alberta’s OHSAct:

**Prime contractor**

2.1(1) Every work site must have a prime contractor if there are 2 or more employers involved in work at the work site at the same time.

(2) The prime contractor for a work site is
   (a) the contractor, employer or other person who enters into an agreement with the owner of the work site to be the prime contractor, or
   (b) if no agreement has been made or if no agreement is in force, the owner of the work site.

(3) If a work site is required to have a prime contractor under subsection (1), the prime contractor shall ensure, as far as it is reasonably practicable to do so, that this Act and the regulations are complied with in respect of the work site.

(4) One of the ways in which a prime contractor of a work site may meet the obligation under subsection (3) is for the prime contractor to do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Act and the regulations in respect of the work site.

Owners, contractors, constructors, etc. have also been required to establish OHS policies and programs, notify the agency of serious accidents and new projects, but these are less common duties than the preceding one. For example, Ontario’s OHS Act states:
23. (1) A constructor shall ensure, on a project undertaken by the constructor that,

(a) the measures and procedures prescribed by this Act and the regulations are carried out on the project;
(b) every employer and every worker performing work on the project complies with this Act and the regulations; and
(c) the health and safety of workers on the project is protected.

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed.

Suppliers have been assigned general duties in nine Canadian OHS statutes. The Legislatures in those provinces have found it necessary to require suppliers to ensure the equipment, materials and substances they supply comply with the Act or regulations (in particular WHMIS for hazardous substances), but also have given suppliers duties to supply safe equipment, supply necessary health and safety information, and related duties. A good example of supplier duties can be found in Nova Scotia’s OHSAct:

"supplier" means a person who manufactures, supplies, sells, leases, distributes or installs any tool, equipment, machine or device or any biological, chemical or physical agent to be used by an employee;

16. Every supplier shall take every precaution that is reasonable in the circumstances to

(a) ensure that any device, equipment, machine, material or thing supplied by the supplier is in safe condition, and in compliance with this Act and the regulations when it is supplied;
(b) where it is the supplier's responsibility under a leasing agreement to maintain it, maintain any device, equipment, machine, material or thing in safe condition and in compliance with this Act and the regulations; and
(c) ensure that any biological, chemical or physical agent supplied by the supplier is labeled in accordance with the applicable federal and Provincial regulations.

Self-employed persons or independent contractors have been identified as persons deserving of legislative attention in eight of the Canadian OHS statutes. In some of these jurisdictions, the self-employed have simply been required to comply with the general duties assigned to workers, but others have set out specific duties, such as those found in Manitoba’s OHSAct:
6. Every self-employed person shall, in accordance with the objects and purposes of this Act,
   (a) conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he or any other person is not exposed to risks to his or that person's safety or health, arising out of, or in connection with, activities in his workplace;
   (b) comply with this Act and the regulations; and
   (c) co-operate with any other person exercising a duty imposed by this Act or the regulations.

Not surprisingly, every Canadian jurisdiction has assigned general duties to workers under their OHS statutes. While there is variation in those duties across the country (as there are for employer, owner, supplier and other duties), generally speaking Canadian workers are required to do the following:
to comply with the Act and regulations;
to take reasonable care to protect themselves and others at their places of employment;
to use personal protective equipment provided to them by their employer;
to inform the employer (or its agents) regarding dangers, accidents, breaches of the legislation, etc.;
to cooperate with the employer (and its agents), joint worksite committees, safety representatives, and the enforcement agency.

2) Less common duty provisions
Certain provisions are found in less than half of the Canadian OHS statutes:

Only four Canadian OHS statutes contain within the provision that assigns general duties to an employer a specific duty to comply with the Act and its regulations, and with orders and similar directives. However, given that the OHS regulations which these jurisdictions may have approved have probably assigned responsibilities to employers within most of their detailed provisions, there may be no need for this general duty within the Act itself.

The employer is required to notify the agency before beginning a new project or using potentially harmful substances or processes. Such a requirement can be seen as the foundation for certain prevention programs that the various jurisdictions have determined are important to establish. For example, section 34 of the Ontario OHSAct states:

**New biological or chemical agents**

34(1) Except for purposes of research and development, no person shall,
   (a) manufacture;
   (b) distribute; or
   (c) supply,
for commercial or industrial use in a workplace any new biological or chemical agent unless the person first submits to a Director notice in writing of the person's intention to manufacture, distribute or supply such new agent and the notice shall include the ingredients of such new agent and their common or generic name or names and the composition and properties thereof.

(2) Where in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent referred to in subsection (1) may endanger the health or safety of the workers in a workplace, the Director shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent intended to be manufactured, distributed or supplied and the manner of use including the matters referred to in subclauses 54(1)(o)(I) to (vii).

(3) For the purpose of this section, a biological or chemical agent is not considered to be new if, before a person manufactures, distributes or supplies the agent, it was used in a workplace other than the person's workplace or it is included in an inventory compiled or adopted by the Minister.

Supervisors have been assigned general duties in the IH&S Regulations and in three of the Canadian OHS statutes. The IH&S Regulations define a supervisor and set out the following duty:

"supervisor" means a person who instructs, directs or controls workers in the safe performance of their duties.

8.20 Every supervisor shall be responsible for the proper instruction of workers under his direction and control, and for ensuring that their work is performed without undue risk.

Ontario’s OHSAct contains the most extensive description of a supervisor’s duty found in any Canadian OHS statute:

"supervisor" means a person who has charge of a workplace or authority over a worker;

27. (1) A supervisor shall ensure that a worker,
(a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
(b) uses or wears the equipment, protective devices or clothing that the worker's employer requires to be used or worn.
(2) Without limiting the duty imposed by subsection (1), a supervisor shall,
   (a) advise a worker of the existence of any potential or actual
danger to the health or safety of the worker of which the
supervisor is aware;
   (b) where so prescribed, provide a worker with written
instructions as to the measures and procedures to be taken
for protection of the worker; and
   (c) take every precaution reasonable in the circumstances for
the protection of a worker.

A less common duty assigned to workers is to follow the employers safety procedures and
instructions. Those jurisdictions which have refrained from adding this duty to the
worker’s general duties may have done so because they recognize that such a
 provision may not be necessary given the employer’s general right at common law
to dismiss an employee who refuses to follow a legitimate safety instruction.

Three jurisdictions prohibit workers from engaging in horseplay. For example, BC’s *IH&S
Regulations* state:

8.34 No person shall engage in any improper activity or behaviour that
might create or constitute a hazard to himself or any other
worker. For the purpose of this regulation, improper activity or
behaviour includes “horseplay”, scuffling, fighting, practical jokes,
unnecessary running or jumping, or similar conduct.

Six OHS statutes place a legal duty on workers to inform their employer when
they become aware of workplace hazards. This may be framed as a duty to
report dangers, workplace accidents, or breaches of the legislation. An
example of this duty can be found in Ontario’s *OHSAct*:

28. (1) A worker shall...
   (c) report to his or her employer or supervisor the absence of or defect in
any equipment or protective device of which the worker is aware and
which may endanger himself, herself or another worker; and
   (d) report to his or her employer or supervisor any contravention of this
Act or the regulations or the existence of any hazard of which he or she
knows.

3) Unique provisions
During the course of our review, we identified certain OHS provisions which appear to be
unique to one Canadian jurisdiction (or at the most two). This is not to say that similar
provisions might not exist within the numerous secondary OHS regulations or in other
OHS-related legislation. As we have not reviewed all those provisions, we cannot make
that firm conclusion. However, from our review, we believe the following provisions are
not found in other Canadian OHS statutes.
• **Employer right to obtain assistance (Quebec)**

Very few expressed rights have been granted to employers in OHS statutes. In contrast, employers may enjoy a number of implied rights that flow from the duties that have been assigned to workers. One interesting example of an employer’s expressed right is found in Quebec’s OHS statute.

50. Every employer is entitled, in particular, in accordance with this act and the regulations, to training, information and counselling services in matters of occupational health and safety.

We have not undertaken research on how this right may have been applied in Quebec, but on its face it appears to create an implied duty on the Quebec Commission to provide employers with training, information and counselling services they require so as to be able to meet their other statutory duties.

• **Workers rights to a safe work environment (Quebec)**

Section 9 of Quebec’s OHS statute declares that: “Every worker has a right to working conditions that have proper regard for his health, safety and physical well-being.” No other Canadian statute expressly articulates this particular right.

• **Multiple duties held by one person (Alberta)**

Alberta’s OHSAct addresses the situation which may arise from time to time when someone holds more than one duty. For example, when someone is both an owner of a worksite, the principal contractor of others contractors providing services on that worksite and the employer of other workers at that worksite, that person could hold three or more separate and distinct duties under the Act or regulations. Section 2.2 of Alberta’s statute reads:

*Multiple obligations*

2.2(1) In this section, "function" means the function of prime contractor, contractor, employer, supplier or worker.

(2) If a person has 2 or more functions under this Act in respect of one work site, the person must meet the obligations of each function.

• **More than one party is responsible (Nova Scotia)**

The Board has attempted through section 2.16 of the IH&S Regulation to establish “cascading responsibilities” from employers, to supervisors, to workers. In our issues paper #4 concerning the enforcement problems with that regulation, criticized that provision for its lack of clarity. Nova Scotia has addressed this issue in its OHSAct, but (in our opinion) has drafted a more meaningful and clearer provision (at least from a legal perspective). The applicable provision in Nova Scotia’s statute reads:

23(1) A specific duty or requirement imposed by this Act or the regulations does not limit the generality of any other duty or requirement imposed by this Act or the regulations.
(2) Where a provision of this Act or the regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement.

(3) Notwithstanding subsection (2), but subject to subsection (5), where the person with the greatest degree of control fails to comply with a duty or requirement referred to in subsection (2), the other person or persons on whom the duty or requirement lies shall, where possible, comply with the provision.

(4) Where the person with the greatest degree of control complies with a provision described in subsection (2), the other persons are relieved of the obligation to comply with the provision only

(a) for the time during which the person with the greatest degree of control is in compliance with the provision;

(b) where simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and

(c) where the health and safety of persons at the workplace is not put at risk by compliance by only one person.

(5) Where the person with the greatest degree of control fails to comply with a provision described in subsection (2) but one of the other persons on whom the duty or requirement is imposed complies with the provision, the other persons, if any, to whom the provision applies are relieved of the obligation to comply with the provision in the circumstances set out in clauses 4(a) to (c) with the necessary modifications.

• Protective re-assignment (Quebec)

The second unique set of provisions is found in Quebec’s OHS statute. They speak to the rights of worker to protective re-assignment generally and re-assignment of pregnant workers in particular. While other Canadian statutes prohibit an employer from taking discriminatory action against workers who exercise their legal rights and duties, this set of provisions goes further that other legislation in that it provides a worker with a basis to request re-assignment to work that would not expose that worker to a contaminant that is adversely affecting his/her health or the health of a fetus. The somewhat complex set of provisions from the Quebec legislation state:

**Protective re-assignment**

32. A worker who furnishes a certificate attesting that his being exposed to a contaminant entails danger to him, in view of the fact that his health shows signs of deterioration, may request to be re-assigned to duties that do not entail exposure to a contaminant and that he is reasonably capable of performing, until the condition of his health allows him to resume his former duties and his working conditions conform to the standards established by regulation for that contaminant.

33. The certificate contemplated in section 32 may be issued by the physician in charge of health services in the establishment where the worker is employed, or another physician. If the certificate is issued by
the physician in charge he must, at the worker's request, notify the physician designated by the worker. If the certificate is issued by another physician, he must, before issuing it, consult with the physician in charge or, if there is no physician in charge, with the public health director of the region in which the establishment is situated, or the physician designated by him.

34. The Commission may, by regulation,
   (1) identify the contaminants in relation to which a worker may exercise his right under section 32:
   (2) determine the criteria on which a deterioration of health associated with each contaminant identified under paragraph 1 warrants the exercise of the right under section 32;
   (3) specify the criteria on which a worker may be re-assigned, or be returned to his regular duties;
   (4) determine the form and tenor of the certificate contemplated in section 32.

35. If a requested re-assignment is not made immediately, the worker may stop working until he is re-assigned or his health or working conditions allow him to return to his duties in accordance with section 32.

36. A worker is entitled, for the first five working days of his work stoppage, to be remunerated at his regular wage rate. At the end of that period, the worker is entitled to the income replacement indemnity to which he would be entitled under the Act respecting industrial accidents and occupational diseases (chapter A-3.001) if he then became unable to carry on his employment by reason of an employment injury within the meaning of that Act. To decide a case under this section, the Commission shall apply the Act respecting industrial accidents and occupational diseases to the extent that it is consistent with this Act; its decision may be the object of an application for review and appeal in accordance with this Act.

37. If a worker believes he is not reasonably capable of performing duties to which he is re-assigned by the employer, he may request the health and safety committee or, failing such a committee, the safety representative and the employer to examine and decide the question in conjunction with the physician in charge of health services in the establishment, or if there is no physician in charge, the public health director of the region where the establishment is situated. If there is no safety committee or safety representative, the worker may send his request directly to the Commission. The Commission shall render its decision within 20 days of the request and the decision has effect immediately notwithstanding any application for review.
37.1. If a person believes he has been wronged by a decision rendered under section 37, he may, within ten days of being notified of the decision, apply for review thereof by a review office.

37.2. The review office shall proceed by preference with an application for review made under section 37.1. The decision rendered by the review office on the application has effect immediately, notwithstanding appeal.

37.3. If a person or the Commission believes he or it has been wronged by a decision rendered by a review office following an application made under section 37.1, he or it may, within ten days of being notified of the decision, bring an appeal therefrom before the board of appeal.

38. The worker re-assigned to other duties retains all the benefits attached to his employment before his re-assignment. At the end of the period of re-assignment, the employer must return the worker to his regular employment. The worker continues to receive the social benefits recognized for his workplace, subject to payment of the exigible assessments, part of which is assumed by the employer.

39. A worker who has stopped working retains all the benefits relating to his employment before his work stoppage. Subject to the first and second paragraphs of section 36. The second and third paragraphs of section 38 apply, mutatis mutandis, to a worker who has stopped working. A worker retains the benefits contemplated in this section for only one year following the date of the work stoppage, unless his working conditions do not conform to the standards established for the contaminant concerned.

Re-assignment of a pregnant worker
40. A pregnant worker who furnishes to her employer a certificate attesting that her working conditions may be physically dangerous to her unborn child, or to herself by reason of her pregnancy, may request to be re-assigned to other duties involving no such danger that she is reasonably capable of performing. The form and tenor of the certificate are determined by regulation, and section 33 applies to its issuance.

41. If a requested re-assignment is not made immediately, the pregnant worker may stop working until she is re-assigned or until the date of delivery. "Delivery" means the natural or the lawfully, medically induced end of a pregnancy by child-birth, whether or not the child is viable.

42. Sections 36 to 37.3 apply, mutatis mutandis, where a female worker exercises her rights under sections 40 and 41.

43. A worker who exercises her rights under sections 40 and 41 retains all the benefits attached to her regular employment before her re-assignment to other duties or before her work stoppage. At the end of the worker's period of re-assignment or work stoppage, the employer
must return her to her regular employment and grant her the benefits she would have been entitled to had she remained in her employment. The worker continues to receive the social benefits recognized for her workplace subject to payment of the exigible assessments, part of which is assumed by the employer.

44. On receiving an application from a pregnant worker, the Commission may make temporary payments if it is of opinion that it will probably grant the indemnity. If the Commission concludes that the application should not be granted, the amounts paid as temporary payments are not recoverable.

45. The cost relating to the payment of the indemnity shall be charged to all the employers.

46. A worker who furnishes to her employer a certificate attesting that her working conditions involve risks for the child she is breast-feeding may request to be re-assigned to other duties involving no such risks that she is reasonably capable of performing. The form and tenor of the certificate are determined by regulation, and section 33 applies to its issuance.

47. If the requested re-assignment is not made immediately, the worker may stop working until she is re-assigned or the child is weaned.

48. Sections 36 to 37.3, 43, 44 and 45 apply, mutatis mutandis, where a worker exercises her rights under sections 46 and 47.

**RIGHT TO KNOW**

Subsection 10(1) of Quebec’s OHS statute states that: “... the worker is entitled... to training, information and counselling services in matters of occupational health and safety, especially in relation to his work and his work environment, and to receive appropriate instruction, training and supervision.” No other Canadian OHS statute declares this right; it must be implied from the duties placed on employers (and others) to provide workers with information, training, proper supervision, etc. so that in turn they will have the skills, knowledge and ability perform their work safely.

The CCH Guide has the following comments to offer concerning this commonly recognized but rarely entrenched worker right:

> Until the mid and late 1970s, Canadian law confined the regulation of the workplace environment largely to the employers and the government. Workers were not perceived as having a useful role to play in the active discovery of workplace hazards, no as having any rights to know what

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was happening to them. As a result of pressure from organized labour and an evolving change of attitudes generally, Canadian law began to accord a greater role to workers.

One of the most valuable aspects of the legislative changes has been the accent on legal mechanisms used to inform workers of what is going on in the workplace. Legislators are now prepared to acknowledge in some tentative ways that, if the means of providing information to workers are established, workers may take advantage of them to change their own situations, or the workplace environment, for the better.

Without positive assistance from the law in promoting the flow of information, there is ample evidence that employers alone will not readily hand over potentially embarrassing or costly data. ...

The availability of existing information on occupational health and safety grows more crucial as technology and research expand. In the field of safety, researchers are discovering that accident causation can be a very complex inquiry. It can involve factors not commonly considered when existing workplaces and routines were designed such as workplace layout, noise and pay schemes. In health, we literally find ourselves in a laboratory. There are over 55,000 chemicals used in industry. Of those, there are exposure limits developed for only a small proportion. The experts who develop these criteria admit that standards are not developed for many substances simply because there is insufficient data. Even substances for which standards are developed are not necessarily safe, notwithstanding that the exposure criteria may be met.

With workers being, in effect, the subjects of multiple and relatively uncontrolled laboratory experiments, concerned workers really have no option but to become informed about the actual and potential hazards in the workplace and what is being done to control them.

Generally speaking, workers (usually through OHS committees or representatives) are entitled to obtain information by the effect of duties placed on employers (or others) to provide copies of government orders or inspection reports, as well as manufacturer specifications, safety codes, and related educational materials. Section 9(2) of Saskatchewan’s OHSAct puts a positive duty on management to forward all data relevant to OHS to the committee, whether or not requested by the committee.

In some jurisdictions, employers are expressly required to take positive steps to ensure workers are adequately trained to safely perform the job they have been hired to undertake. For example, the IH&S Regulations state:

**Instruction of Workers**

**Employer’s responsibility**

8.18 Every employer shall ensure the adequate direction and instruction of workers in the safe performance of their duties.
Supervisor’s responsibility

8.20 Every supervisor shall be responsible for the proper instruction of workers under his direction and control, and for ensuring that their work is performed without undue risk.

The WHMIS duties common across Canada require employers to develop worker education programs focusing on the hazardous materials covered by those rules. These and similar duties found in Canadian OHS statutes are the source of workers’ so called right to know. Unfortunately, this right does not appear to be as well developed in Canadian OHS legislation as the other OHS rights workers enjoy.

A unique and potentially useful provision that other jurisdictions could adopt which would further advance the workers’ right to know can be found in Ontario’s OHSAct:

Summary to be furnished

12. (1) For workplaces to which the Workers’ Compensation Act applies, the Workers’ Compensation Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers.

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally.
J\oint Worksite OHS Committees

Joint worksite OHS committees are often cited as an example (perhaps the primary example) of the worker’s right to participate.\(^6\) But committees are more than that; they are a clear application of what has been called the internal responsibility system (“IRS”). It is perhaps trite to observe that, to have meaningful IRS, there must be effective cooperation between the employer, workers and other parties at the worksite. For many decades, Canadian governments have determined that joint worksite committees are one way (perhaps the only way) to promote cooperation. At the least, they have been viewed as a vehicle to promote worker participation in an area that was traditionally viewed as the exclusive domain of management.

Every Canadian OHS statute and the *IH&S Regulations* address joint worksite committees, but, as can be seen in the comparison table, the legislation varies considerably in terms of the specific requirements.

Committees are mandatory requirements in nine of the 13 jurisdictions. Some jurisdictions link the requirement for a committee to certain industries or the existence of certain workplace hazards, but others have made committees a blanket requirement. In turn, some OHS statutes with blanket requirements have granted exemptions to certain employers or worksites. The number of workers that must be at a worksite (for a defined period of time) to trigger the mandatory requirement also varies, from a low of ten workers in most Saskatchewan workplaces to a high of 50 workers in certain BC industries.

In four jurisdictions committees are not a blanket requirement (e.g. Alberta, PEI, Newfoundland and the Northwest Territories). However, most of the jurisdictions including those four also give authority to a senior agency official, the Minister or the cabinet to require employers to establish committees.

A few OHS statutes recognize the committees that can be or have been established under collective agreements or by request of at least ten percent of workers.

Virtually all jurisdictions require that at least one half of the members of the committee be workers who do not exercise any managerial functions, and most prescribe a minimum number of members; some set out a maximum number. Interestingly, only New Brunswick and Nova Scotia simply let the workplace parties determine what should be the minimum and maximum number of committee members.

Alberta is the only jurisdiction which does not state that the worker representatives must be elected by other workers. Nine of the jurisdictions grant the option to the trade union(s) at the worksite to appoint the worker members.

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\(^6\) The worker’s “right to participate” would also include the right to be or be represented by a worker safety representative, and the right to participate as a partner with the employers in such OHS matters as training programs, workplace inspections and accident investigations.
About half the jurisdictions state that there must be co-chairs; one a worker, the other an employer representative or manager.

Most of the statutes also speak to how often a committee must meet. BC and four other jurisdictions set the frequency of meetings at once every month; four other jurisdictions allow meetings once every three months. However, Canadian OHS legislation is generally silent on such matters as voting procedures, terms of office, structure and organization of meetings, and the content of committee minutes.

Not surprisingly, the statutory provisions governing committees start to diverge significantly from each other when the legislation speaks to the rights and duties of committees. While a few jurisdictions set out a general power, most prescribe a series of rights and duties. For example, most jurisdictions speak to the right (or duty) of a committee to:

- inspect the worksite, identify hazards, and undertake related investigative activities, including testing equipment, etc.;
- participate in either the employer’s accident investigations (or any investigation) or those conducted by the investigating officer from the agency;
- obtain and study information on workplace hazards, claims and other accident statistics (from the compensation board), research and other data;
- advise the employer (and others), make recommendations and develop if not implement corrective action, including (most often) educational programs;
- either receive and investigate worker complaints about unsafe or unhealthy conditions, or become involved in investigating the circumstances of a “dangerous work” refusal situation, or both.

Only a few jurisdictions speak to the committee’s right to be provided with information about contraventions, orders and prosecutions affecting their worksite, and mostly that is a right implied from the employer’s duty to provide that sort of information to the committee. The CCH Guide offers the following comment on this issue:7

Organized labour generally takes the view that, for committees and representatives to do a proper job, they need to be given complete access to information, rigorous training, and sufficient authority to make at least some binding decisions for the workplace. They argue that effectiveness demands employee participation in the final decision-making process. On the other hand, management sometimes questions the amount of information that committees and representatives really need, and firmly holds the view that committees and representatives must perform advisory roles only.

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7 CCH Guide, volume 1, page 1803.
A few statutes have elaborated upon the employer’s general duty to cooperate with the committee and have added the requirement that (to quote from section 51(15) of Quebec’s legislation): the employer “put at the disposal of the health and safety committee the equipment, premises and clerical personnel necessary for the carrying out of its functions.”

Most statutes make it clear that workers must be paid at their regular rates of pay for work they perform as committee members. (A complementary provision is the “non-discriminatory action” requirements which we discuss in more detail below.) However, only three provinces have gone further and expressly stated in their OHS statutes that the employer must pay for certain educational programs the committee members take to help them perform their functions. Manitoba’s OHSAct states:

**Educational leave**

44.(1) Subject to subsection (2), every employer, except an employer on a construction project, at a workplace where there is a workplace safety and health committee or where there is a workplace safety and health representative shall allow each member of the committee, the safety and health representative, or their respective designates, to take educational leave for a period of two normal working days to a maximum of 16 hours each year without loss of pay or other benefits for the purposes of attending workplace safety and health training seminars, programs or courses of instruction offered by the Workplace Safety and Health Division or approved by the Workplace Safety and Health Committee, or provided in the current collective bargaining agreement respecting the workers at the workplace.

(2) The total number of safety and health committee members for whom the employer is required to provide educational leave in accordance with subsection (1) during any year is equal to the number of members constituting the normal size of the committee.

(3) On a construction project, each employer who employs five or more workers on that project shall institute a safety and health education program at the worksite at which all workers shall attend without loss of pay or other benefits for a period or periods equivalent to 30 minutes every two weeks, of which no period shall be less than 15 minutes.

While most committees are required to prepare and keep copies of their minutes, investigation reports and similar documents, only three provinces require through their legislation that committee minutes (and sometimes reports) be automatically sent to the enforcement agency (being BC, Quebec and New Brunswick). The employer is often required to post at the workplace the name of committee members, if not also the committee’s minutes.

Some jurisdictions have provisions which speak to the creation of occupational health services for workers. In Quebec, committees have been given the right to appoint the
physician who would be in charge of such services at their worksite and to later approve the health program that physician will develop.

Four jurisdictions have given some teeth to the committee’s recommendations by requiring that the employer respond to the committee’s recommendations in writing and, if the employer is not going to proceed as the committee recommended, explain why that recommendation is being rejected. Often this step is supplemented by the right of the committee to take the issue to the enforcement agency. For example, Nova Scotia’s OHSAct states:

34.(1) An employer who receives written recommendations from a committee or representative and a request in writing to respond to the recommendations, shall respond in writing to the committee or representative within twenty-one days, and the response shall
   (a) indicate acceptance of the recommendations; or
   (b) give reasons for the disagreement with any recommendations that the employer does not accept,

or, where it is not reasonably possible to provide a response before the expiry of the twenty-one day period, provide within that time a reasonable explanation for the delay, indicate to the committee or representative when the response will be forthcoming, and provide the response as soon as it is available.

Four jurisdictions have made it clear that the committee also has the option of approaching the enforcement agency if they are experiencing problems with convincing the employer to do (or not do) something. Most often, however, complaining to the agency is only permitted after the employer has rejected the committee’s recommendation. For example, section 34 of Nova Scotia’s OHSAct continues:

(2) Where the committee or representative makes a request pursuant to subsection (1) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, or representative, as the case may be, shall promptly report this fact to an officer.

Quebec’s OHS statute sets out these steps thus:

79. If a health and safety committee fails to reach an agreement on decisions it must make in accordance with paragraphs 1 to 4 of section 78, the workers’ representatives shall present their recommendations in writing to the employers’ representatives, who must reply in writing, explaining the points of disagreement. If the dispute continues, it may be submitted by any of the parties to the Commission, whose decision is executory.

Only Ontario has gone further and developed a mechanism which can effectively force an employer to take action. In brief, if two certified workers find that the dangerous circumstances exist at their workplace, they have the power to direct the employer to stop
the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing. The constructor or employer is required to immediately comply with that direction and ensure that compliance is effected in a way that does not endanger a person. The applicable provisions from Ontario’s OHSAct are as follows:

**Definition**
1(1) In this Act, ...
"certified member" means a committee member who is certified by the Agency under clause 16(1)(c);

**Agency functions**
16(1) The functions of the Agency are, and it has the power, ...
(c) to certify persons according to requirements established under this Act and standards developed by the Agency;

**Definition**
44(1) In sections 45 to 48, "dangerous circumstances" means a situation in which,
(a) a provision of this Act or the regulations is being contravened;
(b) the contravention poses a danger or a hazard to a worker; and
(c) the danger or hazard is such that any delay in controlling it may seriously endanger a worker.

(2) Sections 45 to 49 do not apply to,
(a) a workplace at which workers described in clause 43(2)(a), (b) or (c) are employed; or
(b) a workplace at which workers described in clause 43(2)(d) are employed if a work stoppage would directly endanger the life, health or safety of another person.

**Bilateral work stoppage**
45(1) A certified member who has reason to believe that dangerous circumstances exist at a workplace may request that a supervisor investigate the matter and the supervisor shall promptly do so in the presence of the certified member.

(2) The certified member may request that a second certified member representing the other workplace party investigate the matter if the first certified member has reason to believe that dangerous circumstances continue after the supervisor’s investigation and remedial actions, if any.

(3) The second certified member shall promptly investigate the matter in the presence of the first certified member.

(4) If both certified members find that the dangerous circumstances exist, the certified members may direct the constructor or employer to stop the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing.
(5) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

(6) If the certified members do not agree whether dangerous circumstances exist, either certified member may request that an inspector investigate the matter and the inspector shall do so and provide the certified members with a written decision.

(7) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified members or an inspector to cancel the direction.

(8) The certified members who issued a direction may jointly cancel it or an inspector may cancel it.

(9) In such circumstances as may be prescribed, a certified member who represents the constructor or employer shall designate a person to act under this section in his or her stead when the certified member is not available at the workplace.

Declaration against constructor, etc.

46(1) A certified member at a workplace or an inspector who has reason to believe that the procedure for stopping work set out in section 45 will not be sufficient to protect a constructor’s or employer’s workers at the workplace from serious risk to their health or safety may apply to the adjudicator for a declaration or recommendation described in subsection (5), or both.

(2) An applicant shall give written notice of an application to the constructor or employer and to a Director.

(3) The Minister is entitled to be a party to a proceeding before the adjudicator.

(4) The Minister may appoint an inspector to attempt to mediate a settlement of the issues between the applicant and the constructor or employer at any time after an application is made.

(5) If the adjudicator finds that the procedure for stopping work set out in section 45 will not be sufficient to protect the constructor’s or employer’s workers at the workplace from serious risk to their health or safety, the adjudicator,

   (a) may issue a declaration that the constructor or employer is subject to the procedure for stopping work set out in section 47 for the period specified; and

   (b) may recommend to the Minister that an inspector be assigned to oversee the health and safety practices of the constructor or employer at the workplace on a full-time or part-time basis for a specified period.

(6) In making a finding under subsection (5), the adjudicator shall determine, using the prescribed criteria, whether the constructor or employer has demonstrated a failure to protect the health and safety of workers and shall consider such other matters as may be prescribed.
(7) The decision of the adjudicator on an application is final.
(8) The employer shall reimburse the Treasurer of Ontario for the wages, benefits and expenses of an inspector assigned to the employer as recommended by the adjudicator.

Unilateral work stoppage

47(1) This section applies, and section 45 does not apply, to a constructor or an employer,
   (a) against whom the adjudicator has issued a declaration under section 46; or
   (b) who advises the committee at a workplace in writing that the constructor or employer adopts the procedures set out in this section respecting work stoppages.

(2) A certified member may direct the constructor or employer to stop specified work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing if the certified member finds that dangerous circumstances exist.

(3) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

(4) After complying with the direction, the constructor or employer shall promptly investigate the matter in the presence of the certified member.

(5) If the certified member and the constructor or employer do not agree whether dangerous circumstances exist, the constructor or employer or the certified member may request that an inspector investigate the matter and the inspector shall do so and provide them with a written decision.

(6) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified member or an inspector to cancel the direction.

(7) The certified member who made the direction or an inspector may cancel it.

Entitlement to investigate

48(1) A certified member who receives a complaint that dangerous circumstances exist is entitled to investigate the complaint.

(2) The time spent by a certified member in exercising powers and carrying out duties under this section and sections 45 and 47 shall be deemed to be work time for which the member’s employer shall pay the member at the regular or premium rate as may be proper.

Complaint re direction to stop work

49(1) A constructor, an employer, a worker at the workplace or a representative of a trade union that represents workers at the workplace may file a complaint with the adjudicator if he, she or it has reasonable grounds to believe that a certified member at the workplace recklessly or
in bad faith exercised or failed to exercise a power under section 45 or 47.

(2) A complaint must be filed not later than fourteen days after the event to which the complaint relates.

(3) The Minister is entitled to be a party to a proceeding before the adjudicator.

(4) The adjudicator shall make a decision respecting the complaint and may make such order as he or she considers appropriate in the circumstances including an order decertifying a certified member.

(5) The decision of the adjudicator is final.

SAFETY REPRESENTATIVES

Worker appointed safety representatives are not employed as widely in Canadian OHS statutes as are joint worksite committees. Indeed, the OHS legislation of BC, Alberta and the Northwest Territories are either silent or have not developed this form of worker participation in a meaningful fashion.

In those jurisdictions which do address safety representatives in their legislation, representatives are often identified as an alternative to establishing a joint work site committee. They are either a direct substitute to committees or have been the requirement for worksites smaller than or in less hazardous worksites than those which are required to have committees. However, as was the case for committees, they can also be established by order of a senior official, the minister or by regulation.

Like committees, most jurisdictions require representatives to be elected by their fellow workers or appointed by unions at the worksite. Depending on the jurisdiction, representatives share most or all the rights and duties assigned to committees, such as the ability to inspect a worksite, identify hazards, participate in employer or agency inspections, obtain and study information, advise the employer, investigate complaints and deal with work refusals. Where they are mandated, representatives also enjoy the same or similar protections in terms of being paid by the employer while performing their statutory functions. Also, only a few jurisdictions squarely address the issue of paid educational leave for representatives.

Finally, in terms of their powers, when a representative (like committees) submits recommendations to an employer in Saskatchewan, Ontario and Nova Scotia, the employer is required to respond to those recommendations in writing and explain what action will be taken and, if no action is to be taken, the reasons why. (See discussion on this point above, at Joint Worksite OHS Committees.)

In brief, safety representatives are either a substitute or a complement to joint work site committees in many Canadian worksites, and they share most of the same rights and duties.
assigned to committees. As a matter of practice, however, representatives may not be able to be as effective as committees because, generally speaking, they will not have the same time or resources as a committee, and may not have as much influence as a committee (which is, after all, composed of management representatives).

**RIGHT TO REFUSE**

For many years there has been debate as to whether workers should be required to refuse unsafe work assignments (i.e. have a duty to do so) or be granted the right to refuse such work.

The advocates for framing this OHS provision as a legal duty, point out that workers should hold some responsibility for their own safety and the safety of others, and that making this a duty is the best route to take. Employers hold similar duties, so why should not workers? They also suggest that a legal duty would make it easier for workers to tell their employers that they have no option but to refuse, thereby making it easier for workers to refuse unsafe work assignments than would be the case if they had the option to exercise a right to refuse.

On the other hand, advocates of the “rights” approach point out that the common law has long recognized a worker’s right to refuse. Given that, under that same common law, an employer could dismiss a worker who exercised this right, there was a great disincentive to it being exercised. Even if the matter could be taken to a grievance by those workers covered under a collective agreement, that decision rested with the worker’s bargaining agent.

Taking the matter to the courts was even more problematic, as the worker had to sue the employer, a process that could take many months if not years to be resolved. When the courts ruled in favour of the worker, they could only order financial restitution; they could not (or would not) order reinstatement or a clearing of the worker’s employment record.

To address these problems, starting in the mid to late 1970s, Canadian legislatures began to pass legislation which vested a statutory right to refuse with the worker, coupled with protection against reprisal. The right to refuse and the right to complain about unfair treatment when that right was exercised thus rested in the hands of the individual worker. (The legislatures also have found it necessary to place limits or conditions on this right, which we will discuss in more detail below.)

Commentators have also noted that, in those jurisdictions where workers have a legal duty to refuse unsafe work assignments, if workers fail to so refuse, they have technically broken the law and could face a fine or a term of imprisonment. Further, with a duty provision, workers could be subjected to employer discipline or discharge if they failed to
refuse. The duty requirement may also compromise or make irrelevant the subject requirement that the worker must “believe” that an imminent danger may exist.

In summary, it is fair to say that the different approaches to addressing unsafe work refusal situations in the Canadian OHS statutes reflects the fact that, ultimately, this is one area which requires a political as opposed to an bureaucratic or technical decision.

With the exception of BC and Alberta, every Canadian jurisdiction have granted workers the expressed right to refuse unsafe or imminently dangerous work assignments. In the two Western provinces, this OHS provision has been framed as a legal duty, the breach of which constitutes an offence under their applicable legislation.

The right to refuse is not absolute, certain qualifications are important to bear in mind as to how that right has been framed, such as requiring an employee to first have “reasonable grounds” to refuse and the existence of a risk of some degree of imminent and serious harm. As noted in the CCH Guide:  

An employee will be regarded as having had reasonable grounds to believe a situation unsafe if, objectively, such reasonable grounds exist, and provided that there is no reason to believe that the employee was acting out of ulterior motives. If the reasonable grounds are not objectively demonstrable, then the employee may show from his/her own subjective point of view why he/she personally had reasonable grounds.

In the last analysis, if the worker appears to be genuinely and seriously concerned about the health and safety risks of a particular situation, then that employee will be vindicated in using the right to refuse.

A few jurisdictions which have framed the work refusal provision as an expressed right have a later provision which makes it an offence for a worker to exercise his/her right in an improper manner. For example, Newfoundland’s OHS statute sets out this further worker duty:

48. A worker shall not take advantage of his or her right to refuse to work under section 45 without reasonable grounds.

Other jurisdictions have taken the approach of placing limits or describing situations when a worker may not refuse. For example, Nova Scotia’s OHS statute states:

43(9) An employee may not, pursuant to this Section, refuse to use or operate a machine or thing or to work in a place where
   (a) the refusal puts the life, health or safety of another person directly in danger; or
   (b) the danger referred to in subsection (1) is inherent in the work of the employee.

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8 CCH Guide, volume 1, page 1324.
The Yukon as addressed this issue as follows:

15(7) The employer may, within 10 days following the [officerÆs] final decision, dismiss, suspend or transfer a worker or impose a disciplinary measure, if the final decision indicates that the worker abused his right.

Regardless of whether the work refusal provisions are framed as a right or a duty, however, almost every jurisdiction follows the same general process once a worker refuses to perform unsafe work. That worker must report the refusal to the employer (or agent) as soon as practical and the employer must take action to address that refusal, usually to investigate and report to the refusing worker and the committee or representative, if one has been established.

Where they are required by legislation, committees and representatives can also become directly involved in investigating and attempting to resolve unsafe work refusal situations. In some OHS statutes, complaining to the committee or representative is simply the next step the worker can take if the employer does not respond to the worker’s satisfaction, or this is an option for an employer if it does not believe the worker’s continued refusal is justified.

In a similar way, most jurisdictions allow the employer or the worker to approach the agency to investigate the worker’s continued refusal or the employer’s decision that the refusal is not justified. When so approached, the agencies hold broad powers to investigate and order remedial action be taken.

Provisions start to vary significantly after these steps have been taken. While most allow an employer to assign the refusing worker and others affected by that refusal to alternative work and state that a worker cannot be financially penalized for refusing or continuing to refuse, only a few jurisdictions appear to have also addressed the impact one worker’s refusal may have on the wages of other workers. For example, section 28 of Quebec’s OHS statute states (in part):

Where the exercise of the right of refusal results in depriving of work other workers in the undertaking, these other workers are deemed to be at work for the duration of the work stoppage.

The jurisdiction’s also vary in terms of who a worker (or employer) may turn to if they disagree with an officer’s determination in a work refusal situation. Some divert such matters to their labour relation boards, others refer the appeals to their advisory councils, a few direct the appeals to the courts.

Finally, a few jurisdictions have recognized the rights of employers and unions to negotiate terms and conditions regarding work refusals (or in other OHS subject areas) which may provide greater protection to workers than those set out in the legislation. For example, the Canada Labour Code states:

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Where collective agreement exists
131. The Minister may, on the joint application of the parties to a collective agreement if the Minister is satisfied that the agreement contains provisions that are at least as effective as those under sections 128 to 130 [re: right to refuse, officer investigations, etc.] in protecting the employees to whom the agreement relates from danger to their safety or health, exclude the employees from the application of those sections for the period during which the agreement remains in force.

PROTECTION FROM REPRISALS
While the various Canadian OHS statute share a common framework in relation to employer reprisals, this is one area of OHS legislation where there are significant differences across the jurisdictions in terms of the details.

Every Canadian OHS statute but the Northwest Territories’ OHSAct make it an offence for the employer (and others) to discriminate against a worker who has exercised his right (or duty) to refuse. Often, this non-discriminatory action provision applies to workers complying with the Act or regulations generally, and not just in relation to the work refusal provisions. Some OHS statutes list specific things which a worker is protected. Newfoundland’s list is perhaps the longest and most detailed. Others frame this protection in very general terms, such as Ontario’s provision which reads:

50(1) No employer or person acting on behalf of an employer shall,
(a) dismiss or threaten to dismiss a worker;
(b) discipline or suspend or threaten to discipline or suspend a worker;
(c) impose any penalty upon a worker; or
(d) intimidate or coerce a worker,
because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

The other parties who are prohibited from discriminating against workers in some jurisdictions include trade unions. Indeed, it is the non-discriminatory action prohibitions that are often the only provision in any Canadian OHS statute which places an expressed and direct legal duty on trade unions.

While most jurisdictions do set out a prohibition re: discriminatory action, fewer then give the worker the expressed right to complain to an officer if that duty is breached to his/her disadvantage.
As with the right of employers and workers to appeal work refusal orders, a number of Canadian OHS statutes also give a party dissatisfied with an officer’s order the right to appeal that decision to some external agency or the courts.

Interestingly, only four provinces have found it necessary to set out a reverse onus provision. In general, a reverse onus provision states that as long as the worker can provide some evidence that he was discriminated against by the employer contrary to the general prohibition, the employer then has the burden to provide convincing evidence that the worker’s refusal (or activity) was not legitimate, or that the penalty the employer handed down was reasonable in the circumstances or justified for other reasons.

The CCH Guide suggests that these reverse onus provisions exist because the agency which will deal with worker complaints in this area will be the labour board, but access to this tribunal is not limited to only unionized workers in those jurisdictions.⁹ (In some jurisdictions, taking the complaint to the labour board or the OHS agency is an option; in others, it is not.)

For example, section 133(6) of the Canada Labour Code states:

A complaint made pursuant to subsection (1) in respect of an alleged contravention of paragraph 147(a) by an employer is itself evidence that that contravention actually occurred and, if any party to the complaint proceedings alleges that the contravention did not occur, the burden of proof thereof is on that party.

Section 42(2) of Manitoba’s OHS statute states:

Where, in a prosecution under this Act or in a proceeding before the Manitoba Labour Board, a worker establishes that he was subject to a discriminatory action, and where he establishes that he did conduct himself in a manner described in clause (1)(a), (b) or (c) [exercised a right, carried out a duty, testified at an inquiry or provided information or complained], there shall be a presumption that the discriminatory action was taken against the worker because that worker conducted himself in the manner described in either of those clauses; and the onus is on the employer, or union, as the case may be, to prove that the decision to take discriminatory action was not in any way influenced by that conduct on the part of the worker.

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⁹ CCH Guide, volume 1, page 1002.
APPARENT SHORT-COMINGS IN BC'S LEGISLATION

The drafting and enforcement problems of BC’s WCA act and the IH&S Regulations were discussed in issues papers #4 (Commentary on Specific Enforcement Problems with the IH&S Regulations...) and $5 (Analysis and Comparison of the OHS Enforcement Provisions of the WCA act). In this part, we consider the short-comings of BC’s OHS legislation from a content perspective, mostly based upon a comparison of BC’s legislation to the provisions that are commonly found in the majority of Canadian OHS statutes. The major short-comings we can identify are:

• Employer’s general duty
There is no general duty provision in either the WCA ct or the IH&S Regulations that can be directly attributable to an employer. As noted in the Introduction, section 2.04 purports to create a general duty, but the employer has not been expressly assigned that duty and, further, it does not squarely address the same issues that covered in other Canadian general duty provisions. Further, the further duties commonly found in other Canadian OHS statutes in a single section are spread out within the IH&S Regulations. In some cases, it is not clear that these other duties have been expressly set out in the Regulation.

• Supplier duties
As we discussed in issues paper #4, there are no provisions in the WCA ct or IH&S Regulations which assign specific duties to suppliers. A number of other Canadian jurisdictions have drafted such provisions and they could serve as useful models in BC, but none exist in this province’s primary OHS legislation.

• Duties of self-employed persons
As we also discussed in issues paper #4, BC’s primary OHS legislation is silent with respect to general duties to be imposed on self-employed persons. Again, the provisions from other provinces which have articulated such duties could be useful examples for BC.

• Cooperate with committees
There is no provision under the Act or Regulations that requires an employer to cooperate with joint worksite committees established at that employer’s place of business. As noted in the comparison table, certain provisions appear to suggest this duty, but they are not as clear as the duty provisions found in other Canadian OHS statutes.

• Cooperation with the Board
There is no provision under the Act or Regulations that requires employers (or others) to cooperate with the Board or its officers (e.g. during an inspection). However, as we note in issues paper #5 on enforcement, the WCA ct prohibits persons from obstructing or misleading an officer. It would seem useful that there be a general duty placed on all parties to cooperate with the Board and its officers, and to provide them with reasonable
assistance, such as granting access to all areas of a worksite, allowing officers to speak to workers, and to test or operate equipment, machinery, etc.\(^\text{10}\)

**Worker duties**
Workers have been assigned few duties under the *IH&S Regulations* or the *WCAct*. What duties they appear to shoulder must be implied from general prohibitions directed at all persons. Section 14 of the Regulation generally requires workers to use the personal protective equipment provided by their employer and the combined effect of sections 8.26 and 8.30 suggest that workers also have a duty to take reasonable care to protect themselves and their fellow workers.

That aside, it is clear that compared to every other Canadian OHS statute, BC workers have not been assigned the general duty to comply with the Act and regulations, and with the direction set out in officer’s orders and related directives. (See previous discussions about the short-comings of section 2.04.) Further, there is no expressed duty for BC workers to cooperate with their employer, joint worksite committees, safety representatives or with Board officers in the resolution of workplace hazards.

**Worker right to know**
There is no provision in BC legislation like Quebec’s expressed right to know which could serve to complement and provide a focus for the employer’s general duties to provide workers with information, training, etc. This right could be further enhanced by requiring the Board itself to provide workers with detailed statistical data about the injury and illness claims statistic’s applicable to their worksite, much as Ontario requires of its compensation board.

**Rights and duties of OHS Committees**
While in the main the rights and duties assigned to OHS committees under the *IH&S Regulations* parallel those found in other Canadian OHS legislation, we could find no expressed right in BC’s legislation for committees to be provided with or undertake their own research to obtain information concerning workplace hazards. Further, the employer has not been required to provide equipment, premises and clerical support to help the committee carry out its mandated functions.

The *WCAct* and the *IH&S Regulations* are also silent on the issue of the employer’s duty to pay for educational leave that worker members may require so as to be able to perform their functions. Indeed, we understand that this issue was one which resulted in the failure to finalizing Part 3 of the proposed, new *OHS Regulations*.

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\(^{10}\) The CCH Guide at volume 1, page 803, notes that this duty to cooperate has been generalized in some jurisdictions to apply to all persons; i.e. “the employer shall cooperate with all persons acting in compliance with this Act and the regulations”. This expansion would mean that the employer would have to cooperate with workers who were refusing unsafe work assignments, with other government agencies, etc.
A final short-coming of BC’s legislation is the absence of any provision which gives the committee some leverage. There is no provision which requires an employer to respond in writing to a committee’s recommendation; nor is there any provision which can otherwise force the employer to accept and implement the committee’s “recommendations”, such as exists in Ontario’s legislation.

- **Safety Representatives - an alternative to committees**
  
  There is no separate provision or set of provisions in the Act or Regulations which establishes an alternative to joint work site committees - worker OHS representatives. The *IH&S Regulations* imply that representatives may join an officer during a worksite inspection as an alternative to a member of a joint worksite committee, but that provision does not go further which require that representatives be appointed (either as alternatives to committees or to complement their functions).

- **Worker refusal of unsafe work assignments**
  
  Setting aside the issue of whether this should be a duty or a right, BC’s OHS legislation is deficient in three fundamental ways:
  
  - there is no provision which requires the employer to advise other workers who may be assigned the work which a worker has already refused to perform of the fact of that refusal and the refusing worker’s reasons;
  - while there are provisions covering the refusing workers right to be assigned alternative work, continued to be paid, etc., the legislation is silent as to whether this right extends to workers who may have to halt work because of another’s refusal;
  - there is no expressed right for a refusing worker who is not satisfied with a Board officer’s determination to appeal that to some other tribunal.\(^\text{11}\)

- **Employer reprisals prohibited in two areas**
  
  Under the *IH&S Regulation* the employer is only prohibited from disciplining a worker in two specific instances. Section 8.24(6) of the Regulation states:

  > No worker shall be subject to disciplinary action because he has acted in compliance with this regulation [unsafe work refusal] or an order made by an officer of the Board.

  The scope of activities which an employer is prohibited from disciplining a worker for doing is either very broadly stated or a reasonably exhaustive list of prohibitions is set out in other Canadian OHS statutes. Arguably, BC’s two narrow situations do not provide sufficient protection to workers.

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\(^{11}\) As we note in issues paper #7, the right to appeal an officer’s order to the Appeal Division granted to workers under section 2.12 of the *IH&S Regulation* is probably *ultra vires* the *WCAAct*.
• Subsequent steps if reprisals taken
Most other Canadian OHS statutes provide a worker who believes he has been unfairly treated by the employer to file a complaint with the enforcement agency. This usually triggers a duty on the agency to investigate and resolve the matter, including the powers (in some jurisdictions) to order reinstatement, financial restitution, clearing of work records and related orders. An employer who disagrees with an order (or a worker who feels an order should have been made), can appeal that decision to a separate tribunal. In some jurisdictions, the appeal goes to an independent arbitrator (or a labour relations board if the worker can access that separate agency). Finally, as noted above, a few OHS statutes put a reverse onus on employers to prove that they did not discriminate against the aggrieved worker or that their actions were justified.

There are no expressed provisions in BC’s primary OHS legislation which addresses these subsequent steps. Some may be permitted within the more general provisions of the WCAct\(^{12}\) or Regulations, but compared to almost every other Canadian jurisdiction, BC’s legislation is surprisingly silent in this area. The CCH Guide comments:\(^{13}\)

> The legislation in British Columbia does not outline a specific procedure for worker complaints. Claims of unjust reprisal must therefore be addressed through judicial remedy.

\(^{12}\) Such as the power of Board officers to issue orders; see section 74 - 75 of the Act.
\(^{13}\) CCH Guide, volume 1, page 1006.
COMMENTARY FROM THE SUBMISSIONS

We have undertaken a sonar search of the Commission’s submission data base\(^\text{14}\) and have read certain written submissions in full.\(^\text{15}\) From those sources, we offer the following comments. These comments do not necessarily reflect a majority view, unless otherwise noted, but they do indicate the nature of the concerns that have been advanced regarding the subject of fundamental rights and duties in OHS legislation.

There is general acknowledgment of and agreement with what are often characterized as the three fundamental worker rights (namely, the right to know, the right to participate, and the right to refuse to engage in unsafe work). Also, there does not appear to be any strong opposition to the suggestion that such rights should be accorded recognition in statute rather than merely in regulation.

Similarly, when both the subject of worker duties and the subject of employer duties are raised in submissions, the suggestion that such duties should be collected together and accorded statutory recognition is not controversial.

With both rights and duties, however, the “devil is in the detail”. By this we mean that the divergence amongst stakeholders’ submissions has not so much to do with the concept of statutory recognition of commonly acknowledged rights and duties as it does with how such rights and duties should be expressed.

Further, unanimity does not exist as to all rights and duties. For example, while employers and unions might agree that workers have a duty to take care to protect their personal health and safety as well as that of other workers or other persons at worksites, unions likely would not readily agree with an employer suggestion that properly trained and supervised workers should be so responsible for their own actions that sanctions (orders, fines, etc.) should be levied upon them (and not necessarily employers) for violating those duties. Similarly, while employers and unions might agree that a fundamental duty of employers is ensure the safety and health of workers at work, employers likely would not readily agree with the suggestion that such a duty should be a blanket (or absolute) one and not be modified by “reasonable practicality”.

Given these differences, it is perhaps not surprising that the Board was unable to arrange a consensus amongst the parties who participated during its lengthy regulation review process, in particular with respect to Part 3.

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\(^{14}\) The searches were: (a) various combinations of “worker/employee”, “employer”, “right/power”, “duty/obligation/responsibility” and the plural of same; (b) the phrases “right to know”, “right to participate” and “right to refuse”; (c) the combinations of “health/safety” and “committee” or “representative”.

\(^{15}\) The submissions read in full were the submission of the B.C. Federation of Labour (dated July 3, 1997), the submission of the Compensation Employees’ Union (dated August 14, 1997) and the submission of the Employers Co-ordinating Group (dated August 15, 1997).
SUGGESTIONS
In light of the above and by way of summary, we would suggest that the Commission consider the following proposals. We offer these suggestions on the understanding that the Commission has already decided that a new OHSAct should be established and that it would, as a minimum, contain the same or similar rights and duty provisions found in the current WCAct and the IH&S Regulation. Therefore, if a new OHSAct was not to be drafted, these proposals would be amendments to the WCAct or the IH&S Regulations.

We are also sensitive to the fact that our suggestions imply that the Commission is prepared to make certain policy or political decisions which it may not be prepared to make (yet), or that it may conclude should be decisions that the Legislature or Cabinet alone should make.

Before we set out our suggestions, we would note that there will be a need to review the final draft of the proposed, new OHS Regulation to ascertain if that legislation has addressed some or all of the short-comings we have noted above. On the assumption the new regulations will not address the above noted deficiencies, we would suggest that Commission should be prepared to consider recommending:

General duties: That employers, suppliers, self-employed persons and workers be assigned general duties appropriate to their ability to influence or control workplace hazards. Any of the further or more specific general duties found within the IH&S Regulation should be consolidated into these general duty provisions.

Employer duty to cooperate: That a new duty be established that clearly requires the employer (or its agents) to cooperate with joint worksite committees, in particular the employer be required to provide equipment, premises and clerical support to help the committee carry out its mandated functions.

General duty to cooperate with the Board: To complement the prohibition against obstructing an officer, that a new duty be established for each of the worksite parties requiring that they cooperate with and provide assistance when so requested by a Board officer.

Worker duty to comply with legislation: That workers be assigned the duty to comply with the Act and regulations generally, and with directions set out in an officer’s order which apply to them.

Worker duty to cooperate with employers et al: That workers be expressly required to cooperate with their employers, joint work site committees, representatives and Board officers in the identification and resolution of workplace hazards.

Worker right to know: That workers be granted an expressed right to know (perhaps similar to that found in Quebec’s OHS statute) to complement the duty placed on employers to provide workers with information, training, supervision, etc.
**Board to provide workers with information:** That consideration be given to requiring the Board to provide workers with detailed statistical data and other information about injuries and illnesses occurring at their worksites (perhaps similar to that found in Ontario’s OHSAct).

**Review and additions to committee powers:** That a thorough review of the rights and duties assigned to committees be undertaken to ensure those powers are sufficient to allow committees to fully participate in the identification and resolution of workplace hazards. Consideration also should be given to enshrining the requirement that employers pay for some prescribed amount of training for committee members so they can, in turn, be effective.

**Employer duty to respond to committee:** To provide some teeth to a committee’s recommendation, that the employer be required to respond to the committee’s advice and, if that advice is to be rejected, provide the committee with an explanation. Further, should the committee disagree with that response, it be given the clear authority to approach the Board to help resolve that difference.

**Certified workers power to halt unsafe work:** That consideration be given to provide certified workers with the right to halt unsafe work in defined circumstances, as has been set out in Ontario’s OHSAct. In particular, that further research be undertaken to ascertain if those provisions have had the desired effect and what changes to them Ontario may be proposing.

**Safety representatives:** That consideration be given to requiring the employer to establish safety representatives at certain worksites, either as an alternative to committees or to complement their activities. The criteria for this provision should reflect the criteria set out for mandating committees.

**A separate worker right/duty to refuse:** That consideration be given to frame the worker’s unsafe work refusal provision as a right and not as a duty, but at the least become a separate provision focusing on worker refusals.

**Consequences of a work refusal:** Whether framed as a right or a duty, the following new provisions be incorporated into the unsafe work refusal provision:

- the employer must advise other workers who may be assigned the work which a worker has already refused to perform, and such advice must include the name of the worker who refused and his/her reasons for so refusing;
- workers who have been adversely affected by another worker’s refusal not be penalized as a result;
- if a worker is not satisfied with an officer’s determination of the appropriateness of that worker’s refusal, the work be granted a right to appeal that determination to an external tribunal (possibly the Appeal Division or the Labour Relations Board).
Expand protection for workers: That the current prohibition on employers (and others) re: inappropriate discipline of workers be expanded to include worker complaints with more than just the unsafe work refusal provisions or an officer’s order.

Workers right to complain to Board: That there be an clear mechanism provided for workers to file a complaint with the Board if they believe they have been unfairly treated by their employer while refusing unsafe work assignments or generally complying with any provision of the Act or regulations.
## Appendix “A” - COMPARISON OF EXPRESSED RIGHTS AND DUTIES WITHIN CANADIAN OHS STATUTES

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<td>2(1)(a)</td>
<td>3(a) &amp; (c)</td>
<td>4(1)(a), 4(2)(a) &amp; (d), 43(9)</td>
<td>25(1), 25(2)(b)</td>
<td>51(1), (3) &amp; (8)</td>
<td>9(1)(a), 9(2)(a)</td>
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<td>13, 14</td>
<td>44(3)</td>
<td>25(2)(j)</td>
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<td>(b) hazards, warn re: immediate harm, provide information, post notices, WHMIS, etc.</td>
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Comparison of Expressed Rights and Duties within Canadian OHS Statutes - Appendix A - pg 2

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### Comparison of Expressed Rights and Duties within Canadian OHS Statutes - Appendix A - pg 3

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<td>23(1)(a), 29(1)(a)</td>
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<td>14(d) &amp; (e), 15(d) &amp; (e)</td>
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<td>Duty to coordinate actions of others or take actions under his control to protect workers</td>
<td>2(5)</td>
<td>6(a), 7(a), 13(5)</td>
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<td>Duty to inform workers re: hazards, warn re: immediate harm, provide information, etc.</td>
<td>24, 24.1</td>
<td>6(b), 9(3), 8(4)</td>
<td>8(9), 9(29), 11(1), 307, 41(1)</td>
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<td>Duty to establish an OHS program, policy, etc. (generally or in relation to specific hazards)</td>
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<td>Duty to report to agency a serious injury, illness or accident, investigate and take remedial action</td>
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<td>51(1), 53</td>
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<td>Duty to notify agency re: new projects, potentially hazardous substances, etc.</td>
<td>10.1</td>
<td>23(2), 29(3) &amp; 34(1)</td>
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<td>197, 220</td>
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<td><strong>Supplier duties</strong></td>
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<td>General duty to comply with Act and regulations, and orders, or ensure equipment, etc. complies</td>
<td>2(4)</td>
<td>8(a) &amp; (b)</td>
<td>31(1)(b)</td>
<td>63</td>
<td>13(a)(ii)</td>
<td>16(a) &amp; (b)</td>
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<td>Duty to supply safe equipment, substances or materials</td>
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<td>8(a)</td>
<td>31(1)(a)</td>
<td>63</td>
<td>13(a)(i)</td>
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<td>11(a)</td>
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<td>Duty to supply information required re: safe use of equipment, substances, etc.</td>
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<td>9(5)</td>
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<td>Duty to ensure biological, chemical or physical agent is labelled (WHMIS)</td>
<td>24?</td>
<td>8(a)</td>
<td>41(1)</td>
<td>64, 67</td>
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Comparison of Expressed Rights and Duties within Canadian OHS Statutes - Appendix A - pg 4

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<td>General duty to comply with the Act and its regulations, and orders or duty to comply with specific provisions</td>
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<td>15(c)</td>
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<td>Duty to take reasonable care, to protect self and others, and related</td>
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<td>Duty to cooperate with (agency and) others</td>
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<td>2.16(3)?</td>
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<td>Duty to take reasonable care, to protect self and others, and related</td>
<td>2.04?, 8.26, 8.30</td>
<td>2(2)(a)</td>
<td>4(a) &amp; (b)</td>
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<td>28(2)</td>
<td>49(1) - (3)</td>
<td>12(b)</td>
<td>17(1)(a)</td>
<td>14(1)(b), 14(2)</td>
<td>6, 8?</td>
<td>9(a), 11</td>
<td>126(1)(c)</td>
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<td>Duty to use personal protective equipment</td>
<td>Sectn.14 generally</td>
<td>5(b)</td>
<td>21(1)(b)</td>
<td>12(d)</td>
<td>17(1)(c)</td>
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<td>126(1)(a)</td>
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<td>Duty to follow prescribed safety procedures, employer instructions or related</td>
<td>12.03(4), 8.22?</td>
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<td>Duty to inform employer, to report dangers, accidents, beaches of the Act or regulations, and related</td>
<td>Act.53?, 8.10</td>
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<td>Duty to cooperate with the employer, committee, representative or others</td>
<td>2(2)(b)</td>
<td>5(c), (d) &amp; (f)</td>
<td>8(9)</td>
<td>49(5) &amp; (6)</td>
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<td>7(a) &amp; (b)</td>
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<td>Duty to cooperate with the regulatory authority³</td>
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<td>4(c)</td>
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<td>12(f)</td>
<td>17(1)(e)</td>
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## Comparison of Expressed Rights and Duties within Canadian OHS Statutes - Appendix A - pg 5

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**Worker right to a “safe” workplace (to healthful and safe working conditions)**

9

**Worker right to know and to receive appropriate instruction, training and supervision**

10(1)

### Joint work site committees

Criteria to establish: (a) number of workers at worksite (specify trigger number)\(^4\)

<table>
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<tr>
<th>4.02(1) &amp; (5)(g) - 20/50w</th>
<th>15(1) - 10w</th>
<th>40(1) - 20w</th>
<th>9(2) - 20w</th>
<th>204 - 25w (^5)</th>
<th>14(1) - 20w</th>
<th>29(1) - 20w</th>
<th>12(3) - 20w</th>
<th>135(1) - 20W</th>
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(b) designated by the director, Minister or a regulation

4.04(2) 25(1)

40(1)(d) 9(2) & 90

69 29(2) 18(1) 37 12(4) 71

(c) as set out under a collective agreement or at request of 10% of workers

9(4) 69, 82 32 18(1) 12(13) 135(4)

Exemptions to establishing committees (general or specific)

4.04(1)(b) 25(3) 15(3) 9(7) 71 14(3) 30(2) 18(3) 38(2) 12(6) 71 135(4)

Equal composition (at least half members must be workers, not managers)

4.04(1)(b) 25(3) 15(3) 9(7) 71 14(3) 30(2) 18(3) 38(2) 12(6) 71 135(4)

Minimum/maximum numbers of members (a) as specified in Act (#/# members)

4.04(1)(a) - 4/7m 15(2) - 2/12m 40(4) - 4/12m 9(6) - 2/4/7m 70 - as per regulations 38(1) - 2/12m 12(6) - 4/12m 135(1) 2/7m

(b) as agreed to by the parties

14(2) 30(1)

Worker members to be (a) elected by fellow workers

4.04(1)(b) 15(4)(a) 40(4) 9(8) 72 14(3) 30(3) 18(3) 38(3) 12(6) 72(4) 135(1)(b)

(b) appointed by union (in accordance with its constitution)

14(4)(b), (c) 40(4) 9(8) 72, 84 14(3) 30(3) 38(3) 12(6) 135(1)(b)
## Comparison of Expressed Rights and Duties within Canadian OHS Statutes - Appendix A - pg 6

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<td>Frequency of committee meetings (every # months)</td>
<td>4.06(2)(d) &amp; (e)</td>
<td>9(33) - 3mths</td>
<td>74 - 3mths</td>
<td>14(6) - 1mth</td>
<td>30(4) - 1mth</td>
<td>40 - 3mths</td>
<td>12(1) - 1mth</td>
<td>7(5) - 3mths</td>
<td>135(8) - 1mth</td>
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<td>Co-chair (worker and employer reps) of committee</td>
<td>4.04(1)(c)</td>
<td>9(11)</td>
<td>14(5)</td>
<td>30(8) &amp; (9)</td>
<td>38(6)</td>
<td>12(7)</td>
<td>7(a)?</td>
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<td>Rights (or duties) of committee (a) described in general terms</td>
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<td>(b) to inspect workplace and identify hazards, and related</td>
<td>4.06(1)(c) &amp; (i)</td>
<td>25(1)(b), (c)</td>
<td>19(1) &amp; (f)</td>
<td>40(7)(b)</td>
<td>9(18)(a), (b), (25) - (28) &amp; (31), (11)(3)</td>
<td>78(6)</td>
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<td>31(1)(a) &amp; (d)</td>
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<td>39(a)</td>
<td>12(9)(a) &amp; (f)</td>
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<td>(c) to participate during employer accident investigations, tests and related activities</td>
<td>4.06(2)(a), 8.08(4)</td>
<td>9(18)(a)</td>
<td>78(6), (9)</td>
<td>15(b) &amp; (i)</td>
<td>31(1)(b), (42)(1)</td>
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<td>(d) to participate in agency inspections and related activities</td>
<td>Act.72(1), 6.04(2)</td>
<td>40(7)(e)</td>
<td>15(j), 29</td>
<td>31(1)(d)</td>
<td>18(2)(g) &amp; (b)</td>
<td>39(f)?</td>
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<td>(e) to obtain or study information on workplace hazards, including research or test data</td>
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<td>(f) to be advised of contraventions, orders, and related (mostly implied)</td>
<td>22, 34</td>
<td>32(a)</td>
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<td>35(1)</td>
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<td>(g) to advise employer, make recommendations or develop corrective actions (including educational programs)</td>
<td>4.06(1), (2)(a) &amp; (c)</td>
<td>25(1)(b) &amp; (c)</td>
<td>19(c)</td>
<td>40(7)(c) &amp; (f)</td>
<td>9(18)(b) &amp; (c)</td>
<td>78(3) - (5)</td>
<td>15(a), (c) &amp; (d)</td>
<td>31(1)(a), (e) &amp; (f)</td>
<td>18(6)(a), (c) &amp; (d)</td>
<td>39(b) &amp; (d)</td>
<td>12(9)(c) &amp; (d)</td>
<td>135(6)(d) &amp; (f)</td>
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<td>(h) to assist in resolving work refusals [see below], investigate worker complaints and related</td>
<td>8.24(4)</td>
<td>19(e) &amp; (f)</td>
<td>40(7)(a)</td>
<td>9(30)</td>
<td>78(10)</td>
<td>15(e)</td>
<td>31(1)(c)</td>
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### Comparison of Expressed Rights and Duties within Canadian OHS Statutes - Appendix A - pg 7

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<td>(i) to maintain records, prepare minutes, and related administrative tasks</td>
<td>4.06(2)(e)</td>
<td>19(d)</td>
<td>40(7)(g)</td>
<td>9(22)</td>
<td>78(7)</td>
<td>14(8), 15(f)</td>
<td>31(1)(g)</td>
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<td>135(6) (b) &amp; (h), 135(7)</td>
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<td>(k) to perform other duties assigned by director, Minister or regulation, or by agreement between parties</td>
<td>25(1)(d)</td>
<td>19(g)</td>
<td>40(7)(b)</td>
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<td>Worker to be paid, retain benefits, etc. while doing committee business</td>
<td>Act.72(8)</td>
<td>25(5), (6)</td>
<td>9(34) &amp; (35)</td>
<td>74</td>
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<td>12(1) &amp; (12.1), 37(4)</td>
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<td>135) &amp; (8)</td>
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<td>Employer to pay for educational leave for worker members (specify duration)</td>
<td>44(1) - 2d to 18hrs</td>
<td>14(11)</td>
<td>13.1</td>
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<td>Posting of member names, minutes, etc. at worksite</td>
<td>17(1)</td>
<td>40(5)</td>
<td>9(32)</td>
<td>37</td>
<td>18(5) &amp; (7)</td>
<td>38(7)</td>
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<td>Employer to respond to recommendations or provide reasons why it is not resolving problem</td>
<td>22(2)</td>
<td>9(20) &amp; (21)</td>
<td>79</td>
<td>34(1)</td>
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<td>Agency may be involved in resolving outstanding problems</td>
<td>22(3)</td>
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<td>Committee to file minutes and reports with agency</td>
<td>4.06(2)(e)</td>
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### Worker safety representatives

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<tr>
<th>Criteria to establish: (a) number of workers at worksite (specify number)</th>
<th>16(1) - less than10w</th>
<th>41(1)(a) - 10w or more</th>
<th>8(1) - 5w or more</th>
<th>209</th>
<th>17(1) - 5 to 19w</th>
<th>12(8) ? - 20w</th>
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<td>(b) designated by a director, Minister or a regulation</td>
<td>41(1)(e)</td>
<td>8(2)</td>
<td>87?</td>
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<td>(c) as an expressed alternative to mandatory committees</td>
<td>41(1)(b)</td>
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<td>33(1) &amp; (2) - (5+)w</td>
<td>19(1)</td>
<td>41</td>
<td>13(1)</td>
<td>136(1) - 5(+)w</td>
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<td>(d) as set out under a collective agreement or at request of 10% of workers</td>
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<td>41(2)</td>
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<td>33(1) &amp; (2)</td>
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<td>Exemptions to establishing representatives</td>
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<td>136(2)</td>
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<td>Representatives to be (a) elected by fellow workers</td>
<td>16(2)(a)</td>
<td>41(2)</td>
<td>8(5)</td>
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<td>33(1) &amp; (2)</td>
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<td>(b) appointed by union (in accordance with its constitution)</td>
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<td>Rights (or duties) of representative (a) described in general terms (b)</td>
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<td>(b) to inspect workplace and identify hazards</td>
<td>20(a) &amp; (d)</td>
<td>41(5)</td>
<td>8(6) - (8)</td>
<td>90(1) - (3), (9)</td>
<td>18</td>
<td>33(6)(a) &amp; (b)</td>
<td>19(4)</td>
<td>44(1)</td>
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<td>12(8.1)(a) , 13(4)</td>
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<td>(c) to participate during employer accident investigations, consult with employer, etc.</td>
<td>8.08(4)?</td>
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<td>18</td>
<td>33(6)(d)</td>
<td>19(4) &amp; (5)</td>
<td>44(2)</td>
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<td>12(8.1)(b) , 13(4)</td>
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<td>(d) to participate in agency inspections, and related activities</td>
<td>Act.72(1)?</td>
<td>41(5)</td>
<td>90(6)</td>
<td>18, 29</td>
<td>33(6)(d)</td>
<td>19(4)</td>
<td>44(1)?</td>
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<td>12(8.1)(c) , 13(7)</td>
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<td>(e) to obtain or study information on workplace hazards, including research or test data</td>
<td>20(c)</td>
<td>41(5)</td>
<td>8(11)</td>
<td>90(2)</td>
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<td>12(8.1)(e) , 13(4)</td>
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<td>(f) to be advised of contraventions, orders, etc (usually implied)</td>
<td>22, 34</td>
<td>32(b)</td>
<td>?</td>
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<td>35(1)</td>
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<tr>
<td>(g) to advise employer, make recommendations or develop corrective actions (including educational programs)</td>
<td>41(5)</td>
<td>90(4)</td>
<td>18(2)</td>
<td>33(6)(e) &amp; (f)</td>
<td>19(4)</td>
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<td>136(4)(a)</td>
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<td>(h) to assist re: work refusal situations [see below], investigate complaints re: unsafe situations, etc.</td>
<td>20(d)?</td>
<td>41(5)</td>
<td>8(10)</td>
<td>90(5) &amp; (7)</td>
<td>18</td>
<td>33(6)(c)</td>
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<td>136(4)(a)</td>
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<td>(i) to maintain records, prepare minutes, and related tasks</td>
<td>41(5)</td>
<td>19(4)</td>
<td>44(1)</td>
<td>13(9)</td>
<td>136(4)(d)</td>
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<td>(k) to perform other duties assigned by director, Minister or regulation, or by mutual agreement</td>
<td>20(e)</td>
<td>41(5)</td>
<td>8(3)</td>
<td>33(6)(g)</td>
<td>19(4)</td>
<td>44(1)</td>
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<td>Worker representative to be paid, retain benefits, etc. while doing representative’s business</td>
<td>Act.72(8)?</td>
<td>8(15)</td>
<td>92, 96</td>
<td>33(5)</td>
<td>13(8) &amp; (8.1), 37(4)</td>
<td>136(5)</td>
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<td>Employer to pay for educational leave for worker representative (specify duration)</td>
<td>44(1) - 2d to 18hrs</td>
<td>91</td>
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<td>Posting of representative’s name, minutes, etc.</td>
<td>17(2)</td>
<td>41(3)</td>
<td>17(4)</td>
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<td>19(3)</td>
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<td>Employer to respond to recommendations or provide reasons why it is not resolving problem</td>
<td>22(2)</td>
<td>8(12)</td>
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<td>Agency may be called in to help resolve problems</td>
<td>21(3)</td>
<td>18(3)</td>
<td>34(2)</td>
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**Worker right to refuse and related**

| Worker has (a) right to refuse unsafe work | 23 | 43(1) | 43(3) | 12 | 15, 21(1) | 43(1) | 20(1) | 45(1) | 1491) & (3) | 13(2) | 128(1) & (8) |
| Worker has (b) duty to refuse unsafe work | 8.24(1) | 27(1) | 87 |
| Unsafe work, imminent danger, etc. defined | 27(2) | 13(1) | 122(1) |
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<td>Exclusions or limitations on right or duty (other than by definition)</td>
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<td>Duty of worker to inform employer (or agent) when refusal</td>
<td>8.24(2)</td>
<td>27(3)</td>
<td>23(a)?</td>
<td>43(2)</td>
<td>43(4)</td>
<td>15</td>
<td>20(1)</td>
<td>43(2)(a)</td>
<td>20(2)</td>
<td>46</td>
<td>14(2)</td>
<td>13(3)</td>
<td>128(6)</td>
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<td>Duty of employer (or agent) to investigate and document refusal, take appropriate action, etc.</td>
<td>8.24(3)</td>
<td>27(4)</td>
<td>23(a)?</td>
<td>43(3)</td>
<td>43(4)</td>
<td>16</td>
<td>20(1) &amp; (2)</td>
<td>43(1)(a)</td>
<td>20(2) &amp; (3)</td>
<td>45(1)(a)</td>
<td>14(2)</td>
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<td>128(7)</td>
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<td>Committee or representative may become involved in resolving refusal</td>
<td>8.24(4)</td>
<td>23(b)</td>
<td>43(4)</td>
<td>16, 29</td>
<td>20(4) - (7)</td>
<td>43(1)(b)</td>
<td>20(5) - (7)</td>
<td>45(1)(b)</td>
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<td>13(3) &amp; (4)</td>
<td>128(7)</td>
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<td>Agency involvement if refusal not resolved, investigating complaints, writing orders, advising the parties, etc.</td>
<td>8.24(5)</td>
<td>27(7) &amp; (8)</td>
<td>24, 25</td>
<td>43(5) - (7)</td>
<td>43(6) - (9)</td>
<td>18 &amp; 19</td>
<td>20(8) - (12)</td>
<td>43(1)(c)</td>
<td>20(5), (9) - (12)</td>
<td>45(1)(c),</td>
<td>14(4), 15, 16</td>
<td>13(4) &amp; (5)</td>
<td>129(1)</td>
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<td>Other workers to be advised of refusal if asked to perform same work</td>
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<td>Refusing worker assigned alternative work, remain at work, continued to be paid, receive benefits, etc. (if refusal is not frivolous)</td>
<td>8.24(7)</td>
<td>27(4)</td>
<td>36?</td>
<td>43(5) &amp; (10)</td>
<td>25 &amp; 29</td>
<td>22(1), 23</td>
<td>43(4) - (8)</td>
<td>20(13), 21(3) &amp; (5)</td>
<td>45(2) - (5)</td>
<td>15(4) &amp; (6)</td>
<td>7(7) &amp; (8)</td>
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<td>Right of other workers affected by refusal to be paid during that refusal</td>
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<td>Right of refusing worker to appeal agency/officer’s order or committee/reps’ directive to an external tribunal</td>
<td>27(9) - (13)</td>
<td>49(1)</td>
<td>43(8)</td>
<td>20</td>
<td>43(2)(c)</td>
<td>11</td>
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<td>129(5), 130</td>
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<td>Duty of employer or other persons not to take discriminatory action against workers re: work refusal, work stoppages or generally</td>
<td>8.24(6)</td>
<td>25(6), 28</td>
<td>27</td>
<td>42(1)</td>
<td>50(1)</td>
<td>30, 31, 80, 81, 97</td>
<td>24</td>
<td>54(2)</td>
<td>21(1), 22(1)</td>
<td>49, 50</td>
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<td>Right of worker to complain to agency if employer takes discriminatory action</td>
<td>28.1(1)</td>
<td>28(1)</td>
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<td>227</td>
<td>25(1)</td>
<td>46(1)</td>
<td>51(c)</td>
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<td>Duty of agency to investigate complaint of discriminatory action or related</td>
<td>28.1(2)</td>
<td>45(2)</td>
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<td>50(3) - (6)</td>
<td>228</td>
<td>25(2)</td>
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<td>Power of agency to resolve complaint, order remuneration, reinstatement, etc.</td>
<td>28.1(2)</td>
<td>28(2)</td>
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<td>Right of employer/worker to appeal agency/officer’s order to external tribunal or court</td>
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<td>26(5)</td>
<td>67(1)</td>
<td>12, 23</td>
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<td>Reverse onus on employer (or others) to provide discriminatn was for good and sufficient reason</td>
<td>28(4)</td>
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**KEY:**

* references in the BC column are to the sections of the IH&S Regulation, unless prefaced with “Act” which denotes the WCAct.

“?” means that it is not clear that the particular provision squarely fits within the applicable feature or criteria, but that it appears more than likely that it does match.
ENDNOTES:

1. Contractors and owners are two different parties, however, an owner can be a contractor, and visa versa. Further, many statutes place the same or similar duties on these two parties. Some use the term “principal contractor” or “constructor” instead of “contractor”; we consider this to be similar terms.

2. This duty has been assigned to a “person” who is about to begin a new project, but such persons would most often be owners or contractors, but would include employers.

3. The worker’s duty to cooperate with the regulatory authority would complement the general prohibition many OHS statutes place on persons interfering with or obstting an officer, etc.

4. While some jurisdictions simply set out a number of workers, that trigger may be linked to other critiera, such as 20 workers of at least one employer at the worksite, or to certain types of worksites or hazards. For the purposes of this comparison, we have set out the number, but have not noted any specific conditions or limits which may be associated with that trigger.

5. There are complementary but separate provisions in Quebec’s statute governing establishment of committees and representatives at construction worksites, but these provisions are virtually the same as those which apply to worksites in general.