Internal Audit Services Branch

Audit of Occupational Health and Safety (*Canada Labour Code, Part II*)

May 2016

Table of Contents

Executive Summary

The *Canada Labour Code, Part II,* and related regulations, set out the rights and responsibilities under Occupational Health and Safety (OHS) for employees and employers in the workplace. Its goal is to reduce work-related accidents and illnesses in federal jurisdiction workplaces. The Labour Program's OHS program priorities focus on proactive interventions to increase compliance with the Code, particularly in high-risk federally regulated sectors such as air and road transport, feed, flour and seed mills. Approximately 8% of the Canadian workforce falls under the OHS jurisdiction of the federal Government with the rest covered under legislation of the province or territory where employees work.

Audit Objective

The objective of this audit was to provide assurance that the OHS program and its service delivery model support the provisions of the *Canada Labour Code, Part II*, and to assess the effectiveness and efficiency of program activities.

Summary of Key Findings

- A well-functioning governance structure is in place to support the OHS program's accountability.

- Strategic and operational planning lacks integration and there is no coordinated approach to operational reporting.

- The current state of information is inadequate to provide business intelligence to promote effective monitoring and continuously improve activities.

- Quality assurance frameworks are in place for field operations, however broader quality control processes covering non-operational activities are lacking.

- There is no overall framework to measure initiatives against the program's objectives and priorities or measure program performance.

- Program directives and interpretations are in place to support field operations.

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- There are no comprehensive service delivery standards to formalize regular engagement with clients and stakeholders[1].

Audit Conclusion

Overall, the audit concluded the OHS program and related service delivery model support the provisions of the Code. Opportunities exist to improve program planning, monitoring and reporting.

Integrating program planning activities would strengthen accountability and foster better cooperation between program units. Improvements in the identification of key indicators would enable personnel to highlight trends in health and safety and measure program performance.

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[1] For the purpose of this audit, "stakeholders" include employers' associations, labour unions, advisory councils, provinces and territories and international labour organizations; "extended jurisdiction partners" include representatives in other federal departments responsible for the Code; and "clients" include employers and employees in workplaces regulated by federal jurisdiction.

Recommendations

The Labour Program's Compliance, Operations and Program Development (COPD) should:

1. Integrate its various planning and reporting processes and clearly define accountabilities between the Workplace Directorate (WD) and the Regional Operations and Compliance (ROC) Directorate and between ROC and its regional offices to deliver program activities in a more efficient manner.

2. Develop a strategic framework for data gathering and analysis to improve program monitoring and reporting.

3. Develop a program-wide quality control process, including indicators to measure the on-going effectiveness of key OHS processes.

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5. Develop a comprehensive service delivery standard to formalize regular activities and interactions with clients and stakeholders.

1.0 Background

1.1 Context

As stated in Employment and Social Development Canada (ESDC)'s 2015–16 Report on Plans and Priorities, the Labour Program works to create a safe, fair and productive work environment which contributes to the social and economic well-being of Canadians. The OHS program supports that strategic objective by promoting and sustaining safe and healthy workplaces under federal jurisdiction. These include: interprovincial road transportation; air, rail and marine transportation; telecommunications and broadcasting; banking; feed, flour and seed mills; grain elevators; long shoring; pipelines; energy and mining; Crown corporations; the Public Service of Canada; and some businesses on Indian Reserves. OHS activities are delivered by two entities under the direction of the Assistant Deputy Minister of COPD: WD and ROC Directorate. Functional direction is provided from WD at National Headquarters (NHQ) to ROC, which has an office at NHQ and has five regions (Atlantic, Ontario, Quebec, Central and North West Pacific).

The OHS program's enabling legislations are the *Canada Labour Code, Part II*, and the *Non-Smokers' Health Act*. The majority of program activities and resources are dedicated to implementing the provisions of the Code, which are designed to prevent accidents and injuries occurring in the course of employment. Compliance is achieved through a range of activities, from increasing awareness to initiating prosecutions for non-compliance. Core program activities include:

- Developing and amending OHS legislation and regulations;
- Advising employers how to comply with the *Canada Labour Code, Part II*;
- Conducting inspections and investigations; and
- Issuing legally-binding directions to employers to comply with the legislation and, if necessary, initiating prosecutions.

The program is currently undergoing significant changes, due mainly to legislative amendments to the *Canada Labour Code, Part II*, which came into force in 2014. In addition, the OHS program is currently implementing various business modernisation initiatives[2] to adapt to the new legislative environment and to deliver services more efficiently.

1.2 Audit Objective

The objective of this audit was to provide assurance that the OHS program and its service delivery model support the provisions of the *Canada Labour Code, Part II*, and to assess the effectiveness and efficiency of program activities.

1.3 Scope

The scope included an assessment of program activities performed in NHQ, North West Pacific, Ontario and Quebec regions. It also included interviews with selected program stakeholders in Transport Canada (TC) for the application and enforcement of the Code in federal transportation for

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[2] For the purpose of this audit, "business modernisation" was defined as any initiative that aims at improving business processes or creating program efficiencies, leveraging technology in addition to the ongoing work performed by organizational units or through a distinct governance structure, and that usually have a timeline attached to its implementation.

on-board employees (Air, Rail and Marine) and the National Energy Board (NEB) in the federal oil and gas sectors.

The scope did not include the OHS program's provincial and territorial counterparts. In addition, the audit did not assess the activities legislated by the *Non-Smokers' Health Act*. Although the Code covers employees in nuclear facilities in Ontario and New Brunswick and uranium mines in Saskatchewan, the audit did not assess arrangements in place between the program and provinces to cover the nuclear and mining sectors.

1.4   Methodology

A number of methodologies were used, including: interviews, document review and file sampling of assignments performed by OHS officers.

Representatives from WD and ROC were interviewed to provide a comprehensive view of practices in policy setting as well as the operational environment. The audit team also interviewed staff from ESDC's Innovation, Information and Technology Branch (IITB), TC's Civil Aviation sector and the NEB.

File sampling comprised 67 assignments in the three regions visited. The types of assignments reviewed were: Hazardous Occurrence, Hazardous Occurrence – fatality, refusal to work, general inspection, specific inspection as well as promotional and counselling assignments.

2.0 Audit Findings

2.1 A governance structure exists and is functioning well

Overall, the current governance structure adequately supports OHS program objectives and priorities, and has clear accountabilities for managing provisions of the Code.

There is evidence that internal and external committees and sub-committees have defined mandates to cover OHS program activities. Though the Branch Executive Committee's (BEC) mandate encompasses more than OHS, BEC is the main forum for decision making and information sharing on OHS-related matters.

The audit found that national and regional interdepartmental committees support coordination of OHS activities between ESDC's Labour Program and extended jurisdiction partners responsible for the enforcement and application of the Code, namely TC and NEB. As well, an OHS Business Line Forum, which develops strategies to address OHS issues, includes representatives from ROC, TC, NEB and all program advisors.

Further, Federal-Provincial-Territorial OHS activities are coordinated through a committee under the Canadian Association of Administrators of Labour Legislation (CAALL). Through CAALL, Deputy Ministers, as well as other senior officials, work together to seek solutions to similar problems including OHS issues.

2.2 Strategic, operational and regional planning lacks integration

The audit found that the program planning process could be better integrated and that operational reporting requires a more coordinated approach.

The audit showed that strategic and operational planning activities are used to identify high-risk areas for intervention by OHS officers. However, as stated above the planning processes of WD and ROC lack integration which causes a lack of clarity in the interpretation and application of the plans by OHS personnel.

WD provides strategic and operational guidance to ROC who is responsible for carrying out compliance activities. Functional advice and guidance on technical areas such as interpretation and latest jurisprudence is exercised by program advisors reporting to WD in NHQ, whereas, oversight of operational activities is the responsibility of senior investigators reporting to ROC regional/district managers. Scheduled conference call meetings between WD Directors and ROC Regional Directors have been introduced recently as another way to exchange information between OHS personnel.

A lack of integration in the planning process between these two groups creates unclear roles and responsibilities. This situation may result in unclear accountabilities and a reduced ability of organizational units to work collaboratively and achieve common objectives.

Recommendation

COPD should integrate its various planning and reporting processes and clearly define accountabilities between WD and ROC Directorate and between ROC and its regional offices to deliver program activities in a more efficient manner.

Management Response

Management agrees with the recommendation. WD and ROC planning and reporting processes should be integrated into a comprehensive framework which clearly defines accountabilities between WD and ROC, including the regions.

As noted in the audit, a well-functioning governance structure is in place to support the OHS program's accountability. To fully address the recommendation WD and ROC will develop and communicate a workflow/process map that will identify their respective roles and responsibilities throughout the planning, reporting and implementation process. This work will include developing a framework to align the current Strategic Operational Planning process for OHS with the existing regional operational work planning process. It is anticipated that these actions will ensure that WD and ROC and its regional offices accountabilities are clear so as to enhance the ability of the units to work collaboratively towards achieving common objectives. Actions are expected to be completed by June 2017.

2.3 Program monitoring and reporting can be improved

The audit found that the current state of program information is inadequate to provide business intelligence to promote effective monitoring and continuously improve activities.

Evidence indicates that proactive and reactive assignment files are generated and stored using a combination of electronic and hardcopy formats. While the program has a legal responsibility to maintain physical and electronic evidence, current practices in place for using both electronic and hardcopy files hinder the effectiveness of data retrieval and the timeliness for reporting and follow-up. OHS personnel spend a great effort to improve the accuracy, integrity and consistency of data being captured in current information systems.

There is limited capacity to measure and report on program performance using available indicators. As a result of the disposition of information, monitoring and analysis is laborious, limiting the program's ability to generate useful data analysis to identify trends in health and safety.

The current key indicator utilised by OHS is the Disabling Injury Incidence Rate (DIIR)[3]. This indicator identifies employers that are at a higher risk based on incident reports. It does not serve as a good measure of compliance and enforcement activities as it is a lagging and not a predictive indicator. Efforts are being made to identify new predictive indicators, however without data this task is made very difficult.

Furthermore, OHS uses additional disparate indicators to measure and report on the outputs of other program activities, however these do not provide a reliable or aligned source of information on the impact of program activities in reducing fatalities or disabling injuries.

The audit noted that attempts are being made to identify additional indicators from other sources (e.g. other federal departments, provincial, territorial and international organizations), however these efforts have not yet been successful.

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[3] The DIIR is defined as the total number of disabling and fatal occupational injuries per 100 employees, expressed as full-time equivalents.

Recommendation

COPD should develop a strategic framework for data gathering and analysis to improve program monitoring and reporting.

Management Response

Management agrees with the recommendation and recognizes the need to develop a strategic framework for data gathering and analysis to improve and strengthen program monitoring and reporting. This framework will focus on improving the program's ability to generate useful data which will help identify trends in health and safety and to provide business intelligence that will help improve the effectiveness of program activities.

The audit acknowledges that the program has significant data in electronic and hardcopy formats. Currently, COPD personnel make great efforts to improve the accuracy, integrity and consistency of the data being captured in information systems. For example, ROC and WD have sent a joint communique to regional staff regarding the importance of data quality and consistency when inputting data.

Furthermore, the annual priority for 2016 in the Strategic Operational Plan is to ensure better compliance by employers with their annual reporting requirements to improve data integrity. Negotiations have also commenced to develop information sharing agreements to have access to provincial OHS data. Actions are expected to be completed by June 2017.

2.4 Quality control processes are missing

While a quality assurance framework[4] is in place to monitor selected field visits and review selected assignments performed by OHS officers and senior investigators, there is no quality control process[5] in place for key functions and activities.

In 2008—09, the program introduced a quality assurance framework designed specifically for reviewing files of OHS officers and senior investigators to ensure quality and consistency of the information collected during assignments. The framework also included an ability to review how officers carry out their duties in the field, including pre-planning, site inspection, and ending assignments. The framework, including tools and training for officers, was rolled out in 2010.

The audit found that the quality assurance framework is working well and provides useful indicators of the effectiveness of assignment files and field reviews. However, this quality assurance framework focuses only on one area of program activities. Without a comprehensive quality control process, it is difficult to know if key program activities are effective and to decide where modifications or improvements could be made outside of field and file reviews.

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[4] As defined by OHS, a quality assurance framework is mainly product-oriented (i.e. file reviews and observations during field visits) and aims at the identification of potential quality problems.

[5] As defined by OHS, a quality control process is process-oriented and deals with activities or techniques used to achieve and maintain the product quality, process and service to prevent potential problems.

Recommendation

COPD should develop a program-wide quality control process, including indicators to measure the on-going effectiveness of key OHS processes.

Management Response

Management agrees with the recommendation and recognizes the need to develop and implement a Quality Control Framework. As noted in the audit the existing Quality Assurance Framework is working well. COPD will build on the Quality Assurance Framework that is in place to develop a Quality Control Framework that will help improve operational performance and enhance the program's ability to determine if key program activities are effective and to decide where improvements could be made.

The Quality Control Framework will be supported by an overarching OHS performance measurement framework that will be used to measure the effectiveness of key OHS processes. WD has developed a logic model for the OHS program and is currently working with ROC and ESDC's Evaluation Unit to finalize a performance measurement framework. Actions are expected to be completed by September 2017.

2.5 A cohesive program-wide change management framework is lacking

There is no comprehensive program-wide change management framework in place to manage the business modernisation initiatives currently being planned and/or implemented.

The audit observed a number of initiatives being implemented to improve the effectiveness of the program. A change management framework is being developed only for the modernisation initiative relating to information technology systems.

The audit found that the five[6] major initiatives underway, with their differing levels of complexities, interdependencies and multiple plans, may lead to a lack of direction. An assessment of all modernisation initiatives against program's goals and objectives may be required to identify potential risks and mitigating actions as necessary. The program could benefit from expanding on the change management framework being developed for the information technology systems' modernisation initiative to include all major initiatives.

2.6 Directives and interpretations of the legislation are in place

The audit found that program Operations Program Directives (OPD) and Interpretations, Policies and Guidelines (IPG) of the legislation are in place to enforce the provisions of the Code.

The OHS program delivers a regulatory mandate, so it is vital that directives and interpretations be readily available and understood by officers and investigators. The process to disseminate the most current and relevant versions of OPD and IPG to OHS personnel and clients is operating properly. The program could benefit from adding controls to avoid duplicate or conflicting versions, which could

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[6] The major initiatives underway are: Business Modernisation Action Plan to transform the way services are delivered to clients; the information technology modernisation initiative; the Red Tape Reduction Action Plan to reduce the regulatory burden on small businesses; the self-assessments to measure OHS compliance in high-risk industries; and the modernisation of the mandatory training for OHS officers.

result in inconsistent application of the Code by internal personnel or clients. The lack of synchronization of program OPD and IPG may adversely impact the ability of OHS personnel to provide consistent advice to its clients, or the ability of such clients to comply with provisions of the Code.

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OHS officers and investigators are responsible for enforcing the Code and its regulations through awareness, inspection and investigation activities. The following compliance orders methods are employed to enforce compliance with the regulatory regime:

- Assurance of voluntary compliance (AVC), which is a written commitment from the employer to comply with Code requirements by a given date. There is no appeal mechanism for an AVC;

- A Direction, which is a formal written order, directing the employer or employee to terminate and correct a contravention of the Code within a specified period. A Direction may be appealed to the OHS Tribunal of Canada; and

- Prosecutions may be initiated for serious violations. This usually happens as a result of a worker's death, or disabling injuries.

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Recommendation

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Management Response

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2.8   Service delivery standards are lacking

There currently are no comprehensive service delivery strategy or service standards for client engagement. Work has been initiated to improve engagement with clients and stakeholders.

There are a significant number of regular interactions taking place between clients and program officials other than OHS officers. Communications with clients and stakeholders are well established, both at the operational and strategic levels. A formal communication strategy is lacking to provide guidance on how to handle the various forms of communication produced by the program. While OHS officers have delegated enforcement responsibilities, their relationship with clients is generally non-adversarial. As a result, a large portion of the proactive work performed by officers lends itself to a collaborative approach.

The audit found limited evidence that service standards are in place. Service standards could provide a benchmark to officers on making preliminary contacts with clients, scheduling visits and inspections and providing information to employers about next steps. Finally, there is no systematic follow-up which reduces the program's ability to better respond to issues or concerns of clients.

Recommendation

COPD should develop a comprehensive service delivery standard to formalize regular activities and interactions with clients and stakeholders.

Management Response

Management agrees with the recommendation and will develop a suite of comprehensive service delivery standards for high volume/priority activities and interactions with clients and stakeholders to standardize service delivery across the country. These service standards will establish benchmarks for interactions between Labour Program officials and clients to ensure systematic follow-ups to better respond to issues or concerns of clients.

Currently COPD applies a number of internal and informal regional service standards. For example, calls or inquiries are responded within 1-2 business days and urgent requests are addressed within 24 hours.

Work is currently underway to develop more formal national service standards, that will be published for clients and stakeholders. An inventory of high-volume and regular activities/interactions has been developed to align with the work of the Red Tape Reduction Commission that addresses a desire among stakeholders for clear service standards from government. This initiative will help ensure that clients/stakeholders receive a standard of service nationally, in the language of their choice. Regional staff, and partners will be consulted throughout this exercise to ensure that these standards are appropriate and achievable. In addition, COPD will ensure consistency with the established Treasury Board Secretariat Guideline on Service Standards.

WD and ROC have each developed client engagement strategies. They will work together to develop an overarching strategy that will assist in guiding and formalizing the various interactions and consultations with stakeholders. Actions are expected to be completed by September 2017.

3.0 Audit Conclusion

Overall, the audit concluded the OHS program and related service delivery model support the provisions of the Code. Opportunities exist to improve program planning, monitoring and reporting.

Integrating program planning activities would strengthen accountability and foster better cooperation between program units. Improvements in the identification of key indicators would enable personnel to highlight trends in health and safety and measure program performance.

4.0 Statement of Assurance

In our professional judgement, sufficient and appropriate audit procedures were performed and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on observations and analyses at the time of our audit. The conclusions are applicable only for program activities conducted to manage provisions of the *Canada Labour Code, Part II*. The evidence was gathered in accordance with the *Internal Auditing Standards for the Government of Canada* and the *International Standards for the Professional Practice of Internal Auditing*.

Appendix A: Audit Criteria Assessment

Audit Criteria	Rating
It is expected that:	
Line of Enquiry A: OHS Program Management Framework	
• A governance structure is in place to ensure that clear accountability exists for managing the provisions of the Code;	●
• Strategic and operational planning processes are efficiently established across program areas;	◉
• Appropriate strategies, processes, procedures and tools are available to enforce the provisions of the Code;	◉
• Change initiatives are being implemented in a timely manner to transform and modernise the Program's core business;	◉
• Data generated by information technology systems is accurate, consistent and allows for efficient management of risks and effective planning of program activities.	○
Line of Enquiry B: OHS Service Delivery Model	
• An effective service delivery model is in place to enforce the provisions of the Code across its compliance continuum (awareness-raising, voluntary compliance, legally-binding directions, prosecutions);	◉
• Communication strategies and tools are available to assist clients in managing their responsibilities under the Code;	●
• Nationally established directives and guidelines are consistently applied by regional personnel when interacting with clients;	●
• Information provided by clients and stakeholders is used to inform planning, risk management and to identify potential program enhancements.	◉

✪ = Best practice
● = Sufficiently controlled, low risk exposure
◉ = Controlled, however should be strengthened, medium risk exposure
○ = Missing key controls, high risk exposure

Appendix B: Glossary

AVC	Assurance of Voluntary Compliance
BEC	Branch Executive Committee
CAALL	Canadian Association of Administrators of Labour Legislation
COPD	Compliance, Operations and Program Development
DIIR	Disabling Injury Incidence Rate
ESDC	Employment and Social Development Canada
IITB	Innovation, Information and Technology Branch
IPG	Interpretations, Policies and Guidelines
NEB	National Energy Board
NHQ	National Headquarters
OHS	Occupational Health and Safety
OPD	Operations Program Directives
ROC	Regional Operations and Compliance
TC	Transport Canada
WD	Workplace Directorate