

WorkSafeBC Review Points To Enforcement Changes And Tougher Penalties



Following a review into WorkSafeBC's procedures for conducting investigations, the BC government has announced that it will accept all 43 recommendations of the review's final report, the *WorkSafeBC Review and Action Plan*, which was made public on July 15, 2014. If the government does implement these recommendations, BC employers can expect provincial Occupational Health and Safety ("OHS") regulations to become more stringent and more effectively enforced. Non-compliance will likely carry more severe penalties.

BC Labour Minister Shirley Bond appointed Mr. Gordon Macatee, the BC Ferry Commissioner, as Administrator of WorkSafeBC on April 14, 2014. She gave Mr. Macatee a mandate to review WorkSafeBC's investigation procedures after the Criminal Justice Branch declined to press criminal charges in the fatal Babine and Lakeland Mill explosions, both caused by combustible dust. The Criminal Justice Branch elected to not proceed with prosecution because the evidence collected in the course of WorkSafeBC's investigation of the mill explosions was likely inadmissible in court.

Enforcement for Criminal and Regulatory Offences Recommended

To ensure that WorkSafeBC investigations can lead to effective criminal prosecutions, Mr. Macatee recommended that WorkSafeBC create two separate teams, one to investigate incidents for cause and another to gather evidence for prosecution. He also recommended that WorkSafeBC enter into Memoranda of Understanding with police and the Criminal Justice Branch, and develop policies on when to refer matters for prosecution.

Many of Mr. Macatee's recommendations are aimed at encouraging enforcement of regulatory offences, not just criminal offences. Once the report's recommendations go into effect, BC employers should see changes to WorkSafeBC's OHS compliance regime.

Mr. Macatee recommended that WorkSafeBC implement an escalating series of enforcement tools, which are to be guided by the principle that WorkSafeBC officers should select the least onerous tool to ensure compliance. The report included the following graphic to explain how these new powers will be used:

Enforcement Regime Includes Sanctions for Repeat Offenders

New features of this enforcement system include asking that an on-site manager sign

an “Assurance of Compliance,” a formal undertaking to rectify an OHS violation within a certain time period or be subject to a follow-up investigation. In addition, WorkSafeBC officers will be empowered to issue OHS “citations” with escalating fines. The report stated that these fines are to be “proportional” to the offender and offence.

Repeat offenders will be subject to injunctions. If these repeat offenders attempt to start new companies in order to avoid sanctions, WorkSafeBC will have the ability to “pierce the corporate veil” to impose discipline on those behind the non-compliant companies. WorkSafeBC will also publish reports of its enforcement actions to increase their deterrent effect.

Currently, it takes approximately one year for WorkSafeBC to impose an OHS penalty. The report recommended that this timeframe be made “significantly” shorter.

Mr. Macatee recommended broadening the scope of certain existing enforcement tools. Once the report’s findings are implemented, stop-work orders may apply in non-emergency situations or to multiple work sites. WorkSafeBC will regularly conduct inspections during the evening and weekends, in order to ensure compliance with OHS regulations at all times.

Although the legislative, regulatory, and organizational changes necessary to implement this new regime will take time, it is clear that the BC government has committed to far-reaching OHS reforms.

What is not clear is how many of the recommendations will come into place, and when we can expect them. For now, employers should strive to follow best OHS practices, and regularly review their procedures to ensure that they remain compliant with WorkSafeBC’s current standards.

Last Updated: August 4 2014

Article by Alex Hudson and Richard Press

Davis LLP