The Role of Joint Committees
in Workplace Health and Safety:

A Review of the Legislation and Previous Studies

John O’Grady

May 1998
Trends in Occupational Injuries:

In 1996, accepted time-loss injuries per 100 workers in British Columbia were 47% higher than the Canadian average. B.C.’s incidence of injuries was almost double the rate in Ontario.

Exhibit No. 1 compares B.C.’s accepted time-loss injury rate per 100 workers with the “all jurisdictions total.” In 1986, B.C.’s experience converged with the all jurisdictions injury rate. From 1987 to 1990 - years of high employment in all provinces - injury rates increased in B.C., but declined sharply outside of B.C. From 1991 onwards, injury rates fell, both nationally and in B.C. By 1996, injury rates in B.C. were still 47% above the national rate.

Exhibit No. 1
Accepted Time-Loss Injuries per 100 Workers

---

1 Injuries data derived from Table No. 1, “Number of Accepted Time-Loss Injuries by Province, 1982-1996,” Work Injuries and Diseases, Association of Workers Compensation Board of Canada. Employment data derived from Statistics Canada, Survey of Employment Payroll and Hours (SEPH), CANSIM Matrices Nos. 4425 and 4453. SEPH is a measure of paid employment and excludes, therefore, the self-employed. Note that some workers in federal jurisdiction, e.g., employees of chartered banks, will be counted in SEPH but are not covered by Workers Compensation Boards. Conversely, some WCB’s permit self-employed persons to take voluntary coverage. The procedure used in this comparison is methodologically consistent across jurisdictions. Each WCB also reports its injury rates in its Annual Report. The Boards use distinct, and sometimes incompatible, definitions for their employment denominators. The British Columbia WCB, for example, estimates person-years of covered employment. On this basis, the BC WCB derives a short-term injury rate per 100 person-years of covered employment. This procedure produces similar results, as is shown in the following table:
Differences in the structure of employment cannot account for B.C. having the highest accepted time loss injury rate of all Canadian jurisdictions. Employment in the goods producing industries - manufacturing, resources and construction - is generally associated with a higher incidence of occupational injury. In principal, a higher proportion of the covered work force in these industries should be associated with a higher injury rate. However, in B.C., throughout the period 1983-1996, the proportion of the work force in the goods producing industries was lower than the national average. Moreover, the rate of decline from the 1983 level was greater in B.C.²

(continued from prior page)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered Employment</td>
<td>6.1</td>
<td>6.0</td>
<td>5.8</td>
<td>5.7</td>
<td>5.3</td>
</tr>
<tr>
<td>Paid Employment</td>
<td>6.3</td>
<td>6.3</td>
<td>6.0</td>
<td>5.9</td>
<td>5.4</td>
</tr>
</tbody>
</table>

For BC WCB data, see *Workers Compensation Board of British Columbia, Annual Report Statistics '96*, Table B-2, p. 46. In principle, covered employment provides a more indicative denominator than total paid employment. However, WCB’s do not know their actual covered employment and can only estimate this based on covered payroll. Using paid employment for comparative purposes is a reasonable proxy. As can be seen from the above table, both absolute levels and changes over time are quite close.

² The following table compares trends in B.C. and on a national basis:

<table>
<thead>
<tr>
<th>Share of Paid Employment in Goods Producing Industries*</th>
<th>B.C.</th>
<th>Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>24.5%</td>
<td>26.7%</td>
</tr>
<tr>
<td>1996</td>
<td>20.1%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Decline in Share, 1983 to 1996</td>
<td>18.0%</td>
<td>13.4%</td>
</tr>
</tbody>
</table>

Statistics Canada, Survey of Employment, Payroll and Hours, (SEPH), CANSIM Matrices Nos. 4425 and 4453.
Exhibit No. 2 compares the average three year injury rate for the period 1994 to 1996 among the 12 jurisdictions.

<table>
<thead>
<tr>
<th>Exhibit No. 2</th>
<th>Injury Rates per 100 Paid Employees,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1994-1996 Average: All Jurisdictions</td>
</tr>
<tr>
<td>British Columbia</td>
<td>5.46</td>
</tr>
<tr>
<td>PEI</td>
<td>5.42</td>
</tr>
<tr>
<td>Quebec</td>
<td>4.92</td>
</tr>
<tr>
<td>NWT</td>
<td>4.48</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>4.33</td>
</tr>
<tr>
<td>Manitoba</td>
<td>4.31</td>
</tr>
<tr>
<td>Newfoundland</td>
<td>4.13</td>
</tr>
<tr>
<td>Yukon</td>
<td>4.04</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>3.53</td>
</tr>
<tr>
<td>Ontario</td>
<td>2.74</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>1.79</td>
</tr>
<tr>
<td>Alberta</td>
<td>1.47</td>
</tr>
<tr>
<td>Canada: All Jurisdictions</td>
<td>3.78</td>
</tr>
</tbody>
</table>

Strategies for Reducing Injury Rates:

There are broadly three strategies to reduce injury rates. These may be characterized as the administrative and regulatory model, the economic incentive/disincentive model and the internal responsibility system. No jurisdiction in Canada, or abroad, relies wholly on one strategy. Jurisdictions here and abroad differ in both the relative weight they attach to the three strategies and the degree of rigour with which each strategy is adopted. A key point derived from literature on joint committees, which are at the heart of the internal responsibility system, is the way in which one strategy either weakens or reinforces other strategies. The strategies should not be seen as substitutes for one another. Rather, the relevant policy questions are what is the appropriate balance among the strategies, in light of the particular circumstances of a jurisdiction, and how can each of the three strategies be implemented, so as to maximize the potential for positive reinforcement.

The administrative and regulatory model relies on standard setting and enforcement. To be effective, the administrative and regulatory model requires standards that are both timely and appropriate, a high level of on-site inspection and a willingness on the part of public authorities to both issue compliance orders and enforce non-compliance through penalties. The administrative and regulatory model is inherently litigious. The U.S. Occupational Health and Safety Act (OSHA) is the most analyzed application of this strategy. In all Canadian jurisdictions, workplace health and safety legislation incorporates the central features of the administrative and regulatory model. The market incentive/disincentive model relies chiefly on the experience rating system used to establish premiums for

---

3 Injury rates per 100 paid employees calculated on the same basis as Exhibit No. 1, using paid employment as per the Statistics Canada Survey of Employment Payroll and Hours (SEPH), CANSIM Matrices 4299, 4327, 4341, 4313, 4355, 4369, 4383, 4397, 4411, 4425, 4439, 4453 and 4285.

either the Workers Compensation System or the mandatory private insurance which substitutes for this in some U.S. jurisdictions. The premium system needs to reflect both the actual experience of sectors so as to avoid cross-sectoral subsidization and allow individual employers to benefit from improved experience or from the implementation of improved policies and procedures to promote safe working conditions. One of the difficulties with market incentive/disincentive strategies arises from their application to small employers where injuries occur infrequently and, therefore, when expressed in relation to annual employment show sharp swings in performance. Moreover, to the extent that the ultimate incidence of premium costs are shifted onto wages, the incentive or disincentive effect on employers is diminished. Nevertheless, it is likely that if the structure of premiums involves significant cross-subsidies, the economic signals will run counter to the intended policy direction and will undermine soundly designed regulations and an otherwise well functioning internal responsibility system.

**Internal Responsibility System: Principles**

What has been termed the *internal responsibility system* is based on practices that emerged in the unionized mining industry in the 1950’s and 1960’s and, to a lesser extent, in the manufacturing industry. What are now regarded as the core principles of the internal responsibility system were first legislated in Saskatchewan, in 1972. It is generally agreed, however, that the principles of the system were given their fullest expression in the 1976 *Report of the Royal Commission on the Health and Safety of Workers in Mines* [the Ham Commission].

Ham set out three principles as the defining characteristics of the internal responsibility system. These are:

1. **first,** joint health and safety committees with the power to inspect, investigate and, with less clarity, the power to make decisions respecting health and safety;
2. **second,** an individual right to refuse unsafe work;
3. **third,** a right to be informed of substances used in the workplace which could be harmful.

---


7 Parsons, *supra* note 5, interprets Ham as supporting “direct responsibility” for decisions respecting health and safety and understands this to mean effective decision-making power (p. 26).
Ham’s principles inform, in one way or another, health and safety legislation in all jurisdictions. There are, however, significant differences in how these principles are understood and applied. Among the important differences are:

- the authority of joint health and safety committees, specifically, whether these committees will be advisory to senior management or whether they will have the power to make a determination that may alter policies and practices or may entail expenditures;
- the circumstances under which it is obligatory to establish a joint committee, typically expressed in terms of Ministerial discretion, the size of a workplace or its injury and fatality record;
- the role of the health and safety inspectorate, specifically whether its inspection and enforcement role is altered so as to become essentially facilitators and mediators to support the internal responsibility system;
- the training - either voluntary or mandatory - for members of joint committees and, by implication, whether committees must be certified to be in compliance with the statutory requirement to establish a joint committee;
- the procedure for selecting employee representatives, the role of a trade union in determining employee representatives and the non-managerial composition of committees where only part of an employer’s work force is unionized;
- limitations on the right to refuse, including loss of wages for refusing to undertake work or restrictions on the right to refuse unsafe work in certain occupations or types of workplaces.

**Scope of this Paper:**

This paper will compare differences in the way in which the internal responsibility system was adopted across the 13 separate jurisdictions in Canada. The paper will then examine:

- important philosophical differences underlying the establishment of health and safety committees which, in turn, affect views on the appropriate mandate of these committees and expectations of how they will function;
- empirical work on the effectiveness of joint committees in reducing injury rates in Canada, the U.S. and abroad;
- factors that are identified by researchers as contributing to the effectiveness or ineffectiveness of joint committees;
- the relationship of the internal responsibility system to the administrative and regulatory system, and in particular to the role of the health and safety inspectorate;
- the aspects of workplace health and safety which joint committees reasonably can be expected to address and those aspects which it is unreasonable to expect committees to address. By implication, the latter must be addressed through administrative and regulatory strategies or market incentives and disincentives.
The Role of Joint Committees in Workplace Health and Safety

The internal responsibility system is now an integral element in the strategy to reduce workplace injuries in virtually every jurisdiction in Canada. Thus, the 1984 Report of the [Ontario] Royal Commission on Asbestos described the internal responsibility system as “the cornerstone of the Ontario Health and Safety Act and the foundation for the regulations made thereunder.” In their work for the Macdonald Royal Commission, Digby and Riddell concluded that, “the adoption of the internal responsibility system, as a primary vehicle for addressing concerns about workplace health and safety, was one of the key developments in the 1970’s.” The course of legislative innovation since the 1970’s has been to further embed the internal responsibility system.

Internal Responsibility System: Jurisdictional Comparisons

Writing in the late 1970’s, Paul Weiler, a former chair of the B.C. Labour Relations Board, commented on the particular advantages that arise in Canada from the federal distribution of responsibility for jurisdiction in labour relations and workplace policy in general. Prior to the mid-1970’s the weight of opinion held that provincial responsibility for labour relations and workplace policy led to inconsistency in policy and a general tendency to restrict changes so as not to impair a jurisdiction’s competitive position in attracting investment. As Weiler notes, however, for the most part, the actual course of policy has been the opposite of that feared by the critics of provincial jurisdiction. “Each jurisdiction,” Weiler observes, “has been able to try out those innovations that seemed to fit with the character of its industries, the complexion of its workforce, and the spectrum of its political allegiances.” The provincial responsibility for policy in respect of labour relations and the workplace has led to a progressive experimentation in which successful innovations in one jurisdiction are adopted, albeit with a lag, in other jurisdictions while those innovations which are unable to prove their efficacy remain exceptional and are eventually terminated. The evolution of health and safety policy conforms to Weiler’s paradigm. By 1979, some form the Ham principles were in place in almost all jurisdictions.

---

Exhibit No. 3 compares, in broad terms, the adoption of Ham's internal responsibility principles in the 13 Canadian jurisdictions, as of 1998.

### Exhibit No. 3
Adoption of “Ham Principles” of Internal Responsibility by Jurisdiction

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Mandated Joint Committee</th>
<th>Right to Know</th>
<th>Right to Participate</th>
<th>Right to Refuse Unsafe Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Yukon</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>a</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>British Columbia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Alberta</td>
<td>a</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Manitoba</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Ontario</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Quebec</td>
<td>b</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>a</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Newfoundland</td>
<td>a</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

- **a** Ministerial discretion
- **b** on union initiative or at request of 10% of workers

**Mandated Committees:** Joint Committees statutorily required, in at least some classes of workplace.

**Right to Know:** Statutory requirement on employer to disclose use of substances or generation of byproducts which may be hazardous. Effectively enforced through adoption of Workplace Hazardous Materials Information System (WHMIS).

**Right to Participate:** Right of members of Joint Committees (or health and safety representatives) to participate in detection, evaluation and formulation of strategies to reduce workplace hazards.

**Right to Refuse:** Right of an individual worker to refuse to do work that he or she judges to be unsafe, without risk of discipline, subject to final determination by a government health and safety inspector. The right may be limited with respect to some types of workplaces and some occupations.

---

In one form or another, Ham’s principles were the basis for most workplace health and safety legislation from 1976 onwards. Thus, Parsons, for example, describes Manitoba’s Workplace Health and Safety Act of 1976 as “a rather complete application of Ham’s ‘internal responsibility system.’” By 1979, all provinces, except P.E.I. and Nova Scotia, had adopted the internal responsibility system in one form or another. Legislation based on the internal responsibility system was subsequently adopted in P.E.I. in 1985 and in Nova Scotia in 1986.

The general position as of 1998 may be summarized as follows. In all 13 jurisdictions, the right to know is operative, largely through the adoption of the Workplace Hazardous Materials Information System (WHMIS). The right to refuse applies, at least in some form, to a significant proportion of the work force, especially in the private sector. Joint committees are required by statute for most classes of workplaces in all but four jurisdictions, with the remaining four vesting in the Minister of Labour the authority to require the establishment of a committee. (In Quebec, joint committees may be initiated by a union request or by the request of 10% of an employer’s workforce at a particular establishment.) The right to participate is tied to the establishment of a statutorily or ministerially mandated joint committee. Only in Alberta, do the rights of committee members not extend to inspection and evaluation.

Internal Responsibility and Adversarialism in Labour-Management Relations:

There are broadly two views of labour-management relations. The first, which is associated with the human resource management school holds that labour and management have a shared interest in the efficiency and competitive performance of a firm and that the central task of human resource management is to integrate employee interests into the broader interests of the firm while, at the same time, ensuring that the firm takes account of the legitimate needs of employees for recognition, economic security and a safe workplace. The human resource management school has often been sceptical of public policy, believing that “one size fits all” solutions fail to take adequate account of the needs of particular workplaces. By contrast, the industrial relations school has viewed the interests of labour and management as being both different and essentially in conflict. From this perspective, the task of industrial relations is to balance these interests in a way that permits a reasonable modus operandi to prevail. The industrial relations school has traditionally looked to public policy to establish a regulatory environment which better enables labour and management to arrive at a sustainable balancing of their interests. An intermediate position between these paradigms regards issues, such as employee training and workplace health and safety as essentially non-conflictual, in comparison with more directly economic issues such as compensation and employment security.

Though rarely made explicit, these alternative paradigms underlie different conceptions of joint committees and the role of adversarialism in resolving workplace health and safety issues.

It is important to recognize how the basic differences between the human resource management paradigm and the industrial relations paradigm bear on the understanding of the internal responsibility system. These philosophical differences, which are often not made explicit, affect the criteria which are used to evaluate the success of joint committees, the role that is considered appropriate for Ministry of Labour inspectors and the expected relationship between joint committees and labour unions in unionized workplaces.

---

12 In Quebec, the statutory requirement for joint committees is founded in the report of the Beaudry Committee. For a discussion of the Beaudry Committee report, see Doern, G. Bruce. 1977 “The Political Economy of Regulating Occupational Health: The Ham and Beaudry Reports.” Canadian Public Administration, Vol 20 (Spring) pp.1-35
13 Parsons supra note 5, p. 29
In his Royal Commission Report, Ham made explicit his view that the conflict of interest between labour and management does not apply to occupational health and safety. Thus, Ham wrote that “since both parties desire the good of the individual worker, confrontation can and must be set aside with respect both to accidents and to health-impairing environmental exposure.” Elsewhere, in the same report, Ham wrote, that “there is emphatically no place for the adversary system of collective bargaining in dealing with matters of health and safety.” A similar view was set out in the Report of the Joint Federal-Provincial Inquiry Commission into Safety of Mines and Mining Plants in Ontario (the Burkett Report). This Report spoke of the need to develop, “the capability to deal with day-to-day health and safety concerns in a co-operative and consultative manner within the context of a free collective bargaining system...” The Burkett report asserted that unions and management should accept that “day-to-day attention to health and safety matters is distinct and apart from the other aspects of the union-management relationship.”

These views clearly reflect what this paper has called the human resource management perspective on workplace health and safety. The significance of this view is evident in the recommendation made by the Burkett report that worker members of joint committees be constrained from engaging in “partisan union political activity of any kind.” The Burkett report further recommended that worker representatives be required to work closely with the company and, by inference, not function as agents for implementing union strategy.

The alternative view - that workplace health and safety is inextricably bound up with conflictual labour-management relations - rest on three pillars: history, the theory of compensating wage differentials and the practical matter of dealing with the costs required to remedy deficiencies.

History: joint committees did not arise ex nihilo. Prior to the system of internal responsibility, it was a common union strategy to establish such committees through contract negotiations. Labour Canada reported that by 1980, 45% of collective agreements covering bargaining units of 200 of more employees had provisions for joint health and safety committees. Similarly, a study conducted in 1986 found that in 1977 in Ontario, almost 40% of unionized workplaces with more than 20 workers had a committee. Indeed, contractually founded joint committees were the dominant model in the mining industry, which was the focus of the Ham Royal Commission. Unions used these contractually founded committees to obtain information and to influence management’s decisions on policies, practices and expenditures. Viewed against this history, removing these committees from their context of conflictual labour-management relations has little prospect of succeeding.

---

15 Ham Report, supra note 6, p. 105
16 ibid., p. 157
18 ibid., p. 87
19 ibid., p. 69
20 ibid., pp. 68-69
Compensating Wage Differentials: a central premise of the economic theory of wages is that, in some degree, risks to health and safety, as well as other working conditions - whether positive or negative - are factored into wage rates.\textsuperscript{23} Thus, other factors being held constant, jobs that entail greater risk should command a wage premium. Typically studies have confirmed this proposition. However, as Dickens notes, “every study of differences between union and nonunion compensation for exposure to deadly hazards has found that union members receive much larger [compensating differentials] than nonunion workers.”\textsuperscript{24} If risks to health and safety that are factored into wage rates are subsequently removed, wages then reflect an element of ‘economic rent,’ that is to say, a premium over the average which is based on bargaining power and a willingness on the part of management to continue past wage relationships notwithstanding changes in circumstances. In light of the strong evidence of a wage effect, especially in unionized workplaces, it is arguably difficult to see how health and safety can be successfully removed from conflictual labour-management relations.

Dealing with Costs: The costs of remedying an occupational health and safety deficiency may be relatively minor or may be exceedingly high. Reducing noise pollution, dust or fumes, for example, can involve significant capital expenditures. Replacing hazardous substances in a production process may be a straightforward matter or may involve a costly re-engineering of production processes. Altering job designs or changing work organization to reduce individual exposure to risk also may be relatively costless or may have significant implications for relative wages or expected efficiency. Unless these costs can be passed on to consumers, in the form of higher prices, or workers, in the form of lower wages, the costs will be borne by shareholders in the form of lower profits. As Doern notes, “this is not to suggest that occupational health is not considered in more social and human terms by some corporate decision-makers.” However, “the private firm has a strong built-in bias to err on the side of less costly changes.” Doern concludes that “all protestations and assertions to the contrary, occupational and environmental health is a bargainable item.”\textsuperscript{25}

The industrial relations view leads to the conclusion that workplace health and safety cannot be divorced from conflictual labour-management relations. History, the “wage effect” of hazardous employment conditions and the problem of dealing with the costs of remediing a deficiency all bring workplace health and safety back into the context of conflicting interests and the need to have institutions and policies which enable conflict to be managed and conflicting interests to be balanced.

Kochan, Dyer and Lipsky draw a useful distinction between committee interaction based on a problem-solving orientation and interaction based on a negotiating style.\textsuperscript{26} Their distinction is derived from the analysis of bargaining set out by Walton and McKersie.\textsuperscript{27} In this analysis, bargaining proceeds in two phases. The first phase is characterized by problem solving. In this phase, the parties share information, engage in full and open communication, identify alternative solutions or priorities and define the joint gains (or losses). The parties seek to maximize the amount of information exchanged and avoid coercive or threatening tactics. The second phase involves the actual bargaining. In this phase, the parties attempt to select one of the alternative solutions or priorities and determine the precise distribution of gains or costs. Behaviour changes in the second phase. The parties limit the

\textsuperscript{23} As Digby and Riddell, supra note 9, comment: “the existence of compensating wage differentials for hazardous work has been discussed by economists as far back as Adam Smith in the Wealth of Nations.” p 294 A synopsis of the modern theory is presented by Digby and Riddell pp 294 ff.
\textsuperscript{25} Doern, supra note 12, p. 18
amount of communication and rely on principal spokespersons. Either or both parties may engage in bluffing, attempt to establish their firm commitment to a particular position or use various forms of coercive behaviour, such as warning, promises and threats. Issues that otherwise stand alone may be linked in an effort to configure a bargain.

Problem-solving is broadly the behaviour favoured by the human resource management school. It is contrasted with negotiating, which is the behaviour accepted (if not favoured) by the industrial relations school. Two conclusions flow from the work by Kochan, Dyer and Lipsky. The first is that these forms of interaction should not be understood as substitutes for one another, but rather as necessary phases in the interaction. The second, and empirical finding, is that “while management apparently adopts either a problem-solving or a negotiating style of behavior [throughout the interaction], union representatives are more likely to engage in both strategies at the same time or neither strategy at all.”

Kochan, Dyer and Lipsky are the only commentators to explicitly analyze the interaction in workplace committees in terms of problem-solving or negotiating behaviour paradigms. Their findings are both statistically robust and consistent with broader behavioural theories of negotiations. The Kochan, Dyer and Lipsky conclusions cannot be regarded as definitive. Nevertheless, their conclusions do argue strongly against seeking, as a matter of public policy, to divorce occupational health and safety from the broader labour-management relationship or imputing to health and safety issues the unique property of standing above the conflicting interests and priorities of labour and management. To accept Kochan, Dyer and Lipsky’s findings is to conclude that the internal responsibility system will not eliminate sharp disagreements, especially when these are based on different interests and priorities. From this perspective, the public policy task is not to suppress such conflict, but to put in place procedures and policies that maximize the likelihood of solutions being found either through a negotiated resolution or through an acceptable adjudicative process. This, indeed, is the outlook that is brought to bear on virtually all other aspects of labour-management relations. The import of Kochan, Dyer and Lipsky is that it would be an error not to apply this same perspective to workplace health and safety.

Comparisons of Coverage of Joint Committees:

There are differences across the 13 Canadian jurisdictions on the requirement to establish joint health and safety committees. Most jurisdictions exempt small workplaces, drawing the cut-off line typically at 20 employees, although Saskatchewan and Newfoundland use a 10-employee threshold. Some jurisdictions distinguish between workplaces using hazardous substances and those which do not. In Quebec, the procedure is to designate sectors rather than specific employers. Currently, nine sectors are designated. In some jurisdictions, where hazardous substances are not used, the employment threshold may be higher. This is the case in B.C. Alternatively, the requirement to establish a committee may be subject to Ministerial discretion. Alberta and P.E.I. stand alone in relying entirely on Ministerial discretion. Exhibit No. 4 summarizes statutory requirements for joint committees in each of the 13 jurisdictions.

28 Kochan, Thomas, Dyer, Lee, Lipsky, David, supra note 26, p. 47. Emphasis in original. The analysis is based on a survey of health and safety committees in a manufacturing setting in New York State. All plants were unionized and represented by the International Association of Machinists (IAM). A total of 51 usable returns constituted the database for analysis. See discussion of methodology, pp. 8-9.
### Exhibit No. 4

**Workplaces covered by Mandatory Joint Committees**  
29

<table>
<thead>
<tr>
<th>First Enactment</th>
<th>Original Coverage</th>
<th>Current Coverage: Mandatory or Voluntary</th>
<th>Current Coverage: Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal</strong></td>
<td>1978</td>
<td>Designation by Minister.</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>20 or more employees.</td>
</tr>
<tr>
<td><strong>Yukon</strong></td>
<td>1973</td>
<td>Mandatory: 20 or more employees</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Same as original: 20 or more employees.</td>
</tr>
<tr>
<td><strong>Northwest Territories</strong></td>
<td>1977</td>
<td>Mandatory: 10 or more employees</td>
<td>Subject to direction of Chief Safety Officer</td>
</tr>
<tr>
<td><strong>British Columbia</strong></td>
<td>1977</td>
<td>Mandatory: - High Hazard: 20 or more employees - Low Hazard: 50 or more employees</td>
<td>Mandatory</td>
</tr>
<tr>
<td><strong>Alberta</strong></td>
<td>1977</td>
<td>Designation by Minister.</td>
<td>Designation by Minister.</td>
</tr>
<tr>
<td><strong>Saskatchewan</strong></td>
<td>1972</td>
<td>Mandatory: 10 or more employees</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Same as original: 10 or more employees.</td>
</tr>
<tr>
<td><strong>Manitoba</strong></td>
<td>1977</td>
<td>Designation by Cabinet.</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>20 or more employees.</td>
</tr>
<tr>
<td><strong>Ontario</strong></td>
<td>1976 &amp; 1978</td>
<td>1. Designation by Minister. 2. Designated Substances: 20 or more employees</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. Designated Substances: 2. 20 or more employees 3. Office and Retail from 1990</td>
<td></td>
</tr>
<tr>
<td><strong>Quebec</strong></td>
<td>1979</td>
<td>-Subject to risk factors. -Union may trigger committee. -10% of employees (minimum of 4) may trigger formation of committee.</td>
<td>Mandatory in designated sectors</td>
</tr>
<tr>
<td><strong>New Brunswick</strong></td>
<td>1977</td>
<td>Mandatory: 20 or more employees</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Same as original: 20 or more employees.</td>
</tr>
<tr>
<td><strong>Nova Scotia</strong></td>
<td>1986</td>
<td>Mandatory: 20 or more employees</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Same as original: 20 or more employees.</td>
</tr>
<tr>
<td><strong>Prince Edward Island</strong></td>
<td>1985</td>
<td>Designation by Minister.</td>
<td>Designation by Minister.</td>
</tr>
<tr>
<td><strong>Newfoundland</strong></td>
<td>1978</td>
<td>Designation by Minister.</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>10 or more employees.</td>
</tr>
</tbody>
</table>

\[a\] Most jurisdictions assign to the Minister or a Chief Inspector the power to require establishment of a joint committee if the provisions of the statute do not otherwise require such a committee.

\[b\] Most jurisdictions partially or fully exempt certain types of workplaces or occupations where protection of the public is a factor.

---

Underlying policies on coverage are implicit views on the type of problem to be addressed by joint committees. To require the establishment of joint committees in workplaces where hazardous substances are used, but to exempt other workplaces, is to implicitly see the primary - or at least a principal - role of joint committees as auditing exposure to designated substances, in line with whatever standards have been adopted. Similarly to require joint committees to be set up in workplaces with an above average injury rate or a fatality history is to identify the primary role of joint committees as auditing workplaces for accident prevention.

Occupational disease arising from hazardous substances and industrial accidents arising from various causes loom large in overall injury statistics. However, restrictions on the requirement for committees, in the jurisdictions where those restrictions prevail, implicitly assume that occupational disease and injury are essentially “blue collar” problems. The data do not support this view.

Exhibit No. 5 examines the proportion of lost-time injuries accounted for by “blue collar” industries or “blue collar” occupations. Approximately 40% of injuries were accounted for by other than “blue collar” occupations. The proportion is somewhat higher, if judged against the definition of industry. Exhibit No. 5 also shows that musculo-skeletal injuries - using either bodily motion or over-exertion as a proxy indicator - constituted a significant proportion of lost-time incidents. All of these findings suggest that a strategy to deal with workplace injury and disease must have a vision that is broader than traditional “blue collar” industries and occupations and broader than reducing injuries caused by accidents in the use of machinery and equipment. If joint committees are to be part of this vision, then it follows that the requirement to establish such committees must extend beyond traditional “blue collar” industries.

### Exhibit No. 5

Percent of Lost Time Injuries by Reported Source of Injury, Event, Occupation and Industry

<table>
<thead>
<tr>
<th></th>
<th>All Jurisdictions Average, 1994-1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blue Collar Industries</td>
<td>53.0%</td>
</tr>
<tr>
<td>Blue Collar Occupations</td>
<td>59.9%</td>
</tr>
<tr>
<td>Source of Injury: Bodily Motion</td>
<td>15.8%</td>
</tr>
<tr>
<td>Event Causing Injury: Over-exertion</td>
<td>27.8%</td>
</tr>
</tbody>
</table>

a Logging, mining, manufacturing, construction, transportation, communications and utilities and wholesale trade
b Standard Occupational Classifications: Major groups 72-74, 76, 82, 84, 86, 90, 92 and 94-96

30 Derived from *Work Injuries and Diseases*, Association of Workers Compensation Board of Canada. Tables 6, 8, 9 and 12
Comparisons of Functions and Rights of Joint Committees:

Generally all jurisdictions provide for members of health and safety committees:

- to be present when government inspections are undertaken,
- to participate in the investigation of complaints or instances when the right to refuse unsafe work is invoked,
- to have access to necessary information, such as accident reports, investigation reports and technical data on machinery and equipment and substances used or produced in the workplace.\(^{31}\)

Exhibit No. 6 compares the role, powers and functions of joint committees and joint committee members.

<table>
<thead>
<tr>
<th></th>
<th>Role in Complaints</th>
<th>JHSC Inspections</th>
<th>Government Inspections</th>
<th>Maintain Records</th>
<th>Role in Right to Refuse Cases</th>
<th>Recommendations</th>
<th>Access to Information</th>
<th>Develop Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newfoundland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>qualified</td>
<td></td>
</tr>
<tr>
<td>Nova Scotia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>P.E.I.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Brunswick</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quebec</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manitoba</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saskatchewan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alberta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>qualified</td>
</tr>
<tr>
<td>B.C.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N.W.T.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yukon</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{31}\) The right to have access to information is explicit and detailed in some statutes, e.g., Ontario and Quebec, but is implicit in other jurisdictions.
Some jurisdictions require joint committees to undertake regular inspections of the workplace, independent of government inspections. In Ontario, this must be done monthly. In Alberta, an internal inspection is required coincident with every meeting of the committee. B.C. requires “regular inspections.” Swinton, however, notes that some labour representatives complain that employers reduce internal inspections to “walk-arounds” that afford little opportunity for actual inspection. All jurisdictions, except Alberta and the Northwest Territories, require records to be kept of meetings, recommendations and investigations. Some jurisdictions require minutes to be posted. Nine of the thirteen jurisdictions direct committees to undertake safety education and promotion in the workplace. The exceptions are Nova Scotia, Ontario, B.C. and the Northwest Territories. Only Ontario requires that two members of the committee - one management and one labour representative - receive approved training. Manitoba, New Brunswick and Saskatchewan allow committee members to take a leave of absence to obtain training. All jurisdictions, except B.C., Alberta and P.E.I. require employers to provide paid time for committee functions. Only four jurisdictions - Newfoundland, P.E.I., Quebec and Saskatchewan - require meetings to be held during regular working hours. Most jurisdictions stipulate a minimum number of meetings per year - typically 3 to 4. P.E.I., Nova Scotia and Alberta do not specify a minimum number of meetings.

Quebec is unique in conferring on joint committees the right to choose a physician approved by a designated hospital or community health centre to prepare and monitor a work site plan and to be in charge of health services in the establishment. The designated physician is a non-voting member of the joint committee. This has led to a relationship with health professionals that is among the most advanced in Canada. In particular, this model has led to a broader and deeper understanding among physicians who are not occupational health specialists about the health and safety issues arising in the workplace. Exhibit No. 7 compares accepted lost-time injuries per 100 paid workers form 1983 to 1996 in Quebec and in B.C. Quebec’s provision for a physician to be associated with a joint committee dates from 1979. As can be seen, from Exhibit No. 7, 1986 - some seven years after the legislation - marked a turning point, after which workplace safety performance in Quebec regularly improved. After 1991, Quebec’s injury rate per 100 paid employees was lower than that in B.C., notwithstanding that the goods-producing sector in Quebec employed a higher proportion of paid workers than in B.C. - 24% compared to 21%. The Quebec model clearly warrants serious consideration.

---

The authority of committees is a matter of particular concern. Essentially this involves the status of the employer representatives on the joint committee and management’s commitment or lack of commitment to the internal responsibility system. With few exceptions, the legislation provides that committees only make recommendations to senior management. The 1990 amendments to Ontario’s statute require that management respond to these recommendations within 21 days.

Parsons regards the advisory role of joint committees as a dilution of the “direct responsibility” advocated in the Ham Report.\(^{34}\) Fidler, however, offers a more conservative reading of Ham: “under Ham’s proposed ‘internal responsibility system for the performance of work,’ management was to define safety standards and supervise their implementation. Worker safety representatives were to ‘audit’ safety conditions and be front-line advisors to both the inspectorate and company supervisors. The joint labour-management committees were to play a ‘consultative and advisory role,’ ‘communicating management intentions’ to the workers and enabling management to ‘benefit from the insight of workers.’”\(^{35}\)

It is acknowledged by all commentators that the internal responsibility system did not alter, in any fundamental sense, managerial prerogative. Swinton’s comments on the Ontario statute apply to other jurisdictions:

> “[T]he legislation’s commitment is to consultation, but no more. There is a strongly held belief that health and safety come within management’s prerogative, unless bargained away, and the Occupational Health and Safety Act was not meant to shift the balance of power in the workplace to the worker side, either by granting actual decision-making power to joint health and safety committees or by turning government inspectors into interest arbitrators.”\(^{36}\)

---

\(^{33}\) Computed as per Exhibit No. 1. See note 1 for methodology and sources.

\(^{34}\) Parsons, *supra* note 5, p. 26

\(^{35}\) Fidler, *supra* note 17, p. 337.

\(^{36}\) Swinton, Katherine, *supra* note 32, p. 153
The only partial exception is Quebec’s legislation which gives joint committees the right to select individual protective devices and equipment “best adapted to the needs of the workers in their establishment.” Management is required to assume the cost of these purchases, though it may be presumed that the employer’s representatives on the joint committee would not act without sanction from senior management.

Digby and Riddell argue that, “if the internal responsibility system is to be highly effective, functional authority should be vested in these committees. They may have only limited efficacy if they are restricted to an advisory role.” Digby and Riddell point out that many workplace hazards are intrinsically linked to the type of machinery installed and the type of equipment used. The design of jobs, especially in so far as they require the repetition of certain motions, is also likely to be a contributor to industrial injury both in the physical strain to which repetitive procedures give rise and their effect on overall attitudes to the work process.

Scandinavian “work environment” legislation affords employee representatives a greater say in the approval new machinery and equipment, though falls short of conferring right to veto new machinery or equipment which the employee representatives regard as failing to take adequate account of health and safety needs. Closer to the Canadian legal tradition would be an application of the “duty to bargain in good faith,” which is found in labour relations statutes and which applies to formal collective bargaining. As various labour boards have commented, the “duty to bargain” pertains to process, not to outcome. The “duty to bargain” does not imply an obligation to settle, nor is it a bar against “hard bargaining.” The “duty to bargain” is generally held to require that the parties meet, that they exchange relevant information and that they make proposals to settle their differences. Labour boards have identified “surface bargaining” as a violation of the requirement to bargain in good faith. “Surface bargaining” is distinguished from “hard bargaining” by a pattern of conduct that may be characterized as perfunctory or evasive. Many collective agreements provide for a duty to consult. Labour boards regard the duty to bargain as a significantly more substantive obligation than an obligation to consult. The view of George Adams, writing as chair of the Ontario Labour Relations Board, is representative of labour boards in all jurisdictions. Adams characterized this duty to consult as being “many shades lighter in content than the duty to bargain in good faith.” The Canada Labour Code, it should be noted, already confers a duty to bargain on the introduction of new technology during the life of a collective agreement. The Code requires an employer to bargain to resolution or impasse over the effects of that change. After a limited period of time, this duty to bargain expires and the employer can act unilaterally. There is no right to take industrial action nor any right to arbitrate. However, a failure to bargain in good faith can be the subject of a complaint to the Canada Labour Relations Board.

Consideration should be given to introducing into the internal responsibility system a standard comparable to the “duty to bargain in good faith” found in labour relations statutes. Introducing such a standard would communicate a public policy expectation that the interaction of the parties on joint committees should be no less focused or substantive than that expected in formal collective bargaining. Applying a standard comparable to the “duty to bargain in good faith” would also provide scope for remedy to managerial (or union) disregard for the internal responsibility system, through reference to the Labour Board.

37 Digby and Riddell, supra note 9, p. 313
38 Consolidated Bathurst Packaging Ltd and International Woodworkers of America, (OLRB - September 10, 1983), 4 CLRBR (NS)
Effectiveness of Joint Committees:

It was observed earlier that the internal responsibility system is only one of three broad strategies for achieving a reduction in occupational injuries and disease. The other strategies are regulation and administrative enforcement and the use of market incentives and disincentives. Regulation and administration involve standard setting and enforcement through on-site inspection. Important to this approach are the level at which standards are set, the resources made available to support the inspectorate and the operating philosophy that governs the inspectorate. Market incentives and disincentives pertain chiefly to the structure of WCB contributions and the extent to which cross-subsidies make it more economical to pay premiums than to correct the causes of occupational injuries or diseases. Civil or criminal liability, where they exist, adds a further uncertain dimension to costs. It is important, therefore, to keep in mind the broader context, when assessing the effectiveness of joint committees.

Similar policies respecting internal responsibility can be associated with strikingly different results, if the principles of regulation and administration differ significantly or if there are marked differences in the extent of cross-subsidization in the structuring of WCB premiums.

In reviewing the literature on the effectiveness of joint committees, we will consider first those studies that were done of Canadian experience and subsequently studies that were done in jurisdictions outside Canada. Greater weight will be given to more recent studies, since these will reflect the maturing of the internal responsibility system. As well, greater weight will be given to empirical studies.

Canadian Studies on Impact of Joint Committees


Lewchuk, Robb and Walters identified 637 manufacturing and retail workplaces studied in 1991 by Shannon et al. and surveyed the co-chairs of joint committees at these workplaces for information on when the committee was established. These workplaces were then cross-linked with WCB data on accepted time-loss injuries. Survey and WCB data were available for 206 workplaces. These comprised a mix of manufacturing sector workplaces and retail workplaces. The distinction is important because the retail sector was not initially subject to the requirement to establish joint committees. Lewchuk et al. pose two questions. First, were there differences between the change in injury performance between the manufacturing sector and the retail sector that become evident with the implementation of the Occupational Health and Safety Act. Second, within the manufacturing sector, were there differences in the change in injury performance related to whether the joint committee was established prior to or after the statutory requirement. Lewchuk et al. hypothesize that committees which were established prior to the legislative requirement were voluntary and may be presumed to reflect a higher degree of management commitment. Committees established in the period 1978-1980 were put in place in conformity with the legislated obligation, while those established after were set up following a period of non-compliance.

With respect to differences between the manufacturing and retail sector, Lewchuk et al. find strong support for the proposition that, following enactment of the Occupational Health and Safety Act, injury rates in the manufacturing sector fell more significantly than in the retail sector. Since the requirement to establish joint committees did not apply to the retail sector, this provides prima facie support for the view that joint committees had an impact on injury performance. The estimating equation used by Lewchuk et al. suggests that “the reduction in lost-time accident frequencies implied by [the adoption of the Occupational Health and Safety Act] is in the order of 18 percent.”

The analysis of the manufacturing sector data indicates equally significant results. Here, it will be recalled, the issue is whether the joint committee was established prior to the statutory requirement, pursuant to the requirement or following a period of non-compliance. The results suggest that “where workplaces moved towards the internal responsibility system either before they were mandated or immediately upon the state indicating they were likely to be mandated, joint health and safety committees improved a workplace’s health and safety record. However, where workplaces moved towards the internal responsibility system only reluctantly, sometimes after a period when they were in contravention of existing legislation, the formation of a committee had no clear effect.” Lewchuk et al. conclude that, “the internal responsibility system... can lead to significantly lower injury and illness rates... This system of health and safety regulation works and should be encouraged.” At the same time, the authors emphasize that, “these improvements are neither automatic, nor enjoyed by all workplaces. Simply mandating committees is unlikely to have much effect at workplaces where the internal responsibility system and the co-management of health and safety matters is not embraced by management and/or labour.”

Levesque (1995):

Levesque surveyed 71 unionized Quebec manufacturing establishments which had joint health and safety committees. The survey involved direct interviews with labour and management and focused on the tactics they employ in joint committees and their perception of the tactics used by the other party. Tactics were classified as either “coercive” or “persuasive.” Two questions are posed by Levesque: what is the incidence of coercive vs. persuasive tactics and what are the external correlates of a propensity to use coercive tactics.

Levesque’s data suggest that most members of joint committees, whether employer or labour representatives, typically use both coercive and persuasive tactics. In only 18% of joint committees did both parties confine themselves to persuasive tactics. In an insignificant number of committees, both parties used chiefly coercive tactics. Overall, 64% of management respondents and 56% of labour respondents relied on a mix of coercive and persuasive tactics. These findings lend support to the earlier suggestion that workplace health and safety cannot be divorced from the broader context of conflicting interests and priorities between labour and management. Levesque also found that the propensity to use coercive tactics correlated to conflict over production goals. Thus, he observes that, “the tensions over production objectives overlap with safety.” This, too, suggests that Ham and Burkett may

---

41 Lewchuk et al., supra note 39, p. 235
42 ibid. p 234
43 ibid. p 235
44 ibid. p. 235-236
46 Levesque, supra note 45, p. 223-224
47 Levesque, supra note 45, p. 226
have been on the wrong track when they argued that health and safety could and should be severed from the broader context of employer-employee relations and employer objectives.

*SPR Survey for the Workplace Health and Safety Agency (1994):* 48

This survey was based on a mailed questionnaire to joint committee co-chairs in 3,000 workplaces. The response rate was 71.7%. The purpose of the survey was to assess compliance with the procedural requirements of the (Ontario) *Occupational Health and Safety Act*, to appraise the functioning of joint committees and to evaluate the impact of the “core certification training.” The design and sampling procedure of the survey was comparable to the 1986 survey undertaken by the Advisory Committee on Health and Occupational Safety. 49 Under the 1990 amendments to the Act, mandatory joint committees were extended to most workplaces and a certification obligation was established. Among the requirements for certification was the completion of “core certification training” by one management and one labour member of the joint committee. The Workplace Health and Safety Agency was established to develop the core certification training and administer the certification process.

Compliance: Overall the SPR Survey found a comparatively high level of compliance. The study concluded that approximately 80% of workplaces were in compliance on 80% of requirements. The following table summarizes the incidence of low levels of compliance:

<table>
<thead>
<tr>
<th>Exhibit No. 8</th>
<th>Low Levels of Compliance with Procedural Requirements for Joint Committees</th>
<th>SPR Survey (1994) 50</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20 - 49 employees</td>
<td>50 - 99 employees</td>
</tr>
<tr>
<td>Industrial Sector</td>
<td>28.4%</td>
<td>20.4%</td>
</tr>
<tr>
<td>Mining and Resources Sector</td>
<td>20.4%</td>
<td>20.4%</td>
</tr>
<tr>
<td>Public Sector</td>
<td>28.4%</td>
<td>20.4%</td>
</tr>
<tr>
<td>Retail / Services / Other Sectors</td>
<td>54.2%</td>
<td>54.2%</td>
</tr>
<tr>
<td>Non-union</td>
<td>44.4%</td>
<td>44.4%</td>
</tr>
<tr>
<td>Unionized</td>
<td>20.9%</td>
<td>20.9%</td>
</tr>
</tbody>
</table>

The data show a significant compliance problem in small workplaces, i.e., workplaces with fewer than 100 employees and in the retail, hospitality and other service industries. The level of non-compliance among non-union workplaces reflects workplace size and sectoral factors as well as union status. The survey also confirmed other findings on the relation between workplace size and injury rates. As Exhibit No. 9 shows, the reported injury rate was approximately 50% higher in small workplaces compared to large workplaces.


49 see below

50 SPR and Associates 1994, supra note 48 at page 56
Exhibit No. 9
Injury Rates per 100 Employees by Workplace Size
SPR Survey (1994)

<table>
<thead>
<tr>
<th>Workplace Size</th>
<th>Injury Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 - 49 Employees</td>
<td>2.9</td>
</tr>
<tr>
<td>50 - 99 Employees</td>
<td>2.3</td>
</tr>
<tr>
<td>100 - 499 Employees</td>
<td>2.3</td>
</tr>
<tr>
<td>500+ Employees</td>
<td>2.0</td>
</tr>
</tbody>
</table>

Significantly the Survey revealed that in 25.5% of workplaces, worker representatives to joint committees were selected by management. Joint committees were generally not in compliance with the requirement for monthly inspections of the workplace. Exhibit No. 10 summarizes survey results:

Exhibit No. 10
Frequency of Workplace Inspections as Reported by Management and Worker Members of Joint Committees
SPR Survey (1994)

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Management Members</th>
<th>Worker Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 4 per year</td>
<td>30.7%</td>
<td>31.8%</td>
</tr>
<tr>
<td>4 to 8 per year</td>
<td>19.4%</td>
<td>19.8%</td>
</tr>
<tr>
<td>9 to 11 per year</td>
<td>14.7%</td>
<td>14.4%</td>
</tr>
<tr>
<td>12 or more per year</td>
<td>35.3%</td>
<td>34.0%</td>
</tr>
</tbody>
</table>

Training of Committee Members and New Employees: The Survey revealed a continuing need for training of joint committee members. Thirty-five percent of worker members and 41% of management members reported having received no training whatsoever in health and safety matters. Among the issues in which a need for training was cited were stress reduction, reduction of repetitive strain injuries, improvement of air quality and control of hazardous substances. The Survey also showed that a lack of training of new employees was common place.

---

51 SPR and Associates 1994, supra note 48 at page 51
52 SPR and Associates 1994, supra note 48 at page 25
Exhibit No. 11
No Training provided to New Employees as Reported by Management and Worker Members of Joint Committees
SPR Survey (1994)\(^{53}\)

<table>
<thead>
<tr>
<th>Employee Category</th>
<th>Management Members</th>
<th>Worker Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Production Employees</td>
<td>48.1%</td>
<td>64.3%</td>
</tr>
<tr>
<td>New Office Employees</td>
<td>63.0%</td>
<td>80.0%</td>
</tr>
<tr>
<td>New Technical/Professional Employees</td>
<td>62.0%</td>
<td>80.5%</td>
</tr>
<tr>
<td>New Sales/Service Employees</td>
<td>73.5%</td>
<td>85.4%</td>
</tr>
</tbody>
</table>

Operation and Effectiveness: The SPR Survey found that joint committee members “generally reported co-operative relationships in their committee work. This was reflected particularly in the predominance of problem-solving committee actions, as compared to negotiating committee actions.”\(^{54}\) Overall 14.9% of management members and 21.3% of worker members reported having engaged in one or more “negotiating actions.”\(^{55}\) The tenor of joint committees was both affected by the general character of labour relations and also a factor influencing labour relations. Forty-three percent of management members and 41.5% of worker members reported that their work had improved labour-management relations. Fewer than 5% of either group reported that joint committee work had worsened labour-management relations. However, 9.6% of management members would disband the joint committee if they were not required by legislation to have one in place.

Exhibit No.12 summarizes the incidence of specific changes that were judged to contribute to a safer work environment. Exhibit No. 12 also separates the incidence of specific changes between committees in which a worker had completed the core certification training versus committees in which this training had not begun. The first tier of the core certification training comprised a 40 hour training programme following a prescribed text.

\(^{53}\) SPR and Associates 1994, supra note 48 at page 23
\(^{54}\) SPR and Associates 1994, supra note 48 at page 32
\(^{55}\) SPR and Associates 1994, supra note 48 at page 33
Exhibit No. 12
Specific Changes related to Occupational Health and Safety
as Reported by Worker Members of Joint Committees
SPR Survey (1994)\(^\text{56}\)

<table>
<thead>
<tr>
<th>Change in Practice</th>
<th>All Committees</th>
<th>Core Certification Training Completed</th>
<th>Core Certification Training not Begun</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improved Frequency and/or Procedures for Inspections</td>
<td>28.3%</td>
<td>38.1%</td>
<td>27.1%</td>
</tr>
<tr>
<td>Identified Controls for Toxic Substances</td>
<td>19.3%</td>
<td>35.3%</td>
<td>26.4%</td>
</tr>
<tr>
<td>Improved Health Hazard Detection or Monitoring</td>
<td>26.3%</td>
<td>40.6%</td>
<td>28.4%</td>
</tr>
<tr>
<td>Improved Personal Protective Equipment</td>
<td>36.9%</td>
<td>53.0%</td>
<td>38.2%</td>
</tr>
<tr>
<td>Made Specific Work Practices More Safe</td>
<td>48.1%</td>
<td>64.3%</td>
<td>49.4%</td>
</tr>
<tr>
<td>Improved Ergonomic Design of Work Activities</td>
<td>27.7%</td>
<td>48.9%</td>
<td>31.5%</td>
</tr>
<tr>
<td>Reduced Stress in Specific Jobs</td>
<td>14.3%</td>
<td>25.2%</td>
<td>13.4%</td>
</tr>
<tr>
<td>Improved Engineering (Ventilation, etc.)</td>
<td>28.6%</td>
<td>49.4%</td>
<td>31.3%</td>
</tr>
<tr>
<td>Improved Preventive Maintenance Procedures</td>
<td>30.9%</td>
<td>45.7%</td>
<td>32.7%</td>
</tr>
<tr>
<td>Applied H&amp;S Statistics to Solve a Problem</td>
<td>21.1%</td>
<td>42.0%</td>
<td>24.7%</td>
</tr>
<tr>
<td>Began New H&amp;S Training for Workers or Managers</td>
<td>33.1%</td>
<td>45.7%</td>
<td>32.8%</td>
</tr>
</tbody>
</table>

The breadth and sophistication of the changes tracked in Exhibit No. 12 is significant. Exhibit No.12 is arguably the most forceful evidence of the positive and practical impact of joint committees. Exhibit No.12 also demonstrate a strong correlation between implementing specific, positive changes and the completion of the core certification training programme. Again, Exhibit No. 12 is arguably the strongest evidence for strengthening joint committees through a process of certification and intensive training.

Compared with the earlier survey in 1986 (see below), the 1994 survey found a perception of significant improvements in committee performance among both management and worker members. Exhibit No. 13 compares results from the two surveys. As can be seen, by all measures, the performance of committees improved between the two surveys.

\(^{56}\) SPR and Associates 1994, supra note 48 at page 41
### Exhibit No. 13
**Perceptions of Committee Performance as Reported by Management and Worker Members of Joint Committees**
ACOHOs Survey (1986) and SPR Survey (1994)

<table>
<thead>
<tr>
<th></th>
<th>Worker Members</th>
<th>Management Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall record in improving safety</td>
<td>59.4% 76.8%</td>
<td>56.2% 76.3%</td>
</tr>
<tr>
<td>Overall record in reducing health hazards</td>
<td>58.9% 74.1%</td>
<td>60.3% 77.9%</td>
</tr>
<tr>
<td>Success in inspections</td>
<td>67.6% 85.9%</td>
<td>66.5% 87.4%</td>
</tr>
<tr>
<td>Joint committee works well or extremely well</td>
<td>57.3% 61.1%</td>
<td>61.7% 68.5%</td>
</tr>
<tr>
<td>High Rating of workers' knowledge of Act</td>
<td>16.6% 23.7%</td>
<td>18.8% 25.9%</td>
</tr>
<tr>
<td>High Rating of workers' contribution to joint committee</td>
<td>42.5% 59.1%</td>
<td>45.0% 64.1%</td>
</tr>
<tr>
<td>Joint committee viewed as co-operative</td>
<td>71.9% 84.1%</td>
<td>89.4% 91.0%</td>
</tr>
<tr>
<td>Management selects worker members of joint committee</td>
<td>35.2% 25.5%</td>
<td></td>
</tr>
</tbody>
</table>

---

**Workplace Health and Safety Agency (1994):**

The Workplace Health and Safety Agency was a bipartite body, established primarily to oversee delivery of health and safety training and to certify joint committees. The Agency was established in 1990 by the then Liberal government and disbanded in 1995 by the newly elected Progressive Conservative government. The Agency analyzed accident, lost-time and fatality data for the period 1972-1989, comparing Ontario’s experience to the rest of Canada. With respect to accidents per 100 workers, the Agency found that the decline in Ontario exceeded the decline in the rest of Canada. In Ontario the annual decline average 0.21 incidents per 100 versus 0.18 in the rest of Canada. There was no statistically significant correlation to unemployment, where unemployment is taken as a proxy for the overall level of economic activity. In the case of lost-time injuries per 100 workers, no statistically significant results were found. However, the Agency did find a tendency of lost-time injury rates to move in tandem with the unemployment rate. Fatalities per 100,000 workers evidenced a greater annual decline in Ontario than in the rest of Canada, averaging 0.50 in Ontario versus 0.19 per year outside Ontario. This decline was largely attributable to a reduction in fatal accidents. Deaths arising from occupational disease increased over the period, although this was largely attributable to greater recognition of fatality claims by the WCB.

The Workplace Health and Safety Agency’s findings are consistent with those of Lewchuk et al. However, the Lewchuk et al. study carries the analysis further by contrasting the manufacturing and retail sectors and by controlling for the year in which a joint committee was established.

---

57 SPR and Associates 1994, *supra* note 48 at Appendix C; page C.2  
58 *supra* note 21 pp. 24-26  
59 This correlation is usually explained in the following manner. Unemployment is a proxy for the overall level of economic activity and the degree of tightness in the labour market as well as in capacity utilization. As unemployment falls, overtime increases. As well, increases in capacity utilization put pressure on production managers to increase throughput, *i.e.*, output per hour. Increases in throughput typically involves reductions in cycle time, *i.e.*, the time required in a production process before procedures are repeated. Increased overtime and reductions in cycle time are believed to be associated with higher injury rates.
Tuohy and Simard (1993):\textsuperscript{60}

The study by Tuohy and Simard, in fact, is two separate studies. The first examines the Ontario experience, the second the Quebec experience. The studies seek to isolate the impact of joint committees and specifically to ascertain whether they have noticeable effect on injury rates, reduce the requirement for government enforcement and increase the propensity to solve problems internally.

Ontario Findings (Tuohy): The Ontario study relied on a survey based on pooled data for the period 1980-1985, conducted for the Advisory Council on Occupational Health and Occupational Safety.\textsuperscript{61} This survey examined the functioning of joint committees in terms of indicators such as frequency of meetings, record maintenance, number of inspections, depth of management participation and formulation of recommendations. Tuohy correlated these data with administrative data on accepted injury claims, Ministry of Labour inspections and compliance orders. A total of 920 complete observations form the basis for the study.

Tuohy found that, by far the most important variable explaining lower relative injury rates was the presence of an experienced, stable workforce. This is an important finding, since many employers are increasing the proportion of part-time, casual and agency-supplied employees in their total workforce. Tuohy also found that “committee capacity” was also an important factor. “Committee capacity” is a composite variable reflecting principally: scope of committee activity, access to information, training, institutionalized procedures and decision-making role. While injury rates were the most important factor determining the frequency of inspections, Tuohy found that inspectors relied on committees in lieu of inspections, based on the nature of management representation on the committee and the age of the committee. However, this pattern of enforcement by the inspectorate is not well supported by the data. Tuohy comments that, “we did not find the age of the committee, or the presence of senior managers on the committee in small and non-union workplaces, to be directly related to lower injury rates, yet these were factors which reduced the likelihood of inspection.”\textsuperscript{62} “Protagonistic relations” between labour and management were associated with a higher compliance order rate but with a lower injury rate. Factors, such as age of the committee and “committee capacity” were strongly associated with an increased propensity by senior management to accept recommendations. No separate appraisal, however was made of the quality or significance of these recommendations.

Quebec Findings (Simard): The Simard study drew on 117 usable survey returns correlated to administrative data. The survey was conducted in 1985-86 and assessed committees in terms of certain performance and capacity indicators. Like Tuohy, Simard found a general tendency for workplace factors to have a greater impact, when compared to committee factors...” He points out that this “remind[s] us that occupational health and safety performance results form a complex of factors that lie beyond the usual realm of committees.”\textsuperscript{63} For workplaces with more than 75 employees, the impact of joint committees is positive for all injury performance measures.\textsuperscript{64} In smaller workplaces, this pattern does not hold. This is attributed by Simard to differences in the age of committees in large and small workplaces. Joint committees are generally of longer standing in workplaces with 75 or more employees. Supporting this interpretation, Simard found that there is a lag in the impact of joint committees on injury rates. In part this arises from characteristics of the Quebec legislation. In Quebec, committees are established automatically in nine sectors, if requested by a union or 10% of employees. Outside of these sectors, committees are

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{60} Tuohy, Carolyn and Simard, Marcel. 1993. The Impact of Joint Health and Safety Committees in Ontario and Quebec: A Study prepared for the Canadian Association of Administrators of Labour Law (January, 1993)
\item \textsuperscript{61} supra note 22
\item \textsuperscript{62} Tuohy and Simard, supra note 22, p. 10
\item \textsuperscript{63} Tuohy and Simard, supra note 22, p. 28
\item \textsuperscript{64} Tuohy and Simard, supra note 22, p. 38
\end{itemize}
\end{footnotesize}
established by mutual consent. In this context, newer committees typically arise in response to particular incidents or higher than average injury rates. Thus, in the initial years, the presence of a committee may actually be associated with above average injury rates until the committee’s efforts and recommendations have an impact on injury performance. Simard also found that outside of the designated sectors, where committees were established by mutual consent, there was no evidence that the existence of a joint committee had any discernible impact in the absence of a union.

Tuohy and Simard summarize their joint findings: “The most important result of the joint study is the finding that committees with bipartite structures, broad scopes of activities and institutionalized procedures reduce injury rates and improve problem-solving capabilities at the workplace level.” Finally, Tuohy and Simard note that, “both studies found that adversarial relations between management and labour formed part of a factor which was associated with lower injury rates in unionized workplaces.” In Ontario, however, “adversarial and collaborative strategies were linked...” This is consistent with Levesque’s findings and lends further weight to the view that occupational health and safety issues cannot be divorced from the broader context of labour relations and the conflicting interests and priorities that characterize those relations.

Saari et al. (1993): Saari et al. study bears only indirectly on joint committees. The study examined the preferences of companies in the transportation equipment and machinery sector in Quebec with respect to complying with WHMIS training requirements. The study tracked the preferences of 92 plants, all of which were members of a bipartite sector association. The study also monitored indicators of commitment to a safety culture, such as the evidence of senior management participation in health and safety matters, the presence of joint committees and accident prevention activities. The survey was undertaken in 1989-1990. The sector association offered companies the option of training employees directly through a four-hour course in WHMIS at only nominal cost for provision of materials or training a company instructor in a two day course. Companies that chose the latter course would then provide training internally. This was judged by Saari et al. to be the costlier choice for most companies as it required a greater commitment of staff time and financial resources. The general finding was that companies with a stronger safety culture evidenced a marked preference to internalize WHMIS training, while companies with a weaker culture opted for the less costly compliance strategy. The study suggests that sector-based organizations may provide a useful role in providing basic training to companies which do not, for whatever reason, see a value in internalizing the health and safety training function or have the means to do so.

65 Tuohy and Simard, supra note 22, p. 47
66 Tuohy and Simard, supra note 22, p. 44
Shannon et al. (1992): 68

This study was undertaken for the (Ontario) Industrial Accident Prevention Association. IAPA is an employer association. The study was based on a survey of 1,000 employers in eight sectors, supplemented by interviews. Each survey involved four sub-surveys - worker co-chair of joint committee, management co-chair, senior manager and human resources director. Forty-four percent of surveyed firms completed all four surveys. Survey respondents were cross-tabulated with their accepted time loss frequency rate, based on WCB data. Firms were categorized as having low, medium or high lost-time frequency rates.

As with Tuohy and Simard, Shannon et al. found that the most important determinants of lost-time frequency rates were factors related to the characteristics of the work force. Workplaces with low lost-time frequency rates employed more workers over the age of 50 and fewer workers under the age of 25. They also employed more workers with a least 5 years seniority and fewer workers with under 2 years seniority. Finally, firms with low lost-time frequency rates also had lower rates of labour turnover. 69

The survey confirmed that joint committees typically engaged in advisory and reactive roles and did not exercise executive authority. However, “workplaces with low lost-time frequency rates were more likely to have joint health and safety committees with executive duties.” 70 Union structure was also a factor of some consequence. Each additional steward per 100 members reduced LTFR by almost 8%. This result suggests that unions that push responsibility downwards are more likely to have a positive impact through their structure than unions which are more centralized. 71 The study found that, “there was also evidence that committees where labour members received some health and safety training, or where labour members had access to external professional assistance, such as a union financed health and safety specialist, had lower lost-term frequency rates.” 72 Finally the study confirmed the findings of other surveys that there were high levels of co-operation and conflict concurrent in joint committees. 73 Interviews, subsequent to the survey, found that managers acknowledged that “economic constraints can influence what is done in health and safety - trade-offs are commonly made.” 74 This is consistent with the view that health and safety issues cannot be divorced from the conflicting interests and priorities of workers and management. Nevertheless, the interviews also found a reiteration of the theme that some joint committee members did not want “problems in the latter [i.e., industrial relations] spilling over and affecting safety.” 75

68 Shannon et al., supra note 40
69 Shannon et al. p. 107 , Table 9.1
70 Shannon et al., Executive Summary, p viii
71 Shannon et al. p. 108
72 Shannon et al., Executive Summary, p viii
73 Shannon et al. p. 131
74 Shannon et al. p. 174
75 Shannon et al. p. 174
Havlovic (1991):\textsuperscript{76}

This study analyzes fatality data in the B.C. logging industry from 1940 to 1989. Havlovic notes that B.C. achieved lower accident and fatality rates in logging and achieved declines in rates sooner than was the case in California, Oregon or Washington, where the industry faced similar conditions. This superior injury performance was attributable to a mix of safety committees, training programmes, enforcement, penalties and changes in managerial priorities. While acknowledging the contribution of safety committees, Havlovic does not isolate their impact from other factors.

Walters and Denton (1990):\textsuperscript{77}

Like the Saari study, this study bears only indirectly on joint committees. The study is based on interviews with 492 Ontario workers in eight workplaces, comprising a mix of private and public sector, industrial and non-industrial and large and small. The interviews were conducted in 1984-85. The focus of the survey was on the factors affecting workers’ knowledge of their legal right to refuse work and whether this knowledge, in turn, affected whether they had used that right, either formally or informally. There was no correlation of survey results with injury data or with indicators of joint committee performance.

Walters and Denton find that unionized workers and workers in the industrial sector are more likely to be aware of their right to refuse unsafe work. Controlling for other factors, age was not found to be significant. Other factors being equal, males were more likely to be aware of their right to refuse unsafe work than females. Formal exercises of the right to refuse were too infrequent to be evaluated. However, Walters and Denton found a significant correlation between knowledge and what they characterize as the informal exercise of the right to refuse. This presumably means an undocumented instance of refusal. Informal exercise of the right to refuse was found to be significantly more common than formal reliance on the right.

Informal exercise of the right to refuse is generally not a studied phenomenon. It is likely, however, that it is both important and associated with injury avoidance. If this is so, educational activities focused on individual rights, as well as safe working procedures, may be important factors in reducing injury rates. This suggests that there may be a gap in the responsibilities of joint committees in those provinces which do not mandate committees to undertake such training and promotion.


\textsuperscript{77} Walters, Vivienne and Denton, Margaret. 1990 . ‘Workers’ Knowledge of their Legal Rights and Resistance to Hazardous Work.” Relations Industrielles. Vol. 45(3) 1990
ACOHOS / SPR (1986): 78

This survey was undertaken by SPR Associates for the (Ontario) Advisory Council on Health and Occupational Safety. The ACOHOS Survey was undertaken in 1985-86, approximately five years after the requirement to establish joint committees had been fully operative. The Survey was based on questionnaires mailed to 3,000 labour and management members of joint committees and a separate survey of management in 3,800 workplaces. Response rates were 76% among joint committee members and 93% among managers.

Overall, the ACOHOS Survey found a high level of nominal compliance with the procedural requirements of the Occupational Health and Safety Act. Joint committees had been established in 93% of covered workplaces (i.e., workplaces in which committees were mandatory), including 88% of non-union workplaces and 96% of unionized establishments. Among the procedural requirements in Act were regular meetings, posting of minutes and investigation of accidents and refusals. The survey found that “most firms comply fully with most features of the Act, but few are in full compliance.” 79 Compliance with specific provisions of the Act was uneven. “[O]nly 22% of workplaces with joint health and safety committees appear[ed] to be in full compliance with the Act.” 80

The ACOHOS Survey found that joint committees were functioning well in 58% of workplaces, adequately in 30% of workplaces and poorly in 12%. Survey results, however, highlighted the difficulties of joint committee members - principally labour members - in obtaining what they regarded as the necessary information to perform their tasks. Twenty-eight percent of worker members and 9% of management members reported not having adequate information. The ACOHOS Survey also highlighted the absence of training in health and safety among joint committee members. A striking 19% of worker members and 13% of management members were not aware of the health and safety implications of designated substances. Overall, the survey found the 19% of management members and 39% of worker members of joint committees had received no training whatsoever on key issues in occupational health and safety, including hazard recognition, control of designated substances, investigation procedures, requirements under the Act and problem-solving techniques.

The results of the ACOHOS Survey were instrumental in shaping subsequent amendments to Ontario’s Occupational Health and Safety Act. As discussed above, these amendments addressed the coverage of mandatory committees, their access to information and the need for committees to be certified.

Walters (1985): 81

The study is based on interviews with 14 workers’ health and safety representatives and 24 company doctors employed by 10 companies in Ontario. The study found that workers’ representatives were concerned about delays in getting joint committees to address problems concretely or in getting senior management to respond to recommendations. The management prerogative is presented by one managerial interviewee: “management, emphatically retains its right to make decisions. The [joint] committees are useful but they are strictly advisory. I suppose we just haven’t had any issue so far that makes that clear.” 82

78 Advisory Council, supra note 22
79 ibid. p 107
80 ibid. Executive Summary p. v
82 ibid., p 65
Bryce and Manga (1985):  

This study comprises two separate reviews. The first is based on a survey of 36 of 74 joint committees that were established as a result of designation under Alberta’s Occupational Health and Safety Act. The survey interviewed the labour and management co-chairs. The survey was undertaken in 1978, approximately eight months after the committees had been established. Both labour and management co-chairs agreed that “worker members on joint committees had raised the largest proportion of all concerns.” It was also apparent that eight months after being established by designation, there was general acceptance of the committee’s role by management, notwithstanding that half of management co-chairs continued to believe that the establishment of committees should be voluntary. Approximately 60% of management co-chairs believed that the committees could make a moderate contribution to both occupational health and occupational safety. Among labour co-chairs, there was greater confidence in the committees’ potential impact on safety matters (90%) but less confidence in the committees’ potential impact on occupational health (50%). This is a distinction that will be considered later in this paper.

The second study is based on minutes of joint committees in Saskatchewan, filed with the Occupational Health and Safety Branch. Joint committees were made mandatory in 1972. The study reviews these minutes from 1972 to 1981. Exhibit No. 14 compares the functioning of committees during their start-up period with their functioning in 1981.

<table>
<thead>
<tr>
<th>Exhibit No. 14</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Functioning of Joint Committees in Saskatchewan</strong></td>
</tr>
<tr>
<td><strong>1972-74 compared to 1981</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of Meetings at which no concerns raised</td>
<td>23.4%</td>
<td>15.7%</td>
</tr>
<tr>
<td>Average number of concerns per meeting</td>
<td>3.86</td>
<td>8.11</td>
</tr>
<tr>
<td>Percent of concerns resolved</td>
<td>73.9%</td>
<td>88.7%</td>
</tr>
</tbody>
</table>

84 ibid. p. 270
85 ibid. p. 271
86 ibid. p. 272
87 ibid. Tables 1 - 6, pp. 275-280
The Saskatchewan results confirm the pattern of increased capacity of committees over time both to identify occupational health and safety concerns and to resolve those concerns internally. Bryce and Manga conclude that “the Alberta survey and the Saskatchewan data provide strong evidence that joint work site health and safety committees are effective.”

Reschenthaler (1979).

The Reschenthaler study compares the strategies for reducing occupational disease and injury in Alberta, Saskatchewan and B.C. The focus of the study is on the strategies that were operative in the late 1970’s. The Saskatchewan model relied heavily on standard setting, enforcement by inspectors and mandatory joint committees. The B.C. model was reliant chiefly on standard setting, enforcement and penalties. The Alberta model chiefly relied on moral suasion, although the Minister was given the power to designate worksites as requiring a joint committee. In Alberta by 1978, only 206 worksites had been designated. After March of 1979, the government indicated it would only designate worksites on application by management. The Alberta government, thus, rejected the advice of its Royal Commission on Health and Safety (Gale Commission) which urged that, “a joint safety and health committee be established at all worksites unless [an employer is] specifically excused from having one by the Department of Occupational Safety and Health.” Reschenthaler presents no original data in appraising the three regimes. He observes, however, that officials in Saskatchewan acknowledged that the joint committee system - which was the hallmark of the Saskatchewan model - was less effective in dealing with occupational health issues than with safety issues. Reschenthaler also cautions against undue reliance on administrative data, as these are subject to serious and inconsistent under-reporting of accidents.

88 ibid. p. 281
90 cited in Reschenthaler, supra note 89 at p. 85
91 ibid. pp. 129 - 132
International Studies on Impact of Joint Committees


This study is based on a sample of 290 Massachusetts manufacturing plants. Of these, 79 co-operated with the survey. The researchers were unable to obtain accident data at a firm level and rely, therefore, on inspection data from the U.S. Occupational Safety and Health Administration (OSHA). In addition to this analysis, joint committee members at 13 plants were interviewed. The number of inspections and the number of “serious” citations by inspectors are used as a proxy for the level of hazard in the of workplaces. Boden et al. found no general effect of joint committees, that is to say the presence of a joint committee was not a reliable predictor of whether a plant had a high or low level of hazard. However, the researchers did find that if committees were separated between those perceived as effective by their members and those not so perceived, there was an inverse correlation to number of inspections and number of serious citations. Thus, effective joint committees functioned as a substitute for OSHA enforcement.


Cooke and Gautschi surveyed 113 manufacturing plants in Maine to estimate the impact of OSHA inspections and the establishment of joint union-management safety programmes at the plant level. Responding firms were cross-tabulated with OSHA inspection data and with injury rate data. The focus was on the period 1970 to 1976. The U.S. Occupational Safety and Health Act was adopted in 1970. The study found that OSHA citations substantially reduced days lost from injury in firms with 200 or more employees. In firms with fewer than 200 employees, the results were less conclusive. This finding contradicted the results of other studies which generally discounted the impact of OSHA. Cooke and Gautschi also find evidence - though less conclusive - that “plant-specific programs (jointly administered with unions) developed over the 1971-1975 interval reduced lost days in plants with 300 or more employees.” Moreover, “plant-specific efforts have been more effective on average in reducing injuries than have been outside regulatory activities.” The impact of plant-specific programmes was approximately double that of external regulation. However, it should be kept in mind that the commitment of companies to plant-level programmes may have been strongly motivated by experience with OSHA inspections. Nevertheless, the findings of this study point to the potential importance of plant-level initiatives.

---

93 Ibid. p. 833
95 Ibid. p. 256
96 Ibid. p 256
Kochan et al. - U.S. (1977):\textsuperscript{97}

Reference was made earlier to this study in the discussion of problem-solving and negotiating styles of interaction between labour and management members of joint committees. The study was based on administered questionnaires that covered labour and management co-chairs in unionized 51 manufacturing plants in New York state. All of these committees were voluntary between the parties. The study found that three-quarters of management members of committees viewed themselves as being authorized to make all or most relevant decisions on health and safety. Their union counterparts had a more ambiguous perception. Only half of union members believed that the management members of committees could make all or most relevant decisions.\textsuperscript{98} The degree of committee activity was largely determined by the priority assigned to it by the union.\textsuperscript{99} Kochan et al. found that the involvement of OSHA inspectors had different effects on union and management members of committees. The study concluded that the involvement of OSHA inspectors moved management from a negotiating style of interaction to a problem-solving style. The opposite, however, was true of the union.\textsuperscript{100} This finding should not be surprising, since the involvement of an OSHA inspector typically is occasioned by a union request and reflects a decision by the union to use a coercive tactic. Similarly, the threat, or actual history, of OSHA citation orders would be expected to foster a problem-solving and intervention avoidance strategy on the part of management. Finally, it should be noted, that while Kochan et al. regard joint committees as valuable innovations in the U.S. workplace, they conclude that, “major safety improvements appear to be less a function of union participation in a safety committee than on the direct pressure of OSHA regulations.”\textsuperscript{101} The commitment of management and labour were seen as prior factors determining the effectiveness of joint committees and distinct from observable committee conduct.\textsuperscript{102}

Reilly, Paci and Hall - U.K. (1995):\textsuperscript{103}

This study relies on data generated by the third Workplace Industrial Relations Survey (1990). WIRS is a systematic review of industrial relations practices. The 1990 WIRS was the third such survey. After sample attrition, 432 establishments were included in the analysis. The study found that joint committees in which employee representatives were chosen by unions had the greatest injury reducing effect compared with both no such committee and committees otherwise configured. Exhibit No. 15 summarizes these results:

\textsuperscript{97} supra note 26
\textsuperscript{98} ibid. p. 23, Table 2-4
\textsuperscript{99} ibid. p. 44
\textsuperscript{100} ibid. p. 50
\textsuperscript{101} ibid. p. 72
\textsuperscript{102} ibid. p. 834
<table>
<thead>
<tr>
<th>Committee Type</th>
<th>Injuries per 1,000 Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Committee</td>
<td>10.9</td>
</tr>
<tr>
<td>Joint Committee - Union appoints all</td>
<td></td>
</tr>
<tr>
<td>Employee Representatives</td>
<td>5.3</td>
</tr>
<tr>
<td>Joint Committee - Some Employee</td>
<td></td>
</tr>
<tr>
<td>Representatives not appointed by Union</td>
<td>7.5</td>
</tr>
<tr>
<td>Joint Committee - No Employee</td>
<td></td>
</tr>
<tr>
<td>Representatives appointed by Union</td>
<td>6.1</td>
</tr>
</tbody>
</table>


Beaumont and Leopold document the failure of the U.K. policy of reliance on voluntarism to lead to a satisfactory diffusion of joint health and safety committees. The perceived failure of voluntarism led to the adoption in 1974 of legislation permitting unions to appoint health and safety representatives with inspection powers and requiring employers to establish a joint committee on application by a union. \(^{106}\) Survey data from the Warwick University Workplace Survey, 1977-78 found that in 970 plants, 44.4% had voluntarily established a joint committee prior to the 1974 legislation, while 36.7% had established joint committees subsequent to the legislation. The remainder (17.9%) had no committees. \(^{107}\) Appointment of safety representatives was inverse to workplace size. Only 30% or of workplaces with fewer than 50 employees had union-appointed safety representatives. In workplaces with more than 100 employees, the proportion ranged from 70% to 92%, depending on size. \(^{108}\) An interview-based survey of 51 plants with joint committees found that factors which contributed to effectiveness included: regularity of meetings, presence of a senior manager on the committee and training of committee members in health and safety issues. \(^{109}\)

Pragnell - Australia (1994): \(^{110}\)

This analysis is based on the Australian Workplace Industrial Relations Survey (AWIRS) conducted in 1989-90. The survey covered 2004 workplaces with more than 20 employees, of which 762 were in New South Wales - the focus of this study. Legislation provides for the establishment of a joint committee if directed by the Work Cover Authority or on application by a recognized trade union. The Australian system is thus intermediate between a voluntarist model and a mandatory model and functions in a manner similar to that in Quebec. In New South Wales, 45% of surveyed workplaces had established committees. In manufacturing the proportion was 59%, while in recreation services the proportion was 19%. \(^{111}\) In the wholesale and retail sector, the proportion was 36%. Larger workplaces were more

\(^{104}\) ibid. computed from Table No. 2, p. 282


\(^{107}\) Beaumont and Leopold, 1982b, supra note 105, p. 272, Table 2

\(^{108}\) Beaumont and Leopold, 1982a, supra note 105, p. 76, Table 1

\(^{109}\) Beaumont and Leopold, 1982b, supra note 105, p. 273


\(^{111}\) ibid. p. 9
likely to have committees. Eighty-three percent of companies with 200 or more employees had committees compared to 26% of companies with 20 to 49 employees.\textsuperscript{112} The likelihood of a committee being established declined as the proportion of part-time employees increased.\textsuperscript{113} Only 9% of non-union workplaces had committees.\textsuperscript{114} Pragnell concludes that “less voluntaristic arrangements, for instance mandatory committees as is the case in Canada, might be considered to overcome the lack of penetration of committees.”\textsuperscript{115}

\textit{Chew - Singapore, India and Thailand (1988):}\textsuperscript{116}

This study was based on analysis of pairs of companies in six manufacturing sectors in each country, \textit{i.e.}, a total of 36 companies. The pairs were deliberately selected as high injury frequency and low injury frequency examples. The firms were surveyed in 1984. Safety officers, committees and inspections are not operative in either India or Thailand. In Singapore all three procedures are in place and are associated with lower injury rates.\textsuperscript{117}

\textit{Factors influencing the Effectiveness of Joint Committees}

The Ontario Advisory Council concluded, in its 1986 report reviewing the findings of the survey it had commissioned, that “unless fully developed through careful legislation and implementation, through training and education, and unless fully integrated with the workplace, the joint health and safety committee leads not to self-regulation, but rather self-deception.”\textsuperscript{118} This conclusion is supported by the analytical literature. Lewchuk \textit{et al.} found that in Ontario there was a marked difference between committees established with management support and those established after a period of non-compliance and presumably established reluctantly. Similarly, Boden \textit{et al.} found no significant effect from the presence of joint committees \textit{per se}, but noteworthy effects when committee capacity was taken into account.

In the foregoing review of studies a number of factors have been identified as contributing to the effectiveness of joint committees. Two clearly stand out. The first is access to information. The second is training for members of joint committees, and in particular for the co-chairs. Both of these are within the scope of public policy to affect.

\begin{itemize}
\item \textsuperscript{112} \textit{ibid.} p. 30
\item \textsuperscript{113} \textit{ibid.} p. 31
\item \textsuperscript{114} \textit{ibid.} p. 34
\item \textsuperscript{115} \textit{ibid.} p 37
\item \textsuperscript{117} \textit{ibid.}, p. 117-118
\end{itemize}
The 1986 ACOHOS Survey pointed up the difficulties of labour members in obtaining the necessary information to carry out their duties. Inadequate access to information was cited by 28% of worker members. Surprisingly, 9% of management members had the same concern. By the time of the 1994 Survey by SPR and the Workplace Health and Safety Agency, this issue largely had been put to rest. It may be inferred, therefore, that the current provisions of the Ontario statute have addressed this problem.\textsuperscript{119}

The second factor identified as critical to the capacity of joint committees is training of committee members. Survey evidence in 1986 showed that one out of five management members and two out of five employee representatives had received no training whatsoever. Equally striking was the finding that 19% of worker members and 13% of management members were not aware of the health and safety implications of designated substances. The need for committee members to be trained is a theme which runs through the analytical studies. Ontario devised its core certification programme to address this deficiency. The 1994 Survey by SPR and the Workplace Health and Safety Agency shows a marked contrast between the performance of committees where core certification training had been completed and where it had not yet been commenced. (See Exhibit No. 12 \textit{supra}).

Studies have broadly identified managerial commitment as an important factor in the effectiveness of committees. Commitment is evidenced by the seriousness given to recommendations and the expedition with which they are considered. Commitment is also demonstrated by assigning senior managers to participate in committee affairs. The diligence and frequency of inspections may also be taken as indicative of managerial commitment. More broadly, committed management - at least in larger establishments - evidences a preference to deliver employee training internally. The difficulty with managerial commitment is that, while it is undeniably important, there are no obvious policy instruments to compel or encourage such commitment. Legislation can specify monthly inspections and regular meetings. Legislation can also set time limits for responding to recommendations. Useful as these provisions may be, they are unlikely to engender commitment where it would otherwise be lacking. It was suggested earlier that occupational health and safety legislation might be strengthened by porting over to this aspect of workplace regulation the “duty to bargain in good faith” that has been a longstanding feature of labour relations statutes. The object of establishing such a standard would be to provide a means of remedy for what in the labour relations arena would be termed “surface bargaining.” The structure of WCB premiums and penalties related to injury performance or the performance of joint committees might also contribute to altering the priorities of those

\textsuperscript{119} The \textit{Act} reads as follows:

\begin{quote}
Sec. 9(18) Powers of committee - It is the function of a committee and it has power to:
\begin{enumerate}
  \item[(d)] obtain information from the constructor or employer respecting,
    \begin{enumerate}
      \item the identification of potential or existing hazards of materials, process or equipment, and
      \item health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge;
    \end{enumerate}
  \item[(e)] obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety.
\end{enumerate}
\end{quote}

As well, the committee is to be consulted on the preparation of a hazardous materials inventory. Sec. 36(2)(b)
employers that attach too little weight to improving the work environment.

There may also be scope to occupy an intermediate position between vesting executive responsibility in joint committees and confining them to a purely advisory role. The Quebec statute, for example, assigns to joint committees, decision-making power on personal protective equipment and the selection of an external medical advisory. Safety policy might also be assigned to joint committees, though the legislation would have to determine whether the employer’s position or adjudication prevailed, in the event of an impasse. A role might also be defined for joint committees in the oversight of occupational health services. There has been some movement in this direction in the European Union. The provisions of the Canada Labour Code respecting mandatory bargaining over the introduction of new technology might be adopted, at least in respect of the occupational health and safety implications of new machinery and equipment. As discussed earlier, the Canada Labour Code requires employers to bargain over the effects of technological change, but allows the employer to proceed after a period of time, if bargaining reaches an impasse. As a restriction on an employer’s ability to make decisions, there is little substantive difference between consultation and a duty to bargain along the lines of the Canada Labour Code’s treatment of new technology. However, in terms of process, the duty to bargain establishes a higher standard which is arguably consistent with the intent of occupational health and safety legislation.

The availability of impartial expertise may also strengthen a joint committee by enhancing its overall capacity to deal with occupational health and safety issues. In this regard, the Quebec statute is unique in directing committees to establish a relationship with a qualified medical professional at a designated hospital or community health care centre. There has been little systematic exploration of the effect of this provision. Nevertheless, a comparison of injury trends in Quebec and B.C. suggests that the Quebec model has yielded benefits which must be given weight.

Lastly, it is important to the functioning of joint committees that the health and safety inspectorate adopt an appropriate operating philosophy. We turn to this topic separately, in light of its complexity.

The Health and Safety Inspectorate and Joint Committees:

A contentious issue in policy vis à vis the internal responsibility system is the relationship between that system and the health and safety inspectorate. There are three broad areas of potential conflict which can require the intervention of inspectors. The first, and most obvious, involves an employer that attaches a low priority to occupational health and safety and has no commitment to the internal responsibility system. In these circumstances, enforcement through inspectors is arguably essential for reducing the risk of occupational injury or disease. Weak enforcement signals other similarly minded or equivocal employers that non-compliance may be the most expedient course. The second area of conflict arises from the cost implications of addressing a particular risk to occupational health or safety. We noted earlier, Doern’s observation that “the private firm has a strong built-in bias to err on the side of less costly changes.” Where addressing the risk of occupational injury or disease involves significant potential costs, there is a strong likelihood of conflict between employee and management members of joint committees. Employee representatives may be reluctant to pursue their concerns in the absence of reliable grievance rights. However, when employee representatives can rely on the protections of a grievance system, there is a greater likelihood that such

---


121 supra note 25
conflict will arise. Thus, it should be no surprise if unionized workplaces are found to have a higher degree of conflict in their joint committees and a greater propensity to draw on the health and safety inspectorate. Finally, acceptance that disease pathologies result from the workplace is also likely to be contentious, given the uncertain liabilities that may arise. Conflict is the norm, rather than the exception, in establishing that disease pathologies are caused by the work environment. For all of these reasons, conflict should be expected. Such conflict should be seen not as evidence that the internal responsibility system is failing, but as evidence that the system has approached its limits with respect to a particular type of issue. Kochan et al., it will be recalled, found that the intervention of inspectors positively altered the approach of management representatives in joint committees.

What then should be the relationship of the health and safety inspectorate to the internal responsibility system? The predominant view in government has been that the inspection and enforcement system should defer to the internal responsibility system. That is to say, inspectors should only intervene when they are satisfied that the joint committee cannot resolve the matter. To intervene prematurely, in this view, would encourage a reliance on external direction. Conversely, to delay intervention encourages a perception that enforcement has been compromised by a prior commitment to the internal responsibility system. Fidler has described in detail the conflicts that arose in Ontario over the role of the inspectorate and the inspectorate’s own complaints that it was being constrained by policy direction to defer to the joint committee long after it was apparent that the problem was not being resolved internally. In Ontario, concerns with the health and safety inspectorate led to the appointment of a special review. Tuohy, it will be recalled, found that the Ontario inspectorate was likely relying on doubtful indicators of joint committee efficacy in determining inspection schedules and how to respond to complaints.

The difficulty in striking a balance between premature and delayed intervention is compounded by two factors. Many governments have seen the internal responsibility system as a means of reducing public expenditures on compliance. Recent fiscal pressures have undoubtedly contributed to this view. The conclusion drawn by critics of the internal responsibility system, namely that it substitutes for enforcement and waters down compliance, may be well founded in some jurisdictions. Most governments have also assigned to their inspectorate responsibility for supporting the internal responsibility system by acting as mediators and facilitators to joint committees. In labour relations, it has usually been judged important to maintain a clear cut distinction between the mediation and facilitation role and the adjudication role. Only in consensual proceedings does one find a mediator-arbitrator. In statutorily founded proceedings, the distinction between mediation and arbitration is invariably maintained. Arguably the failure to reflect this separation of roles in occupational health and safety was unsound. Indeed, in principle, there is no reason to believe that a technically qualified inspector will have the skills of a mediator or conversely that a mediator will have the technical understanding required to make enforcement decisions. It may be appropriate, therefore, to divide the mediation and facilitation roles from the inspection and enforcement roles. The procedure used in the “expedited arbitration” system in some provinces provides a potential model. Under this system, there is a time limit to the commencement of adjudication proceedings and a requirement for mediation prior to those proceedings. While some types of health and safety issues do not lend themselves to this type of regime, since they require immediate decisions by an inspector, other types of issues could be accommodated to this approach. Overall, the result could be to introduce a needed “space” between the mediation role and the enforcement role of the health and safety inspectorate.

---

122 Fidler, supra note 17
124 Tuohy, supra at note 62
Limitations of Joint Committees:

The research findings reviewed in this paper have supported, often with qualifications, the adoption of the internal responsibility system that was a central theme of public policy in Canada in the late 1970's. It is important, however, to recognize the limitations that are inherent in the internal responsibility system and the need, therefore, for a workplace safety regime that incorporates both administrative and regulatory strategies as well as market incentives and disincentives. As noted earlier, broadly similar internal responsibility systems will have different effects if the regulatory regimes differ or if there are perverse incentives or disincentives in the structure of WCB premiums.

A finding that was reiterated in more than one study was the overriding importance of broad labour market and work force characteristics as determinants of injury rates. Other things being equal, a work force that is older, full-time and has a low rate of turn-over will have a lower injury rate than a work force that is younger, has a high proportion of workers who are not full-time or not permanent and has a high turn-over. The term “non-standard” characterizes divergences from the pattern of full-time, permanent employment. Non-standard employment includes, therefore, self-employment, part-time work, short-term or contract work, casual work and workers supplied to an employer by an agency that remains their technical employer. Betcherman has documented a secular trend toward an increased reliance on non-standard workers by Canadian employers. Total non-standard employment increased from approximately 23.75% in 1975 to 29.25% in 1993. The share of non-standard employment tends to accelerate during economic downturns and to remain at a higher plateau during the subsequent economic expansion. It is likely that, by now, the share of non-standard employment has crossed the 30% threshold. Betcherman has described a trend in which some employers bifurcate their work force between a core of full-time, permanent employees and a secondary pool of non-standard employees. This is a trend which has been identified across the OECD economies. Other things being equal, the trend towards a greater share of non-standard employment in total employment and towards bifurcating an employer’s work force between core and peripheral employees is likely to increase the risk of occupational injury.

Generally, the research findings examined also found a correlation between unionization and the effectiveness of the internal responsibility system. Joint committees were more likely to be present in unionized workplaces and appear to have been more active in those workplaces. Tucker has estimated that over 90% of work refusals occur in unionized workplaces. We should not be surprised by that fact. Without the protection of a grievance system and a trade union, few workers will be inclined to exercise their statutory right to refuse to perform unsafe work. Similarly, only a small minority of non-union members of health and safety committees will summon inspectors to rectify

persistent non-compliance with standards. While near universal unionization was not a presumption of the internal responsibility system, widespread unionization - at least in high incidence sectors - was an unstated premise of that system. Indeed, trying to understand the system of internal responsibility and the role of the right to refuse without recognizing the central importance of unions is like trying to put on a production of *Hamlet*, but leaving out the ghost.

Trends in unionization, however, have not been favourable to the internal responsibility system. Since 1976, unionization in the resource industries has declined by 16.7%. In the manufacturing sector, unionization has fallen by 22.9%. Moreover, those segments of manufacturing that have seen growth in both absolute and relative terms - industries such as plastics or electronics - are almost entirely non-union. Not simply in relative terms, but in absolute terms, there are fewer unionized workers in manufacturing and resource industries today than there were in 1976. Two-thirds of manufacturing sector workers today are not members of a trade union. For an increasing number of workers - increasing both absolutely and relatively - the unstated premise of the internal responsibility system, *i.e.*, the presence of a union in the workplace, no longer holds.

The research findings canvassed in this paper also showed a lower degree of interest in occupational health and safety issues and lower degree of compliance with statutory obligations in the service sector. In part, this arises from the conventional wisdom that occupational health and safety is essentially a “blue collar” problem and needs to be a priority, therefore, only in the traditional “blue collar” industries. Thus, the evidence is that joint committees are less common in the service sector and that their capacity in that sector is markedly less developed. At the same time, there is increasing recognition that occupational disease arising from stress and from repetitive strain is not confined, nor even predominantly a problem, of the traditional “blue collar” industries. The joint committee model historically arose in the resource and manufacturing sector. A general disposition to compliance has made the transfer of this model to the public sector relatively successful. However, porting the joint committee model over to the private service sector will prove far more difficult. There is broadly no tradition in the private service sector of joint committees nor is there a well developed health and safety culture. To transfer the joint committee model successfully to the private service sector, will require a commitment to enforcement and training that exceeds what is currently typical in most jurisdictions.

A further distinction that arose in some of the studies reviewed was between occupational safety and occupational disease. Safety issues typically involve such matters as: workplace procedures, the use of protective clothing or equipment, and installing safety devices on machinery, *e.g.*, shut-off switches, guards, etc. The internal responsibility system has undoubtedly made a significant contribution in promoting workplace safety - especially when safety issues can be addressed without a significant capital expenditure. Indeed, safety issues lend themselves to problem-solving and to jointly developed solutions. Arguably, safety issues were predominant in the thinking of those who initially framed the system of internal responsibility. While joint workplace committees have had a positive impact on safety, their efficacy in the prevention of industrial disease is another matter altogether. Yet, it is in the prevention of industrial disease that future gains in workplace health must be made.

The critical importance of industrial disease, whether it arises from repetitive strain, stress or from prolonged exposure to contaminants, needs no elucidation. Statistics Canada’s General Social Survey found that among manufacturing sector workers, 34% reported that they were exposed to dangerous chemicals or fumes. Fifty-eight percent said they were exposed to dust or fibres in the air they breathed. Perhaps in some situations, the remedy

---

can be identified easily and will entail only a small cost. However, those circumstances are likely to be the exception, not the norm. By far the more common situation is one in which there will be lengthy dispute over the workplace contribution to a pathology and a reluctance on the part of an employer to accept the implied liability. Addressing repetitive strain, for example, may require a major re-design of jobs and possibly of machinery. Similarly, the elimination of contaminants can involve significant capital expenditures and the re-engineering of production processes.

Preventing industrial disease will entail greater reliance on standard setting and the epidemiological research that should inform standard setting. With each iteration of standards, there will be a need to provide training to the members of joint committees, if they are to understand the standards and pursue the control strategies that are required. In this regard, it should be recalled that prior to the introduction of core certification training in Ontario, a disturbingly high proportion of worker members and management members of joint committees were not aware of the health and safety implications of designated substances.

**Conclusions:**

Using WCB accepted time-loss injuries and wage and salary employment as benchmarks, B.C.’s workplace injury experience compares unfavourably to experience in the rest of Canada. Since 1986, reported injury rates have been higher and have declined more slowly. The divergence between B.C. and the rest of Canada cannot be explained in terms of the structure of employment or changes in that structure. The difficulty in getting injury rates down points to the need to re-appraise the province’s approach. There are broadly three strategies to reduce occupational injuries and disease. The first relies on regulation and administration. The essential elements of this strategy are standard setting and enforcement through on-site inspection. The second strategy involves the use of market incentives and disincentives. The essential element in this strategy is to make the costs of prevention at the workplace lower than the costs of compensation. The elimination of perverse incentives and disincentives is clearly critical. If not corrected, distortions in economic signals can undermine the impact of other strategies. The third strategy is promotion of internal responsibility, through mandated joint committees and conferring on workers the right to refuse to do unsafe work. A central argument of this paper has been that the three strategies are interdependent. The effectiveness of each strategy is influenced by the configuration of the others. Thus, broadly similar systems of internal responsibility will have different results, if the administrative and regulatory regimes differ or, if there are significant differences in the implicit incentives and disincentives in the structuring of WCB premiums and other aspects of the cost/benefit calculus.

Since the 1970’s, the internal responsibility system has been a central feature of public policy in Canada. Every jurisdiction in Canada, to one degree or another, has adopted the principles of the internal responsibility system. Differences in the application of these principles make each jurisdiction a laboratory whose experience can inform subsequent innovation in other jurisdictions. The broad similarity in economic structure, labour relations systems and social values makes comparisons with other jurisdictions particularly appropriate.

In adopting the internal responsibility system, many jurisdictions implicitly sought to remove occupational health and safety from the conflict that often characterizes labour relations. The Ham report and the Burkett report both pursued this goal. The presumption that this is an appropriate goal also informs studies of the internal responsibility system that regard signs of conflict as evidence of deficiency. This paper suggested, however, that history, economic logic and the pragmatic problem of dealing with potentially costly change all made it likely that the internal responsibility system would be characterized by both conflict and problem-solving. Most studies have found this to be the case. A policy which is premised on separating health and safety from the conflicting interests and priorities of labour and management is likely to lead to disappointment and frustration. The real task is to balance interests and manage
conflict. This is the classical industrial relations view. It has served us well. Occupational health and safety is not likely to be an exception.

The research studies reviewed in this paper were broadly in agreement that labour force characteristics are the most important factors determining overall health and safety performance. Other things being equal, injury rates are lower when an employer’s work force comprises predominantly full-time, permanent workers and is not skewed towards younger workers. As well, some research studies concluded that the internal responsibility system is potentially more effective in addressing accident prevention than disease prevention. The latter, by inference, will continue to be affected more by the process of standard setting and enforcement.

There was also broad agreement in the studies reviewed that joint committees per se do not lead to improved injury performance. The critical issue is the capacity of joint committees. Rights to information and training of committee members are the key determinants of capacity. Managerial commitment is also an important factor in the effectiveness of committees. Incentives and penalties may be important influences on managerial commitment. The application of a “duty to bargain in good faith” - comparable to the standard established in labour relations statutes - may also affect managerial conduct, if not commitment. Finally, there may be scope to further articulate the role of joint committees so as to occupy an intermediate position between consultation and decision-making.

The discussion in this paper leads to the following suggestions and recommendations:

1. Joint committees should be mandatory in most work places.
2. Joint committees should be subject to a certification requirement to ensure that employee representatives are selected either by a union or by employees, independently of management.
3. As a further requirement for certification, members of joint committees should be required to take standard training. This training should address: statutory rights and responsibilities, hazard identification and prevention, control of hazardous substances and problem-solving. It may be appropriate to distinguish between a common core of training applicable to all joint committees and sector-specific training.
4. The right of joint committee members to necessary information should be set out in statute.
5. The Occupational Health and Safety Act should include a “duty to bargain in good faith” standard that is comparable to that found in the B.C. Labour Code.
6. Consideration should be given to expanding the responsibility of joint committees. Joint committees could be empowered, as in Quebec, to make decisions respecting personal protective equipment. The Act could be amended to require bargaining over the health and safety effects of new technology or major changes in work organization. This duty to bargain would be analogous to the duty to bargain over the effects of the introduction of new technology currently found in the Canada Labour Code. In the absence of a resolution, the employer would be allowed to proceed. Such procedures would be comparable to obligations currently in place in many jurisdictions in the European Union. Consideration could also be given to conferring on joint committees an oversight role in workplace health services where these exist, as is also done in many EU jurisdictions. Finally, joint committees should be assigned responsibility for setting up and maintaining health and safety programmes in the workplace.
7. Consideration should be given to adapting the Quebec requirement that joint committees associate with a qualified medical professional at a designated hospital or health centre. This individual would be a non-voting member of the committee and would assist in both hazard identification, assessment of risk of occupational injury or disease, interpretation of technical and medical information and designing prevention programmes.
8. The mediation and facilitation functions should be separated from the inspection and enforcement functions of the health and safety inspectorate.

May 1998
Bibliography:


Galarneau, Diane 1996. “Unionized Workers, Perspectives on Labour and Income, Statistics Canada (75-001), Spring 1996,


Moser, Cindy. 1991 “Committees Score High -- The Results Are In: Joint Committees are Playing an Important Role in the Protection of Worker Health and Safety” *OH&S Canada*, Vol 7(4) pp. 62 and 315


Ontario 1984,  Report of the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, [Dupré Commission], Toronto: Queen’s Printer


Simard, Marcel and Tuohy, Carolyn. 1993. The Impact of Joint Health and Safety Committees in Ontario and Quebec. Toronto: Canadian Association of Administrators of Labour Law


The Role of Joint Committees in Workplace Health and Safety

Butterworths, pp. 145-160.


