

*A national occupational health & safety (OHS) and workers' compensation law newsletter*



June is "graduation month" and we are pleased to announce we have our own new graduate and OHS Consultant, Jennifer Hogan. Jennifer is a recent graduate of Ryerson University's Occupational Health and Safety Bachelor degree of Applied Science. She previously had co-op work terms in the pharmaceutical and smelting industries across Canada.

Jennifer is now one of six OHS Consultants at Gowlings providing training, consulting, and para-legal services to clients across Canada. Backed by the leading OHS Practice at Canada's largest law firm, our OHS team is now the professional services firm of choice for local and national clients.

In this edition of OHSLAW™ Report, we look at the challenge of meeting all legal obligations in Ontario under the *Occupational Health and Safety Act*. There is a new functional abilities form released by the Workplace Safety and Insurance Board. We also track new enforcement initiatives in Alberta.

Do not miss our free monthly podcast episodes. The most recent hot topics discuss emergency preparedness and response and whole body vibration syndrome. Every episode is available for download from our website.

**Norm Keith, B.A., LL.B., CRSP**  
Partner, Gowlings

## Meeting OHS Obligations is Easier Said Than Done

By Cathy Chandler, B.A.Sc., CRSP

Meeting occupational health and safety ("OHS") legal obligations is easier said than done. With the requirements under Ontario's *Occupational Health and Safety Act* ("OHS Act") and a multitude of regulations, guidelines, standards and codes of practice to review, understand, apply and manage, it is no wonder that many employers are left wondering if they can achieve everything required to meet their obligations.

The OHS Act requires you to ensure your workplace is safe for employees, visitors and contractors. Are you confident that you have a safe workplace? Do you have

an effective OHS Management System? Does your OHS Management System meet OHS legal requirements?

Many employers in this country are not meeting their OHS obligations and are lacking an effective OHS Management System. According to data collected by the Association of Worker's Compensation Boards of Canada, 1097 workplace fatalities were recorded in Canada in 2005, up 45% from 758 in 1993.

As Canadians work on average 230 days per year, this means that there were nearly five work related deaths per work day in this country.

*continued on p. 2*

## Musculoskeletal Disorders a Concern in the Transportation Sector

By Elizabeth Rankin, B.A.Sc., CRSP

If you are in the transportation sector or you employ workers whose job involves transportation, Musculoskeletal Disorders ("MSD's") are an issue that requires special attention. Studies show that MSD's contribute to approximately 60 - 70% of lost time injuries among workers in the transportation sector.

The Centre of Research Expertise in the Prevention of Musculoskeletal Disorders

("the Centre"), based at the University of Waterloo, in association with the Transportation Health and Safety Association of Ontario ("THSAO"), is conducting a research project into causes and prevention of MDS's among drivers. They held a one-day International Conference on April 12, 2007, which included industry leaders, researchers, management and union stakeholders, as well as experts from Holland and the United States.

*continued on p. 4*

### Also in this OHSLAW™ Report

- Busy Month of May for Alberta's OHS Laws, p. 3
- WSIB Releases New Functional Abilities Form, p. 4
- Amendments to Mining Regulations Aimed at Improving Safety, p. 5
- New Course: Managing OHS & Environmental Due Diligence For Shutdowns, p. 5
- Confined Space Regulations - One Day Compliance Workshop, p. 5
- Changes to Occupational Exposure Limits in Ontario, p. 6
- Alcohol and Drugs in Canadian Workplaces - Upcoming Seminar, p. 6
- School Board Fined \$100,000 for OHS Violation, p. 7

## Meeting OHS Obligations is Easier Said Than Done

*continued from p. 1*

Many companies have seen the benefits of an effective OHS Management System in fewer accidents, reduced costs, higher productivity, better morale and improved quality.

### Elements of an OHS Management System

An OHS Management System can be defined as "that part of the overall management system, which includes organizational structure, planning activities, responsibilities, practices and procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the OHS Policy, and managing the OHS risks." An effective OHS Management System includes, but is not limited to the following elements:

- Company OHS policy statement - reviewed and updated annually in consultation with the JHSC, signed by the most senior level person in the organization, dated, posted and distributed to employees;
- Health and safety program in place to implement the policy commitments;
- Clearly defined roles for managers, supervisor and employees;
- Hiring of competent supervisors (knowledge, training and experience);
- Posted copy of the OHS Act as well as applicable regulations - WHMIS, First Aid, WSIB Forms etc.;
- Specific health and safety policies and procedures that address workplace hazards - in accordance with workplace hazard assessment;
- Health and safety representative or joint health and safety committee in place (as required);
- JHSC has two certified members (if applicable);
- Workplace inspections completed monthly by worker member of JHSC or health and safety representative;
- Appropriate training of all employees which includes orientation training and workplace specific hazard training (documented through training records, enforced, ongoing process);
- Incident reporting and investigation system in place;
- Policy on early and safe return to work;
- Completed physical demands analysis for all job categories;
- Appropriate number of first aiders trained, certificates posted, first aid station stocked, maintained and inspected;
- All job descriptions include health and safety responsibility which is measured in performance appraisals (best practice);
- Emergency response plan;
- Disciplinary policy for OHS violations; and,
- Process to monitor and enforce OHS requirements.

These elements must be implemented to maintain an effective OHS Management System. It is up to each individual employer to customize their own OHS Management System to manage their specific risks and hazards. At a minimum, an OHS Management System must include the elements required by the applicable provincial or federal health and safety legislation.

If you would like more information or require assistance to evaluate or develop your company's OHS Management System, please contact Cathy Chandler at 416-369-7351 or [cathy.chandler@gowlings.com](mailto:cathy.chandler@gowlings.com) or [www.gowlings.com/ohslaw](http://www.gowlings.com/ohslaw). ■

### A Practical Guide to Occupational Health and Safety Compliance in Ontario, Third Edition

**Norman A. Keith and Elizabeth Rankin**



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Emergency Preparedness and  
Emergency Response

#### **April 2007 Episode:**

Whole Body Vibration Syndrome

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## Busy Month of May for Alberta's OHS Laws

By Adam Neave, B.A.Sc.

May was a busy month for Alberta's Occupational Health and Safety ("OHS") regulator.

Alberta, Employment, Immigration and Industry (AEII), formerly Alberta Human Resources and Employment, reported the province's 2006 fatality and injury rate statistics, a significant prosecution and a legislative change to the OHS Code.

According to an AEII press release, 2006 saw a decrease in the fatality and lost-time claim rates in Alberta. The number of work-related fatalities decreased from 143 in 2005 to 124 in 2006. Of the 124 work-related fatalities in 2006, 33 were motor vehicle incidents, 27 were on-the-job deaths, and 64 were attributed to occupational diseases.

As the working population in Alberta continued to rise in 2006, the fatality rate fell to 78 fatalities per million person years, the lowest fatality rate since 1991. The provincial lost-time claim rate for 2006 was down from 2.41 per 100 person years in 2005 to 2.35 per 100 person years - the sixth straight year this rate has dropped. This steady decrease appears to be inversely proportional to the steady increase in the disabling injury rate, a new

measure that also includes claims submitted in which employees are able to perform modified duties to accommodate their injuries, enabling them to remain in the workplace and not lose any time from work.

On May 3, 2007, in Edmonton, a numbered company operating as DJZ's Welding was fined a whopping \$350,000 after pleading guilty to an OHS charge that resulted from the death of a worker. More specifically, the charge was related to allowing hot work to be performed where a flammable substance could be present.

On September 19, 2003, a worker was fatally injured when an explosion occurred, which threw him against the wall of the tank that he was welding. The \$350,000 sentence is a clear indication that AEII is committed to continuing to increase fines for employers and individuals who contravene the OHS Code.

In other news, Part 38 of the OHS Code - Residential Roofing - expired on April 30, 2007. The Director of Inspection has approved a grace period to continue the use of slide guards until October 31, 2007. During this grace period, OHS Officers will point out current practices to roofers that may violate the OHS Code beginning on November 1, 2007. ■

## OHS Courses in Western Canada in 2007

### Alberta OHS Due Diligence for Managers and Supervisors

June 20 & 21	Edmonton
Sep 19 & 20	Calgary
Sep 26 & 27	Fort McMurray
Oct 17 & 18	Medicine Hat
Oct 24 & 25	Edmonton
Oct 30 & 31	Red Deer
Nov 7 & 8	Lethbridge
Nov 14 & 15	Calgary
Nov 21 & 22	Fort McMurray
Nov 28 & 29	Grande Prairie
Dec 5 & 6	Edmonton

### Introduction to British Columbia OHS Due Diligence for Managers and Supervisors

Aug 21	Vancouver
Nov 6	Vancouver

### Introduction to Manitoba OHS Due Diligence for Managers and Supervisors

Sep 20	Winnipeg
Nov 14	Winnipeg

### Introduction to Saskatchewan OHS Due Diligence for Managers and Supervisors

Sep 6	Saskatoon
Oct 11	Regina

### Workplace Accident Investigation (Alberta)

June 19	Edmonton
Sep 13	Calgary
Oct 4	Fort McMurray
Nov 13	Edmonton

### Workers' Compensation Claims Management (Alberta)

June 27	Red Deer
Sep 18	Calgary
Sep 25	Fort McMurray
Oct 23	Edmonton
Nov 1	Red Deer

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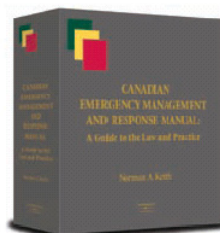
## Canadian Emergency Management and Response Manual: A Guide to the Law and Practice

by Norm Keith, B.A., LL.B., CRSP

**Canadian Emergency Management and Response Manual** is the FIRST Canadian resource that analyzes the legal requirements that pertain to emergency situations and offers clear practical guidelines on how to develop an Emergency Plan.

This publication:

- ✓ Outlines the legislative framework that applies in each Canadian jurisdiction
- ✓ Examines in detail the common duties and the scope of legal liabilities of firefighters, police and ambulatory staff
- ✓ Discusses a model Emergency Response Plan, business continuity strategies and general guidelines to develop for your organization



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## Musculoskeletal Disorders a Concern in the Transportation Sector

*continued from p. 1*

The conference discussion groups were led by Ontario industry leaders and focused on identifying issues and challenges, while bringing a plethora of expertise, technical and regulatory knowledge to the table, with a goal of identifying preventative strategies. The material on this conference is currently under preparation.

Generally, injuries amongst transportation workers arise from tasks such as driving, loading/unloading, tarping, and securing. These tasks involve various ergonomic risk factors, including heavy lifting, pulling, pushing, reaching, and bending, combined with sitting in a static position for a prolonged period in a vibrating vehicle. Sudden shocks when travelling over rough terrain further increases the risk.

Whole body vibration syndrome has been found to result in numerous short and long term symptoms, including interruptions to circadian rhythms, increased heart rate, and disorders of the spinal, digestive, nervous and reproductive systems. As an employer, you should take the following steps to minimize the risk and effects of whole body vibration syndrome:

- Conduct a hazard assessment to determine if whole body vibration is a risk to

your workers.

- Develop and implement a vibration control program. The program should include medical monitoring, exposure analysis, training and education on hazards, signs and symptoms, and control measures.
- Control measures may include limiting the time workers spend on a vibrating surface, implementing a work/rest schedule, mechanically isolating the vibrating source or surface to reduce exposure, inspection and maintenance to ensure that vehicles and equipment are well maintained to avoid excessive vibration, and installing vibration damping devices, such as air-ride seats and suspended cabs.
- ACGIH has developed threshold limits for vibration exposure. The most widely used document on this topic is the Guide for the Evaluation of Human Exposure to Whole Body Vibration (ISO 2631). These exposure guidelines have been adopted as ACGIH TLVs. A qualified vibration analyst can assist with evaluating your workers' exposure.
- Workers exposed to whole body vibration syndrome should undergo permanent medical surveillance. Pre-placement and periodic examinations are



recommended, including a basic medical examination and an X-ray of the spine, at least of its lumbar part.

In British Columbia - OHS Regulation, Part 7, Division 2 prescribes limits and control measures. Most provinces do not have OHS legislation dealing specifically with vibration. Some have published bulletins on the subject. However, all jurisdictions have a general duty clause that requires an employer to take reasonable precautions to protect the health and safety of workers. ■

### WSIB Releases New Functional Abilities Form

*By David Marchione, B.A.*

One of the main tools used by Ontario employers to assist in identifying suitable work for an injured worker is the Functional Abilities Form for Timely Return to Work ("FAF"). If completed properly, it can assist employers and workers in identifying suitable work. If not, it can frustrate the return to work process.

The FAF has been under review by Ontario's Workplace Safety and Insurance Board ("WSIB") since November 2000, and after much consultation, the updated form has finally been

released. The new form, now called the Functional Abilities Form for Planning Early and Safe Return to Work, is longer, easier to follow, and clearer in the information requested of the health care professional completing it.

The updated form has removed the very contentious "as tolerated" option from the area of the form describing the injured workers' functional abilities. This area includes specific abilities related to sitting, standing, walking and lifting, as well as an option to choose "other". Should the health care professional select the "other" option, they are required to specify restrictions

or functional abilities.

In addition, the new FAF provides health care providers with an ability to specify a start date for return to work, which should help employers in the planning process.

The WSIB has made the FAF, and a Guide to Completing the FAF available on their website. A 'Frequently Asked Questions' document is also available for common questions arising from the use of the FAF in planning for return to work. For more information, and to access the FAF, please visit the WSIB website at [www.wsib.on.ca](http://www.wsib.on.ca). ■

## Amendments to Mining Regulations Aimed at Improving Safety

By Goldie Bassi, B.A., LL.B., LL.M.

In April 2007, the Minister of Labour for Ontario, Steve Peters, announced that the government is implementing changes to the Regulations for Mines and Mining Plants under the OHSA to improve mine safety based on developments in the industry in recent years.

The amendments, include:

**1. Training:** Amendments to training requirements to reflect changes made by the Ministry of Training, colleges and Universities (MTCU) in respect of its Common Core training program for First Line Underground Mine Supervisor, Underground Hard Rock Mining, and Soft Rock Mining. A table detailing training programs is also included in the Regulations to provide easy reference and guidance.

**2. Vehicle Safety:** Amendments to brake requirements for motor vehicles and adoption of brake systems standards for both surface and underground vehicles. The amendments will also implement new requirements for underground motor vehicle safety and use of overhead protective equipment to protect workers from falling debris.

**3. Underground Storage and Transportation of Explosives:** Amendments to update references to the federal standard for storing explosives; new requirement that all explosives be listed on a plan that is kept on-site; specification of the location of all underground explosives; changes to revise electrical safety requirements relating to explosive storage areas; new requirement for underground motor vehicles to use a flashing red light when

transporting explosives. The amendments also includes provisions for new designated parking, fire suppression systems, use of power washing to reduce risk of fire when vehicles are not in use, and new requirements for bulk explosives vehicles.

**4. Elevator Safety:** Adoption of standards recently set by the Canadian Standards Association.

In announcing the amendments, Minister Peters stated, "These changes will help to ensure [workers] are better trained and protected and continue to contribute to a strong economy and a healthy Ontario". With the exception of the amendments relating to training requirements, which came into effect on April 1, 2007, the remaining amendments will come into effect on October 1, 2007. ■

### Managing OHS & Environmental Due Diligence For Shutdowns

October 3, 2007 - Toronto

9:00 am to 4:30 pm

- Part I: Anatomy of a Shutdown
- Part II: Applicable OHS Legislation, Codes and Guidelines
- Part III: Additional Legal Considerations
- Part IV: Development and Execution of Effective Shutdown

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### Confined Space Regulations: One Day Compliance Workshop

September 26, 2007 - Toronto

9:00 am to 4:30 pm

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- Develop an adequate confined space program
- Conduct a hazard assessment
- Develop an adequate confined space entry plan

and more...

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Can employers be prosecuted for failure to have an effective Emergency Response Plan?

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## Changes to Occupational Exposure Limits in Ontario

By Kathryn Fisher, B.A.Sc.

The Ontario Ministry of Labour recently introduced changes to occupational exposure limits ("OELs") for various hazardous chemical substances present in workplaces. The changes included introducing an OEL for substances where an OEL had not previously been established and revising existing OELs, thus requiring a greater level of protection for workers.

OELs identify the maximum exposure concentration of a substance that a worker may be exposed to in a given time period. Generally, the more hazardous the substance, the lower the OEL because of the potential for adverse health effects.

The changes to the OELs were made as part of an annual review process that was started in 2004 by the Ministry of Labour. Labour Minister Steve Peters stated,

"overexposure to hazardous substances is a major cause of occupational illness that also adds significant costs to businesses through lost time and higher workplace insurance premiums". Over exposure also puts an employer at risk of legal liability.

Regulation 833, Control of Exposure to Biological or Chemical Agents, lists over 700 different agents and their corresponding OEL, either as a time-weighted average exposure value, short-term exposure value, or ceiling exposure value. The regulation also prescribes specific requirements for compliance with the limits.

Employers should identify, by way of conducting a hazard assessment, if their workplace contains or uses any of the hazardous substances listed in the regulation. If the workplace contains a hazardous substance listed in Regulation 833, the

employer is required to ensure that any exposure to workers is in compliance with the OEL. This requires implementation of sound control measures and diligent and regular monitoring of worker exposure.

An action item for employers on this issue is to conduct a workplace hazard assessment to determine the presence of and extent of exposure to any hazardous materials and develop a written program to address how exposure to the substance(s) will be eliminated/minimized through control measures, monitored (personal and workplace) and handled in the event overexposure does occur.

Communication and training to workers on what practices they should employ to protect themselves and consistent follow up by management to ensure compliance is key to successful prevention of overexposure. ■



## Alcohol & Drugs in Canadian Workplaces

October 11, 2007 - Toronto

9:00 am - 12:00 pm

**A seminar on the legal and human resource challenges of alcohol and drug use and abuse in the workplace, and what employers can do to minimize the risks.**

### SPEAKERS

**Norm Keith**, B.A., LL.B., CRSP  
Partner with Gowlings

**Dr. Barry Kurtzer**, B.Sc., M.D., M.R.O.  
Chief Medical Review Officer with  
DriverCheck Inc.

**Ailsa Wiggins**, B.A., LL.B., LL.M.  
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  - Legal challenges to an alcohol and drug policy
  - Human Rights considerations in the non-union workplace
  - Legal considerations in the unionized workplace
  - Review of current court and human rights decisions regarding alcohol and drugs in the workplace
- and more...

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**GOWLINGS**

## School Board Fined \$100,000 for OHS Violation

By Goldie Bassi, B.A., LL.B., LL.M.

The Simcoe Muskoka Catholic District School Board, with over 50 elementary and secondary schools, was fined \$100,000, plus a 25% victim surcharge, recently for a breach of the *Occupational Health and Safety Act* relating to the death of a school employee.

The deceased employee, an energy management systems technician, was accessing an electrical panel using a laptop computer to troubleshoot a mechanical problem with a cooling system. He was discovered lying on the floor of the mechanical room of a Collingwood school. It appears that the technician, who was not wearing personal protective equipment, suffered a fatal electrocution when he inadvertently made contact with a live high-voltage electrical panel that controlled the

cooling tower.

Although the school board had put in place procedures that required live power to be locked out before any maintenance work was carried out, the Ministry of Labour deemed the procedures to be insufficient as they failed to adequately warn a worker of all the hazards of working near live power and did not specify in writing the requirement for personal protective equipment.

The school board plead guilty as an employer to one count under section 25(2)(h) of the *OHS Act* for a failure to take every precaution reasonable for the protection of a worker.

This case underscores the importance of implementing written job procedures and identifying and informing workers of potential hazards relating to a particular task. ■

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## Emergency Preparedness & Response Planning

Developed by Kathryn Fisher, B.A.Sc.,  
and Norm Keith, B.A., LL.B., CRSP

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- Strategies and resources for managing various types of emergency events
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- Practical steps on how to put your plan into practice
- Considerations for business continuity planning

July 5, 2007	Toronto
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October 17, 2007	Ottawa

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