



October 2017
Honourable Christina Gray
Minister of Labour
Transmitted via email: labour.minister@gov.ab.ca lbr.review@gov.ab.ca

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Dear Minister Gray:

The Alberta Construction Association appreciates the opportunity to continue to provide feedback on the review of Alberta's Occupational Health and Safety (OHS) System. Alberta's construction industry employs approximately 1 in 9 working Albertans, and at 3000 member firms, ACA is the largest provincial voice of Alberta's construction industry.

ACA has participated in numerous reviews of Alberta's OHS system, including the Work Safe Alberta initiatives referenced on page 14 of the Discussion Paper, and each review of the OHS Code.

ACA believes that the suggested direction outlined in the Discussion Paper would move our current collaborative system to an adversarial system, without improvement in workplace safety. ACA believes that improved workplace safety arises from: shared responsibility, adoption of evidence-based best practices, and collaborative stakeholder dialogue.

Specific responses to the questions posed in the Discussion Paper and Survey follow.

Theme 1: Responsibility

1. How can Alberta Labour help employers and workers achieve compliance with the OHS legislation and reduce illness and injury?

As noted on page 14 of the Discussion Paper, significant reductions in injury rates were achieved following the introduction of the Work Safe initiatives starting in 2002. ACA recommends a return to these collaborative forums which involved meaningful, respectful, collaborative dialogue.

2. Compliance activities are based on the principles of being progressive, proportional and effective. What can Alberta Labour do to make its compliance activities and processes more effective?

It is not clear that OHS has intentionally collected evidence to determine the effectiveness of its various compliance tools. ACA recommends rigorous evidence-based decision-making to determine retention of existing tools or introduction of new tools. Employers may lack resources to dispute administrative penalties. There is a risk that employers will simply pay, adding costs without improving safety.

3. The internal responsibility system is the underlying principle of OHS legislation. How can Alberta's OHS legislation strengthen the internal responsibility system?

The responsibility of each stakeholder needs to be maintained. ACA lobbied for employee ticketing as an important aspect of shared responsibility, based on dialogue with Ontario regulators. As with all tools, rigorous analysis should be undertaken to confirm effectiveness.

4. How might Alberta Labour improve the effectiveness of its compliance tools and reduce administrative burden?

As noted in ACA Policy, OHS should weigh benefits against costs, including employer and OHS administrative costs. ACA believes that OHS officers should be trained for specific sectors they are inspecting, that is, inspectors for construction should be trained and familiar with work and safety procedures for construction worksites.

5. How can Alberta Labour ensure that OHS legislation is current, relevant and technically valid?

It is critical that changes introduced to the system be rigorously reviewed shortly after implementation, in order to assure that the changes and the system as a whole operate efficiently and effectively.

As per ACA Policy:

"The Occupational Health and Safety Regulations and Code should be updated periodically to reflect changes in technology, safe work practices, and understanding of occupational hazards and their prevention. The frequency of updating the OHS Code needs to reflect a balance between reflecting recent change and the impact of increased cost to employers in revising their employee training programs. "

6. How can Alberta rebalance the internal responsibility system to prevent over-reliance on government enforcement in the absence of internal monitoring systems in the workplace?

As noted on page 8 of the Discussion paper, the internal responsibility system promotes implementation of best practices. ACA believes adoption of practices should be evidence-based. Prior to accepting the value of joint employer-employee committees as a best practice, ACA urges all stakeholders to present evidence of the value of joint committees in terms of improved safety, balanced against, increased employer and OHS administrative costs. These increased administrative costs will in fact reduce the funds available to invest in safety programs.

ACA Policy states: *"Employer experience ratings and lost time claims are inappropriate and misleading indicators of safety performance. Disability claims management data collected by the Workers Compensation Board are not suited as measures of safety performance..."* ACA is interested in working with OHS on the value of leading indicators to prevent injuries.

ACA Comments in relation to OHS Survey Questions related to Theme 1:

Q: "To what extent do you agree employers should be responsible for dealing with mental health and physical violence hazards caused by domestic violence that spills over the workplace?"

ACA believes there are significant challenges for employer responsibility for actions in the workplace stemming from domestic violence.

ACA believes the survey omitted possible responses that workers and the self-employed should also be responsible for complying with OHS legislation, and for cooperating with other stakeholders. Including these responsibilities enhances a collaborative approach to safety.

Q: “Supervisors should be responsible for:

- making reasonable efforts to ensure the health and safety of their workers,
- making reasonable efforts to ensure their workers comply with OHS legislation”

ACA endorses the current interpretation of supervisors making “reasonable efforts” and would be very concerned with any unilateral change in interpretation by the Government.

Q: “Prime contractors should:

- Be required in construction projects...where it makes sense to have a prime contractor,
- Be responsible for ensuring the work is organized and supervised to properly manage the health and safety risks arising out of the project,
- Ensure the OHS programs and management systems for employers on the project are coordinated to properly manage OHS risks”

Any changes to prime contractor responsibilities should only occur after collaborative discussion with contractors. Home owners should be excluded from the definition of prime contractor for simple renovations (eg. Roofer hired to replace roof. Leave homeowner as prime contractor where homeowner is managing a new build or major renovations / rebuilds.

Q: “Service providers, such as consultants, are not currently covered by the OHS Act....To what extent do you agree that service providers should be accountable under the OHS legislation for their services?”

Service providers should be accountable under OHS legislation where their services create a hazard.

Q: “To what extent do you agree that employers, prime contractors, owners and suppliers should have a responsibility to provide information that may affect OHS to other affected workplace parties?”

ACA believes obligations to share information are adequate under current legislation.

Q: “To what extent do you agree that OHS officers should be responsible to issue orders to resolve situations where workers have been subjected to threats or actual discipline or other reprisals for legitimate OHS activities?”

ACA does not support OHS officers having the responsibility to issue orders where reprisals are alleged. ACA is concerned about duplication of existing statutory mechanisms, ensuring due process, and believes that officers are not equipped to assess and weigh conflicting evidence.

Q: “To what extent do you agree that OHS officers should be able to issue stop work and stop use order on multiple work sites that belong to the same employer when an inspection reveals a fault with an activity or with equipment common to all?”

ACA strongly disagrees with stop work orders being issued across multiple work sites. By the very nature of project based work such as construction, subcontractors, personnel, and equipment differ across sites so blanket orders are not appropriate.

Q: “To what extent do you agree that Officers should share orders and other OHS workplace reports and documents with representatives of workers or joint work site health and safety committees?”

ACA also disagrees with the sharing of information with other parties. The employer has the responsibility to address the issue, and it is unclear what the added value is, particularly should an order be modified or overturned on appeal. Similarly, information should not be public until after any appeals are exhausted.

Q: “When an OHS Officer serves an order on an employer, they must follow up to ensure the order has been complied with. To what extent do you agree that in addition to the follow-up by the officer, a person who has been served an order should be responsible for providing a progress report on the steps taken to comply with the order to the OHS officer or director?”

ACA does not support that the individual served with an order be responsible for providing progress reports. The corporation already bears the responsibility to respond, and tying up the individual with administration serves little purpose in improved safety.

Q: “Through proactive strategic inspection programs, the government identifies employers that require special attention to improve health and safety. To what extent do you agree:

- The government should continue to target similar types of worksites
- the government should also consider non-traditional hazards that may not be well represented in statistical information
- the government should also consider more focus on at risk worker populations (for example vulnerable workers, temporary foreign workers, or young workers) in proactive strategic programs?

ACA suggests that any targeting through proactive inspections be evidence-based.

Q: “To what extent do you agree that when granting an acceptance or an approval under the OHS legislation, statutory directors be required to consult with affected workers, the joint work site health and safety committee and other interested parties before deciding the about the acceptance request?”

ACA disagrees that statutory directors be required to consult with workers, the implications for maintenance of a construction schedule could be seriously compromised. The compliance history of the applicant should be considered, and industry-wide acceptances are supported. Acceptances should apply to products or equipment, not to suppliers. ACA agrees that acceptances should be of limited duration.

Q: “To what extent do you agree that Alberta should:

- Provide authority in legislation for OHS officer decisions to be reviewed
- Introduce a two-stage appeals process (first stage review by an Alberta Labour Director, second stage to an independent appeals body
- Consolidate labour appeals to a single body?”

ACA strongly supports providing authority in OHS legislation for officer decisions to be reviewed and the proposed 2 stage appeal process. ACA supports the OHS Council retaining the authority for the 2nd stage of appeal. ACA does not believe all labour-related appeals being heard by a single body is good practice – the legislative and industry expertise is quite distinct between labour relations and OHS, for example.

Q. “To what extent do you agree that the OHS Code should be updated to align or harmonize more closely with other Canadian jurisdictions or other Alberta legislation?”

ACA supports mutual recognition rather than harmonization. Harmonization will be slow and extremely difficult to coordinate an evidence-based approach that meaningfully involves stakeholders. Mutual recognition avoids these problems and may in fact speed the dissemination of best practices as jurisdictions will be exposed to varying approaches from other jurisdictions.

Theme 2: Worker Engagement

1. What should Alberta Labour do to ensure that Alberta workers have all the same rights as workers elsewhere in Canada?

ACA believes adoption of practices should be evidence-based. Prior to accepting the value of joint employer-employee committees as a best practice, ACA urges all stakeholders to present evidence of the value of joint committees in terms of improved safety, balanced against, increased employer and OHS administrative costs. While ACA strongly supports worker engagement and participation in workplace safety, the goal of internal responsibility is thwarted if engagement is assigned to a particular group of employees.

2. The OHS Act prevents any person from taking action against a worker who acts in compliance with the OHS legislation. How could Alberta Labour strengthen worker protection against reprisal?

ACA believes that existing statutory provisions exist to protect workers from employer reprisal, and that duplicating simply creates complexity and administration for stakeholders to navigate.

3. What could Alberta Labour, WCB, industry, labour organizations, employers and workers do to improve worker participation in OHS?

ACA members expend funds on safety performance. Collect and promote case studies where there is evidence of the value of increased worker participation in their employers’ safety programs.

4. How might training for workers be more accessible, meaningful and useful?

ACA is working with Alberta Construction Safety Association to reduce training overload and overlap by developing a common site orientation through the CSTS program.

ACA Comments in relation to OHS Survey Questions related to Theme 2:

Q: “A worker may be unable to work because they refuse to perform dangerous work. They may also be unable to work if an OHS officer issues a stop work order for the work site, or issues a stop use order on a piece of equipment that remove it from service. To what extent do you agree that under these circumstances the worker should be reassigned to alternate work without loss in pay or benefits?”

ACA strongly disagrees that OHS interfere with employer rights to manage their workforce and to involve themselves into workforce reassignment.

Theme 3: Prevention

1. Which Alberta Labour illness and injury prevention programs and resources have been most effective?

As noted on page 14 of the Discussion Paper, significant reductions in injury rates were achieved following the introduction of the Work Safe initiatives starting in 2002. ACA recommends a return to these collaborative forums which involved meaningful, respectful, collaborative dialogue.

2. Which new programs and resources could be introduced to prevent illnesses and injuries in Alberta?

As per ACA Policy on Regulatory Best Practices:

“Adoption of best practices should extend to regulatory compliance and enforcement. Regulations should be rooted in evidence and weigh benefits against costs. Enforcement needs to be consistent across officers and regions. Measures used elsewhere should be evaluated for their impact on improvements to workplace safety before being adopted in Alberta. Failure of existing tools should be understood before proceeding to adoption of new tools. Adoption of new standards should be phased in to provide time for preparation.

Regulatory inspectors should have expertise specific to the sector they are inspecting.

Regulatory approaches that are outcome-based allow for innovation and industry-developed alternative solutions rather than a single prescriptive so-called “highest standard”. ACA would prefer that regulators in any of the provinces of the New West Partnership Trade Agreement accept a standard approved in at least one of the other provinces.”

3. How might province wide prevention activities be improved? What would be the role of Alberta Labour, employers, workers, WCB, and health and safety associations in this?

As noted on page 14 of the Discussion Paper, significant reductions in injury rates were achieved following the introduction of the Work Safe initiatives starting in 2002. ACA recommends a return to these collaborative forums which involved meaningful, respectful, collaborative dialogue.

4. What actions should be taken to improve health and safety training for priority groups such as inexperienced, vulnerable and young workers?

ACA supports efforts to continue to develop a safety culture and enhance safety education within the school and post-secondary systems. The Alberta Construction Safety Association for example delivers the CSTS program in high schools across Alberta. ACA is confident that ACSA is an excellent partner to develop and implement additional initiatives to improve training for priority groups.

5. What can be done to improve the perception of, and behaviours related to workplace health and safety risks?

ACA recommends a joint industry government examination of leading indicators as a potential source of improvements.



6. How do the COR/PIR program and health and safety associations fit into the overall occupational illness and injury prevention activities?

Alberta Construction Association strongly supports the continued funding of the Alberta Construction Safety Association through WCB premium levies. The levy approach ensures that all employers are invested in providing safe workplaces by contributing financially to a consistent standard of construction safety education, training, and audit programs. The current oversight by Boards of Directors comprised of employers and other stakeholders is appropriate. WCB should continue to annually confirm employer support to fund the safety associations.

The Certificate of Recognition (COR) program was developed by and for industry. Continued industry leadership is essential for COR to be meaningful.

Employers have determined that a portion of their funds collected by the WCB be used to incent prevention efforts through the Partners in Injury Reduction (PIR) program. PIR refunds are a financial tool to reinforce employer accountability for safety performance. Government should continue to support this decision by employers.

ACA Comments in relation to OHS Survey Questions related to Theme 3:

Q: "To what extent do you agree that Alberta should take a strategic approach to OHS prevention that includes public awareness and education and other voluntary measures in addition to enforcing compliance with legislation?"

ACA believes that public awareness programs should be funded by the taxpayer, not the employer. The value of such initiatives should be evaluated based on evidence of improved safety.

Q: "To what extent do you agree that Alberta would benefit from a formal mechanism that brings government, the WCB, and representatives of employers, labour and safety associations together to renew our focus on prevention?"

"To what extent do you agree government should oversee WCB-funded safety associations to ensure they are held accountable for providing effective up-to-date OHS training and services, and improving the OHS performance of their members?"

ACA believes that OHS and WCB fulfill distinct roles and that the current roles of WCB in prevention are sufficient, ie.

- Pricing mechanisms such as experience rating and PIR
- As a mechanism for employer funding of OHS officers
- As a mechanism for employer funding of safety associations

The members and workers of ACA remain committed to improving workplace safety for all Albertans. We appreciate your consideration of our comments and input and are available to discuss these important matters more thoroughly. ACA requests the opportunity to be involved in any future discussions regarding changes to the OHS system.

Sincerely,

Paul Heyens, Chairman