

Construction Safety: A Changing Landscape

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Throughout the ages the risk of injury has been a constant reality incidental to construction projects. The dangers inherent at any work site are numerous and despite the best safety regimes, accidents are inevitable. The approach to work place safety has changed over the years from the cavalier attitude that worker safety was the responsibility of the worker, to an acknowledgement that workers injured on the job should be entitled to compensation from a scheme imposed on employers, to the enlightened notion that all work place injuries are preventable by education, the imposition of standards and the requirement for safety certification.

BACKGROUND

As the plight of the injured worker captured the conscience of mainstream society, a consensus emerged that something had to be done to improve their lot. Through a government initiative, The Royal Commission on the Relation of Capital and Labour in 1887, a compensation scheme for injured workers was introduced, funded by employers. As the focus on workers safety continued to evolve, by the 1970s, three key rights were acknowledged as entrenched: the right to refuse dangerous work; the right to participate in identifying health and safety concerns on a work site; and the right to be informed of hazards in the workplace. The current preoccupation is on safety and prevention with penalties as an important element of deterrence. The worker's compensation regime still remains the cornerstone of security for workers albeit much refined and matured from that originally introduced at the turn of the last century.

HOW SERIOUS IS THE PROBLEM?

It should come as no surprise that some of the highest incidents of workplace injuries arise in the construction industry. Based upon available StatsCan information, in 2008 injuries in the construction industry peaked at 24.5 cases for every 1000 employees. This average had improved by 2010 to 14.7 cases for every 1000 employees nationally with the regional experience somewhat better in NB and PEI, 12.5 cases and 11.5 cases respectively and somewhat worse in NS and NL at 15.4 and 18.3 respectively. The dichotomy in the region can likely be explained by the significant number of construction sites in NS and NL compared to those in NB and PEI.

MANDATORY SAFETY STANDARDS

Not all contractors have embraced the introduction of safety standards and safety certification with the same degree of enthusiasm. There is a significant cost to compliance including the cost of safety equipment, employee training, fees payable to safety organizations, man hours to document programs and compliance, time and resources devoted to mandatory safety committees and the list goes on. The playing field is far from level in competitions for those contracts where both compliant and non-compliant contractors are permitted to bid.

The problem is further amplified in those situations where a project requires that a contractor have a specific safety certification. The general contractor may have the required certification but some or all of the subcontractors engaged by the general may not. If an injury occurs because of the business practices of one of the uncertified or non-compliant subcontractors, the general is likely to find that it will bear the full consequences up to a prosecution and fine even though the procedures of the general were fully compliant and the general did not participate in the activity causing the injury beyond hiring the sub trade.

GROWTH OF THE WORKPLACE SAFETY INDUSTRY

The shift toward enhanced safety standards and prevention of workplace accidents has spawned a whole new industry. The Construction Safety Associations in both NS and NB are leading examples of organizations that have formed to introduce and refine safety standards, offer training and provide certification to the construction industry. They are funded by the industry and in the case of the NB Construction Safety Association, by a levy collected by WorksafeNB with its regular assessments.

The proliferation of safety agencies and regulators is not limited to industry funded bodies. The private sector has also entered this lucrative new sector, some offering industry specific training and certification such as IS Network to the gas, oil and petroleum industry and others offering more general safety education such as Canqual Network and Complyworks. The business model is quite simple: learn safety best practices and then sell them to contractors struggling to meet the safety requirements of a specific contract or in a particular sector.

COMPLIANCE

In order to ensure compliance with increasing safety standards, sanctions are a necessary tool to be used against the defiant and the sloppy. These offences and penalties are prescribed under the *Occupational Health and Safety Act* in NB and identically titled legislation in the other three Atlantic Provinces. Until recently (2008) the maximum penalty in NB was \$50,000 but that has since been raised to \$250,000. In PE the maximum penalty is also \$250,000 up from \$50,000 in 2006 as it is in NL, up a staggering 500% from \$5,000 in 1999. Finally in NS, the maximum penalty for a first offender where there is no fatality is \$250,000. Since 2011 however, in the case of a second or subsequent offence within a 5 year period or where there is a workplace fatality, the fine increases to \$500,000. These recent significant increases in penalties are a further testament to the increased priority on prevention and deterrence. In addition to fines, directors of convicted contractors may also be subject to imprisonment, in each of the Atlantic Provinces.

NS has introduced an innovative approach to compliance with the promulgation of the Occupational Health and Safety Administrative Penalties Regulation in 2010. The philosophy is to compel changes to safety practices and to promote education by the imposition of administrative penalties using mandatory compliance orders and lesser fines prescribed in the Regulation. The severity of the penalty is determined based upon the nature of the offence, the compliance history of the offender and a host of other factors. The decision whether to impose an administrative penalty rests with the Occupational Health and Safety Officer and if a contractor is assessed administrative penalties then it cannot be prosecuted for the same offence. The objective of the new administrative penalties is to

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encourage safety compliance by education and corrective behaviour as an alternative to prosecution and deterrence. Once the results of the NS experiment with administrative penalties are in and tabulated, it may prove to be a model that should be adopted in other Provinces.

CONCLUSION

The penal consequences flowing from a failure to adhere to exemplary preventive practices has certainly had a profound effect on workplace safety in the construction industry and in other sectors. Are all accidents preventable by even the best safety regime? The answer is obviously no. The reality is however, that contractors who are fully compliant with industry mandated safety training and certification will be far better prepared to defend their conduct when that inevitable accident does occur.

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