WCB CONSULTATION

Submission on Proposed Policy and Regulatory Amendments

OCTOBER 2015

BCFED

Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 affiliated members across the province of British Columbia.

Irene Lanzinger
President

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Contents

WCB Consultation

Submission on Policy & Regulation Amendments | October 2015

Introduction

The BC Federation of Labour ("Federation") appreciates the opportunity to provide our submission with respect to the proposed amendments to the Workers' Compensation Board ("Board") Prevention Manual and the Occupational Health and Safety Regulation ("OHSR")[1] as per the outlined in the Board's discussion papers:

- ✓ Stop Work Orders Policy (D12-191-1)[2]
- ✓ OHS Citations[3]
- ✓ OHS Compliance Agreements[4]
- ✓ Employer Incident Investigations Policy and Regulation[5]

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The Federation is recognized by the Board and the government as a major stakeholder in advocating for the health and safety of all workers in BC.

The Federation's submission was prepared in consultation with its affiliates and supports the individual submissions of its affiliates.

Background

The *Workers Compensation Act* ("*Act*")[6] was amended by Bill 9[7] on May 14, 2014, to introduce, amongst other things, new enforcement and compliance tools. These legislative amendments require consequential policy and regulatory changes which are the subject of this consultation.

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[1] *Occupational Health and Safety Regulation,* BC Reg. 296/97 [OSHR].

[2] Workers Compensation Board of BC. (2015, June). *Discussion Paper: Stop Work Orders Policy* (D12-191-1). BC. Retrieved from http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/StopWorkOrdersPolicyD12-191-1.pdf [Stop Work].

[3] Workers Compensation Board of BC. (2015, June). *Discussion Paper: OHS Citations*. BC. Retrieved from http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/OHSCitations.pdf [Citations].

[4] Workers Compensation Board of BC. (2015, June). *Discussion Paper: OHS Compliance Agreements.* Retrieved from http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/OHSComplianceAgreements.pdf [Comliance Agreements]

[5] Workers Compensation Board of BC. (2015, June). *Discussion Paper: Employer Incident Investigations Policy and Regulation.* BC. Retrieved from http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/EmployerIncidentInvestigations.pdf [Investigations]

[6] *Workers Compensation Act*, R.S.B.C. 1996, c. 492 [WCA].

[7] Bill 9, *Workers Compensation Amendment Act, 2015*, 4th Session, 40th Parliament, British Columbia, 2015

The Bill 9 legislation arose out of the recommendations provided to government by the special administrator, Gordon Macatee's, report ("Macatee Report")[8]. Macatee states that the recommendations were designed to achieve:

> …the Minister's intention that WorkSafeBC investigations be handled correctly in future, that sawmills be safer places to work, that best practices be employed in occupational health and safety (OHS) organizational structure, and that BC establish a world class inspection and investigation regime. The actions which led to the tragic events at the Babine and Lakeland sawmills, with the resulting failure of prosecution, should never happen again.[9]

It is apparent that Macatee did not have the time, and did not perform the proper stakeholder consultation, to understand the nuances of the regulatory regime and, therefore, the unintended consequences of many of his recommendations and the government's implementation of these recommendations.

The Federation has developed our Submission with the above intent in mind. Although legislative amendments do not fall under the purview of the Board, the Federation will be providing our comments on the needed legislative amendments as they pertain to the consequential policy and regulatory amendments.

Stop Work Orders

As per the Macatee Report, the *Act* was amended to expand the criteria for issuing stop work orders in three ways:

1. To address situations where there is danger that is not immediate but involves a high risk of serious consequences;
2. To have a stop work order apply to multiple worksites that are performing the same function in the same way, for example, roofing companies; and
3. To escalate enforcement where orders, citations, and/or penalties have been ignored.[10]

The Federation is in full support of the amendments to Section 191 of the *Act*. These enhanced enforcement powers will allow the Board to ensure the highest level of health and safety for workers. In addition, it will make it much more difficult for the employers who have been described as "conscious opposers" to abdicate their duties and functions under the *Act*, regulation and policy.

The amendments to Policy Item D12-191-1 outlined in the discussion paper are intended to provide guidance for changes to Section 191 of the *Act*.

Submission on Policy Item #D12-191-1

The Federation is generally in support of the proposed changes to Policy item #D12-191-1.

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[8] Macatee, G. (2014). *WorkSafeBC Review and Action Plan.* Ministry of Jobs, Tourism and Skills Training, Government of BC. Retrieved from https://www.labour.gov.bc.ca/pubs/pdf/WBC_Review_and_Action_Plan.pdf [Macatee].

[9] *Ibid* at 1.

[10] *Ibid* at 100

However, the Federation does not support the first bullet under section D (Stop Operations), subsection (b), which states:

> Whether the employer performs (or would perform) ***substantially*** the same or similar work at other workplaces.[11] [Emphasis added.]

Firstly, it is our position that the first and third bullets in their entirety add nothing as far as guidance to Section 191 (1.3) of the *Act* which is very clear that stop work orders can be applied to workplaces, or parts of workplaces, that have "the same or similar working or workplace conditions."[12] The first and third bullets do not assist in providing guidance to Board officers over and above the *Act*.

Secondly, the Federation opines that the word "substantially" in the first bullet seeks to introduce a higher test than was contemplated by the *Act*. It is our position that this will lead to more direct challenges of the Board officers' discretion in this matter, and in turn will lead to an increase of reviews and appeals.

Macatee's original explanation of this provision provides much more clarity than the bullet in the proposed policy.

- *The Federation strongly recommends removing the word "substantially" in the first bullet under section D (Stop Operations), subsection (b) of the proposed policy.*

Lastly, the Board's third bullet uses only the words "*working* conditions" and fails to mention "**workplace**" conditions. It is our position that the language in the policy should be consistent with that in the *Act*.

- *The Federation strongly recommends adding the phrase "workplace conditions" into the third bullet under section D (Stop Operations), subsection (b) of the proposed policy.*

OHS Citations

Macatee recommended that "on-the-spot penalties", referred to as citations, be introduced as another enforcement tool. It was suggested that these citations be for specific, "relatively minor" violations, with a fixed amount, and provisions for escalating for repeat violations.[13]

Bill 9 amended the *Act* to enable an OHS citations system. The Board's discussion paper[14] proposes regulation and policy to support the new enabling legislation.

Submission on Section 2.4 of the OHSR & Associated Policy

The Federation and its affiliates have noticed a disappointing trend coming from the Board's regulatory department. More and more the proposed regulatory language is overly complex and legalistic, as opposed to the majority of the existing regulation that is written in plain language. It

[11] Stop Work, *supra* note 1 at 10

[12] WCA, *supra* note 6

[13] Macatee, *supra* note 8 at 99

[14] Citations, *supra* note 3

is imperative that the regulation is written in such a way that it is easily understood and applied by all employers, big or small, without the need for legal or other specialists.

This concern has been raised at many recent pre-consultation sessions and the response is that legislative counsel insisted that it be written this way. In the Federation's opinion, this is an unacceptable response. Legislative counsel should be educated as to the audience and general purpose of the regulations – it is not a document that is meant to be interpreted by lawyers, but rather by those who are expected to comply with it: employers and workers.

The proposed language for Section 2.4 of the OHSR is of this new overly legalistic style, in particular Section 2.4 (b) (ii) and (iii). We strongly encourage the Board to rewrite this into plain language, which is certainly possible to do, and ensure that all new proposed regulatory language is in plain language.

Specifically, with respect to the new Section 2.4, it is pertinent to note that the labour movement did not support the introduction of an OHS citation system for employers (or workers). It is our belief that increased focus and new practices around the pre-existing enforcement tools, including increased resourcing of the enforcement system, would have been the most effective and efficient way of enforcing compliance.

However, as it has been imposed, the Federation is obliged to respond to the Board's proposal on how to administer these citations.

In Macatee's report, he posited that citations would be[15]:

- ✓ Highly efficient;
- ✓ Low cost, quick and easy to apply; and
- ✓ Provide an **immediate** consequence for a contravention. [Emphasis added].

The Board's proposal to implement the citation model only in situations where there is a failure to comply with an order seems to fly in the face of what Macatee had contemplated. There is nothing "quick" or "efficient" or "immediate" about implementing citations in this manner, as is illustrated in the elongated flow chart[16] provided in the discussion paper.

The Board commissioned Deloitte to conduct a review of "on-the-spot" penalty systems in Canada, Australia and New Zealand. Deloitte's report, "Employer citations in OHS enforcement: A review of practices in other jurisdictions," was completed on June 26, 2015, and has been appended to the discussion paper.[17]

According to Deloitte's review, the Board's approach is different from all but one of the other jurisdictions in that it does not allow for an immediate citation and fine. Deloitte outlines the Board's rationale for this approach as follows:

> Rather than defaulting to a punitive enforcement action, this model supports education and awareness when contraventions are observed, with the ability to issue a citation if compliance is not attained within a prescribed timeframe. Through discussions with

[15] Macatee, *supra* note 8 at 93, 94

[16] Citation, *supra* note 3 at 4

[17] Citation, *supra* note 3 at 17-54

WorkSafeBC, it was noted that a shift to an immediate ticket, without warning, would not align with WorkSafeBC's historical approach to enforcement.[18]

It is the opinion of the Federation that this argument is weak at best and is another example of what has become increasingly more obvious – the Board's desire to tiptoe around and protect employers thereby overriding the Board's responsibility to ensure the highest level of occupational health and safety for workers.

The new legislation had already introduced another "soft" or educational and collaborative tool with OHS compliance agreements (added to the pre-existing education and consultation phase of enforcement). There was absolutely no logical reason to insert yet another "educational" step into this overly protracted enforcement system. This serves to make citations even more ineffective than they would have been if immediate citations were implemented as contemplated by Macatee.

Following the current model, it could conceivably take five (5) to six (6) steps, or visits, to get to the point where a penalty is imposed. It is not clear how this is "efficient" or in any way a motivating force to employers that are slow to comply – it simply provides them with more time to put workers at risk. In addition, it adds unnecessary administrative layers to a Board officer's already overloaded work day, keeping them from the important work they should be doing.

- *The Federation strongly recommends that the Board reconsider their approach to OHS citations and in keeping with other jurisdictions and the intent of Macatee's recommendations, create a system of on-the-spot citations for specific violations.*

OHS Compliance Agreements

Macatee recommended that the Board introduce an assurance of compliance tool to the suite of enforcement tools to fill an arbitrarily chosen enforcement gap. He recommended that these be used only in situations where there was no immediate risk to health or safety and the employer is willing to commit to corrective action within a specified period of time.[19] This recommendation was implemented with the Bill 9 changes to the *Act*.

For the reasons discussed above, with respect to a protracted enforcement system, the labour movement is not in favour of the legislative amendment enabling OHS compliance agreements (CAs) to fill an enforcement gap that the Federation submits does not exist. The pre-existing system of an informal consultation or education approach for low-risk violations was sufficient to work with employers who were motivated to comply.

As proposed, OHS CAs do not replace the above informal approach, but rather are an additional step or tool in the enforcement regime. A CA does not trigger the obligation to "voluntarily" comply with the *Act* and regulations – presumably, motivated employers will have researched their obligations and complied with them prior to a Board officer arriving to perform an inspection. Under the pre-existing system, if a violation was noted during an inspection of a responsive employer, the officer already had the discretion 'not' to issue an order, or an order

[18] Citation, *supra* note 3 at 33

[19] Macatee, *supra* note 8 at 98

would be written to document the violation and the order would be complied with in a reasonable time.

It is pertinent to note that orders are not punitive. As stated by Macatee himself, orders are simply a "*tool that will create a record of both the issue and the outcome*"[20] – or a formal notice to comply with the regulation within a specified period of time – it is confounding as to what the purpose is of this extra "formal" agreement is other than to avoid an order.

It would follow that unmotivated or resistant employers, who were not easily motivated by orders, are not likely to be persuaded to change their ways with a CA. Rather, it will be seen as another way to prolong the escalation to a citation or a penalty – allowing the unsafe conditions to exist.

It is for these reasons the Federation's position is that CAs are absolutely unacceptable and unnecessary. Under this system, (unmotivated) employers now have possibly two or more "free passes" prior to being administered an order.

In addition to this, CAs add a significant administrative burden on Board officers and administrative staff. Officers are already under-resourced, in particular with the new investigation reporting requirements, meaning they are spending less time performing the important function of "boots-on-the-ground" education and enforcement which serve to keep workplaces healthy and safe. The Federation has been advised that the new CA tool is unwieldy, complex, and difficult to implement, manage, monitor, and track.

In fact, it is an additional administrative burden ("red tape") for employers, as well.

Submission on Policy Item #D12-186.1-1

Following is the Federation's Submission on the Board's proposed Policy Item #D12-186.1-1 that will provide guidance to the requirements under the *Act*.

Explanatory Notes

The proposed policy begins with background information that includes explanatory notes. The Federation takes exception to the first sentence of this section:

> ***Instead of issuing an order***, WorkSafeBC may, in certain circumstances, enter into a compliance agreement in which an employer voluntarily agrees to correct OHS violations and report back to WorkSafeBC by a specific date.[21] [Emphasis added.]

The Federation opines that the first section of this sentence sets the wrong tone from the outset. Although the statement is true, opening with this emphasizes the misperception that orders are punitive, as noted above, and makes it sound as though this is an automatic work-around, as opposed to a possible step in the enforcement toolkit.

- *The Federation recommends striking out "instead of issuing an order" in the first sentence of the "Explanatory Notes" section of the policy.*

The Federation also believes that the second and third paragraphs need to be switched. It is our position that the fact that CAs are at the Board's discretion must be given priority placement in the document. The Federation is already receiving reports that employers are challenging the

[20] Macatee, *supra* note 8 at 98

[21] Compliance Agreements, *supra* note 4 at 7

Board officers' decisions to write orders and pressuring them to write CAs instead. This is a disturbing trend so early in the implementation – it is paramount that the Board continue to reinforce the fact that CAs are at the discretion of the Board officer.

- *The Federation recommends switching paragraphs two and three in the "Explanatory Notes" section of the policy.*
- *The Federation recommends reinforcing in the proposed policy that the Board retains the discretion to issue an order in circumstances where an employer prefers a CA.*

Entering into a Compliance Agreement

The proposed policy states that an employer will not be issued an order for the violations that are specified in the CA while it is in effect. Although there seems to be some logic to this, there are concerns about another advantage that is not discussed in the paper.

Violations in a completed CA will not form a part of the employer's compliance history for the purpose of further escalation of enforcement and/or determining the appropriateness of entering into another CA. Specifically, this situation does not meet the criteria in Policy Item #D12-196-3[22] which provides guidance on what should be considered as prior violations or orders when determining the appropriateness of a penalty under Section 196 of the *Act* on the basis of repeated non-compliance.

- *The Federation strongly recommends amending the appropriate policies to ensure that violations within completed CAs are captured in the employer's compliance history for the purpose of escalating enforcement.*
- *The Federation strongly recommends amending this proposed policy to ensure that new CAs are not possible for employers who have had the same violations form part of a previous CA, whether it was completed or canceled.*

Requirements of a Compliance Agreement

The proposed policy states that a CA must be signed by the appropriate employer representative "*who is authorized to enter into agreements on behalf of the employer*."[23]

While the Federation agrees that this should be the case, the failing in the proposed policy is that it does not clearly assign the onus for acquiring this signature on the employer. It should not be left to the Board officer's responsibility to attempt to track down the appropriate signature.

- *The Federation strongly recommends that the policy be amended to state that if an appropriate, authorized employer representative is not readily available onsite, the Board officer will not initiate a CA.*

[22] Workers Compensation Board of BC. (2014, January 1). *Prevention Manual*. BC, Canada. Retrieved from http://www.worksafebc.com/publications/policy_manuals/Prevention_Manual/Assets/PDF/prevmnl.pdf [Prevention Manual]

[23] Compliance Agreements, *supra* note 4 at 10

Cancelling a Compliance Agreement

The proposed policy makes the following statement about cancelled CAs:

> If a compliance agreement is cancelled, WorkSafeBC will, ***except in exceptional circumstances***, write orders for any outstanding OHS violations specifically described in the agreement.[24] [Emphasis Added.]

The *Act* provides that a CA can be canceled if the employer fails to comply with the agreed-to obligations in the CA or if the situation changes to put workers' health or safety at immediate risk. Based on this criteria, the Federation cannot imagine a situation that would not lead to an order should a compliance agreement be canceled. For example, the *Act* already provides for the ability to amend the order if there is reason to do so, agreed to by the Board and the employer (perhaps the timeline needs to be extended due to unforeseen delays with a supplier of the needed equipment).

CAs by their nature have already provided the employer with a "free pass," so to speak, from receiving an order. Again, an order is simply a formal notice of the requirement to comply within a specified period of time; however, without an order in place, it is impossible for the Board to escalate to the other tools in the enforcement tool kit in a timely manner.

It is the Federation's position that if an employer has voluntarily entered into a CA, in which the employer negotiates the terms of compliance with the Board, and is *still* unable (or unwilling) to comply, it should lead to:

- ✓ **An automatic order in the *penalty stream*** (an order with a penalty warning).

If the employer is motivated to comply, the order will be complied with and no penalty will result. However, if the employer continues to be non-compliant, the Board can quickly escalate to a penalty and ensure that the health and safety of the workers is protected in a timely manner.

A canceled CA **should never** lead to:

- ✓ An order in the *citation stream* (an order with a citation warning); and
- ✓ No order.

CAs are time consuming and carry a significant administrative burden for the Board. As such, they should be treated with the same seriousness and deference as any other enforcement tool. CAs should not simply be used (abused) by employers as a way to drag out the timeline to comply with what are already their obligations under the *Act*, regulation and policy.

Leaving the door open to a) write an order in the citation stream, or b) not write an order at all, will lead to inconsistent application and constant challenges of the Board officers' decisions. What criteria is the officer going to use to determine what kind of order should be written or if they should write one at all? Clearly, this will ultimately lead to shifting the burden onto the Review Division and the Workers' Compensation Appeal Tribunal to sort out.

- ➢ *The Federation strongly recommends that the canceled Compliance Agreements lead to an automatic order in the penalty stream.*

[24] Compliance Agreements, *supra* note 4 at 12

Employer Incident Investigations Policy and Regulation

As per the Macatee report, the *Act* was amended to require employers to prepare a preliminary investigation report within 48 hours of an incident and a full investigation report within 30 days~~,~~ provided to the Board,[25]. The *Act* was amended to incorporate these changes and more.

Submission on Section 3.4 of the OHSR

In the original Section 176 (1) of the *Act,* employers were directed to ensure that an investigation report was "*prepared in accordance with the **regulations.***"

One of the most significant changes in the amendments to the *Act* was removing this provision and replacing it with "*prepared in accordance with the **policies** of the board of directors.*"[26]

The hierarchy of the Board's law and policy is:

1. **Statute – The *Workers Compensation Act***

   Legislation is introduced in the legislative assembly as a bill and must pass through three readings and receive royal assent before it is passed into law.[27] The *Act* supersedes any regulation or policy – it provides and defines the authority to make regulation and policy.

2. **Regulation – The Occupational Health and Safety Regulations**

   The *Interpretation Act* defines regulation as a rule, form or bylaw which executes the authority under an *Act*.[28] The *Regulations Act* further defines regulation stating that the *Act* has to confer the power by using the words "regulation" or "prescribe," or variations of.[29]

   Section 111 (2) (a) of the *Act* states that one of the Board's functions is to "*make regulations to establish standards and requirements for the protection of the health and safety of workers…"* [30]

   Section 226 (1) of the *Act* states that the Board must consult with employers and workers, as well as hold a public hearing, prior to making a regulation.[31] This provision creates a higher level of responsibility on the Board when developing regulation, providing more comfort to the stakeholders that the regulation will be more stable, not subject to the whim of the Board.

3. **Policy – The Prevention Manual (in this case)**

   According to the Board's Prevention Manual, "*policies are of broad general application and provide further direction to Board officers in dealing with individual matters*."[32]

   Section 82 (1) of the *Act* establishes the Board of Directors' authority to "*set and revise as necessary the policies of the board of directors, including…respecting occupational health*

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[25] Macatee, *supra* note 8 at 106, 107

[26] WCA, *supra* note 6

[27] Best, C. (2015). *Bills: The origin of new legislation*. Retrieved October 12, 2015, from Best Guide to Canadian Legal Research: http://legalresearch.org/statutory/bc-statutes/bills/

[28] *Interpretation Act*, R.S.B.C. 1996, c. 238.

[29] *Regulations Act*, R.S.B.C. 1996, c. 402.

[30] WCA, *supra* note 6

[31] WCA, *supra* note 6

[32] Prevention Manual, *supra* note 22

and safety."[33] In other words, the Board has no obligation to do prior consultation or hold a public hearing in order to make or amend a policy of the Board of Directors.

It is with this hierarchy in mind that the Federation submits that the changes to the *Act* that remove the reference to regulations effectively downgrade this requirement in the OHS system.

The requirements of the incident investigation reports should properly be placed within the regulation, as they have always been. Section 225 (2) of the *Act* states, in part, that the Board may make regulations:

> (b) respecting specific components of the general duties of employers, workers, suppliers, supervisors, prime contractors and owners under this Part;.. [Emphasis added.]
>
> (h) respecting the form and manner of reporting on any matter required to be reported under this Part or the regulations;[34] [Emphasis added.]

One of the general duties of employers is to establish an Occupational Health and Safety (OHS) program, as per Section 115 (2) (c) of the *Act*.[35] The OHS program is defined in Section 3.3 of the OHSR and sub-sections (e) and (f) require employers, as part of their OHS Program, to investigate incidents, maintain investigation reports, and provide them to the joint committee.[36]

As such, it is clear according the *Act* that the "manner of reporting" an incident investigation should fall under the regulatory regime, not a policy. Incident investigations and reports of such are an essential part of any OHS program and therefore must be prescribed by regulation.

Regulation vs Policy?

The Federation understands this particular piece of legislation was allegedly enacted by the government without prior consultation with the Board. However, there is an obvious and disturbing trend on the part of the Board to move more and more towards developing policy rather than regulation.[37] The labour movement strongly opposes this practice, as outlined above, as it creates requirements that are too easy to change at the whim of the Board – outside of the important stakeholder and public consultation process worthy of workplace occupational health and safety requirements.

The Board argued in the pre-consultation sessions that Section 3.4 must be removed as the *Act* now directs the section to be a policy. The Federation disagrees with this interpretation – the *Act* certainly does not state that it cannot be in the regulation – and encourages the Board to modify the regulation to reflect the changes in the *Act*.

- *The Federation strongly recommends that Section 3.4 is not removed and downgraded to a policy, but rather be amended to reflect the requirements in the new legislation.*

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[33] WCA, *supra* note 6
[34] WCA, *supra* note 6
[35] WCA, *supra* note 6
[36] OHSR, *supra* note 1
[37] A good example of this is the Board's decision to create policy regarding the requirements for the prevention of bullying and harassment as opposed to placing it in the OHSR where it clearly belongs with the violence regulation in Section 4.27

Submission on Policy Item #D10-175-1 & D10-176-1

Generally, the Federation is in support of the proposed content for Policy Item #D10-175-1, Preliminary Incident Investigation, Report and Follow-Up Action, and Policy Item #D10-176-1, Full Incident Investigation, Report and Follow-Up Action, as proposed in the discussion paper.[38]

Following is the Federation's Submission on our areas of concern with these policies.

D10-175-1 – Producing the Preliminary Report

The second significant amendment made to the legislation is the removal of the obligation to provide the investigation report to the joint committee which used to be required in the prior Section 175 (2) (a) the *Act*. The amended *Act* only obligates the employer to provide the joint committee with a copy of the corrective action report.

The Federation is vehemently opposed to this change as it completely undermines the duties and functions of the joint committee as outlined in Section 130 of the *Act*, which clearly states (in part):

> (h) to ensure that accident investigations and regular inspections are carried out as required by this Part and the regulations;
>
> (i) to participate in inspections, investigations and inquiries as provided in this Part and the regulations;

As the joint committee or worker representative is to participate in the investigation, it makes no sense not to provide the joint committee with a copy of this report. The committee requires the report in order to perform their other duties and functions, including making recommendations regarding the corrective actions and any associated educational programs and policies required.

In the case of the preliminary report this becomes even more important, as it is more likely that the worker representative is unable to participate in the preliminary investigation due to the short timeline. The preliminary report will inform not only the interim corrective actions, but also the process for the full incident investigation.

Providing joint committees with a copy of the report is also in keeping with Section 3.3 (f) of the OHSR, as mentioned previously, which states that the employer's OHS program must include "*the maintenance of…reports of inspections and incident investigations, with provision for making this information available for the joint committee*…"[39] [Emphasis added.]

Item 5 of the proposed policy attempts to rectify this situation as follows:

> The employer may also provide a copy of any incident investigation report to the joint committee or worker health and safety representative, as applicable. If doing so, the employer may need to remove certain of the listed elements from the investigation reports in order to protect personal information of individuals.[40] [Emphasis added.]

It is the position of the Federation that the "may" in the first sentence above should be changed to a "must," based on the existing provisions in Section 3.3 (f) of the OHSR quoted above.

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[38] Investigations, *supra* note 5
[39] OHSR, *supra* note 1
[40] Investigations, *supra* note 5 at 12

In addition, the Federation submits that the second sentence in Item 5 of the policy should be eliminated. There is no provision in the *Act* or the OHSR for information to be hidden from the joint committee. Again, if you follow the logic that the joint committee have a duty to be involved in the incident investigations from the outset, they will already be privy to the names of the witnesses having been part of the interview process, etc.

All of the information that joint committees are privy to is of a confidential nature[41] – it should be left in the purview of individual employers and joint committees to determine if they require processes or procedures over and above what is provided for in the *Act*, OHSR and the policy.

It cannot be said strongly enough that the full and meaningful participation of the joint committee in investigations – from the beginning of the investigation process to the end – is a long-standing and *fundamental right*. It is only with this fully integrated approach to health and safety, as intended by the BC *Act* and OHSR, that the highest level of workplace health and safety can be achieved.

Any derogation of this provision will lead to action on behalf of the labour movement.

- *The Federation strongly recommends removing the word "may" in the first sentence of the second paragraph in Item 5 in Policy Item #D10-175-1 and replace it with "must."*
- *The Federation strongly recommends deleting the second sentence of the second paragraph in Item 5 in Policy Item #D10-175-1.*

D10-176-1 – Producing the Full Investigation Report

The Federation is opposed to the same language as noted above in the full investigation policy Item 3[42] for the same reasons mentioned.

Thankfully, this issue may be resolved, in part, if the new Bill 35[43], which seeks to place the obligation to provide the joint committee with the full investigation report back into the legislation, receives royal assent.

- *The Federation strongly recommends removing the word "may" in the first sentence of the second paragraph in Item 5 in Policy Item #D10-175-1 and replace it with "must."*
- *The Federation strongly recommends deleting the second sentence of the second paragraph in Item 5 in Policy Item #D10-175-1.*

Conclusion

The Federation appreciates the opportunity to provide a Submission regarding the proposed regulatory and policy amendments. We are confident that the Board of Directors will seriously consider this Submission and revise their proposed amendments in support of healthier and safer workplaces and work activities.

[41] For example, information provided as per Section 136 (2) of the *Act*.
[42] Investigations, *supra* note 5 at 18
[43] Bill 35, *Workers Compensation Amendment Act (No. 2), 2015*, 4th Session, 40th Parliament, British Columbia, 2015.