

DISCUSSION PAPER

1. TITLE

Prevention Responsibilities of Workplace Parties

2. ISSUE

In October 2005, the Board of Directors (BOD) hosted a symposium to seek input from stakeholders on the current and possible future state of the occupational health and safety system in BC. As part of its health and safety initiative, the BOD also directed WCB staff to develop a forceful, rigorous and comprehensive strategy and policy amendment package to reduce serious injuries and fatalities.

This paper addresses the need to amend WorkSafeBC's ("WCB") policies outlining the roles and responsibilities of workplace parties to ensure that each party can be held accountable to the extent that each can influence health and safety at the workplace.

3. BACKGROUND

The *Workers Compensation Act* ("Act") and *Occupational Health and Safety Regulation* ("OHSR") impose many responsibilities on persons at workplaces, ranging from the very specific to the very general. The concern of this paper is with the general duties created by the *Act* and the *OHSR*. Although the specific requirements are important, the overall safety of a workplace is highly dependent on the management system or systems set up by the persons controlling the workplace or different parts of it. These systems may be, in part, required by specific provisions, for example the setting up of a joint committee, but to a large extent are based on general duty requirements.

3.1 Law and Policy

Division 3 of Part 3 of the *Act* creates general duties with respect to health and safety in workplaces for the following persons:

Section 115	Employers
Section 116	Workers
Section 117	Supervisors
Section 118	Prime contractors
Section 119	Owners
Section 120	Suppliers
Section 121	Directors and officers of corporations

Some of these sections contain very specific requirements as well as general duties, for example, section 115(2)(f) requiring an employer to make available at the workplace a copy of the *Act* and *OHSR*.

In addition to sections that set out general duties for specific persons, sections 122 to 124 of the *Act* deal with certain aspects of how the responsibilities provided for in the *Act* and *OHSR* interrelate. Section 122 states that a specific obligation imposed by the *Act* or *OHSR* does not limit the generality of any other obligation imposed by the *Act* or *OHSR*. Section 123 states that, if a person has more than one function, for example he or she is an employer and an owner, he or she must meet the responsibilities of both. Section 124 sets out criteria under which, if more than one person has the same responsibility and one person complies, the other person does not have to comply.

The *OHSR* has many provisions defining roles and responsibilities, some very specific in nature and some very general. A key section is section 2.1, which states that the *OHSR* applies to “all employers, workers and all other persons working in or contributing to the production of any industry within the scope of Part 3” of the *Act*. This means that persons working in or contributing to an industry that do not have general duties under the *Act* do have duties under the *OHSR*. In this context, a notable general duty provision in the *OHSR* is section 2(2) requiring that “all work must be carried out without undue risk of injury or occupational disease to any person”. Another key provision relating to forestry is section 26(2) which states that “the management of forestry operations must plan and conduct such operations in a manner consistent with this *Regulation* and with recognized safe work procedures”.

The *Prevention Manual* has specific policies on some of the persons with general duties, notably supervisors, prime contractors, owners and directors and officers of corporations.¹ Even where there are policies, they tend not to have general statements as to who is responsible and the scope of that responsibility. Rather they deal with specific technical issues. An exception to this is found in the policy on “owners”, policy item D3-119-1, which does attempt to make a general statement as to the scope of their responsibility.

4. DISCUSSION

Aside from what may be required by specific provisions of the *Act* and *OHSR*, the responsibilities of a workplace party will depend to a large extent on the particular circumstances of the industry and workplace. There are, however, some general policy statements that can be made as to what is generally expected under the general duty provisions. Although these sections are worded differently, the generality of their language often results in similar responsibilities being imposed. It is also necessary to consider how the various key sections interrelate because:

¹ Although there are pages in the manual relating to employers, workers and suppliers, these pages simply set out the section of the *Act* and state that “there is no policy for this item”.

- Several or all of the persons with general duties will often be found on the same workplace, all having responsibility for dealing with the same or related health and safety questions.
- One person may have responsibilities under more than one of these sections or under one or more of these sections plus other provisions of the *Act* or *OHSR*.
- Other persons may be present at the workplace that do not have responsibilities under the sections of the *Act* but have responsibilities under other provisions.

Overlapping responsibilities under the same or different sections could cause confusion as to who is required to do what.

In considering the general duty provisions, there are four basic questions that need to be considered. Each of these are discussed below. The main purpose of the policy amendment proposals discussed in this paper is to provide answers to these questions or principles by which they can be answered.

4.1 When does a responsibility apply?

For many general provisions, this question is not a major concern since the duty attaches permanently to a person having a particular status, for example workers and employers. The person has the duty at all times. However, the question of when a responsibility applies can be an issue for some sections that impose a duty on a person when certain criteria are met. An important example of this is section 118 that imposes special responsibilities for owners in the case of a “multiple-employer workplace”. The existing policy D3-118-1 sets out criteria for determining when a “multiple-employer workplace” exists and no change is proposed to those criteria.

4.2 Who is responsible?

The general duty sections of the *Act* specifically state who is responsible, for example, the employer, worker or supervisor. However, there are often issues about who exactly is covered by those terms. For example, does “employer” cover an employer who has not registered as such with WorkSafeBC, (“WCB”), does “worker” cover an independent operator with personal optional protection, or is a holder of a road permit in the forestry industry an “owner” of the road with responsibilities under sections 118 and 119 of the *Act*?

Many general duty sections of the *OHSR* do not specifically state who is responsible. For example, section 2.2 simply states that “all work must be carried out without undue risk of injury or occupational disease to any person”. However, since section 2.1 states that the *OHSR* applies to “all employers, workers and all other persons working in or contributing to the production of any

industry within the scope of Part 3” of the *Act*, all these persons must comply with section 2.2. This is important in situations where the general duty sections in the *Act* are limited in some way. For example, there is no general duty in the *Act* on independent contractors who are not employers and do not have personal optional protection. However, these persons will have responsibilities under section 2.2. The combined effect of the *Act* and the *OHSR* is that every person working in or contributing to an industry has a general responsibility for health and safety at the workplace.

At workplaces where there are many different persons with responsibilities, the *Act* recognizes there is a need for one person to take overall responsibility for the whole workplace and to at least coordinate all the other workplace parties. Often this will be the employer, but in workplaces where more than one employer is operating, section 118 of the *Act* places responsibility on the “owner”.

4.3 What is the standard that has to be met?

The wording of many of the general duty provisions suggests that there is an absolute responsibility, so that the occurrence of an injury automatically results in a violation, for example section 115 of the *Act* with respect to employers. Some provisions, for example section 116 with respect to workers expressly state that the obligation is only to exercise reasonable care. Generally speaking, there appears to be no useful purpose in creating absolute liability in relation to the general duty provisions. The general nature of those provisions means that this would be an impossible task. All that can be expected with respect to any general duty provision is that reasonable care be exercised. This is commonly described as “due diligence”, a defence that is specifically recognized by the *Act* for prosecutions and administrative penalties and at common law in the case of prosecutions.

The requirements of due diligence depend on what is reasonable in the circumstances of the workplace. Due diligence is commonly shown by providing evidence that certain procedures or programs were carried out. For example, in the case of an employer, owner or prime contractor with overall responsibility for a workplace, these will include the basic elements of a health and safety program, for example, where applicable, policies and procedures, joint committees, regular inspections, the conduct of risk or hazard assessments, accident investigations, first aid services, instruction of workers and other concerned persons, and supervision.

In workplaces where there is more than one person with general duties, the due diligence standard provides principles on which the specific responsibilities of each person can be determined, the employer/owner responsible for the whole workplace and any other person. For example, the extent to which one person can rely on an expectation that others will perform required actions will depend to a large extent on whether the person has exercised due diligence, for example,

with regard to communicating that expectation and following up. Section 124 of the *Act* must also be considered in this situation.

Existing policy D3-119-1 provides an example of the application of due diligence principles to the general duty of owners under section 119 of the *Act*. The proposed policies aim to extend the same principles to other persons with general duties.

4.4 For whose protection does the responsibility exist?

The general duties primarily exist for the protection of workers. An issue which arises is whether responsibilities exist in relation to workers outside the scope of a person's normal authority, for example, workers of a different employer. Some sections are restricted in scope. For example, section 117 of the *Act* limits the duty of supervisors to workers under their direct supervision. On the other hand, section 115 specifically makes employers responsible for the health and safety of other workers at the same workplace. The general result of all the general duty sections in the *Act* and *OHSR* is that the responsibilities of each person extend to all other persons at workplaces. The scope of each person's duty will depend on how reasonable it is for them to take steps to protect other persons, having regard for example to how much control they exercise over that person.

The *Act* is concerned with protecting workers but also other persons. Section 107 of the *Act* states that "the purpose of this Part is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work related risks to their health and safety". In addition, certain of the general duty sections specifically apply for the benefit of "other persons", for example, the duty of owners under section 119 and of workers under section 116. Even where a section is limited, as in the case of section 115, to the protection of workers, the general duty sections in the *OHSR* such as section 2.2 create a more general responsibility. Therefore, it can generally be said that every person at a workplace has responsibilities to take reasonable precautions regarding every other person at a workplace, and even to members of the public adjacent to workplaces.

5. CONSULTATION

Stakeholders are invited to provide feedback on the draft policies. Stakeholder comments will be accepted until **June 9, 2006**. When responding, please provide your name, organization and address. Comments may be sent by mail, fax or e-mail to:

By mail: Policy and Research Division
WorkSafeBC
P.O. Box 5350, Stn. Terminal
Vancouver, B.C. V6B 5L5

By fax: 604 279-7599

By e-mail: policy@worksafebc.com

In addition, comments may be submitted through the online submission form on the WorkSafeBC website.

The Board of Directors will consider the feedback provided by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the PRD's database and may be published, including the identity of the organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.



RE: General Duties – General Policy

ITEM: D3-000-1

BACKGROUND

1. Explanatory Notes

Division 3 of Part 3 of the *Act* creates general duties with respect to health and safety in workplaces on the following persons:

Section 115	Employers
Section 116	Workers
Section 117	Supervisors
Section 118	Prime contractors
Section 119	Owners
Section 120	Suppliers
Section 121	Directors and officers of corporations

In addition to sections that set out general duties for specific persons, sections 122 to 124 of the *Act* deal with certain aspects of how the responsibilities provided for in the *Act* and the regulations relate to each other.

Specific policies on each of the persons with general duties follow this policy. However, it is not appropriate to consider each of these persons or sections in isolation because:

- Several or all of these persons will often be found on the same workplace, all having responsibility for dealing with the same or related health and safety questions.
- One person may have responsibilities under more than one of these sections or under one or more of these sections plus other provisions of the *Act* or *Regulation*.
- Other persons may be present at the workplace that do not have responsibilities under these sections but have responsibilities under other provisions.

In order to avoid unsafe situations arising from confusion as to responsibilities, it is desirable to have clear principles in determining roles and responsibilities. However, because of the variety of circumstances



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that occur, each situation will have to be considered on its own merits to some degree and the policies may have to be supplemented by more specific guidelines.

2. The Act

See the immediately following policies for the relevant provisions of the *Act*.

POLICY

(a) General Principles

Some general principles for applying the general duty sections and considering their interrelationships are set out below.

1. The combined effect of the *Act* and regulations is that all persons working in or contributing to an industry at a workplace have responsibilities for the health and safety of all other persons at the workplace. This derives from the *Act* and regulations as follows:
 - The general duty sections in the *Act* require the persons responsible to comply with the regulations as well as the *Act*. This includes the general duty provisions of the *Occupational Health and Safety Regulation* as well as the specific requirements. In particular, it includes section 2.2 requiring that “all work must be carried out without undue risk of injury or occupational disease to any person”. The general duty sections of the regulations will cover areas that are not covered by the general duty provisions of the *Act*. For example, where there are persons other than workers present at a workplace, the employer would not have responsibilities to those persons under section 115 of the *Act* but would have responsibilities under section 2.2 of the *Occupational Health and Safety Regulation*.
 - Persons that do not have general duties under the *Act* have responsibilities under the *Occupational Health and Safety Regulation* if they are working in or contributing to the industry being carried on at the workplace (see section 2.1 of the *Occupational Health and Safety Regulation*). In particular,



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they have the general duty under section 2.2 of the *Occupational Health and Safety Regulation* to work without undue risk of injury or occupational disease to any person. An important example in this category is independent operators who have not been granted personal optional protection under section 2.2 of the *Act*.

- While the main object of the *Act* is to promote occupational health and safety, the reference to protecting “other persons” in the purpose provision of Part 3 (section 107) and some the general duty sections (sections 116 and 119) indicate an incidental intent to protect members of the general public present at or adjacent to workplaces with regard to activities at the workplace.
2. The nature of the responsibility on each person depends on the terms of the applicable provision and other circumstances, but the general duty sections of the *Act* and regulations do not create absolute obligations to guarantee that no injuries or occupation diseases will occur. The wording of some of the sections, for example, section 115, may appear to create absolute obligations. However, it will not normally serve the purpose of the *Act* to make persons absolutely responsible for matters beyond their control or which they could not reasonably have avoided. Therefore, in applying the general duty provisions and determining which of several persons with general duties is responsible in particular circumstances, the Board will consider whether the persons in question acted with due diligence.

Policy D12-196-10 sets out the basic definition of due diligence. The conduct that meets this standard at a workplace will depend on the circumstances of the particular industry and workplace. The factors that may be considered in assessing whether a person has acted reasonably include such things as:

- the gravity of the potential harm and the likelihood of it occurring,
- the degree of knowledge or expertise to be expected,
- the degree of control over the situation, and
- the practicality of taking measures.



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"Due diligence" is commonly shown by evidence that certain procedures or programs were carried out. For example, in the case of an employer, owner or prime contractor with overall responsibility for a workplace, these will include the basic elements of a health and safety program, such as, where applicable, policies and procedures, joint committees, regular inspections, the conduct of risk or hazard assessments, accident investigations, first aid services, instruction of workers and other concerned persons, and supervision. The subject matter of particular regulations or the particular circumstances of the workplace or industry may require measures beyond the basic elements.

Except where the *Act* specifically requires otherwise, due diligence is only considered in relation to responsibilities that arise under the general duty provisions over and above specific requirements imposed on a person by the *Act* or *Regulation*.

3. Wherever there is more than one person with a general duty under the *Act* or *Regulation* present at a workplace, there is always one person with overall responsibility for the whole workplace. The responsible person will be the employer under section 115 in a typical one-employer workplace having only supervisors and workers of the employer. In workplaces with more than one employer, the responsible person will be the owner as prime contractor under section 118 or another person designated by the owner in that role. The exact responsibilities will depend on the general duty section under which the responsibility lies and the application of any specific requirements of the regulations. However, this person must at least coordinate the activities of all persons present, which will involve ensuring that an occupational health and safety program is developed for the whole workplace and taking reasonable steps to ensure that the plan is put into effect. This program must cover the basic elements of an occupational health and safety program such as are discussed in paragraph 2 above as well as any additional elements reasonably required by the circumstances of the workplace or industry. The plan may recognize the fact that other workplace parties such as workers, supervisors, suppliers and contractors have responsibilities and provide for the exercise those responsibilities, but must include reasonable provision for instructing those parties in the program, following up and enforcing compliance.



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PRACTICE

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: **General Duties of Employers**

ITEM: **D3-115-1**

BACKGROUND

1. Explanatory Notes

Section 115 sets out the general duties of employers under Part 3.

2. The Act

Section 115(1):

Every employer must

- (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
- (b) comply with this Part, the regulations and any applicable orders.

Section 115(2):

Without limiting subsection (1), an employer must

- (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
- (b) ensure that the employer's workers
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
 - (ii) comply with this Part, the regulations and any applicable orders, and
 - (iii) are made aware of their rights and duties under this Part and the regulations,
- (c) establish occupational health and safety policies and programs in accordance with the regulations,
- (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,



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- (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,
- (f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,
- (g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and
- (h) cooperate with the board, officers of the board and any other person carrying out a duty under this Part or the regulations.

POLICY

~~There is no POLICY for this Item.~~

(a) Who is responsible?

Section 106 states that "employer" means

- (i) an employer as defined in section 1,**
- (ii) a person who is deemed to be an employer under Part 1 of this Act or the regulations under that Part, and**
- (iii) the owner and the master of a fishing vessel for which there is crew to whom Part 1 applies as if the crew were workers,**

but does not include a person exempted from the application of this Part by order of the Board.

The employers who must comply with section 115 are the same persons who are responsible to pay assessments to the Board, whether or not they are in fact registered with the Board for the payment of assessments. In addition to having the employer's responsibilities, individual employers may have other roles that require them to comply with other general duty sections of the Act, for examples sections 117 (supervisors), 118 (prime contractors) and 119 (owners). (See section 123.)

The fishing industry is different. Owners and masters of fishing vessels have the responsibilities of employers under Part 3 even though they are not normally responsible for paying assessments. Assessments in the fishing industry are normally paid by the person who buys the fish



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pursuant to the *Fishing Industry Regulations* made under section 4 of the *Act*. This person may or may not be an employer in his or her own right. (See policy AP1-4-1 of the *Assessment Manual*.)

(b) What standard must the employer meet?

Section 115(1)(a) states that the employer must “ensure the health and safety” of workers. This on its face appears to create an absolute obligation, so that, for example, there will be an automatic violation if a worker is injured. The Board recognizes that imposing an absolute obligation in this context is not appropriate and that generally employers can only be expected to act with due diligence in fulfilling their responsibilities under section 115(1)(a). (See Policy AP3-000-1.)

(c) For the safety of which persons is the employer responsible?

Section 115(1)(a)(ii) provides that employers must ensure the health and safety not only of their own workers, but of “any other workers present at a workplace at which that employer’s work is being carried out.”

Section 106 defines a “worker” as

- (i) a worker as defined in section 1, and
- (ii) a person who is deemed to be a worker under Part 1 or the regulations under that Part, or to whom that Part applies as if the person were a worker,

but does not include a person exempted from the application of this Part by order of the Board. This means that the employer is responsible for persons at the workplace who are not in an employment relationship with any person on the workplace, but are deemed to be workers because they are independent operators who have obtained personal optional protection under section 2(2) of the *Act* or have been admitted as workers under section 3 of the *Act*.

The responsibility to other employers’ workers only applies to workers present at a workplace where “that employer’s work” is being carried out. This might mean that an employer has responsibility for workers of, for example,

- an owner or tenant of the workplace,
- another employer who hired the employer in question,
- a subcontractor to the employer or a subcontractor to one of its subcontractors, or any other employer operating at the same workplace as the employer.



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The employer's responsibility is not limited to workers who are involved in the particular work being done by the employer. Nor is it necessary for the employer to have any of its own workers present at the site.

As noted above, the extent of the duty of the employer for other employers' workers is not absolute. It will depend on the circumstances, including

- the extent of the employer's control over the employer of those workers or the circumstances in which they are employed,
- knowledge of the employer of hazards affecting those workers, and
- the reasonableness of the employer taking steps.

Though the employer's duty under section 115 is limited to "workers", the employer has a general duty to other person at the workplace under section 2.2 of the *Regulation* to work "without undue risk of injury or occupational disease to any person".

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined

AUTHORITY:

CROSS REFERENCES:

HISTORY:

APPLICATION:

**RE: General Duties of Workers****ITEM: D3-116-1**

BACKGROUND

1. Explanatory Notes

Section 116 sets out the general duties of workers under Part 3.

2. The Act

Section 116(1):

Every worker must

- (a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work, and
- (b) comply with this Part, the regulations and any applicable orders.

Section 116(2):

Without limiting subsection (1), a worker must

- (a) carry out his or her work in accordance with established safe work procedures as required by this Part and the regulations,
- (b) use or wear protective equipment, devices and clothing as required by the regulations,
- (c) not engage in horseplay or similar conduct that may endanger the worker or any other person,
- (d) ensure that the worker's ability to work without risk to his or her health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes,
- (e) report to the supervisor or employer
 - (i) any contravention of this Part, the regulations or an applicable order of which the worker is aware, and
 - (ii) the absence of or defect in any protective equipment, device or clothing, or the existence of any other



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- hazard, that the worker considers is likely to endanger the worker or any other person,
- (f) cooperate with the joint committee or worker health and safety representative for the workplace, and
 - (g) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

POLICY

~~There is no POLICY for this Item.~~

(a) Who is responsible?

Section 106 states that a "worker" means

- (a) a worker as defined in section 1, and**
- (b) a person who is deemed to be a worker under Part 1 or the regulations under that Part, or to whom that Part applies as if the person were a worker,**

but does not include a person exempted from the application of this Part by order of the Board;

Commercial fishermen are treated as workers under Part 1 of the Act pursuant to Section 2 of the *Fishing Industry Regulations* issued under section 4 of the Act and are therefore subject to the general duties in section 116.

Independent operators who have been granted POP under section 2.2 of the Act are persons to whom Part 1 of the Act applies as if they were a worker. Therefore, they have the responsibilities of workers under section 116. The same applies to persons admitted as workers under section 3 of the Act.

(b) What standard must the worker meet?

Section 116(1)(a) states that the worker must "take reasonable care" to perform his or her general duties under subsection (1). (See Policy D3-000-1.)

(c) For the safety of which persons is the worker responsible?



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Section 116(1)(a) states that a worker must “take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work”. Therefore, the worker’s obligation extends to all persons present at a workplace, including employers, supervisors, independent operators, whether employed in the same business as the worker or not.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: General Duties of Supervisors

ITEM: D3-117-1

BACKGROUND

1. Explanatory Notes

Section 117 sets out the general duties of supervisors under Part 3.

2. The Act

Section 117(1):

Every supervisor must

- (a) ensure the health and safety of all workers under the direct supervision of the supervisor,
- (b) be knowledgeable about this Part and those regulations applicable to the work being supervised, and
- (c) comply with this Part, the regulations and any applicable orders.

Section 117(2):

Without limiting subsection (1), a supervisor must

- (a) ensure that the workers under his or her direct supervision
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and
 - (ii) comply with this Part, the regulations and any applicable orders,
- (b) consult and cooperate with the joint committee or worker health and safety representative for the workplace, and
- (c) cooperate with the board, officers of the board and any other person carrying out a duty under this Part or the regulations.



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POLICY

(a) Who is responsible?

In determining **who is responsible under section 117** ~~whether Section 117 applies~~, the following guidelines will be considered:

- A supervisor is a person who instructs, directs and controls workers in the performance of their duties.
- A supervisor need not have the title “supervisor”. He or she may have some other title or have no title at all.
- The supervisor will normally be appointed by an employer as such, but a person may be a supervisor without being specifically appointed by an employer if, as a matter of fact, he or she instructs, directs and controls workers in the performance of their duties. The employer himself or herself may be a supervisor.
- ~~• “Direct supervision” may take place even though a worker may be located in a different place than the supervisor or may travel to different places as part of his or her work. Directions may be given by any communications medium.~~

An employer does not have the duties set out in section 117 unless he or she is actually supervising workers in person. However, the employer will still have duties under section 115.

(b) What standard must the supervisor meet?

Section 117(a) states that the supervisor must “ensure the health and safety” of workers. This, on its face, appears to create an absolute obligation, so that, for example, there will be an automatic violation if a worker is injured. The Board recognizes that imposing an absolute obligation in this context is not appropriate and that normally supervisors can only be expected to act with due diligence in fulfilling their responsibilities under section 117(a). (See Policy D3-000-1.)



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(c) For the safety of which persons is the supervisor responsible?

The supervisor's responsibility under section 117(1)(a) is limited to the workers under his or her direct supervision. This will include workers of other employers that he or she supervises as well as independent operators with POP. However, the supervisor also has a general duty to other persons at the workplace under section 2.2 of the *Occupational Health and Safety Regulation* to work "without undue risk of injury or occupational disease to any person".

"Direct supervision" may take place even though a worker may be located in a different place than the supervisor or may travel to different places as part of his or her work. Directions may be given by any communications medium.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: **General Duties – Coordination at
Multiple-Employer Workplaces**

ITEM: D3-118-1

BACKGROUND

1. Explanatory Notes

Section 118 sets out responsibilities at a “multiple employer workplace”. It provides that the “prime contractor” is responsible for the coordination of activities at these workplaces and defines “prime contractor” for this purpose.

2. The Act

Section 118(1):

In this section:

"multiple-employer workplace" means a workplace where workers of 2 or more employers are working at the same time;

"prime contractor" means, in relation to a multiple-employer workplace,

- (a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or
- (b) if there is no agreement referred to in paragraph (a), the owner of the workplace.

Section 118(2):

The prime contractor of a multiple-employer workplace must

- (a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and
- (b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.



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Section 118(3):

Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

POLICY

(a) When does section 118 apply?

Section 118 only applies to multiple-employer workplaces, which it defines as a workplace where workers of 2 or more employers are working at the same time.

For sake of clarity, the following apply in determining whether there is a “multiple-employer workplace” under section 118:

- Two or more adjacent workplaces do not constitute a "multiple-employer workplace", even though the activities at one workplace might affect the health and safety of workers at an adjacent workplace.
- It does not matter whether:
 - workers of different employers are present at the same time working on different projects; or
 - workers of different employers are present at the same time working on the same project.

In both cases, the workplace will generally be a “multiple-employer workplace”.

- In determining whether “workers of 2 or more employers are working at the same time”, the phrase “at the same time” will be given such fair, large and liberal construction as may best attain the objectives of section 118. “At the same time” does not mean that, at any precise point in time, there are workers of 2 or more employers present in the workplace. Rather, it means that, over an appropriate interval, there are workers of 2 or more employers present in the workplace, whether or not the 2 or more groups of



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workers are actually present together in the workplace at any precise point in time at all. The duration of the interval of time to be considered will depend upon the circumstances of the individual workplace.

- Whether the workers of the one employer come into actual contact with the workers of the other employer does not generally affect the determination of whether the workplace is a “multiple-employer workplace”. An employer, the employer’s workers and their activities could well affect the health and safety of another employer’s workers who come into the workplace later in the day or on another day, even though there may be no actual contact between the two groups of workers.

However, the degree to which the activities of the first employer and its workers affect the health and safety of the second employer’s workers will generally affect the determination of the responsibilities of the prime contractor and of the two employers under Part 3 and the regulations.

- Virtually all workplaces will be visited by workers of other employers. For example, workers may deliver or pick up mail, goods or materials or enter to inspect the premises. Short term visits of this type, even if regular, do not make the workplace a “multiple-employer workplace” for purposes of section 118(1).

(b) Who is responsible?

Section 118 applies to a prime contractor who are defined as

- (i) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or**
- (ii) if there is no agreement referred to in paragraph (a), the owner of the workplace.**

The prime contractor is therefore the owner unless the owner designates another person. Section 106 defines “owner” as including

- (i) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and**
- (ii) a person who acts for or on behalf of an owner as an agent or delegate.**



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Policy D3-119-1 points out that there may be more than one owner at a workplace and that each of these owners has responsibilities in relation to the interest that they own. The same applies to section 118. Therefore, an owner of a limited interest in a workplace, for example, the tenant of a room in a building or person with permit to build a road on Crown land, will have the responsibility of an owner under section 118 where the work is confined to the area of the owner's interest. Where the work goes beyond one owner's limited interest and involves the interest of more than one owner, for example, another room in the same building rented by a different tenant or a general access corridor, then the owner whose interest is superior to both limited owners, for example the owner of the whole building, will have the responsibilities of an owner under section 118.

There can be only one "prime contractor" at a workplace at any point in time. If an owner enters into more than one agreement purporting to create a "prime contractor" for the same period of time, the owner is considered to be the prime contractor.

A designation of another person as prime contractor by the owner must be in writing. It is preferable but not necessary that the document expressly state that the designation is for the purpose of section 118. If other language is used it should be sufficiently clear that the intent is to make the designated person carry out all the responsibilities of section 118. The mere fact that a contract gives another person health and safety responsibilities at a workplace does not necessarily mean that that person is designated as prime contractor under section 118. These responsibilities might be consistent with the owner acting as prime contractor and using its contract with the other person to ensure that part of its responsibilities are met. In view of the importance of all parties knowing their health and safety responsibilities, ambiguities in a document should be construed so that the owner retains its basic responsibility in the absence of clear language designating another person for the purpose of section 118.

Even where an employer has clearly designated a person under section 118, the owner retains personal responsibilities for its acts or omissions under the other general duty provisions, notably section 119 of the *Act* and section 2.2 of the *Occupational Health and Safety Regulation*. However, the scope of these responsibilities would not include matters reasonably left to the designated prime contractor under the terms of the designation.



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The written agreement referred to in section 118(1) must be made available within a reasonable time if requested by a Board officer.

(c) What standard must the prime contractor meet?

Section 118(2) states that the “the prime contractor of a multiple-employer workplace must

- (i) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and**
- (ii) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.”**

Clause (b) is an obligation to “do everything that is reasonably practicable”. Clause (a) does not contain such wording, and on its face appears to create an absolute obligation, so that, for example, there will be an automatic violation if a worker is injured due to a lack of coordination. The Board recognizes that imposing an absolute obligation in this context is not appropriate and that normally prime contractors can only be expected to act with due diligence in fulfilling their responsibilities under section 118(2). (See Policy D3-000-1.)

(d) For the safety of which persons is the prime contractor responsible?

Section 118(2)(a) states that the prime contractor must ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated. Even though section 118(2)(b) does not contain language about “other persons”, it involves compliance with the *Occupational Health and Safety Regulation*, and this has provisions such as section 2.2, that create protections for all persons at workplaces. Therefore, the prime contractor’s responsibilities extend to all persons on the workplace.

~~The written agreement referred to in section 118(1) must be made available within a reasonable time if requested by a Board officer.~~

~~There can be only one "prime contractor" at a workplace at any point in time. If an owner enters into more than one agreement purporting to create a "prime contractor" for the same period of time, the owner is considered to be the prime contractor.~~



PREVENTION MANUAL

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PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: **to be determined**
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: General Duties of Owners

ITEM: D3-119-1

BACKGROUND

1. Explanatory Notes

Section 119 of the *Act* sets out the general duties of owners under Part 3 of the *Act*. ~~This policy clarifies when these duties apply, and which owner(s) will be responsible for compliance, in multiple owner situations.~~ **The purpose of this policy is to ensure that owners understand and fulfill their responsibilities under section 119 of the *Act*, especially in multiple owner situations.**

2. The Act

Section 106:

~~“owner” includes~~

- ~~(a) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and~~
- ~~(b) a person who acts for or on behalf of an owner as an agent or delegate.~~

Section 119:

Every owner of a workplace must

- (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
- (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
- (c) comply with this Part, the regulations and any applicable orders.



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POLICY

(a) Who is responsible?

Section 106 defines owner as including

- (i) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and
- (ii) a person who acts for or on behalf of an owner as an agent or delegate;

~~The purpose of this policy is to ensure that owners understand and fulfill their responsibilities under section 119 of the Act, especially in multiple owner situations.~~

The term "owner" is defined broadly under the *Act* to include several parties such as the person who holds the legal title to land or premises, a mortgagee in possession, a tenant, a lessee, a licensee, a trustee, and any other occupier of lands or premises used or to be used as a workplace. Accordingly, more than one person may simultaneously meet the definition of the term "owner" in respect of a particular workplace. For example, both the entity that holds legal title to land and the entity that leases it for business purposes would qualify as owners under the *Act*. In such circumstances, referred to as multiple owner situations, all the owners of a particular workplace are responsible for fulfilling the duties set out in section 119 of the *Act*, the regulations, and any applicable orders, ~~subject to the Limited Exemption under section 124 of the Act.~~

(b) What standard must the owner meet?

Section 119(a) and (b) appear on their face to create an absolute obligation, so that, for example, there will be an automatic violation if a worker is injured. The Board recognizes that imposing an absolute obligation is not appropriate in this context and that owners can only be expected to act with due diligence in fulfilling their responsibilities under section 119(a) and (b) . (See Policy D3-000-1.)

When the duties set out in section 119 of the *Act* have not been met by a party or parties, ~~and the Limited Exemption does not apply,~~ Board officers will determine which owner(s) should be held responsible for the violation. **As discussed in Policy D3-000-1, in making this determination, Board officers will consider whether the owner acted with due diligence. With regard to owners in**



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particular, this requires consideration of who had or should have had knowledge of, and control over, the particular workplace. To assist in this consideration, a non-exhaustive list of factors is set out below. When these factors are present, an owner will likely be held responsible for or have to address an issue.

Category 1: Knowledge

1. The owner knew or should have known that:
 - (a) persons would be at or near the land and premises that were being used as a workplace, and
 - (b) the health and safety of such persons might be harmed by the condition or use of the workplace, and
 - (c) the extent of the harm, if it occurred, would be more than minor or trivial.

Category 2: Control

2. The owner had some control or influence over the safety of the workplace in that the owner:
 - (a) could practicably have taken measures necessary to eliminate or reduce either:
 - (i) the risk of the potential harm, or
 - (ii) the extent of the potential harm, to persons at or near the workplace; or
 - (b) possessed material information and either:
 - (i) failed to communicate all this information to the persons at or near the workplace and thus, prevented them from taking measures to protect themselves, or
 - (ii) communicated all this information to the persons at or near the workplace, but then unreasonably expected those persons to take the required precautions against a particular hazard.



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(c) For the safety of which persons is the owner responsible?

Section 119(a) and (b) provide explicitly that the owner's obligation extends to all persons at a workplace, and section 119(a) applies to persons "at or near" the workplace.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Guidelines available on the WCB website.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: General Duties of Suppliers

ITEM: D3-120-1

BACKGROUND

1. Explanatory Notes

Section 120 sets out the general duties of suppliers.—~~Section 106 defines “supplier” for this purpose.~~

2. The Act

~~Section 106:~~

~~“**supplier**” means a person who manufactures, supplies, sells, leases, distributes, erects or installs~~

~~(a) any tool, equipment, machine, device, or~~

~~(b) any biological, chemical or physical agent~~

~~to be used by a worker;~~

Section 120:

Every supplier must

- (a) ensure that any tool, equipment, machine or device, or any biological, chemical or physical agent, supplied by the supplier is safe when used in accordance with the directions provided by the supplier and complies with this Part and the regulations,
- (b) provide directions respecting the safe use of any tool, equipment, machine or device, or any biological, chemical or physical agent, that is obtained from the supplier to be used at a workplace by workers,
- (c) ensure that any biological, chemical or physical agent supplied by the supplier is labeled in accordance with the applicable federal and provincial enactments,



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- (d) if the supplier has responsibility under a leasing agreement to maintain any tool, equipment, machine, device or other thing, maintain it in safe condition and in compliance with this Part, the regulations and any applicable orders, and
- (e) comply with this Part, the regulations and any applicable orders.

POLICY

~~There is no POLICY for this Item.~~

(a) Who is responsible?

Section 106 states that a "supplier" means a person who manufactures, supplies, sells, leases, distributes, erects or installs

- (i) any tool, equipment, machine, device, or
 - (ii) any biological, chemical or physical agent
- to be used by a worker;

This section does not apply to a supplier of services that do not involve the supply of a tool, equipment, machine or device, or any biological, chemical or physical agent. For example, an engineer or architect engaging in the design of buildings or structures might not be subject to this section.

(b) What standard must the supplier meet?

The wording of section 120 appears on its face to create an absolute obligation, so that, for example, there will be an automatic violation if a worker is injured. The Board recognizes that imposing an absolute obligation in this context is not appropriate and that suppliers can only be expected to act with due diligence in fulfilling their responsibilities under section 120. (See Policy D3-000-1.)

(c) For the safety of which persons is the supplier responsible?

The obligation under section 120 is directed at "workers" who might use the equipment or other item supplied. However, similar responsibilities would lie towards other persons at workplaces under provisions such as section 2.2 of the *Occupational Health and Safety Regulation* that create protections for all persons at workplaces.



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PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



WORKING TO MAKE A DIFFERENCE

**RE: General Duties of
Directors and Officers of a-Corporations**

ITEM: D3-121-1

BACKGROUND

1. Explanatory Notes

Section 121 sets out the duties of directors and officers of a corporation. The provision should be read in conjunction with Section 213(2).

2. The Act

Section 121:

Every director and every officer of a corporation must ensure that the corporation complies with this Part, the regulations and any applicable orders.

Section 213:

- ~~(1) — A person who contravenes a provision of this Part, the regulations or an order commits an offence.~~
- ~~(2) — If a corporation commits an offence referred to in subsection (1), an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence.~~
- ~~(3) — Subsection (2) applies whether or not the corporation is prosecuted for the offence.~~

POLICY

(a) Who is responsible?

There is no definition in the Act of “director” or “officer”. These terms will have their normal meaning.



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(b) What standard must the director or officer meet?

The Board will not automatically issue an order to officers, directors or agents of a corporation each time an order is written to the corporation.

The Board will, however, issue orders to officers, directors or agents where there is evidence that they were responsible for the failure by the corporation. Being “responsible” includes authorizing, permitting or acquiescing in the failure.

The wording of section 121 appears on its face to create an absolute obligation, so that, for example, there will be an automatic violation if a worker is injured. The Board recognizes that imposing an absolute obligation in this context is not appropriate and that directors and officers can only be expected to act with due diligence in fulfilling their responsibilities under section 121.

(c) For the safety of which persons is the employer responsible?

The obligations in section 121 extend to all persons covered by the duties placed on the director’s or officer’s corporation. (See Policies D3-115-1 and D3-118-1 to D3-120-1.)

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



**RE: General Duties –
Overlapping Obligations**

ITEM: D3-123/124-1

BACKGROUND

1. Explanatory Notes

Section 123 of the *Act* describes how persons may be subject to obligations in relation to more than one role. Section 124 of the *Act* explains what can happen when more than one person is responsible for fulfilling the same obligations. This policy provides guidance on when a party with obligations under the *Act* will be held responsible for a violation of these responsibilities despite the fact that one or more other parties share the same obligations.

2. The Act

Section 123:

- (1) In this section, "function" means the function of employer, supplier, supervisor, owner, prime contractor or worker.
- (2) If a person has 2 or more functions under this Part in respect of one workplace, the person must meet the obligations of each function.

Section 124:

If

- (a) one or more provisions of this Part or the regulations impose the same obligation on more than one person, and
- (b) one of the persons subject to the obligation complies with the applicable provision,
the other persons subject to the obligation are relieved of that obligation only during the time when
- (c) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
- (d) the health and safety of persons at the workplace is not put at risk by compliance by only one person.



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POLICY

~~The purpose of this policy is to ensure that all of the duties under the Act are effectively fulfilled despite the fact that multiple parties may share the same responsibilities.~~

All parties with duties under the *Act* may be able to affect the health and safety of persons at or near a workplace. Any and all of these parties may be cited for violations of their statutory duties regardless of whether or not another person has fulfilled his or her statutory responsibilities.

Under section 124 of the *Act*, one person may be relieved of his or her obligations under Part 3 of the *Act* or the regulations if:

- another person who is subject to the same obligations complies with those obligations, and
- simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
- the health and safety of persons at the workplace would not be put at risk by the compliance of only one person.

The first requirement of this Limited Exemption means that persons who have the same duty under the *Act* or regulations may agree amongst themselves as to who should perform it. The Board is neither bound by any agreements of this nature, nor by whether the terms of the agreement are complied with. The Board's primary concern is that the duty in question is fulfilled.

Further, even if the first requirement is satisfied, the Limited Exemption will only apply if the Board determines that the second and third requirements set out in section 124 are also satisfied. The third requirement of the Limited Exemption will not be met if performance of the occupational health and safety duty by one person leaves health and safety risks that would be eliminated by others performing their duty.

In view of the very broad language of the general duty provisions, it may be necessary to consider due diligence principles in some situations in determining whether in fact more than one person has the same obligation in particular circumstances. (See Policy D3-000-01)



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PRACTICE

For any other relevant PRACTICE information, readers should consult the Guidelines available on the WCB website.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION: