



RECOMMENDED CHANGES TO THE OCCUPATIONAL HEALTH AND SAFETY SYSTEM

A RESPONSE TO THE EXPERT ADVISORY PANEL ON
OCCUPATIONAL HEALTH AND SAFETY PUBLIC
CONSULTATION

By:
**THE BUILDING & CONCRETE RESTORATION
ASSOCIATION OF ONTARIO**

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EXECUTIVE SUMMARY

Following the tragic events of December 24, 2010 the Building Concrete Restoration Association of Ontario (B&CRAO) struck a special Safety Task Force which is pleased to respond to the Expert Advisory Panel on Occupational Health and Safety's Consultation Paper.

This brief responds to a number of the questions laid out in the Consultation Paper, with a particular emphasis on health and safety concerns related to work on suspended access equipment. As shown by recent tragic events, work on suspended access equipment can be hazardous and even deadly if not safely done by trained workers under adequate supervision with appropriate equipment selection.

To make these workplaces safer for all workers a number of **regulatory amendments** and **non-regulatory amendments** are recommended in this brief. These recommendations are:

Regulatory:

- Mandatory notification of SAE projects to the MOL.
- Mandatory training of SAE workers, riggers, and supervisors.
- Mandatory roof sketch of anchor layout.
- Mandatory work plan.
- Mandatory posting of SAE system capacity.

Non-regulatory:

- Owner to be involved in project safety.
- Revision to the notice of project form to include safety section.
- Employees educated to understand the act.
- Mandatory training and re-training for SAE.
- Provide additional MOL officers', better trained and more consistent.
- Elimination of "independent operators" WSIB.
- Carry out detailed job site orientation for employees.
- Verify that the employees are trained to carry out the work they are performing.
- Include project safety requirements within the contract documents.

In addition to these recommendations, B&CRAO has attempted to answer all of the questions raised in the following four sections of the Consultation Paper

1. Partners in the Occupational Health and Safety System
2. Underground Economy
3. Vulnerable/Precarious Workers
4. Training

The goal of this brief is to provide a safer workplace for our employees and to ensure that they return home after every shift. Although the responsibility for accidents lies with all the parties involved, it is usually the end user or the worker who will pay the ultimate price.

INTRODUCTION

The Building Concrete Restoration Association of Ontario (B&CRAO) works to promote safety in the workplace with its membership and fully supports the Ontario Ministry of Labour's role in ensuring a safe work place. B&CRAO's members activities are regulated by the Ministry of Labour and it encourages all members to maintain the standards legislated by the Ministry in all of their projects.

In presenting this brief, B&CRAO is doing so with the incident of December 24, 2009 in mind. On that tragic evening four workers lost their lives and another was seriously injured when the stage they were using split in half. That incident was followed by another swing stage fatality a month later.

The rare failure of swing-stage rigging should never result in the death of a worker. There are strict regulations in place that include engineering specifications as well as worker training and the requirement of full body harnesses and lifelines. It is the responsibility of every employer and employee to ensure these safety measures are adhered to and that at no time should the worker disengage from his lifeline. These safety measures make it possible for a worker to be safely suspended in the air in the unlikely event of a swing-stage failure and allow for the required rescue plan to be put in motion.

While an investigation is ongoing, we now know the workers were wearing fall protection safety devices (harness), however these devices were not secured to a life line.

Within this context our goal must be to try to understand why such accidents happen and what should be done to reduce if not eliminate those types of accidents in future. Because accidents and injuries can occur when workers contravene the provincial regulations set out in the Occupational Health and Safety Act, we must examine such potential issues as training, supervision, legislation, and enforcement.

It should be underlined that the high-rise restoration, the maintenance sector, as well as sectors involved in constructing and finishing the building envelope utilizing suspended access equipment (SAE) comprise a relatively large industry. This industry includes several hundred firms and over 10,000 workers.

The following brief focuses on selected issues listed in the Expert Advisory Panel's Consultation Paper. It concentrates on those issues that B&CRAO feels it has first-hand experience and knowledge in. Specifically the issues of focus are:

- Partners in the Occupational Health and Safety System
- Underground Economy
- Vulnerable/Precarious Workers
- Training

PARTNERS IN THE OCCUPATIONAL HEALTH AND SAFETY SYSTEM

B&CRAO believes that officials in the Ministry of Labour, WSIB and Safety Associations are not the only “partners” in achieving occupational health and safety. In identifying the partners, B&CRAO feels that employers and building owners, contractors, engineers and the workers themselves should also be seen from the perspective of system partners.

Question 1: How can the Ministry of Labour, the WSIB and the HSAs be better aligned in terms of service and program delivery?

The system itself appears adequate with the Health and Safety Associations (HSAs) addressing the training; the Ministry of Labour addressing enforcement and penalties; and WSIB addressing employers insurance and responsibilities after an accident along with safety performance monetary assessments.

However, it often appears that only the Ministry of Labour’s roles are understood at the construction site because the HSAs and WSIB are not at the actual construction sites, and it's only after an accident occurs that they become involved.

As for the HSAs, their role in training is minimal. This leaves responsibility for training with the employee who typically is only made aware of the responsibility after being directed to take a training course by the employer.

Question 2: What would give employers and workers a better understanding of the roles of the ministry, WSIB and HSAs?

B&CRAO recommends a simple flow chart outlining the responsibilities of each from the perspective of an employee and an employer and how they are inter-connected. We urge the use of icons and language that is easy to understand to help overcome the language barriers that some workers face.

Question 3: Can you comment on the effectiveness of the ministry, WSIB and HSAs in preventing occupational injury and illness?

For the Ministry of Labour, penalties of employees and employers should be sufficient. However, B&CRAO recommends that filing of notice of project must be mandated as an essential component of the system. HSAs must clearly identify the training required to be able to carry out the work, notably that which involves Suspended Access Equipment.

The WSIB should clearly identify Rate Groups, and ensure training is in place before a company can register. It should also eliminate independent operators.

B&CRAO’s Safety Task Force has examined both the regulatory and non-regulatory framework in which swing-stage activity takes place. It believes a number of changes can be made in order to improve the effectiveness in preventing occupational injury. Those changes are listed below.

Regulatory – Overview of Concerns

B&CRAO has identified a number of concerns with the language used in both the legislation and the regulations. After a thorough analysis of this language, we suggest the following general problems exist:

1. Language used can sometimes create interpretation problems in the field or lead to inconsistent enforcement.
2. Language used does not always reflect current practices in the industry.
3. Existing language does not address some of the specific concerns of today.
4. The causes of high number of injuries/fatalities are not addressed by the current language.

These problems will affect the Ministry’s ability to prevent injury.

Regulatory – Details of Concerns

Specifically, B&CRAO has identified the following problems with the current language used in the documents identified:

	<u>Section(s) of Act or Regulation</u>	<u>Problem/shortcomings with current language</u>
1	O. Reg. 213/91 s. 6 & 7	Does not address specific notification requirements when using Suspended Access Equipment (SAE) - cost independent.
2	OHSA 25(2)(a), Reg. S 137 to 142	Competency training for workers using SAE is not mandatory
3	OHSA 29(4), Reg. S 137 to 142	Anchor sketch not mandatory for roof or other supporting surface.
4	OHSA 29(4), Reg. S 137 to 142	No specific reference to a work plan when utilizing SAE.
5	O. Reg. 213/91 s.137(11)	No direction for inspection after each SAE set up.
6	O. Reg. s. 139(3)(b)	The phrase “state the maximum live load” currently applies only to engineered set ups not all SAE systems.
7	O. Reg. s.93(3)(4), 94(1) O. Reg. S 136.1 to 142	General equipment inspection not adequate for SAE and not all SAE components are currently required to be inspected.

Regulatory - Recommendations

As a result of these concerns, B&CRAO recommends the Expert Panel consider making the following changes, additions or deletions to the Act or regulations:

	Section(s) of Act or Regulation	Proposed Change (general terms or draft language)
1	O. Reg. 213/91 s. 6 & 7	Mandatory written notification before commencing SAE work. Refer to O. Reg. 859 s.7(1)
2	OHSA 25(2)(a) or Reg. S 137 to 142	Mandatory SAE competency training similar to fall protection training. Mandate re-train program every 3 years. Combine Suspend Access Equipment training with Suspended Access Equipment Users' Hazard Awareness training.
3	OHSA 29(4)	A workplace party be assigned the responsibility to provide a roof sketch. Consider drawing from Window Cleaning Reg. -refer to O. Reg. 859 s.39
4		The employer shall provide a work plan including requirements such as loading, suspension line protection and means of suspension line attachment. Consider drawing from Window Cleaning Reg. - refer to O. Reg. 859 s.42
5	O. Reg. 213/91 s.137(11)	Add inspection by a competent worker after each SAE set up.
6	O. Reg. s. 139(3)(b)	Post the load capacity for all SAE systems. State the maximum live load, and in addition the distribution of that load. Include the maximum number of workers allowed on the SAE. Suppliers/owners to produce documentation in a consistent manner.
7	O. Reg. s.93(3)(4), 94(1) O Reg. S. 136.1 to 142	Require inspection of, and its frequency, for all SAE system components by amending O. Reg. S 136.1 to 142. Mandate inspection and testing of mechanical and welded connections on an annual basis, with visual inspection required prior to each use/rental with written record.

Non- Regulatory Issues - Overview

The following is our analysis with respect to the key stakeholders. As mentioned above, we consider there to be more stakeholders and have identified them as:

1. Owners;
2. Ministry of Labour;
3. Constructor (employer); and,
4. Engineers.

These four groups of stakeholders are typically involved in the issue of worker health and safety. Below B&CRAO has outlined the current roles, current safety responsibilities and potential issues associated with each stakeholder group.

1. Owner:

Current Role:

- Health and safety is not part of their current role.

Current Safety Responsibilities:

- None.
- Only within the window cleaning regulation does the owner have some responsibility.

Potential Issues:

- Owners may use contractors who may not be qualified to carry out the work they are to perform.
- Owners are only concerned with the project costs, which leaves safety issues in the hands of the contractor.

Potential Solutions:

- Stress safety as part of the contract during the pre-job walk-around. This gives contractors the opportunity to include all safety-related items in their bids and lets contractors know early that the owner is serious about safety.
- Conduct safety audits of the contractor prior to and during construction. The owner's or construction manager's safety staff conducts these audits to ensure compliance with the owner's safety requirements and with all provincial and federal safety regulations.
- Conduct periodic third party safety inspections.
- Require safety training of all project employees.
- Include general safety guidelines in the body of the contract.
- Always include safety on the agenda at owner-contractor meetings.
- Provide contractors with special safety guidelines they must follow.
- Require the contractor to assign safety coordination responsibility to someone on site.
- Reimburse the contractor's safety costs in full.
- When the Notice of Project is filed, the owner is to complete an additional section stating and verifying that the contractor has supplied and submitted the necessary safety documentation for the project, and information required by the MOL and WSIB.

2. Ministry of Labour:

Current Role:

- Enforcement.

Current Safety Responsibilities:

- Ensure that the work being carried out is in accordance with the Act.

Potential Issues:

- Insufficient amount of MOL officers to conduct proper enforcement.
- Competency / training of officers is inconsistent.

- Consistency in the enforcement of the regulations.

Potential Solutions:

- Provide additional officers and ensure that they are adequately trained and are applying the act consistently.

3. Constructor (Employer):

Current Role:

- Maintaining a safe working environment.

Current Safety Responsibilities:

- Ensure that the regulations in the Act are being followed.
- Ensure that the sub-trades are working in accordance with the Act.
- Provide a Notice of Project, and Form 1000 to the MOL as required under the Act.

Potential Issues:

- Firms hiring unskilled workers and not providing their workers with adequate training.
- Failure to adopt and comply with health & safety policies and procedures.
- Cutting corners with respect to safety to save the associated costs.
- Failure to ensure employees are properly trained and providing the required safety equipment.

Potential Solutions:

- Eliminate the independent contractor section under WSIB, ensure that there is a competent supervisor on site and provide adequate training as well as a detailed job site orientation.

4. Engineer:

Current Role:

- Health and safety is not part of their role.

Current Safety Responsibilities:

- Ensure that the project is complete as per the specifications and contract documents.
- Ensure all field inspectors are adequately trained in the use of SAE and fall protection.

Potential Issues:

- None.

Potential Solutions:

- Include general safety guidelines in the body of the contract. Always include safety on the agenda at owner-contractor meetings, ensure that the contractor has submitted all the relevant health & safety documentation and is qualified to complete the work under the contract.

Question 4: What short comings, gaps or duplication of services should be addressed by this review?

There are an insufficient number of MOL officers. The Ministry of Labour should have an increased number of officers who are better trained and who provide consistent enforcement. MOL must ensure that work is being carried out in accordance with the Act.

Question 5: Should stakeholders and other organizations, such as private foundations and non-government organizations, be involved in the planning and design of occupational health and safety system initiatives, and if so, how?

We do not believe that private foundations or NGOs should be involved in the planning and design of occupational health and safety system initiatives.

Question 6: What enforcement strategies could be used to improve compliance with legislation, codes and standards?

Notice of Project filing must be mandated. Building owners and customers should have increased responsibilities which should include a section in the notice of project that they have seen the training records of employees. Since owners are those who hire the contractors, they have the most influence on the contractors' actions.

Mandate minimum training requirements for all employees, ensure they are aware of Workplace Hazardous Information Systems (WHMIS) and have undergone hazard analysis training. They must also have competent supervisors.

Independent operators should be eliminated and WSIB coverage should be mandated.

Questions 7: Should the government use administrative penalties as another enforcement tool and what sort of violations should these penalties be applied to?

We are unsure.

Question 8: What can the government do to ensure that other ministries consider occupational health and safety implications when they are making decisions?

The government should engage in an internal education and information campaign discussing the importance of occupational health and safety issues.

UNDERGROUND ECONOMY

Question 1: What could regulators do to enhance these existing systems and techniques to detect underground employers?

Regulators could mandate Notice of Project filings and eliminate independent operators.

Question 2: How could employees of underground employers be enabled and protected to inform regulators about an underground employer?

We recommend a 1-800 number or a TIP line. Anonymous calls could be useful but the government must ensure to prevent abuse.

Question 3: What kind of partnerships within and external to the prevention system, as well as with the public, would work best to address the underground economy?

The government should establish regulation to ensure that owners of properties who allow this work to occur be held responsible.

Question 4: How might legitimate employers motivate underground employers to comply with the law and/or help regulators identify underground employers?

Legitimate employers have a stake in compliance with the law. They should be encouraged to show that being safe and legitimate is a profitable way to do business through mentoring programs. Educational programs and safety seminars organized by reputable voluntary associations could contribute to helping motivate employers to comply with the law.

Question 5: How could a media campaign about the negative consequences of the underground economy effectively influence consumers to not purchase goods or services offered by someone operating in the underground economy?

Consumers and property owners are strongly motivated to try to save on construction costs. If there is no risk of exposure then they may participate in the underground economy. To help deter this kind of action, consumers and property owners must be held responsible for safety on their properties.

VULNERABLE WORKERS

Question 1: Who would you consider to be a vulnerable worker?

We would consider workers to be potentially vulnerable if they have one or more of the following traits:

- Confront language barriers;
- Have a low income;
- Have little or no education or training; and,
- Have recently immigrated to Canada and are unfamiliar with Ontario's safety rules and regulations.

Question 2: How can government require and/or motivate employers to protect the health and safety of these workers?

The government should provide financial supplements for training in the language of vulnerable workers. Independent operators under WSIB should be eliminated.

Question 3: Could anonymous complaints be effective in enforcing health and safety compliance to protect vulnerable workers?

B&CRAO wonders how effective anonymous complaints would be. Vulnerable workers require their incomes and often have families to support. Because of this, they are unlikely to report any wrongdoings that may be occurring on their jobsite.

TRAINING

Question 1: Are there training principles and methods that are key elements of effectively imparting health and safety knowledge to workers?

Awareness is a key component of training.

Question 2: Should there be mandatory entry-level training for workers, supervisors and managers? Should the curriculum and method of training be prescribed?

B&CRAO supports mandatory entry-level training for workers, supervisors and managers and supports a prescribed curriculum and method of training.

Workers should use the supplied and required safety equipment, understand the act and ensure they are trained to carry out the work they are performing. They should also understand their rights under the act, specifically the right to refuse work.

Question 3: Are there criteria that should guide decisions on when a specific training program should be mandatory?

Companies committed to safety employ a risk analysis which entails an examination of the work involved and a rating of the hazards associated with it; the likelihood of an accident; the number of workers involved; and the repetitiveness of the activity. High scores call for special training programs.

Question 4: Do you have an example of a highly effective training program that you could describe?

B&CRAO typically advocates following the CSAO/IHSA training programs.



Question 5: When providing health and safety information, instruction and training to workers, how do you take into account: (1) literacy levels, in any language; and (2) the presence of multiple languages at the workplace?

As outlined earlier, B&CRAO has identified language as a key barrier to training. B&CRAO supports translating documents and health and safety training carried out in the language of the worker.

Question 6: How have you incorporated visual aids (e.g., pictures, symbols, demonstrations, etc.) into health and safety training?

B&CRAO supports power point training programs that show the right and wrong way to carry out tasks and the results of doing things the wrong way. People identify with the results of doing something unsafe.

WHO WE ARE

The Building and Concrete Restoration Association of Ontario's members are contractors, material suppliers, consultants and engineering firms with expertise in the field of building and concrete repair. Founded in 1985, the Association has grown to over 100 member companies today.

The Association's mission is to:

- Promote the exchange of ideas for the development of the highest standards and efficiency within the restoration industry;
- Improve the conditions and advance the best interests of the restoration industry with other industries, public and government; and,
- Create goodwill among members who provide contracting and professional services and those who produce building and concrete restoration materials.