ROYAL COMMISSION on the
Worker’s Compensation Board
British Columbia

Regulatory Review Process

FINAL REPORT
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Executive Summary

Purpose

This report is the result of a research project undertaken for the Royal Commission on Worker’s Compensation of British Columbia. The primary objective of the project was to examine and assess the process for the development of health and safety regulations, and to provide recommendations for an efficient and timely regulatory review process at the WCB.

Focus

The focus of the research was on the latest round of regulation review conducted by the WCB throughout 1992 to 1996.

The Challenge

The regulatory review was an important undertaking for several reasons. First, the body of regulations that required examination was substantial. Second, the regulations had not been the object of a thorough review in over twenty years. And third, this round of regulatory review relied heavily on the participation of stakeholders.

WCB Approach to Regulation Review

The regulatory review process utilized two main consultation techniques. The first technique made use of stakeholder working groups called specialty subcommittees and the Regulations Advisory Committee (RAC), whose task was to examine the content of the regulations and propose changes, as well as to advise on the overall process of the regulation review (this was one of the RAC’s functions). The second technique used was that of public hearings which gathered further stakeholder input in the regulatory review process once the work by subcommittees and the RAC was completed.

Key Recommendations

The review process, as with any other significant undertaking in regulatory change, was not without its issues, concerns and difficulties. Most problematic was the structure of the process itself. Described as bipartite (involving labour and employers), the WCB role in this model was that of facilitator, administrator and technical advisor. Consequently, the interests of the regulator were given lesser priority even though the WCB was accountable for implementation and enforcement of the regulations: an unusual role for a regulatory organization.

A central recommendation for improvement involves the use of a multi-stakeholder approach in which the WCB has a role in decision-making (following the collection and consideration of the views of stakeholders). However, the ability of the WCB to establish itself as a credible regulatory decision-making body will be critical to the future success of this approach to regulation review. At the present time, this credibility in the eyes of stakeholders, is fragile. That the regulation review process is largely restricted to two principal stakeholders reinforces traditional partisan discourse. On some issues, it is difficult, if not impossible, for the stakeholders keep labour relations considerations from overtaking occupational safety and health concerns. The tendency is for the stakeholders to adopt a relating style that is more bargaining/negotiating in nature rather than focussed on the development of regulations for a safe, healthy and competitive workplace.
Project Background

Purpose of the project
This report is the results of a research contract whose aim was to examine the process for the development of health and safety regulations and to provide recommendations for an efficient and timely regulatory review process. The terms of reference of the project are drawn from the overall mandate of the Royal Commission. The purpose of this project is to assess the past process of regulatory development and change and to provide recommendations for the future.

Project deliverables
The project includes a report to the Royal Commission that respects the following objectives:
- Creation of an evaluation criteria;
- Development of a methodology to assess WCB regulatory review process;
- Identification of models, procedural rules and principles for effective public consultation;
- Assessment of WCB regulatory review process against the established criteria;
- Formulation of recommendations that will increase stakeholders’ confidence in the ability to conduct meaningful consultations in a regulatory context.
### Components and Features of the Regulation Review Process at the Worker's Compensation Board of BC

#### Some History

Periodic review of the body of regulations governing workplace health and safety have occurred. The Worker’s Compensation Board attempted to review the regulations twice during the 1980's, and both attempts failed to produce revised regulations for reasons that go beyond the scope of this report.

#### Regulation review over time

The regulation review process was announced by the Board of Governors in January of 1992. This review process was subjected to several changes, most notably with the passage of Bill 56 (in July of 1995), that abolished the Board of Governors and replaced it with a panel of administrators. Bill 56 brought significant changes to the regulatory review process and as a result, the following report will at times make distinctions between the “1992 to 1995 phase” and the “post 1995 phase”.

#### The 1992-1995 Phase

The Governor’s strategy on regulatory review, adopted on January 7, 1992 identified the purpose as follows:

“...to conduct an open, comprehensive review and revision of occupational safety and health related regulations, which the Worker’s Compensation Board currently administers, and to develop new regulations in certain areas and industries currently unregulated.”

The scope of the review was to be extensive and cover the following areas:

- Industrial Health and Safety Regulations;
- Occupational Environment Regulations;
- Industrial First Aid Regulations;

The strategy for regulation review specified the following criteria for effective regulations:

1. Regulations that are achieved through a process that respects consensus and relies upon the parties with the most direct interests and outcomes;
2. Regulations achieved through a process that provides for the greatest possible public participation and confidence in the outcomes;
3. Regulations that clearly address hazards in the workplace to protect the health and safety of workers;
4. Regulations that define responsibilities and accountabilities;
5. Regulations that clearly state the criteria for compliance;
6. Regulations that are in plain language, technically competent and easily understood;
7. Regulations that provide a mechanism for ongoing review and update in the areas subject to changing knowledge and technology;
8. Regulations that do not restrict workplace activity and conditions beyond that necessary to address the workplace hazard;
9. Regulations that address the diverse character of workplaces in the province;
10. Regulation that are compatible with and do not overlap related regulations from other authorities.

The regulatory review process was founded on several assumptions:

1. Two sets of public hearings would be held on priority items such as agriculture and first-aid and then on the overall package of regulations;
2. Public hearings should be a minor exercise on the basis of high level consultation built into the regulation creation process, with direct involvement of employer and worker members;
3. The RAC would conclude its preliminary review of core area requirements early in the process;
4. The RAC would make recommendations on regulations, and leave policy and administrative matters to other bodies and consultative mechanisms;
5. All issues of non consensus would be resolved in a timely manner through decisions of one of the superintending body, the GCRR (and the Board of Governors).

Regulation Review Structure

The Governor’s strategy defined a structure enabling the conduct of the review. The structure featured several bodies of varying scope and function. Here is a brief outline of the structure. The reader will find a graphic representing the structure on page 72. The regulation review strategy, RAC protocol and Guidelines for Staff Seconded to the Secretariat are included in the appendix starting on page 58.

Governor’s Committee on Regulation Review

Composition and mandate
The Board of Governors constituted a Committee for Regulation Review (GCRR) consisted of two employer, two labour and one public interest governor as well as the Chair. The mandate of the GCRR was to “...Oversee the regulation review and development process; bring it, as far as possible, to a successful conclusion by presenting the Board of Governors recommendations based on consensus; to record and define differences and to present a clear definition of the options where consensus was not achieved”.

Roles and functions of the GCRR:
- Conduct Public Forums to assist in the identification of the issues;
- Establish and fill positions of the coordinator of the regulation review;
- Participate in the Regulation Advisory Committee;
- Appoint members of specialty subcommittees;
- Approve general budgetary and secretariat allocations;
- Receive, review and as necessary amend the final report from the RAC;
- Oversee the public hearing and gazetting process;
- Evaluate the effectiveness of regulation implementation.
Regulation Advisory Committee

Composition and mandate
The Governor’s strategy on regulatory review also appointed a Regulation Advisory Committee (RAC), chaired by the Chairman of the Board of Governors. At the onset, the RAC was composed of

- The GCRR;
- Seven labour representatives;
- Seven employer representatives;
- Coordinator of the regulation review process (a WCB employee) in an advisory capacity.

The fourteen representatives were selected by the Board of Governors on the advice of the Governor’s Committee on Regulation Review.

The mandate of the RAC was “...recommend a process for regulation amendment during the period of this review process.”

Role and functions
The specific role and functions of the RAC were to:

- Implement the term of reference for regulation review adopted by the Governors;
- Make recommendations to the governors on the general structure of the regulations;
- Review core area regulations; for example, on topics of: application of regulations, joint occupational safety and health programs, accident/incident investigations and general requirements in places of employment;
- Direct specialty subcommittees as necessary;
- Review and integrate reports from specialty subcommittees;
- Members of the RAC may participate in specialty subcommittees and otherwise act as ex-officio members on specialty subcommittees where appropriate.

In May of 1992, members of the RAC agreed and signed on to an operating protocol. The protocol reiterated many of the points raised in the Governor’s Strategy for Regulations Review but also specified:

- the method of decision-making (by consensus);
- the method to be used should consensus not be possible (through voting);
- frequency of meetings;
- the mechanism for the establishment of the meeting agenda;
- the conduct of the meeting and recording of minutes;
- relationships with subcommittees.

Specialty Subcommittees
Specialty subcommittees were established to review industry specific regulation. Typically subcommittees were composed of an equal number of labour and employer representatives (3 to 4). Each subcommittee was provided with detailed terms of reference.

The Roles and function of the Subcommittees
- Implement terms of reference on specialized areas;
- Liaise with other specialty subcommittees.
Subcommittee functioning
Each subcommittee included the participation of a chair (a WCB staff, seconded to the Secretariat for Regulation Review) and that of a Technical Advisor whose function was to provide technical expertise. Further descriptions of their roles can be found below.

Give the magnitude of the work required at the subcommittee level, it was deemed appropriate to phase in their work. Based on the criteria of generality of the regulations, priority of the topic area and an estimate of the time required to review a section of regulations, the following three phases were established:

Phase 1 Subcommittees — 1992-1993
- Agriculture
- First aid and Occupational Hygiene
- Ergonomics
- Fishing
- Equipment Safety
- Silviculture Camps

Phase 2 Subcommittees — 1993-1994
- Construction Safety
- Underwater Diving
- Blasting and Underground Workings
- Electrical Safety
- Land Transportation and Traffic Control

Phase 3 Subcommittees — 1994-1995
- Forestry Operations
- Wood Products Operations
- Oil and Gas
- Firefighting and Emergency Rescue
- Medical Programs
- Personal Protective Equipment
- Aircraft Operations

The timing of subcommittees and other regulatory review features can be found on a timeline presented on page 73. These timelines were developed from documents obtained from the WCB.

Secretariat for Regulation Review
As a means to assist in the development of regulation, the WCB created the Secretariat for Regulation Review under the supervision of the Coordinator for Regulation Review. The main duties of the Secretariat staff was to provide support for the work of subcommittees and the regulations review process. WCB Staff were seconded to the Secretariat and provided with guidelines. Facts that are of importance:
- A secondment did not imply a full time transfer to the Secretariat. WCB staff still carried all or part of their regular duties;
- a Subcommittee Chair or Technical Advisor reported to the Director of the Secretariat/Coordinator of the Regulation Review;
- Those seconded to subcommittees were to be guided by the fundamental principle of the Health and Safety of Workers;
Decision-making was to be accomplished through consensus. In the event of a vote, only worker and employer representatives had a right to vote; Dissentions were to be recorded in the form of a minority opinion.

**1996 to present**

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### The passage of Bill 56

In July of 1995, the Government passed Bill 56 abolishing the Board of Governors and replacing it with a Panel of Administrators to discharge the functions of the Governors under the Worker’s Compensation Act. At the time of the passage of Bill 56, much had already been accomplished:

- New regulations were in effect on: permissible concentrations, violence in the workplace, occupational first aid, and fishing;
- Public hearings on fall protection and ergonomics had been held;
- The work of Phase 3 subcommittees was completed.

However, there was still much to do, since only a fraction of the regulations had been amended and enacted.

### Creation of the Advisors on Regulation Review

Following the passage of Bill 56, the RAC was disbanded and replaced by the Advisors on Regulation Review (ARR). At that time, membership was expanded to twenty, ten representing labour, ten representing employers.

### Emergence of a new way of functioning: Tri-partite model

Perhaps the more significant change brought on by the passage of Bill 56 was the emergence of tripartite model for regulation review. Under this model the voice of WCB staff became “officially” recognized. Regulations were now submitted to the Panel of Administrators showing the consensus of the ARR as the recommendation. However, when consensus did not emerge the staff of WCB provided a position on the issue for consideration by the Administrators.

In September of 1996, hearings were staged to obtain public input on the overall health and safety regulations. The results of the hearings were considered by the ARR who recommended the creation of small working groups structured along the lines of the former specialty subcommittees (typically 2 people from each of major stakeholders). These working groups examined the input from the public hearings and made proposals for the finalization of the regulations. Their recommendations were offered to the Panel of Administrators who made the final decision on the regulations.
Principles for Effective Public Consultation

The 1990 report of the Task Force on Service to the Public, Public Service 2000 (Federal Government), provided the following list of principles for public consultation. These principles for effective consultation formed the foundation of Privy Council Office document, “Draft Consultation Guidelines for Managers in the Federal Public Service,” issued in December 1991. This document is still the main quasi-official guidelines available to federal departments and agencies.

1. Consultation between government and the public is intrinsic to effective public policy development and service to the public. It should be a first thought, not an afterthought.
2. Mutual respect for the legitimacy and point of view of all participants is basic to successful consultation.
3. Whenever possible, consultation should involve all parties who can contribute to or are affected by the outcome of consultation.
4. Some participants may not have the resources or expertise required to participate, and financial assistance or other support may be needed for their representation to be assured.
5. The initiative to consult may come from inside government or outside - it should be up to the other to respond.
6. The agenda and process of consultation should be negotiable. The issues, objectives and constraints should be established at the outset.
7. The outcome of consultation should not be predetermined. Consultation should not be used to communicate decisions already taken.
8. A clear, mutual understanding of the purpose and the expectations of all parties to the consultation is essential from the outset.
9. The skills required for effective consultation are listening, communicating, negotiating and consensus building. Participants should be trained in these skills.
10. To be effective, consultation must be based on values of openness, honesty, trust and transparency of purpose and process.
11. Participants in a consultation should have clear mandates. Participants should have influence over the outcome and a stake in implementing any action agreed upon.
12. All participants must have reasonable access to relevant information and commit themselves to sharing information.
13. Participants should have a realistic idea of how much time a consultation is likely to take and plan for this in designing the process.
14. Effective consultation is about partnership. It implies a shared responsibility and ownership of the process and the outcome.
15. Effective consultation will not always lead to agreement; however, it should lead to a better understanding of each other’s positions.

16. Where consultation does lead to agreement, wherever possible, participants should hold themselves accountable for implementing the resulting recommendations.

To the list of principles we would add the following:

17. Effective consultation requires clear feedback and continuing communication with all those directly and indirectly involved in the process, with particular attention to decision makers and participants.

The National Round Table on the Environment and the Economy also listed guiding principles for processes intended to produce consensus through consultation. As the Round Table report points out, consensus processes are participant determined and driven - that is their essence. No single approach will work for every situation: because of the issues involved, interests and circumstances vary. At the same time, experience points to certain characteristics that are fundamental to consensus.

**NRTEE Consultation Principles**

1. **Purpose Driven.** People need a reason to participate in the process.
2. **Inclusive, Not Exclusive.** All parties with a significant interest in the issue should be involved in the consensus/consultation process.
3. **Voluntary Participation.** Parties that are affected or interested participate voluntarily.
4. **Self-Design.** The parties design the consensus/consultation process.
5. **Flexibility.** Flexibility should be designed into the process.
6. **Equal Opportunity.** All parties must have equal access to relevant information and the opportunity to participate effectively throughout the process.
7. **Respect for Diverse Interests.** Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus/consultation process is essential.
8. **Accountability.** The parties are accountable both to their constituencies and to the process they have agreed to establish.
9. **Time Limits.** Realistic deadlines are necessary throughout the process.
10. **Implementation.** Commitment to implementation and effective monitoring are essential parts of any agreement/outcome.
The February 1995 (and final) edition of *In Public*, a Canadian public consultation newsletter, listed a generic mission statement and eight public involvement principles for public involvement processes to improve the effectiveness, fairness and durability of outcomes.

**Mission**

To achieve decisions and results that respect the knowledge, values and rights of all affected interests.

**Principles**

- shared process
- respect commitment
- timeliness
- relationships
- communication
- responsiveness
- accountability

In material developed for use in a 1992 pilot course on public consultation, the Ontario Ministry of the Environment enunciated five principles of public consultation:

- emphasize consensus building
- be objective, open and fair with due consideration of time and cost
- evaluate public input
- define requirements clearly for how and when public can participate
- provide public with response.
Criteria for Effective Public Consultations in a Regulatory Environment

Criterion 1
Achieving Purpose

In general, the purpose of public participation in decision-making is two-fold:

**Better Decision-making**

Broader input provides a more comprehensive database on which to base decision-making. Since no one individual or group, including the regulator, holds sufficient information concerning perspectives, issues and potential impacts, consultation provides decision makers with greater confidence that all relevant considerations have been voiced. The result being higher quality decisions. A well-designed and implemented consultation program can contribute to higher-quality regulations, identification of more effective alternatives, lower costs to businesses and administration, better compliance, and faster regulatory responses to changing conditions.

**Acceptance of Decision**

Secondly, involving the relevant stakeholders in the process of regulatory review will enhance the acceptance and ultimately implementation of the final regulations. If those participating truly have the opportunity to influence the outcome through a fair and credible process, there is a greater likelihood of achieving regulations which have the qualities of acceptance and compliance by stakeholders and are enforceable for the regulator. A well-designed and implemented consultation process can improve the credibility and legitimacy of government action, win the support of groups involved in the decision process, and increase acceptance by those affected.

**Criterion Question:** To what extent did the involvement process satisfy its purpose of producing a set of occupational health and safety regulations which are:

- complete
- high quality
- agreed-upon, and
- reflect the concerns of relevant stakeholders?

Criterion 2
Stakeholders

Stakeholders are those individuals or groups, external to or within the organization, that are affected, will be affected or “feel that they will be affected by a proposed project.” It is essential that all those who feel
they have a stake in the regulations have the opportunity to participate in the regulatory review process, just as it is equally important to ensure the involvement of those whose acceptance of the regulations is critical to successful implementation. Overlooking or denying access to a key participant is likely to affect the credibility of the entire process, and adversely affect the quality and implementation of subsequent decisions.

In considering stakeholders, interests must be balanced and not viewed as biased towards a particular outcome. Imbalance—or the perception of imbalance—in participation is not unusual. It is therefore important that the regulatory sponsor of any consultation be sensitive to, and be prepared to address the possibility that participation could reflect a limited set of well-organized, highly-expert, and/or well-financed interests, and that other interests may be under-represented and/or unheard.

**Criterion Question:** Did the consultation process:

- ensure the participation of all relevant stakeholders?
- achieve a balanced representation of interests?

**Criterion 3**

**Involvement Mechanisms**

The range and application of involvement mechanisms has expanded greatly over the past ten to fifteen years. However, the critical dimension remains that of effectively matching mechanisms with the purpose, circumstances, participants, and existing legislation surrounding individual consultations. The selected mechanism(s) must ensure that stakeholders are involved to a sufficient degree that the twin goals of quality and acceptance of decision-making are achieved. To this end, the format must enable each participant to contribute constructively, and to their satisfaction.

Involvement mechanisms include not only broad-based formats such as public hearings and submission of papers, but also temporary organizational structures such as advisory committees and working groups. All serve to involve stakeholders to varying degrees in the decision-making process. In determining if, when, how, and to what degree stakeholders should be involved, it is valuable to have a clear understanding of the key milestones in your decision-making process.

In as much as the WCB has made frequent use of Advisory Committees in the consultation process, it is worthwhile to consider some guidelines for the effective use of this particular mechanism.

An Advisory, Liaison, or Working Group is generally comprised of a representative sampling of interests on a particular issue, who are appointed or selected to provide comments, feedback and/or advice to a
sponsoring group, organization or agency. The most common guidelines for effective Advisory or Liaison Committees include:

1. Membership reflects the full range of interests and values surrounding the issue;
2. Clearly defined mandate and terms of reference to which the members are committed;
3. Clearly defined decision-making role;
4. Provides ample time for members to maintain communication with their constituencies to ensure they adequately represent the view of their organizations;
5. Clearly established and agreed procedures, decision-making processes, attendance requirements and guidelines for the participation of observers or alternates, confidentiality and reimbursement of expenses;
6. Commitment of adequate professional staff, taking into account the amount of time needed to arrange meetings, write minutes and follow-up reports, tend to administrative details and other practical concerns.

Criterion Question: Did the involvement mechanisms of the Specialty Subcommittees, the Regulatory Advisory Committee/Advisors on Regulatory Review Public Hearings/Public Forums:

- provide a balanced view from all stakeholders
- have a clear structure, organization, mandate and terms of reference
- meet the goal of consensus among stakeholders, and
- contribute to the development of high quality health and safety regulations?

Criterion 4 Decision-Making Process

The credibility of any regulator rests on its ability to make effective regulatory decisions based on sound decision-making processes. In a regulatory environment, decisions must reflect the broader interests reflected in the organizational mandate rather than those of any individual stakeholder. Since the consultation process, by its nature, cannot always and totally prevent over-representation—or even domination—by particular interests, it is generally recommended that the regulatory body be the final arbiter of decisions. While engaging stakeholders in the decision-making process might seem the best hope for achieving consensus, the disparate, and strongly-held positions typically represented in the consultation process, particularly in regulatory environments, makes it rare that a consensus approach is used. And if there is no ultimate decision-maker, stakeholders can effectively stall the process indefinitely if it is in their interests to do so. While consensus is often aimed for, there is no guarantee that a
mutually acceptable position can be reached. While this reinforces the position that regulators hold final decision-making authority based on the consultative processes, it also further heightens the need for the decision-making process to be viewed as effective, fair and timely. In this model, stakeholders provide the input necessary to make informed decisions.

**Criterion Question:** Did the decision-making process and structures in place for the WCB regulatory review result in decisions which:

- [ ] adhered to established time-lines
- [ ] were considered of high quality by the organization, and
- [ ] were viewed as effective and fair by stakeholders?

**Criterion 5**

**Roles, Responsibilities and Accountabilities of Decision-Makers**

In regulatory environments, the regulator is accountable for ensuring regulations are in place, and, in some cases, that they are enforced. While other bodies may be created to advise, provide supporting information and/or recommend revisions to existing regulations, the regulator most often retains both the right — and accountability — for final decisions. The public involvement process, by bringing together various perspectives, enriches the regulatory process; however, individual stakeholders, because they typically represent particular interests, cannot assume the same roles or responsibilities as the regulator.

It is essential that the “terms of reference,” including the roles and responsibilities of any group or committee formed for the purpose of regulatory review be clearly articulated prior to launching any participative process. All participants should fully understand their individual and collective roles in the decision-making process, whether they are advising, recommending, reviewing or making regulatory decisions.

**Criterion Question:** In the WCB regulatory review consultative process:

- [ ] Were there clearly-articulated “terms of reference” developed for each chosen participative mechanism?
- [ ] Were efforts made to ensure that each participating individual and group clearly understood, acknowledged, and adhered to their respective roles, responsibilities and accountabilities in the consultative process?
Criterion 6
Resources

Involving the public through a consultative process is a resource-intensive initiative. The time demands placed on stakeholders, project managers, and administrators is extensive. The cost of involving stakeholders is contingent upon many factors, including:

- the number of participants;
- the time-frame in which decisions will be made;
- the need for technical information;
- the need to disseminate information to the public;
- the need to respond to media attention; and
- expenses related to the format of meetings and communication, including, in some circumstances, the cost of providing financial assistance to some who would not otherwise have the resources to participate.

Since the question, “was the consultation worth the effort and resources expended?” will inevitably be asked, each circumstance in which public participation is considered should include a cost/benefit analysis.

**Criterion Question:** Was the consultation initiative provided with adequate resources with respect to:
- ☐ people
- ☐ funds, and
- ☐ technical information

in order to conduct a consultation process which could produce a set of occupational health and safety regulations of high quality and acceptance?

Criterion 7
Time Frame

Consultation timelines need to be realistic and strike a balance between the need to get something accomplished expeditiously and the need for participants to engage meaningfully with each other on the issues.

In effective consultation, the starting point for establishing time lines is determination of (a) the specific elements on which decisions are needed, (b) the data needed to decide, (c) the preferred data collection methodology, and (d) the decision-making methodology. These factors allow the development of consultation milestones, which are then linked to the regulation review timetable. The timetable and milestones must be sufficiently flexible to accommodate emerging issues and other unforeseeable challenges. Other considerations include the time needed to gather and assess data, allow stakeholders to report and consult with their own constituencies, and allow participants in the consultation
sessions to hear and understand the interests of other stakeholders, to make decisions, and to report on results.

Time lines will also influence —and be influenced by— decision-making approaches. If the time for decision-making is short, consensus-seeking will likely be unworkable. Attempts to squeeze an ideal, yet complex process into too short a time period, or setting artificial deadlines in order to speed up the process, often results in frustration, resentment and cynicism on the part of stakeholders, and a loss of reputation and good-will with respect to the sponsor.

**Criterion Question:**

Did the time-frame provided for the consultation allow for:

- satisfactory participation by stakeholders
- flexibility to respond to emerging issues
- effective and efficient management of the consultation process, and
- key milestones to be met?

**Criterion 8
Information**

Each stakeholder enters the consultation process with particular views based on the information and experience available to them up to that time. However, stakeholders are seldom fully aware of all dimensions of the issue on which they are being consulted. It is therefore important, in order to make it possible for stakeholders to contribute informed comments and recommendations, that the consulting organization gather full and accurate information on the relevant issue(s) and disseminate it to stakeholders in a timely manner.16 17

In addition to possibly increasing the quality of contribution, providing stakeholders with comprehensive information concerning the issue under discussion can also help them gain a greater appreciation of others’ views and interests. This, in turn, may increase the potential for convergence among stakeholders on some dimensions of the issue.

For the consulting organization, enhancing stakeholder understanding can be a data intensive exercise; a great deal of information may need to be gathered and made available to those being consulted during the regulatory review process.

**Criterion Question:**

Were the Regulatory Advisory Committee/Advisors on Regulatory Review and the Specialty Subcommittees provided with information:

- in a timely manner?
- in an appropriate format?
- in an accessible manner?
- that broadened their perspectives on the regulatory issue on which they were being consulted?
Criterion 9
Compatible with the labour/employer/WCB Context

To be effective, the public involvement process must be compatible with stakeholders’ expectations, their respective governance systems, and their ability and availability to participate. In providing stakeholders with the opportunity to participate and provide their respective views and opinions, the involvement mechanisms employed by committees and public hearings must be sensitive to and, to the extent possible, reflective of the circumstances in which stakeholders function.\(^\text{18}\)

The effectiveness of the consultation process will be affected by the quality of the relationship between the regulator and the stakeholder community. If stakeholders question the regulator’s credibility, integrity, honesty or intentions, by extension they are likely to question and/or challenge the credibility of the regulator’s review process.

It is therefore important for the consulting organization to assess and understand the nature of the existing relationship between itself and the “publics” with which consultation is planned. Further, where appropriate and necessary for the success of the review process, the regulator should take steps to improve relationships both before and during the review process.\(^\text{19}\)

**Criterion Question:** Did the WCB’s process of involvement for the purpose of regulatory review:

- demonstrate a sensitivity to, and reflect the political, social and economic context of the workplace?
- reflect the existing relationship between and among the WCB, labour and employers?
- foster an improved relationship among stakeholders?

Criterion 10
Transparent and Credible to Those Being Consulted

To be effective, consultation must be based on openness, trust, integrity, mutual respect for the legitimacy and point of view of all participants, and transparency of purpose and process.\(^\text{20}\) The transparency and credibility of the process and the consulting regulator must be continually reinforced through the behaviours of organization staff\(^\text{21}\), visibility of the decision process, and the incorporation of consultation and involvement in other regulator initiatives.\(^\text{22}\) The consulting organization must be seen as truly seeking the views of stakeholders, and incorporating these into decisions.
**Criterion Question:** Was the WCB regulatory review process

- conducted in a transparent manner as evidenced by open, full and timely communication to stakeholders on all dimensions of the review process?
- viewed as credible by those being consulted?

**Criterion 11**

**Ongoing Review**

Regulations are relevant for a period of time. Significant changes in technology, social values, economics among others can quickly date regulations and make them obsolete, inadequate or even obstructive. The result is a requirement for the regulator to be able to utilize an appropriate process for updating regulations on an ongoing basis. The process requires a mechanism to continually collect relevant information which puts the regulator in a position to anticipate and/or quickly react to emerging issues. The data is used as an input into the regulatory change process which will update the regulation on a periodic or as required basis. Effective functioning of an ongoing regulatory review process requires the same adherence to consultative principles as specific involvement initiatives.

It is important to make the distinction between the processes of consultation and regulatory review. Consultation is a method of obtaining input into the decision-making process, and is part of the decision-making process, not a substitute for it. Regulatory review is the process of reviewing and updating the regulations to ensure their relevance. Regulatory review may utilize various approaches and mechanisms of public consultation to ensure the views of stakeholders are incorporated.

**Criterion Question:** Does the WCB have an ongoing regulatory review approach that:

- has a mechanism for collecting relevant data
- involves the workplace parties
- adheres to the principles of effective public involvement, and
- ensures up-to-date occupational health and safety regulations?
Research Methodology

Purpose and overall approach

The project was designed to examine the process for the development of health and safety regulations and to provide recommendations for an efficient and timely process. This examination was conducted through the use of two media: firstly through research of documentation provided by the WCB, and secondly through discussions with stakeholders in the regulatory review process.

Specific objectives for the stakeholder interviews

The specific objectives for conducting the interviews and focus groups were:

1. To fill documentary information gaps;
2. To enrich our knowledge of stakeholder perceptions of specific issues around the regulatory review process.

Stakeholders

Stakeholders of the regulatory review process can be segmented into three principal categories: the regulator (WCB), employers, and labour representatives. The regulatory review process relied on the interplay of these three groups in various fora. WCB, employers and labour representatives were involved in the Governors Council on Regulatory review (GCRR), the Regulations Advisory Committee (RAC), the Advisors on Regulations Review (ARR), Specialty Subcommittees and Secretariat for Regulations Review.

Research mechanisms

Stakeholder research was conducted through the use of either focus groups and one-on-one interviews. Focus group methodology was utilized for groups whose population was relatively large. This was the case for Secretariat staff and for those who had participated as subcommittee members. Their numbers were large enough that an interview approach would have been time consuming. The notes from the focus groups are included in this report. The Subcommittee focus group notes can be found starting on page 47, while the Secretariat focus group notes on page 50. As for members of the RAC and ARR, an interview approach was taken.

Selection criteria

Stakeholder selection criteria were as follows:

- **RAC/ARR**: Have served substantive time on the RAC and or ARR
  - Representatives can speak of their experience as a subcommittee member
  - Representation from each subcommittees
  - Relative balance between labour and employer representatives
  - Representation must cover a range of subcommittees (can span all phases - pre-September 1995, post-September 1995)

- **Subcommittee focus group**: Have substantive experience in working with one or more subcommittees;
  - Possibly a mix of current and former employees of the WCB;
  - Secretariat to Management level (no senior manager level).

- **Secretariat**: Have substantive experience in working with one or more subcommittees;
Selection Methodology

Subcommittees
The selection was done in random fashion using an alphabetically ordered list; selection was based on the order in which they appeared, then verified for overlap in subcommittees. The name was omitted if we already had a member from that subcommittee.

Secretariat:
Names were provided by the WCB

RAC / ARR
The selection was done on a random basis. The selection process ensured that the interviewees had been members of RAC only, or RAC & ARR, or ARR only. This was done to avoid any skewing of the interview results.

Timing
Interviews and focus groups were held between September 15 and 26.

Number of People Consulted

<table>
<thead>
<tr>
<th>Category</th>
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</tr>
</thead>
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<tr>
<td>WCB Secretariat Members (Focus Group)</td>
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<tr>
<td>Other WCB Staff</td>
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</tr>
<tr>
<td>RAC Members</td>
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<td>ARR</td>
<td>4</td>
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<tr>
<td>Subcommittee Members (Focus Group)</td>
<td>16</td>
</tr>
<tr>
<td>Governors</td>
<td>1</td>
</tr>
</tbody>
</table>
Key Findings - Assessment of the WCB Regulation Review Consultation Against the Evaluation Criteria

1. Achieving Purpose

To what extent did the involvement process satisfy its purpose of producing a set of occupational health and safety regulations which are:

- complete;
- high quality;
- agreed-upon; and
- reflect the concerns of relevant stakeholders?

Key Findings

Regulation review was comprehensive in scope yet incomplete in some areas

Over the past 6 years, the WCB has revised a substantial body of regulation. During this period, the review process touched upon all existing regulations. Indeed, the comprehensive nature of the process led to the creation of entirely new regulations such as Violence in the Workplace.

Inconsistencies were noted with respect to completion of the review and revision process. While notable completions included the areas of fishing and agriculture, others, such as industrial camps, rights and responsibilities, and arguably ergonomics, left some areas of the regulations unresolved.

The perceived quality of the regulations is varied

Stakeholders disagree as to the quality of the regulations. While some expressed the opinion that parts of the regulations were of poor quality, others thought they were practical. Most stakeholders preferred to reserve judgement until the final sets of regulation were available. This “wait and see” stance is also a reflection of the view expressed by many stakeholders that the review process, after the public hearings, has not been transparent. Many were sceptical that the WCB would incorporate the suggestions voiced during the public hearings.

Throughout the 1992-1995 phase, the WCB had no “official” voice in the regulatory decision-making process. This placed the WCB at a disadvantage since it is a key stakeholder with an interest in cost effective, enforceable and practical regulations. Their input in the regulatory review process was officially non-existent (particularly during the 1992 to 1995 phase of regulation review)\(^24\). As a result, the regulations are written with little consideration for ease of administration and cost effectiveness.

1992 - 1995: Where agreement was achieved, the regulations reflected the concerns of labour and employers. Where agreement was unable to be reached, there was no regulatory change

From a technical point of view, most drafting of the regulations occurred at the subcommittee level, and it was generally felt that there was a high degree of consensus among labour and employer representatives. However, there are clear indications that this consensus was not sustained at the level of the RAC and among the Governors, where the debate appears to have fallen more along historical labour-employer lines.

Some issues and topics areas proved more divisive than others. In general, consensus was more easily achieved when the topic was more technical in nature (e.g. regulations on construction safety), and more difficult for topics that had social policy implications (workplace roles and responsibilities or ergonomics).
Contentious regulations (those having a social/economic policy impact such as ergonomics) had stalled prior to 1995 without final decisions being made. With the passage of Bill 56, the WCB began to play a greater role in the decision-making-process and in the drafting of new regulations. Labour and employers are sceptical about the degree to which the new regulations would indeed reflect their concerns.

2. Stakeholders

☐ Did the relevant stakeholders participate
☐ Was there a balanced representation of interests?

The regulatory review process is clearly limited to two principal stakeholders: labour representatives and employers. This is a direct reflection of the governance model in place at the WCB. The closed nature of this debate encourages a more traditional labour-employer discourse and does not necessarily facilitate the search for new ideas. Furthermore, the two principal stakeholder groups are represented by people who hold very senior roles within labour and business interests, suggesting a more exclusive —rather than inclusive— approach to the consultative process.

Interviews revealed that small businesses had not been adequately represented at the start of the regulatory consultation process. This was a view frequently expressed by employers. The Board did seem to adjust its approach (particularly after the passage of Bill 56) by increasing employer representation on the ARR, and including representatives from small business. However, those representatives included in the later stages of the regulation review process clearly expressed some discomfort in “speaking on behalf of small businesses”. Some observations are offered on this matter in later paragraphs.

Many stakeholders expressed the view that unaffiliated/unorganized workers (non-union) were also under-represented, although it is the contention of organized labour that they represented the interests of all workers. Satisfactory representation for both unorganized labour and small businesses would seem to be an issue requiring discussion and resolution.
The respective governance structures of the stakeholder groups had a significant impact in the regulation review process. The governance structure of labour makes it easier to dedicate resources to a project like regulation review and, generally, labour was better prepared and demonstrated a more coordinated effort throughout. Employer representatives perceived this as Labour putting on “...a full court press...”, an all out effort to get labour’s issues addressed.

The employer governance structure is quite different: association members are often competitors and are not well structured to provide a coordinated, resource-intensive effort. Consequently labour representatives felt they were carrying a greater portion of the work in research, analysis and drafting of regulations. Labour representatives expressed some frustration over the employers’ perceived inability or unwillingness to make a decision on behalf of their constituents, and they viewed the employer representatives’ delayed response to proposals as “foot dragging”.

Employers felt the process favoured labour

Employer representatives expressed concern that the regulation review process favours labour. Some attributed this to the leanings of the Government in power, while others felt that this was the direct influence of the Chair of the Board of Governors. Given our findings regarding labour’s high degree of preparedness and participation, this would also seem to be a factor.

WCB relegated to a minor role

The review process dictated that the WCB would not participate with labour and employers in decision-making. While WCB representatives did find alternate ways to contribute to outcomes, either during or after subcommittee work, any participation was unofficial, of questionable value, and outside the mandate as prescribed by the Board of Governors.

Criterion

3. Involvement Mechanism

Were the involvement mechanisms of the Specialty Subcommittees, the Regulatory Advisory Committee/Advisors on Regulatory Review and the Public Hearings appropriate in:

- accommodating the views of all stakeholders;
- meeting the goal of consensus among stakeholders; and
- achieving high quality health and safety regulations.

Key Findings

Preamble

During the regulation review process the WCB relied heavily on stakeholder involvement, employing a variety of mechanisms. For the purposes of this section, we consider public fora, public hearings, RAC, GCRR, and specialty subcommittees as stakeholder involvement mechanisms. Several variables can assist in the selection of consultation mechanisms that are appropriate to the context, the specific task and stakeholder needs. A brief explanation of these variables can be found in Appendix 4 on pages 54 and 55.
The mechanisms utilized by the WCB fostered confrontational, adversarial interaction. Joint decision-making requires the sharing of relevant information as well as an ongoing dialogue on the views and perceptions of all stakeholders. The structure of the reviewing bodies (GCRR, RAC and subcommittees), split as they were along employer and labour lines, tended to perpetuate and exacerbate adversarial relationships. On most issues the structure provided little opportunity to broaden views and facilitate greater mutual understanding.

The structure of traditional public hearings also promotes confrontation. Most often panel members are physically separated from those wishing to make a presentation, and only intervene to ask questions. This mechanism offers little room for dialogue, exchange of ideas, and exploration of solutions that will satisfy all interests.

The initial public fora were effectively public hearings with little opportunity for inter-stakeholder dialogue. To launch the regulatory review process, the WCB chose to host a series of public fora, the objective of which was to identify the concerns across a broad range of stakeholders. As a consultation mechanism, a public forum is generally a relatively informal event, permitting the exchange of ideas, concerns and issues facilitated through inter-stakeholder dialogue.

The information available indicates that the product of the WCB fora was largely statements of biased positions from individual stakeholders, rather than a building of ideas, broadening of perspectives and clarifying of issues among stakeholders. This would suggest that the WCB fora more closely reflected a public hearings approach, which is much more formal and only allows submission from those who have pre-approved standing.

Initially, the public hearings did not adhere to the principles of effective consultation. Concerns were raised by several individuals regarding the conduct of public hearings, particularly in the early stages of the regulation review. Stated concerns included:

- Stakeholder groups were manipulating the process by following the hearings from location to location to present a view previously heard. In the later stages of the regulation review (the period after the passage of Bill 56) this problem was addressed.
- The members of the public hearing panel would not restrict their role to listening to submissions. Stakeholders stated that they observed panel members aggressively question presenters, convince others that presenters were wrong, and even humiliate presenters in public.

In the public hearing format, the objective is to hear the public’s view on the issue under consideration. The principal role of the panel members is to listen; questioning a presenter is undertaken only to gain clarity on the views expressed.

Individuals who were critical of the public hearing process were also quick to point out that there have been significant improvements since the passage of Bill 56. Indeed, our research has revealed that guidelines had been provided to all public hearing panel members (guidelines dated February 1996) and the guidelines clearly spell out the expected conduct of panel members.
Criterion  

4. **Decision-making**

Did the decision-making process and structures in place for the WCB regulatory review result in decisions which were:

- [ ] timely
- [ ] high quality, and
- [ ] accepted by stakeholders?

**Key Findings**

**Preamble**

The decision-making process had a significant impact on the WCB regulation review process. The process followed what the WCB calls a bipartite consensus model, where the two main stakeholders, labour and employers, make the decisions. Later (as of January 1995) the regulation review process was modified to become a tripartite model whereby the regulator assumed a formal role in the decision-making process.

**The regulator was effectively removed from the decision-making process**

Under the bipartite model consensus model (in place from 1992 to 1995), decision-making is divided between labour and employers, with the WCB as process facilitator. From a structural perspective, if an impasse is reached at the Subcommittee level, it is then resolved at the RAC, or higher, level. On some issues, the stakeholders split along partisan lines, resulting in stalemate.

While it was the role of the Public Interest Governor (at the level of the Board of Governors and at the level of the GCRR) to resolve the impasse, the two Public Interest Governors were eventually split, thus perpetuating the impasse.

**RAC members had varying interpretations of their decision-making mandate**

The boundaries for decision-making between Subcommittees and the RAC were not clear, or at the very least they were not interpreted uniformly by all involved. Some RAC members were adamant in saying that they only made recommendations, while others said they were the final decision makers on the content of the regulations.

**There was no contingency if consensus could not be reached**

The regulatory review process did not have a clear decision-making body or mechanism. Disagreements at each level were largely relayed to the next higher level of review body, with no effective ultimate decision maker.

**Employers and labour representatives negotiated as a means of resolving impasse**

Consensus seeking requires commonality of purpose. Employers and labour have fundamentally different approaches to and views of health and safety. Employers viewed labour as: “Using health and safety as a means to increase their power in the workplace”. Labour representatives thought that employers believed that, “the fewer or less restrictive the regulations, the greater the ability to be competitive”. In the context of decision-making, such polar views led to radically different decision criteria. The basis for consensus requires initial agreement on decision criteria and then on decision outcomes. Given the different perspectives at play during the regulation review process, it is unreasonable to expect labour and employer representatives to achieve agreement on all issues. As a result, agreement on contentious issues was difficult and became the object of negotiated trade-offs.
The WCB has currently adopted an approach to decision-making which strives for consensus but reserves the right to make the final recommendation to the Panel of Administrators.

The introduction of the Tripartite arbitration model (1995 to present) followed the passage of Bill 56. At that time the Board of Governors was replaced by a Panel of Administrators. The tripartite model incorporates the input of the WCB as a stakeholder, and more importantly takes on the role of 3rd party decision-maker. Where employers and labour cannot come to resolution, the WCB staff forward recommendations to the Panel of Administrators for final decision.

5. Roles, Responsibilities and Accountabilities of Decision Makers

Did each individual and group involved in the WCB regulatory review clearly understand and accept the roles, responsibilities and accountabilities of the decision-makers and participants?

Key Findings


Throughout the 1992 to 1995 period the role of the WCB was essentially reduced to one of facilitator, administrator and technical advisor to the regulation review process. As mentioned in previous paragraphs, this period featured:

- WCB staff removed from the input and decision-making process throughout the regulation review
- WCB role was to administer the overall regulation review process
- WCB influence in the regulatory decision-making process was through the provision of technical advice to subcommittees, RAC, Governors.

GCRR and Governors as final decision makers did not fulfill their role effectively

Information suggests the GCRR/Board of Governors was largely a mirror of the RAC in composition, and represented their partisan interests first and the mandate of the WCB second. Their decision-making process was more adversarial than cooperative.

RAC was advisor, decision maker, arbiter

The mandate of the RAC was broad, serving as advisor on the process of regulations review, and acting as decision maker and arbiter on issues unresolved at the subcommittee level. The RAC also played a significant role in the actual review of regulations, with particular emphasis in the areas of role and responsibilities, which touched all industry/sectors. However, there would also appear to be significant risk in this approach in that an impasse on such issues could negatively impact the work accomplished by the subcommittees. Further, in situations of disagreement, the parties were reduced to negotiating health and safety.

Many who participated in the process commented that the RAC seemed to hold little accountability for the quality of the regulations, with RAC members representing the interests of their respective constituencies first and the mandate of the WCB second. In some respects, labour relations issues seemed to overshadow OSH issues.
Overlap of membership on the GCRR, RAC and subcommittees blurred decision-making responsibilities and lines of reporting

RAC members were responsible for recommending a process for regulation amendment and also had a significant role in the content of the regulations. Their involvement and influence was unclear to all participants in the process, as was the definition of who made what decisions at what points in the process. The diagram presented on page shows the regulatory review process in the 1992-1995 timeframe. This diagram is adapted from WCB documents and shows that the reporting relationship between subcommittees and the other regulatory review bodies goes through the Secretariat (solid line). Stakeholders indicate that the presence and influence of the RAC was so pervasive that one could argue that there was also a real, albeit informal, direct link between the RAC and the Subcommittees (dotted line).

Output from subcommittees was inconsistent

Specialty Subcommittees

The Specialty subcommittees had a significant role in the review process, and managed a substantial workload, particularly in reviewing the more technical side of the regulation. However, where some subcommittees actually re-wrote the regulations, others only made recommendations on intent. It would seem that a structured, disciplined project management framework and approach might have resulted in greater consistency in subcommittee output.

Some subcommittee members lacked expertise and understanding of the issues

There is evidence that some of the subcommittees members did not have the expertise to deal with all topics assigned to them.

Subcommittees had clear terms of reference

The terms of reference for the subcommittees were explicit and clear.

Criterion

6. Resources

Did the WCB apply adequate resources in the form of people, funds and technical information to the consultation process to deliver a set of high quality occupational health and safety regulations?

Key Findings

Resources attached to the Regulation Review Process were extremely stretched

Many Secretariat staff stated that during the regulation review process, they felt pressure to chair subcommittee work (or to provide technical expertise) in addition to their regular duties. Other Secretariat staff contributed significant amounts of overtime to support the review process, suggesting that the project may have required more resources than were assigned.
Subcommittees were provided with all the data and information needed for their deliberations. Secretariat staff were responsible for ensuring that subcommittee members had the necessary information and resources to complete the review. All evidence suggests that they were extremely effective in this regard, and should be commended for their efforts.

Per diem fees may have contributed to the time and expenses of the process. Many interviewees expressed the view that the per diem fees paid to subcommittee members added to the expense of the regulatory review process, and that this practice encouraged behaviours that extended the process. Further, since some subcommittees included members who were consultants paid by specific stakeholder groups to represent their interests, many felt that these consultants had a vested interest in prolonging the process.

Criterion 7. **Time frame**

Did the time frame allow for:

- adequate participation of stakeholders
- response to emerging issues
- management of the process, and
- ensure that key milestones were met.

Key Findings

Despite initially tight deadlines, the WCB was flexible in offering additional time as required. There is clear evidence that the WCB adjusted the review process to respond to emerging issues and requests from subcommittees for extended deadlines. In addition, the review process began with a series of public fora where the public was offered the opportunity to raise concerns and issues on existing regulations. These meetings surfaced critical issues that indicated a need for regulations in areas such as Violence in the Workplace.

Lack of an effective project management approach contributed to frequent deadline extensions. The regulatory review process was an immense task. The last extensive review occurred over twenty years ago and many changes were required to update the current set of regulations. This made for a project with extensive breadth and depth.

Many stakeholders expressed concern that the task assigned to them in the consultation meetings was far wider and bigger than they had anticipated, and that they had difficulty understanding how their work was linked into the overall regulation review process, or as many put it, “the bigger picture.”

Many of the time and tasking-related concerns expressed seem to relate to insufficient attention to project management principles and methodology. Clear definition and the “scoping” of the review process project would have led to more accurate forecasting of time requirements and the identification of significant milestones. A thorough project break-down would have allowed for greater clarity of information and instruction to stakeholders regarding their key deliverables (in the form of reports, revised regulation and so on). Greater definition in project phasing would have made clear deliverables in each phase of the review tied to the inputs for the following stage.
Using a consensus model of decision-making with labour and employers on workplace issues lengthened the process. A primary reason the regulatory review took six years instead of the anticipated two years was the inability of the decision-making bodies, Governors/RAC/Subcommittees, to achieve consensus. If one group couldn’t reach consensus, the issue was moved to the next higher level. At the highest level, there was no effective mechanism to deal with failed consensus, thereby stalling the process.

8. Information

Criterion

Was the information provided to the Regulatory Advisory Committee/Advisors on Regulatory Review and the Specialty Subcommittees appropriately produced, managed and shared?

Key Findings

Information was not sufficiently shared among stakeholders

The WCB made every effort to provide all appropriate technical level information to involved stakeholders. However, stakeholders seemed very cautious about sharing information with other parties. At the RAC level, the sharing of information was more similar to that found in formal negotiations than in a joint problem solving exercise. In a labour negotiation setting, information is treated as something that can advance the cause of one of the stakeholders, while in a joint problem solving and decision-making the information is shared freely and openly in the service of reaching mutually satisfactory decisions. Most interviewees indicated that information sharing occurred only when it advanced a particular position.

At the subcommittee level information flowed more freely

Subcommittee members indicated that they obtained more information than they needed.

9. Compatibility with the labour / employer / WCB context

Criterion

Was the WCB’s process of involvement for the purpose of regulatory review compatible with the:

☐ political, social and economic context of the workplace, and
☐ relationship among labour, employers and the WCB?

Key Findings

Context:
Past practice influenced the WCB’s ability to bring credibility and transparency to its consultative processes

The failed attempts of regulation review during the 1980’s cast a shadow on the WCB. In 1991, the WCB was held in contempt by many stakeholders, and the Board’s lack of credibility would have made it difficult for it to act as final decision maker on new regulations.
**Context:**

**Pressure to review regulation quickly**

During the 1980's, the WCB had two failed attempts at regulatory review. By 1990, there was significant pressure from stakeholders to complete a review as the regulations became seriously outdated. As the regulatory review was initiated in 1991, many felt that it was part of a left-leaning government initiative. That some employers viewed the government of the day as being pro-labour overshadowed the process.

**Key Findings**

**The consensus-bipartite model inappropriate**

The consensus, bipartite model was inappropriate for labour and employers who are naturally adversarial. This model was a reflection of the governance structure in place (until 1995) at the WCB. Given the perceived partisan nature of the Board, it is highly unlikely that they would have selected the WCB senior executive as the final decision-makers of regulation instead of the RAC.

**Criterion**

**10. Transparent and Credible**

Was the entire WCB regulatory review process seen as transparent and credible by those being consulted?

**Key Findings**

**Initially viewed as transparent and credible**

In its early stages, the regulatory review process was considered transparent and credible. That this view diminished over time can be attributed to several factors:

- The political nature of RAC debates. A series of trade-offs between labour and employers diminished credibility.
- The passage of Bill 56, which removed the Board of Governors, caused stakeholders to question the credibility of the regulatory review process to date.
- Some subcommittee members felt that WCB was not transparent in their editing and writing of regulations. Numerous concerns were voiced about WCB staff changing the wording of the regulations.
- The haste to bring the regulation review to a close (after the passage of Bill 56 - throughout 1996 - 1997) led stakeholders to believe that the WCB was attempting to hide something.
**Criterion 11. Ongoing Review**

Is the WCB utilizing an ongoing regulatory review approach which:
- has a mechanism for collecting relevant data
- involves the workplace parties
- adheres to the principles of effective public involvement, and
- ensures up-to-date occupational health and safety regulations?

**Key Findings**

**Current review mechanism not assessed**

The WCB’s current ongoing review mechanism of regulatory review was not assessed. According to the WCB, the process is under development and other stakeholders were unable to provide informed comment.
Comparative Analysis - Regulation Review in other Sectors/Jurisdictions

Case 1: Transport Canada
Canadian Aviation Regulations

Background / Environment
Canadian Aviation Regulations are governed by the Aeronautics Act. In 1985, a major review of the regulations was initiated to accommodate recent changes to the Act. The objectives of the review were to ensure up-to-date, comprehensive and user-friendly regulations. As well, the need to harmonize regulations with other countries for improved global competitiveness and recommendations resulting from the Commission of Inquiry into the Air Ontario Crash at Dryden were also significant factors.

Consultative Approach
The regulations are developed in consultation with industry through a body called the Canadian Aviation Regulation Advisory Council (CARAC). CARAC is made up of a combination of government and aviation industry members and is a combination of the Transport Canada Aviation (TCA) Regulatory Committee, technical committees, working groups and a secretariat. CARAC industry members include management and labour organizations, representing operators, manufacturers and professional associations. CARAC has 7 technical committees to review and analyze issues in specific sectors. Additional technical committees are established if required. The technical committee will establish working groups of government and industry specialists to develop recommendations and proposals for consideration by the committee. The technical committee forwards their recommendations to the Transport Canada Aviation Regulatory Committee. The TCA Regulatory Committee is comprised of Transport Canada Safety and Security senior executives. From this point, the regulations follow the government course of updating regulation; gazettes Parts I and II.

The members of CARAC reach the broader aviation community through their Internet web site, distribution of newsletters, bulletins and reports and aviation notices. Formal consultation is also a requirement under Part I of the Canada Gazette process.

Frequency of Review
The CARAC process was the first time Transport Canada undertook a significant review of the regulations.

Results
The CARAC was established in July, 1993 and Transport Canada completed its revision of the Canadian Aviation Regulations (CARs) in 1996. Part I of the Canada Gazette was published in the fall of 1995 and Part II published in October 1996. The CARs are currently being implemented by the department. Although the process was not without its difficulties, regulations in all areas were achieved and there is a positive sentiment about how industry stakeholders were involved in the process. Regulations were developed in sectors such as: Aircraft Fire Fighting; Medical Standards; and Flight Attendant Flight and Duty Limitations.

Resources for the CARAC are provided through a full-time secretariat and also further provided by Transport Canada and the aviation community as required.
**Governance**

CARAC: Assesses and recommends potential regulatory changes through cooperative rule-making activities.

**TCA Regulatory Committee**
- Identifies and prioritizes regulatory issues and considers recommendations from the technical committees.
- Provides advice and recommendations to the Transport Canada Assistant Deputy Minister, Safety and Security and the Aviation Safety Review Committee.
- Chaired by the Director General Aviation Regulation
- Nine members represent the Transport Canada senior executive of safety and security.

**Technical Committees**
- Review and analyze the issues assigned by the TCA Regulatory Committee and make regulatory recommendations. Examples include: Aerodromes and Airports; Personnel Licensing and Training; Airworthiness
- Members are made up of representatives of the industry and government.

**Working Groups**
Develop proposals and recommendations for the assigned tasks and implement those that are approved. Limited to the period of the task assigned by the respective technical committee. Members are both industry and government.

**Secretariat**
Manages the activities of CARAC including communications, monitoring, data provision, administration, records maintenance and quality control of documentation.

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**Decision Making / Accountability Framework**

The final decision-maker on regulation is the Minister of Transport Canada. However, this is most often a case of accepting a recommendation from more technically informed advisors. TCA Regulatory Committee, for all intents and purposes, finalizes the revised regulations that move through the departmental approval process. Because they are all senior officers of Transport Canada’s Safety and Security Branch the regulatory committee is able to make decisions without the element of negotiation.

The mandate of the technical committees is clear. Analyze issues and make recommendations. If the TCA regulatory disagrees with the technical committee recommendation, it is referred back to the technical committee for rework. Ultimately, the TCA regulatory committee will make the decision. The mandate of any working group is to make recommendations to the technical committee

The entire process is geared towards providing stakeholders an opportunity to provide input into decisions and potentially influence the rule-making of the department.
**Case 2:**

**Ontario Ministry of Labour**

**Occupational Health and Safety Regulations**

**Background / Environment**

In Ontario, the Ministry of Labour is responsible for developing and enforcing the regulations under the Occupational Health and Safety Act. To this point in time, the Ontario Ministry of Labour has not undertaken an overall review of the regulations, however has attempted to revise and develop regulations where required. Regulation is applied in 3 areas; mining, construction and industrial. The industrial sector is broken down into many sub-sectors such as fire-fighting, motion picture and video, hazardous substances etc.

There has been increasing pressure to update both the Occupational Health and Safety Act and regulations to ensure they are relevant to the rapidly changing workplace and to achieve improvements in the province’s health and safety record. The current legislative framework promotes government involvement rather than recognizing that labour and employers have responsibilities and accountability regarding workplace health and safety and the framework emphasises process rather than outcomes.

**Consultative Approach to Reviewing Regulations**

The Minister of Labour has established about 5 permanent sectoral advisory committees which are brought together to amend respective regulations as required. A sectoral committees is also struck to deal with a specific regulatory area not covered by one of the existing 5 to amend or even create new regulation. These committees will strike working groups to deal with specific technical aspects of regulation.

The committees are supported in their decision-making by Ministry of Labour staff who provide the required information and resources to committee members. The committee makes recommendations to the Minister of Labour for approval. Once approved, the notices of proposed regulation are posted on the Ministry web site, published in the gazette and distributed to affected stakeholders.

**Frequency of Review**

Regulations are updated on a continuous basis. Committees meet as required (as often as every 3 months) and recommendations for amendments are made on an as-needed basis. Typically, issues are collected by Ministry staff and brought to the committee for resolution and recommendation.

**Results**

Typically, the consultation process results in successful in updating of regulation. This is particularly true when the sector being updated is technical in nature, clearly defined and has an existing regulatory framework in place. Successful decision making and regulatory review has been achieved in the construction and mining sectors. However, a notable example of where revised regulations failed to be achieved was in the sector related to hazardous substances. The regulations were not updated after 8 years, the process was viewed as expensive and cumbersome and Ontario is behind the United States on updating exposure levels on over a hundred substances.

**Governance**

The Minister of Labour:

Governs the Occupational Health and Safety Act and regulations.
Sectoral Advisory Committees:
Provide recommendations directly to the Minister regarding workplace issues.
Made up of a balanced representation of employers and labour. Typically come from occupational health and safety related disciplines rather than union and employer organizations.

Sectoral Working Groups:
Develop recommendations to the sectoral advisory committee on technical issues. Composed of employer, labour and Ministry of Labour representatives.

Ministry Staff:
Ensures the appropriate Occupational Health and Safety regulations are in place and enforced.

Decision-Making / Accountability Framework
The Minister is accountable for making the final decision and is directly involved in the establishment of revised regulation. The sectoral advisory committee is responsible for providing recommendations for revised regulations. If the sectoral advisory committee cannot reach a consensus on a requisite piece of regulation, the Minister will defer to Ministry staff, particularly for technical decisions.

The decision-making process is tripartite at the working group level and bipartite at the advisory committee level. The Minister is recognized as the final decision-maker and will make decisions on critical issues when necessary.

Ongoing Regulatory Review
The Ontario Ministry of Labour utilizes permanent sectoral advisory committees in several sectors and will create a sectoral committee as needed to update regulation in a particular sub-sector. The result is regulations which continuously undergo revision. However, issues are dealt with as they arise and there has been no overall review of the regulations to date.

In the spring of 1997, the Minister of Labour initiated a comprehensive review of the Occupational Health and Safety Act which involved the distribution of a discussion paper, receiving over 200 written submissions and conducting a series of informal meetings across the province. Amendments to the act are currently awaiting decision. Revisions to the Act may be followed by a more comprehensive review of the regulations at a later date.

Recommendations

Decision-Making
To ensure quality, consistency and timeliness in decision-making on revised regulations, an arbitration model is recommended. Specifically the WCB, along with multiple stakeholders, contribute to articulating the revised regulations and make recommendations to the Panel of Administrators or an appointed senior executive committee, who will make final decisions where there are controversial issues, or deadlines are exceeded.
Stakeholders

- To appropriately situate the regulator in the regulatory review process, establish the WCB as a legitimate stakeholder, with interests and expertise to contribute to regulatory decision-making.

- To ensure that the interests of a wide range of stakeholders are represented in the consultation process, broaden the level of stakeholder participation from the current bi-partite / tri-partite to a multi-stakeholder environment. This includes the medical community, small business, unorganized labour, relevant non-governmental organizations, concerned individuals, the public at large and others who have an interest in health and safety regulations.

- As a means to develop a multi-stakeholder environment, develop and publish a series of criteria for the selection of stakeholders. Criteria should aim at obtaining a balance of stakeholders selected on the basis of:

  - **Representation** - those most central to OSH regulations traditionally referred to as employers and labour representatives.

  - **Contribution** - those who may not be among the traditional groups but would have the desire, ability and commitment to contribute significantly to the regulatory review process. These can be opinion leaders from a variety of walks of life, who are not affiliated to the traditional parties.

- To ensure an adequate level of expertise of working / technical groups, establish, publish and use specific criteria for the selection of members.

- To ensure that the regulatory review process reaches a variety of stakeholders, wherever possible conduct pre-consultations to assess the most desirable way to reach specific stakeholder groups and proactively plan and provide specific opportunities for their involvement.

Roles and Responsibilities

- To ensure mandates of regulatory review bodies are fulfilled and not exceeded, articulate clear terms of reference for each body, and utilize an evaluation mechanism to assess achievement.

- To ensure that the regulatory review process is conducted in a reasonable time frame, the stakeholders must be clear on the final decision-making authority. Under the existing governance structure, the Panel of Administrators or an appointed senior executive committee must be clearly identified as the final decision-maker and must exercise that role. All others are to provide input in the form of advice, recommendations or guidance.

Project Management

- To ensure a smooth and timely regulation review process, allocate resources commensurate with the scope of the issues being addressed. Resources include: personnel, time, money and equipment. The WCB should consider dedicating support resources on a full-time rather than part-time basis.
· To ensure clarity of timelines, milestones, deliverables and allocation of resources, adopt and follow a specific, structured project management approach to regulatory review. In particular, the WCB must focus on:

- Providing stakeholders with ongoing communication specifying the results of their contributions, the decision outcomes and supporting rationale, and most importantly provide details of the overall consultation process and status. These communication efforts must result in visibility of process, clarity and rationale of decisions, and outline the linkages between the individual consultation process steps as a means to continuously situate stakeholders in the regulatory review process.

- Adopting a continuous improvement approach to the consultations and regulatory review process. This internal review must examine and document the elements that contributed to, as well as restricted, the regulation review process. This form of action research must be done throughout the regulatory review process and be shared among WCB staff involved.

**Information**

· To ensure that the regulatory review process is completed in an expedient and thorough fashion, the WCB must develop the ability and capacity to identify regulatory problem areas, synthesize relevant research, and define the critical consultation questions that are to be put to stakeholders. Doing so efficiently and effectively frames the extent of the regulatory debate and accelerates the regulation review process significantly. Regulatory change typically raises a finite number of issues to which a series of consultation questions can be established. For example, a change in maximum allowable concentrations will raise several consultation questions such as: “What is the ability of employers to pay for additional safety measures?” or “What is the state of the technology available in protective equipment?”

· To ensure that regulatory decision-making is founded on sound evidence, the WCB must develop the capacity and ability to be a credible and impartial source of information and research in the field of health and safety.

· To ensure that decisions are evidence-based, technical working groups must start the review process by sharing and agreeing to the source and content of information.

· To ensure an efficient and ongoing regulatory review, the WCB must establish a mechanism by which the effectiveness of regulations can be monitored.

**Consultation Mechanisms**

· To recognize and respond to the varying needs, interests and resources of the broadest range of stakeholders, the WCB must employ a wider range of consultation mechanisms. The current consultation mechanism mix currently used has definite limitations. Regulatory consultation mechanisms must be selected in full awareness of their
inherent characteristics. Some mechanisms are more suited to sharing information, others share information while building a dialogue among stakeholders, and others engage stakeholders in the decision-making process.

- To ensure consistency across working groups addressing various issues, adopt and enforce a more rigorous and consistent process and methodology. The adoption of a problem-solving model may be appropriate in this environment. Steps could include definition of the regulatory problem areas, collection and assessment of data, generation of potential solutions, definition of decision-criteria and assessment and selection of potential solutions.

- When using a consultation mechanism that requires stakeholders to interact face-to-face, it is critical that the stakeholders feel the process to be objective and impartial. Furthermore, to enable the WCB to fully apply their expertise, the WCB should consider utilizing the services of neutral, third party facilitators to manage stakeholder participation.

**Ongoing Review**

- To ensure relevant, up-to-date regulations, and to avoid the challenges of undertaking a full review, conduct regulatory review as an ongoing process.
Appendices
Appendix 1
Lines of Inquiry

The interviews were conducted according to a series of questions drawn from the established criteria.

1. There were 2 failed attempts at reviewing the regulations in the 1980's. The purpose of the regulatory review process was to review the regulations and adjust where necessary. It sought to incorporate a consultative approach with the most affected stakeholders in the review process. In your opinion, did it achieve its purpose? If so, in what way. Please provide examples. If not, why?

2. Was the timeframe sufficient to review the regulations? Did it allow for adequate participation and ensure that the process was well managed? Why or why not? Please provide examples.

3. In your opinion, were all the relevant stakeholders represented fairly in the process? Was there any over- or under-representation?

4. There are a number of mechanisms that can be used to involve people in a consultative process, public hearings being one of them. Do you think that the consultative mechanisms used by the WCB were appropriate for the task? More of... Why Examples Less of.. Why not Examples

5. Were there sufficient resources - particularly people and money - allocated to the task of carrying out the regulatory review? More of... Examples Less of... Examples

6. Describe how you saw the decision-making process to determine the revised regulations. What were the specific steps, if any? Who did you see as the final decision-maker? Please provide a specific example.

7. How would you describe the relationship between WCB staff / labour representatives / employer representatives? How did these relationships play out during the regulatory review process? Can you provide specific examples? Option: Could you describe or comment on the relationship between the interviewees: Subcommittee and Subcommittee RAC/ARR RAC/ARR WCB Secretariat WCB Secretariat

8. To what degree was relevant information available and shared among all stakeholders? To what degree was there agreement on accuracy / relevance / sufficiency of the information used? Why? Please provide examples.

9. Was the entire consultative regulatory review process viewed as transparent and credible by those involved? Why or why not?

10. Based on your experience in the regulatory review process, what value do you think the WCB places on consultation and involvement of relevant stakeholders? What evidence supports your comment?

11. What significant changes in the regulatory review process have you observed throughout your involvement? What was the impact?
Appendix 2
Subcommittee Members Focus Group Report

Two questions were posed to those attending the focus groups:
“\textit{In what way was the Regulation Review process successful?}”
“\textit{In what way did the Regulation Review Process not meet expectations?}”

\textbf{Ways in which the regulation review process was successful:}

1. The experience of people involved was diverse and practical. This translated into regulations that reflected their expertise.
2. Good representation from management and labour
3. Subcommittee used resource people to get the required technical answers - the ergonomics subcommittee particularly brought together leading edge research and established a great knowledge base
4. The WCB representative: excellent
   - effective research skills
   - provided access to information: market wide - worldwide
   - WCB staff kept Sub committee member supplied with information - secretariat function well done
5. Recognition of a common goal was an enabler to reach consensus. Goal: To reduce fatalities
   - Subcommittee members all had experience of tragic accidents
   - Common goal enabled elimination of partisan lines
6. There was a willingness of Subcommittee members to gain information, get information, look at regulations from a broader view. Members were more concerned about safety of employees.
7. The chair was effective in his/her role:
   - mediator - arbitrator
   - forced Subcommittee to identify positions of parties
   - With assistance of chair, able to select most appropriate standard
   - Chair kept us focussed on deadline. In cases where the timeline was too short, the chair sought to have more time to complete task
8. The size of the committee helped in achieving consensus (6) It gave enough time to explore issues, discuss and come to agreement.
9. The consensus approach worked well with some exceptions.

\textbf{Where expectations were not met:}

1. The expertise level within some subcommittees varied. Those with low expertise in the group hindered the process.
   - On some issues, the expertise became “thin” -- not enough Sub committee members who are experts in every area. Degree of impact varied by subcommittee.
2. The content of Subcommittee work was often technical. The chair’s role could not be that of mediator, but rather as minute-taker. Deadlocks were resolved through break-outs; some deadlocks were not overcome. Could not get away from vested interest
3. As soon as the job of the Subcommittee was done, we did not hear back. We don’t know what happened to our work.
   - no follow-up
   - lots of people who dedicated time and effort
   - From Sept 93 to June 95 and to the Royal Commission in 97 our contact has been discontinuous
4. The WCB provided resources to the Subcommittees. However, meetings were based on availability of the chair and WCB expertise internal to WCB. This resulted in delays.
5. Where consensus didn’t work:
   - Vested interests on both sides
Too much to do
Lack of expected knowledge
Not having a common goal
Attempts to turn the committee work into a negotiation
Heavy political agendas eg. Ergonomics Subcommittee - some members made presentations at public hearings
6. More negotiation rather than developing regulations
   Some people could not separate labour relations issues from health and safety issues
7. Labour had dedicated resources - employers did not
8. Involving other Sub committees:
   Should have looked to other Sub committee for help (Ergonomics)
   Most often, if there was overlap with other committees the information was shared and passed on
9. Ineffective ways to deal with absenteeism of members
   Little discipline around attendance
10. Involvement at Subcommittee was very time consuming
    Both labour and employers found it difficult to spare people
11. There were some incentives to spend more time in the process i.e. paid consultants
12. After the subcommittee, for those Subcommittees where the WCB interpreted the recommendations, there was no further involvement of the Subcommittee’s representatives. Other results were entered when the regulations were drafted without consulting experts on the Subcommittee.
    Sub committees were not consulted on final wording after pubic hearing stage
    Sub committee should have been involved in taking the regulations to final draft
    The board would make changes before/after public hearing without any consultation with the Subcommittee
    Did send out a copy of the draft (PPE) but did not bring Sub committee back together and changes made were not identified
13. There was a lack of leadership on the output.
    Was the subcommittee to produce regulations? guidelines? recommendations? Everyone was second guessing the long term impact of the output. A clear, higher level implementation plan was needed.
14. There are rapid changes occurring in each industry. Is there an ongoing process in place?
15. The Board refused to discuss areas that subcommittee members felt they should
    Outside jurisdictions - like other Ministries - the Board will not accept responsibility for prevention in areas covered by other departments
16. Responsibility of dual roles (RAC/Subcommittee) caused difficulty
    RAC members often brought their agendas to the subcommittee
17. There was a perception of bias of the chair by Sub committee members.
    Changes to the draft
    Uninvited guest etc.
    Chair took some licence to manage the process and needs to make more effort to be seen as fair/transparent etc.

What were the major phases of the regulatory review work plan?

The responses to the above question were varied and clearly showed that subcommittees did not take a common approach to revising the regulations. In fact, some rewrote the regulations while others simply amended them.

Was the process transparent and credible?

1. Until the end. Then the regulations were pushed through.
2. Have to see the results first.
3. Until the subcommittee was disbanded and unconnected.
4. Not when being paid to be on the committee - reduced the credibility (hitmen)
5. Wrong people on some committees
6. Not sure we had confidence in the Board of Governors. Would they really implement the regulations?
7. Didn’t have the bigger picture.
8. Terms of reference may have been too flexible; subcommittees lost consistency.

Do you believe the WCB values consultation?
1. Directly associated staff were committed to consultation - Not sure beyond that.
2. WCB pursues consultation to a point.
3. Have to see the impact of how regulations are interpreted/enforced
4. The jury is still out. WCB could easily block the investment they have built in involving the workplace community.
5. Biggest problems are at the top.
6. All members attending the focus group were unanimous when asked if they would participate again.

We would demand the WCB:
- provide more guidelines
- provide more leadership
- have the resources to apply particularly at the front end

All participants requested a copy of the report to the Royal Commission.
Two questions were posed to those attending the focus groups:

“In what way was the Regulation Review Process successful?”
“In what way did the Regulation Review Process not meet expectations?”

**Ways in which the regulation review process was successful:**

1. **Consultation Process (of regulation review)**
   - It involved participation from both sides.
   - Incorporated a broader range, a cross-section of views, it involved more expertise.
   - Stakeholders had opportunity to meet the needs of their respective constituencies.
   - There was tremendous buy-in (in that the WCB didn’t shove something down stakeholder’s throats)
   - The process made for accountability with the employee and labour groups.

2. Stakeholders brought an additional practical perspective to bear on the issue.

3. Although the process was sometimes difficult, we had the knowledge that we were developing a higher level of knowledge for those involved and that this knowledge would pay back later as it was shared among stakeholders.

4. Regulations were now being written for practical application instead of administrative ease (administrative ease being what is easier for WCB to administer).

5. In between meetings, subcommittee (SC) representatives involved their sector / groups, varied across industries. Labour was better at this than the employer side.

6. There was a level of cost-benefit argument was built into the deliberations - reflected reality of the workplace - This was not common to all committees (at individual regulation level).

7. Members of the subcommittees have become subject matter experts for us to use and also act as a benchmark in the industry → can show how regulations have been met, not met.

8. The process opened the door to public comment - altered the relationship between board representatives and employer / labour representatives. More partnership rather than confrontational.

9. Established a legacy the board can utilize:
   - Contacts across North America
   - Developed a broad knowledge base

10. Given us more a sense of the various groups, of what they wanted.

11. As a result of this process, we have a record behind the intent of the regulations and the decisions made at public hearings.

12. There was a benefit to looking at all of the regulations - they are now more integrated.
13. Overall things worked well
   • Focussed on narrow aspect - nuts and bolts
   • Fewer philosophical differences
   • Had expertise
   • Chosen less for who they represent rather than what they know

Where expectations were not met:

1. In some cases, it was difficult to understand what hat was being worn by SC members. For example, some wearing RAC hat at the SC level. Duality of roles was problematic. As a result, SC members “flip-flopped” on some decisions.

2. The RAC mandate was much wider. RAC members gave themselves a lot of latitude in interpreting their mandate.

3. The need for the RAC is questionable. Some disagreement on this point. There is a view that a change in steering function is needed.

4. The RAC never resolved an issue that was not solved at the subcommittee level.

5. Overall, the level of consensus at the SC level has high. However, there was no expedient mechanism to decide issues. RAC attempted to make decisions, however did not have a level of expertise to do so.

6. Presence of panel of administrators (chair) helped achieve decisions - getting the process going again.

7. RAC at times added “things” to what subcommittees had done - additional regulations by RAC. For example, the regulation on survival suits (fishing regulations); SC had decided not to implement a regulation on this subject.

8. In other instances the RAC obfuscated the process. Some clauses were re-written to make them less clear, more open to interpretation.

9. Some issues went across the boundaries of SC and were deal with by some SC.

10. Given the varied background of SC members, technical expertise was brought in by WCB staff. This could lead to some necessary changes to the regulations by WCB staff.

11. Some changes to be brought given the scope of some of the issues.
    3 reasons why regulations changed by WCB staff
    • requirement to integrate all parts of regulations
    • results of public hearings
    • technical expertise not necessarily present or held by SC members

12. Evidence that SC interpreted the output of SC work differently: some developed recommendations, others wrote the actual regulations. SC failed to distinguish between regulation and enforcement policy.

13. SC members were not aware of what was being discussed or decided at the level of the RAC.

14. Some discrepancy between the terms of reference and the messages that were given to RAC/SC.

15. The reporting from public hearing is flawed. The adjustments are made as a reaction to the numbers of submissions. It is therefore easy for an interest group to over-represent a position at a hearing (“stacking the agenda”) and skew the results.
16. Some SC had more of a labour negotiation approach - give and take was apparent. Other SC kept a health and safety focus.

17. In some sectors such as ergonomics which started from a clean slate (where there was no preceding regulation), labour performed much research and background work. Employer took on a more reactive stance, and this led to shifting position on their part (since their position was not founded on research). Some evidence and opinions expressed that employer representatives did not transmit information to their respective organizations.

18. In one instance a consultant represented the interest of one party - it was often unclear whose view they were representing.

19. By their very structure and governance system, labour is more organized. This enables labour to connect with constituencies more smoothly and more readily. Labour brings more data and research to the table.

20. Labour tapped into a broader network, they capitalized on information and knowledge from other constituencies and jurisdictions.

21. There is a widely held perception by WCB staff that they were excluded from the regulatory review process. This is particularly the case for the prevention division staff. The WCB input was made through much lower key means - for example the drafting of regulations.

22. Some irritation and concern was felt by staff in this exclusion - they played an advisory role only and had no real say in decision-making. This was problematic given that SC members may not have expertise or knowledge on specific issues. Board staff could also provide a dissenting opinion.

23. Small employers and individual workers were not represented. The criteria to participate was that of financial stability and the fact that small operations can ill afford to be absent from the workplace was a factor. The issue remains: “How to get representation from unorganized workers”.

24. Officers were asked to provide input, but only after the process was complete.

25. The scope of SC work, in some cases, was so broad that it was impossible to have a broad basis of expertise among SC members. SC members were expected to contribute to issues they have no knowledge about. SC must have a cross section of expertise.

26. Timelines and Project Management:
   - Sequencing and coordination is important
   - Timelines must be realistic - SC were driven to meet timelines - and in the end the SC reports sat with RAC for 1 ½ years.
   - The inability to set “real” deadlines and ensure coordination was frustrating to WCB staff - “Got to regulations despite the process.”

**How much value is placed on consultation**

- The panel of administrators / VP’s look to see how workers/labour have been involved.
- Needs analysis for production of video requires assessment of stakeholder commitment.
- Public Consultation: The Way We Do Business.
- At the level of WCB - may be less aware of commitment to consultation.
If we were to do this again:

1. Greater involvement for WCB in decision-making and input.
2. Clarity in Terms of Reference for RAC/ARR to give advice on broader perspective; it is not a decision-making body; provide a significant role in coordinating regulations across sectors and setting priorities; project management.
3. More support to carry out role and task.
4. Ensure scope of review by a committee is manageable.
5. Do part of regulations at same time - not all at once.
6. Keep information systems maintained / updated. These systems feeding regulatory process.
7. Must be a decision-maker designated.
8. Ensure accountability of costs - identify various industry sectors / regulatory sections as cost centres.
9. Setting reasonable expectations and timelines.
10. Get a head start on revisions - create a document to comment on.
11. Build some measurables so that we know if regulations are having impact.
Appendix 4
Models on public consultation mechanisms

Condition Necessary For Change

\[ D \times V \times F > R \]

RESISTANCE to Change

A "FIRST Steps" Roadmap to Achieving the Vision

A Clear VISION of a Preferred Future

DISSATISFACTION with Current Conditions

If D, V, or F are missing, the product of \( D \times V \times F = 0 \).
Effective change is then unlikely, since \( R \) is always \( > 0 \)

Public Consultations and Change

Regulatory review implies change for the stakeholders subjected to the regulations. Involving stakeholders in the development of regulations has several benefits including that of smoother implementation. This raises the question: “what conditions are required to make change in general readily accepted?” The following model may shed some light.

Any change generates some amount of resistance. Overcoming this resistance can be achieved when three conditions are met:
1. All significantly affected stakeholders share a common basis of dissatisfaction (D) over the current situation;
2. All stakeholders have a vision (V) of a preferred future;
3. First steps (F) are articulated permitting the achievement of the vision.

The model insists that an insufficient amount of Dissatisfaction, Vision or First Steps will result in a product of “0” on the left side of the equation, making change impossible. Therefore, any consultation effort must place emphasis, at least in the beginning, on the building of a common database of dissatisfaction or an agreed upon set of facts. The starting point for consensus decision-making must be that of building an understanding of the reasons why the current situation is unsustainable. In a multi-stakeholder environment, how does one go about this? Are there techniques and tools more apt to producing the desired results? A second model will shed light on this very question.

Purpose of consultation as a variable in selecting a consultation mechanism

Any organization planning on conducting public consultations must ask THE fundamental question: why consult? The question goes to the very core of the purpose of the consultation. Simply put, an organization may wish to consult its stakeholders as a means of:
1. Sharing information useful in the shaping of programs, projects or policy
2. Develop an ongoing dialogue with stakeholders
3. Making joint decisions.
Figure 2 shows the relationship between: consultation objective; the commitment level of the stakeholders; and the amount of time required for all parties to gain an understanding of the issues. It must be emphasized that joint decision-making has a pre-condition of exchange of information so that all parties share in their understanding the current situation AND develop an ongoing dialogue. Then and only then can joint decision-making truly take place.  

The Spectrum of Mechanisms

Some consultation mechanisms are more suited to sharing information, while other are better and developing dialogue and joint decision-making. No single mechanism can meet all three purposes (sharing information, develop dialogue, make decisions).

It is recommended that any consultation strategy include a variety of mechanisms permitting joint decision-making based on shared information and an open dialogue.

Figure 3 maps out a variety of consultation mechanism options available to organizations. This is by no means an inclusive list.
Appendix 5

Consultation Process

Effective consultation requires the application of a methodology closely related to project management. This methodology, or consultation process, is described below.

The Pre-Planning Phase can be characterized as the “Getting Ready to Get Ready” phase. This phase requires consideration of overall purpose of the consultation. Issues such as mandate, desired outcomes and objectives are clearly spelled out and act as guiding philosophy to the consultation team. A second step is to analyse the environment in which the consultation is to take place. External factors such as the political context, social issues, public opinion and other topics should be the focus of this analysis. Of equal importance, an agency must also assess its own ability to bring the consultation to a successful outcome. The analysis of the internal environment includes factors such as the agency’s reputation, the skill level of staff, and organizational capacity. A third step is the identification of stakeholders, including the establishment of selection criteria to justify who is to be invited. Finally, the fourth step requires some contact with stakeholders to assess their availability, interest and commitment to the process. This is facilitated when the has completed some preliminary scoping of the issues and has identified some of the relevant consultation questions. The scoping will frame the debate and define the parameters of the consultation.

The second phase is the “Getting Ready” or Planning Phase. At this stage, a consultation team is assembled, external resources are secured, and a consultation strategy is established. The consultation strategy details the mechanisms that will be utilized to reach the stakeholders. Typically, effective consultation use a variety of mechanisms often referred to as the mechanism mix. The mechanism selection process is based on several criteria that include: time and money available, the overall consultation purpose, stakeholder readiness and knowledge of the issues.
Phase 3, involves *Implementation* of the strategy and carrying out the consultations. This phase includes management of stakeholders, of the consultation team, and that of external communications with the media and troubleshooting.

The last phase, *Follow-Up* is comprised of three steps. In the first step, the data gathered throughout the consultation is tabulated, analysed and most often, committed to a report. A second step requires the circulation of reports back to stakeholders. The third step should be one where the agency completes an internal evaluation. In a regulatory environment, this concluding phase usually signals the beginning of an ongoing monitoring phase that attempts to evaluate the effectiveness of the regulations.
Appendix 6

Strategy on Regulations Review
RAC Protocol
Guidelines for People Seconded to the Secretariat

The following documents are from the Worker’s Compensation Board and are referenced in the text.
Decision of the Governors

Number: 9
Date: January 7, 1992
Subject: Review and Development of Occupational Safety and Health Regulations – Strategy Document

The governors adopted the following document at their meeting on January 7, 1992.

1. Purpose

The Board of Governors of the Workers’ Compensation Board are statutorily responsible for making occupational safety and health and first aid regulations and are relied upon for recommendations to the lieutenant-governor-in-council with respect to regulations under the Workplace Act.

The Board of Governors is responsible for making the final decisions with respect to the content of any regulations or recommendations.

There has not been a public review of occupational safety and health regulations that has been brought to a conclusion for over a decade.

The governors propose to successfully complete a review through a process that is respectful of the interests of workers, employers, the community, and the W.C.B. They propose to complete the review within a reasonable time while allowing for broad community consultation. They intend to adopt a process that recognizes the experience and expertise of the parties most directly affected.

The purpose of the process is to conduct an open, comprehensive review and revision of occupational safety and health related regulations, which the Workers’ Compensation Board currently administers, and to develop new regulations in certain areas and industries currently unregulated.

2. Scope of Review

The existing regulations that are the subject of this review consist of the Industrial Health and Safety Regulations, Occupational Environment Regulations, Industrial First Aid Regulations and Workplace Hazardous Materials Information System Regulations.
The Committee is delegated the responsibility to oversee the regulation review and development process; to bring it, as far as possible, to a successful conclusion by presenting to the Board of Governors recommendations based on consensus; to record and define differences; and to present a clear definition of the options where consensus has not been achieved.

All recommendations and reports related to the process will be presented to the Board of Governors prior to their publication.

The Board of Governors shall appoint a Regulation Advisory Committee to be chaired by the chairman or another governor that he designates during his temporary absence. It shall include the two worker, two employer and one public interest governor who are members of the Governors' Committee for Regulation Review plus seven persons representative of workers and seven persons representative of employers. It shall also include the coordinator of regulation review as an advisor to the Regulation Advisory Committee.

The fourteen persons representative of workers and employers are to be selected by the Board of Governors on the advice of the Governors' Committee for Regulation Review following consultation with labour and employer groups.

Employees of the Workers' Compensation Board and professionals in related fields may be appointed by the Board of Governors as advisory members of the Regulation Advisory Committee.

Specialty Subcommittees of the Regulation Advisory Committee may be appointed to address specific areas. Their composition, chairmanship and responsibilities shall be decided by the Governors' Committee for Regulation Review after consultation with the Regulation Advisory Committee.

The Regulation Advisory Committee will ensure that the Occupational Health and Safety Division of the Board is consulted on matters related to the content, structure, implementation, monitoring, and enforcement of regulations and standards.

Non-governor members of the Regulation Advisory Committee and Specialty Subcommittees shall receive reimbursement for travel and other reasonable expenses, and a per diem or other compensation determined by the governors.

It may be appropriate to proceed to public hearings on proposed additions or amendments to the regulations before the comprehensive review is complete.

The Regulation Advisory Committee will recommend a process for regulation amendment during the period of this review process.
• Provide liaison with all departments of W.C.B. which will be involved in regulation review process
• Participate on Regulation Advisory Committee and Specialty Subcommittees as directed by the Governors’ Committee for Regulation Review
• Participate in drafting of final report of Advisory Committee
• Liaise with Ministry of Labour during gazetting process

(5) Research Assistant

• Assist coordinator with technical and other advice on operation of Advisory and Specialty Committees
• Fulfill research function for regulation review process
• Assist coordinator with operation of the Secretariat
• Assist coordinator in other aspects as necessary

(6) Secretariat

• Provide legal advice on matters related to regulation to the governors, the Regulation Advisory Committee and Specialty Committees
• Provide budgetary services, administrative and secretarial support
• Develop resource information centre for regulation review process (for example: previous draft regulations, previous public comment, standards, claims statistics, regulations from other jurisdictions)

(7) OSH Division

• Provide information, consultation, advice and comments as requested by the Regulation Advisory Committee or Specialty Subcommittees through the coordinator
• Prepare manuals and explanatory literature on new regulations
• Provide education and training programs both for staff and the community to assist with implementation of new regulations

6. Public Forum

The Governors’ Committee for Regulation Review shall conduct a series of public forums with interested parties.

The purpose is to provide a means for interested parties to express their views on regulation review early in the review process and to receive views on a range of strategies for the creation of a safer workplace, including non-inspectional strategies such as internal responsibility and information systems; consulting and educational services; assessment incentives; and enforcement.
REGULATION ADVISORY COMMITTEE

OPERATING PROTOCOL

1. General

The Regulation Advisory Committee is constituted by the Governors of the Workers Compensation Board of British Columbia as part of the Governors' strategy for review and development of occupational safety and health regulations. The Committee's terms of reference and mandate are established in the Governors' overall strategy "Review and Development of Occupational Safety and Health Regulations" adopted January 7, 1992. (Appendix)

The Committee's goal is to present to the Governors a report and recommendation, including any dissent, in a form that may be publicized as the subject of public hearings under section 71 of the Workers Compensation Act.

2. Role and Function

The Committee's role and function are set out in the Governors' strategy document. The Committee as a whole, and each member of the Committee, is responsible for, and committed to, implementing the terms of reference and mandate of the Committee and thereby perform the Committee's role in the Governors' successful completion of a comprehensive review and revision of occupational safety and health regulations within a reasonable time. The Committee will present its report and recommendations within 24 months of this date.

3. Meetings

The Committee shall schedule meetings not less than six months in advance or on fourteen days notice at the call of the Chairman. The Chairman shall call a meeting when requested to do so in writing by eight members of the Committee.

4. Postponement or Cancellation

Any meeting, except one called at the request of eight members, may be cancelled or postponed by the Chairman.

5. Agenda

The agenda for each meeting shall be prepared by the Coordinator of Regulation Review, after consultation with the Chairman. The agenda and any supporting materials shall be delivered to each member of the Committee by the Secretariat not later than seven days prior to the date of the meeting.
8. Working Groups

The Committee may establish Working groups to carry out any mandate given to them by the Committee. Working Groups shall not have the authority to make decisions on behalf of the Committee. The role of Working Groups is to address issues referred by the Committee, compile and organize supporting data and information and provide options to be considered by the Committee.

The membership of a Working Group shall include an equal number of worker and employer representatives.

9. Specialty Subcommittees

Members of the Committee may serve as facilitators of any Specialty Subcommittees established by the Governors' Committee for Regulation Review under the Governors' terms of reference for review and development of occupational safety and health regulations. Members of the Committee are ex officio members of any Specialty Subcommittee.

10. Conflicts of Interest

The Governors have final decision making authority to make or recommend revisions to occupational safety and health regulations. While the Committee anticipates the Governors will adopt all consensus decisions of the Committee, the Governors can not be bound by the Committee's consensus under section 71 of the Workers Compensation Act.

For this reason, because of the representative nature of members of the Committee and because the Committee's role and function is part of a legislative process, it is the Committee's belief that individual members of the Committee are not in a conflict of interest position in the discharge of their responsibilities, regardless of their employment, business or involvement in any industry or organization.

11. Openness

The Governors' terms of reference direct that the entire process of review and development of occupational safety and health regulations be open. The Committee shall conduct its affairs in a manner that facilitates a transparent regulation review and development process.
Lance Ewing
Leif Hansen
Elyne Johnson
Barb Pederson
Mark Thompson
Dale Versfelt
Cathy Walker
Len Werden

Jim Halliday
E.A. Hawrysh
William Kessel
Bill Kessel
Larry Stoffman
Tom Timm
Ed Voegenaar
John Weir

Richmond, British Columbia, December 14, 1993

Iah May

Richmond, British Columbia, October 25, 1994

Robert West-Sells
GUIDELINES FOR PERSONS SECONDED TO THE SECRETARIAT

It is contemplated that Specialty Subcommittees will typically include two persons from the OSH Division seconded to the Secretariat. Usually, these persons will be expected to assume the role of Chair of the Subcommittee and technical advisor to it.

The following guidance is provided to seconded persons to assist with their contribution to the Regulation Review process.

GENERAL

1. The term "secondment" will not typically mean full time transfer to the Secretariat. It will mean sufficient provision of the seconded person's time to meet the obligations created through the Terms of Reference for the Subcommittee. Estimates of secondment time shall be established by the Director of the Secretariat in consultation with the seconded person's manager.

2. Seconded persons will report to the Director of the Secretariat/Coordinator of Regulation Review on all matters related to their contributions to the Specialty Subcommittee. The Coordinator reports to the Chairman of the Governors and is responsible to the Governors' Committee for Regulation Review.

   The Director will name a representative from the Secretariat to act as a point of contact with the Subcommittee to assist with the day-to-day function of the Subcommittee.

3. In their work with Specialty Subcommittees, seconded persons will be guided by one fundamental objective, the health and safety of workers. All matters related to that objective are to be tabled for discussion in the Subcommittee.

4. The preferred means of decision-making on Subcommittees is consensus. Consistent with the Operating Protocol of the RAC, in the event of vote, only worker and employer representatives shall vote.

5. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

THE ROLE AND FUNCTION OF THE CHAIR

1. The primary role of the chair of the Subcommittee will be to guide and facilitate the work of the Subcommittee in the achievement of its Terms of Reference.

2. The chair will have the normal administrative rights and responsibilities accorded the chairing role. This will extend to preparation of agendas, sign-off of minutes and coordination of meetings. The chair will have the responsibility of proposing the frequency of and pace to Subcommittee meetings in order to ensure the Subcommittee achieves deadlines.

3. The chair will ensure that all items proposed by the Subcommittee which have budgetary impact are brought to the attention of the Coordinator of Regulation Review for consideration.
Appendix 7
Regulation Review Structure

REGULATION REVIEW STRUCTURE - 1992 to 1995
Phase 3 subcommittees

BOARD OF GOVERNORS

Governors' Committee for Regulation Review

Regulation Advisory Committee

Secretariat for Regulatory Review
* Administrative Centre
* Advisory Centre
* Resource Centre

Oil & Gas
Medical Programs
Personal Protective Equipment
Aircraft Operations
Other Subcommittees as required
Focus Groups as required

REGULATION REVIEW STRUCTURE
1995-1997

Panel of Public Administrators

Vice President - Prevention

Advisers on Regulation Review
Secretariat for Regulation Review
Specialty Subcommittees
### Appendix 9

**Glossary**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bipartite</td>
<td>Governance system based upon the interplay of two major actors, in this case employer and worker representatives.</td>
</tr>
<tr>
<td>Bill 56</td>
<td>Law passed in July of 1995 that effectively abolished the Board of Governors and delegated the authority to a Panel of Administrators.</td>
</tr>
<tr>
<td>Consensus</td>
<td>General agreement on an issue. An agreement that is reached by identifying the interests of all concerned parties and then building an integrative solution that maximizes the satisfaction of as many of the interests as possible. The process does not involve voting but a synthesis and blending of solutions.</td>
</tr>
<tr>
<td>Constituency</td>
<td>The group or body supporting a representative. The constituency of labour representatives are the members of the labour unions.</td>
</tr>
<tr>
<td>Consultation Mechanism</td>
<td>Technique used to gain wider input. In the context of this report, a consultation mechanism usually refers to a public forum, a public hearing or the advisory groups designated by the Governor’s strategy on Regulatory Review.</td>
</tr>
<tr>
<td>Criteria</td>
<td>A standard by which a judgement or a decision is taken.</td>
</tr>
<tr>
<td>Decision-making Process</td>
<td>Mechanism used to select among alternatives.</td>
</tr>
<tr>
<td>Employer representatives</td>
<td>Those chosen to represent the interests of employers. Employer representatives are typically part of an association and can therefore speak on behalf of the association members.</td>
</tr>
<tr>
<td>Focus groups</td>
<td>An interview technique applied to a number of individuals having a community of interests.</td>
</tr>
<tr>
<td>Interest</td>
<td>A substantive need of a party involved in a consultation.</td>
</tr>
<tr>
<td>Involvement mechanism</td>
<td>Synonymous to consultation mechanism.</td>
</tr>
<tr>
<td>Labour representatives</td>
<td>Those that are members or employees of a union.</td>
</tr>
<tr>
<td>Milestone</td>
<td>A significant point in the life cycle of a project.</td>
</tr>
<tr>
<td>Multi-stakeholder</td>
<td>An environment or approach that includes and encourages input from all relevant and affected stakeholders. These might include labour, employers, other levels of government, non-governmental organizations, and interested members of the public, among others.</td>
</tr>
<tr>
<td>GCRR</td>
<td>Governor’s Council on Regulatory Review.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Project Management Approach</td>
<td>The effective and efficient utilization, allocation and coordination of resources (including time, materials, money, people, information, etc.) towards the achievement of clearly defined deliverables.</td>
</tr>
<tr>
<td>Public Consultation</td>
<td>Generally represents a series of activities bringing together different people, different interests groups in the hope of exchanging information, and/or building a dialogue and/or making joint decision on one or several issues.</td>
</tr>
<tr>
<td>Public Forum</td>
<td>A public consultation mechanism for a group of varying size. The format of a public forum may involve one or more of the following: educational sessions, keynote address, discussion groups, working sessions to examine issues, share points of view and develop common grounds for agreement.</td>
</tr>
<tr>
<td>Public Hearing</td>
<td>Usually a formal consultation mechanism where stakeholders with “standing” present their position or views on a specific subject matter. The public hearing is most often the minimum legal requirement prior to enacting a policy, law or body of regulations.</td>
</tr>
<tr>
<td>Public Involvement mechanism</td>
<td>Synonymous to consultation mechanism.</td>
</tr>
<tr>
<td>RAC</td>
<td>Regulatory Advisory Committee</td>
</tr>
<tr>
<td>Regulator</td>
<td>Generally refers to the Worker’s Compensation Board.</td>
</tr>
<tr>
<td>Regulatory Review Bodies</td>
<td>Refers to the elements within the regulatory review process. Specifically, GCRR, RAC, Secretariat and Subcommittees.</td>
</tr>
<tr>
<td>Specialty Subcommittees or subcommittees</td>
<td>A group brought together to examine sector / industry specific issues.</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>Refers to all affected parties, generally workers, and employers.</td>
</tr>
<tr>
<td>Timelines</td>
<td>Schedule of deliverables.</td>
</tr>
<tr>
<td>Transparency</td>
<td>Quality or condition that demonstrate a lack of pretense or deceit.</td>
</tr>
<tr>
<td>Tripartite</td>
<td>Governance system based upon the interplay of three major actors, in this case employer representatives, worker representatives and the regulator.</td>
</tr>
</tbody>
</table>
Appendix 10

Bibliography


ENDNOTES


2. These assumptions were identified through examination of documents made available by the WCB.


5. Full version of the Guidelines for Staff Seconded to the Secretariat can be found in the appendices.

6. (OECD, 1994)

7. (OECD, 1994)

8. (CSA, 1996)

9. (OECD, 1994)

10. (CSA, 1996)

11. Adapted from CCMD, 1997

12. (CCMD, 1997)

13. (TBS, 1994)

14. (CCMD, 1997)

15. (Canadian Standards Association, 1996)

16. (CSA, 1996)

17. (TBS, 1994)

18. (CPA, 1989)

19. D. Conner

20. (TBS, 1994)

21. (CPA, 1989)

22. (TBS, 1994)


24. See chapter describing the regulatory review process.

25. As related by one participant in the subcommittee focus group.
26. Please refer to Appendix 5 for a description of a consultation process (project management) approach.

27. Intersol’s model for understanding personal and organizational change.

28. This model is adapted from the CSA.