



For Cause and For Prosecution Investigations – How Proof of Due Diligence is Your Friend

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www.gov.bc.ca/employersadvisers

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Employers' Advisers Office

- Authority under S.94 (3) of the *Workers Compensation Act*
- Provides advice, assistance and representation
- Independent from WorkSafeBC
- No charge for service





WorkSafeBC Investigations

What Triggers an Investigation?

- Serious injury or death
- Major structural failure
- Major release of a hazardous substance
- Fire or explosion that had potential for causing serious injury
- An incident required by regulation
- Near miss



Fatal and Serious Injury Investigations

Two types of investigations for incidents that resulted in or had the potential to cause death or serious injury:

- For Cause
- For Prosecution



What's the Difference?

- “for cause”: when evidence is compelled
- “for prosecution”: when *Charter* applies



Why Should We Care?

So you know

- Your rights and obligations
- The enforcement or penal consequences



How Did We Get Here?





WorkSafeBC's Broad Powers – Finding Cause

- Enter and seize documents or other evidence
- Compel testimony
- Employer must facilitate the investigation
- Employers, supervisors, workers must cooperate



Possible Outcomes of a WorkSafeBC Investigation

Include:

- S. 187 – Order
- S. 191 – Stop Work Order
- S. 196 – Administrative Penalty
- S. 73 – Claims Cost Levy
- Recommend prosecution in court



Provincial Prosecutions

Finding Fault – *Charter* Applies

- Quasi-Criminal
- *Offence Act*
- Strict liability – due diligence defense
- Fine and/or imprisonment up to 6 months



Criminal Prosecutions

Finding Fault – *Charter* Applies

- Federal
- *Criminal Code*; Westray Bill C-45
- Criminal Negligence – wanton/reckless disregard
- No due diligence defense
- Bodily harm - 10 years; death - life imprisonment



Back to the Sawmill Cases

WorkSafeBC referred the results of their investigation to Criminal Justice Branch (CJB) for provincial prosecution

CJB refused to prosecute based on inadmissibility of evidence arising from *Charter* violations, and strong due diligence arguments

Gordon Macatee Report

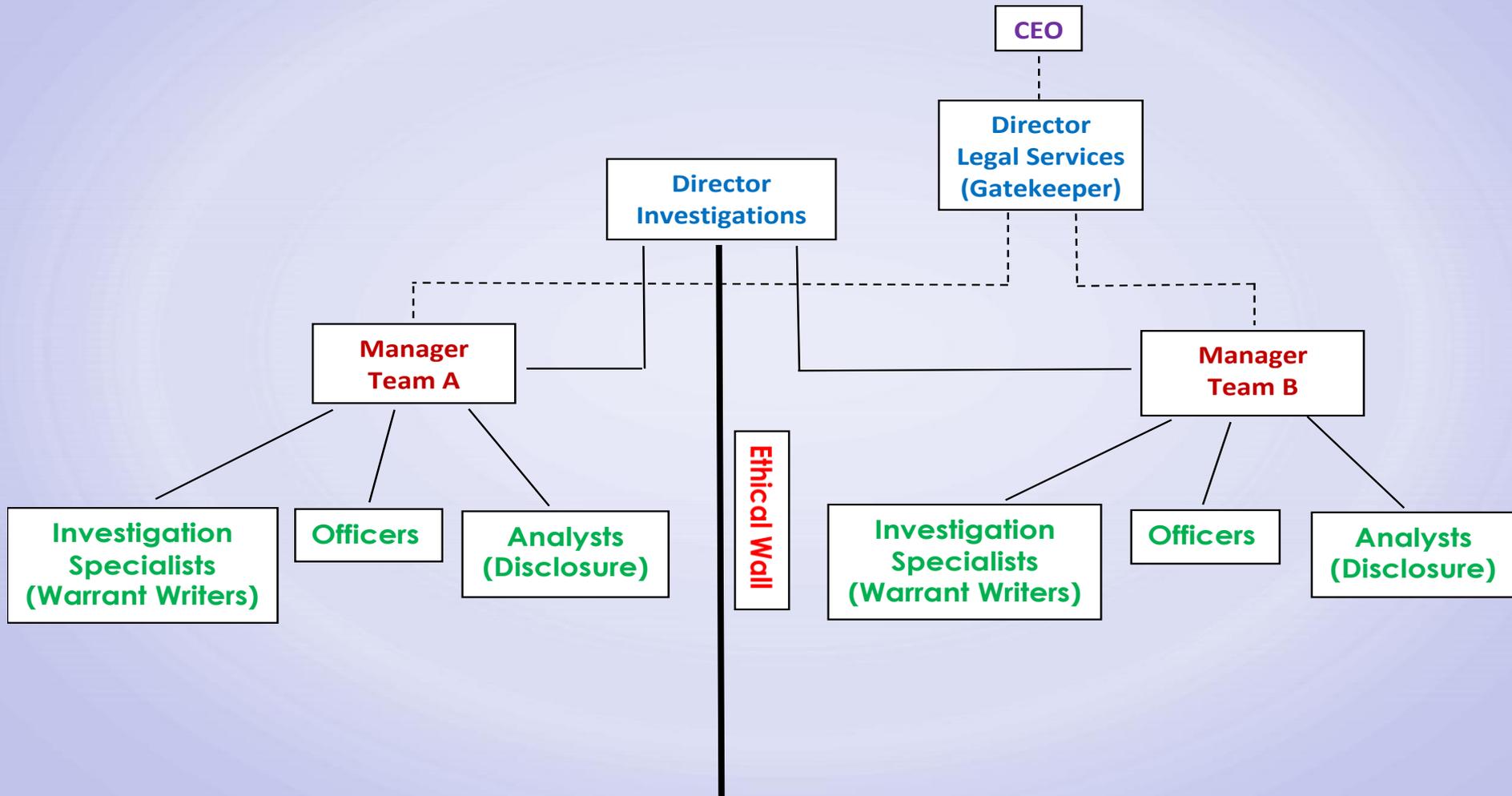


WorkSafeBC Review and Action Plan

Gordon Macatee
Administrator

July 1, 2014

Fatal & Serious Investigations



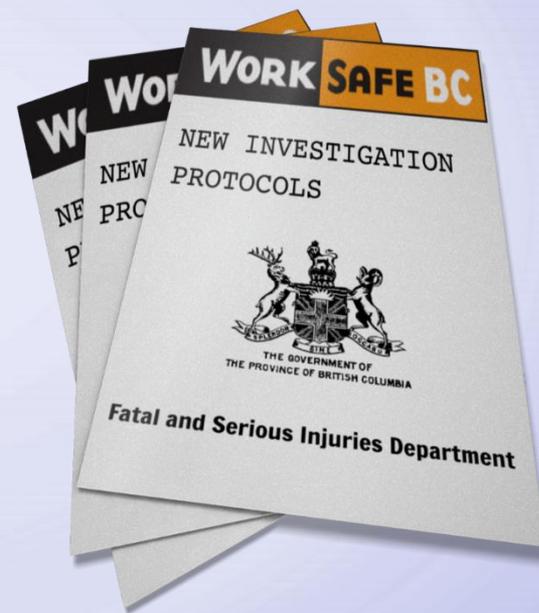


Employers'
Advisers

Other Investigation Changes

Memorandums of Understanding:

- Criminal Justice Branch
- Police Services



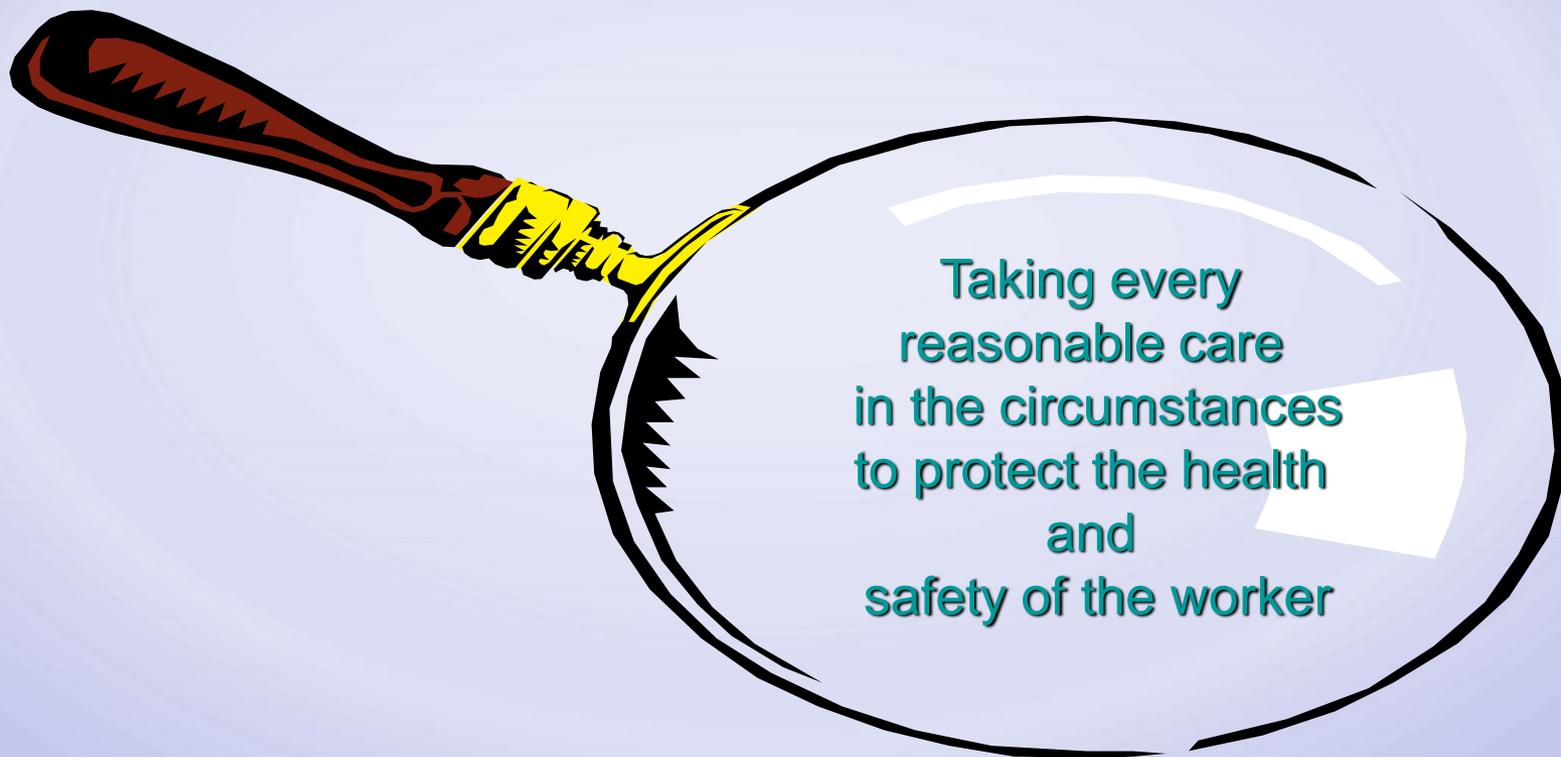


What This Means For You

- Have a plan: leadership and expertise
- Instruct your workers
- Know when to seek legal counsel
- Conduct thorough investigations
- Have documentation to show due diligence



What is Due Diligence?





Due diligence doesn't look like this:





Sawmill Cases

Criminal Justice Branch

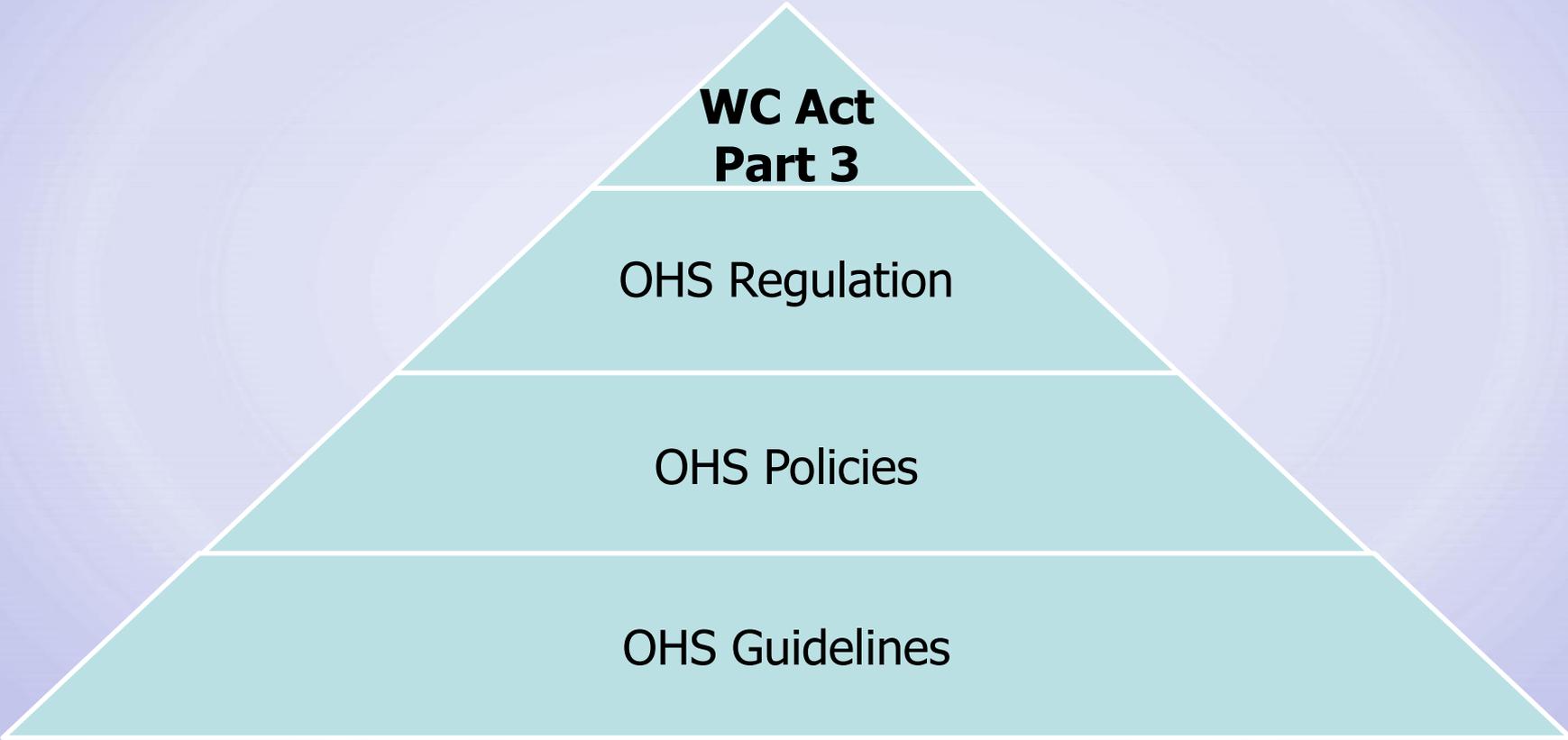
- Explosion not foreseeable
- No WSBC standards
- Reasonable measures taken

Review Division (WSBC)

- Fire hazard known
- Excessive dust accumulation known
- Insufficient cleaning staff for increased production



Familiarize Yourself with the Law

A pyramid diagram with four horizontal levels, each containing text. The pyramid is light teal with a white outline. The levels from top to bottom are: WC Act Part 3, OHS Regulation, OHS Policies, and OHS Guidelines.

**WC Act
Part 3**

OHS Regulation

OHS Policies

OHS Guidelines



The Cornerstones of Due Diligence

Information

Instruction

Training

Supervision

Supervisors are Key

A person who instructs, directs, and controls workers in the performance of their duties

Duties:

- Ensure worker health and safety
- KNOW law and regulations
- Communicate hazards
- Ensure compliance





Questions to Ask Yourself

- Have I “taken every reasonable care in the circumstances to protect the health and safety of workers”?
- How serious would the consequences be if an issue is not addressed?
- Do I have authority and control?



AND, Document or Record Everything!

- Orientation records
- Worker/supervisor training records
- Safety meetings and crew talks
- Supervisors notes and logs – or recordings
- Copies of your inspection reports
- Investigations and corrective actions
- Records of progressive discipline



Continuous Improvement

The road to success is always under construction.

James C Miller, US economist, politician (b. 1942)

The flag of British Columbia, featuring a red saltire on a white field with a gold crown at the center, and a gold sunburst at the bottom.

Resources

- www.gov.bc.ca/employersadvisers
- www.worksafebc.com
 - OHS Regulation Mobile App
 - Due Diligence Checklist
 - Supervising for Health and Safety
 - FSI Investigations Brochure
- Workers Compensation Act
- OHS Regulation & Guidelines
- Prevention Policies

Questions?

