
FORMATIVE EVALUATION OF ALBERTA'S OCCUPATIONAL HEALTH AND SAFETY CODE REVIEW PROCESS

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Executive Summary

Introduction

Alberta's Occupational Health and Safety (OHS) Code is a ministerial regulation that contains the technical health and safety rules that provincially-regulated workplaces must follow to keep their workers healthy and safe. The Code was first introduced in 2003 to replace 11 regulations with the intent of the Code being easier to update than the regulations it replaced. To date, the process of updating the Code has not met the original goals of keeping the Code up-to-date. The 2003, 2006 and 2009 editions of the OHS Code were all created following different processes, none of which improved the process to the extent expected. The Code's review process was revised in 2011 to address stakeholder concerns of the Code being updated too frequently, and the revised process had not worked out as planned. Not having an up-to-date Code creates the problem of workers not having the most up-to-date health and safety rules to protect them. The need to create an effective and efficient Code review process is the impetus for this study.

Research of this type is important because approaches of efficiently reviewing and updating OHS regulation in a Canadian context has not been formally researched before. Having increased scholarly knowledge in this area creates opportunity for governments who are informed by this research to deliver more efficient and effective regulatory review processes than in the past.

Methodology and Methods

Formative evaluation is technical language for the evaluation of a process. This study uses formative evaluation methodology to evaluate Alberta's OHS Code review process by using the following methods to collect data:

- Analysis of scholarly and grey literature pertaining to OHS regulatory review to help identify gaps in Alberta's Code review process.
- Document analysis to understand past and current states of the OHS Code review process.
- Comparison of Alberta's Code review process with the processes other jurisdictions use to review their OHS technical rules to identify opportunities to improve Alberta's process.
- Key informant interviews to gain the perspectives of key external stakeholders affected by Alberta's OHS Code.
- A focus group to gain insights of Government of Alberta staff responsible for reviewing and updating the OHS Code.

Key Findings

Literature Review

The study's literature review explored governance, stakeholder engagement, guiding principles for OHS regulation, project management, and interprovincial harmonization as they relate to OHS regulatory review. According to the literature, governments should consult stakeholders when developing OHS regulation and the International Association for Public Participation provides 'gold standard' principles of how best to engage with stakeholders. Little was found in the literature with respect to the overall process of updating OHS regulation; however, the literature

identified guiding principles that should be used in setting OHS rules, which are reflected in this report's recommendations.

The literature confirmed that project management is important part of updating regulation; however, cautioned that project management is stressful for staff and strategies are needed to protect the psychological well-being of staff, otherwise project management will offer little-to-no benefit. Interjurisdictional harmonization of OHS rules and their enforcement is a recent trend. On a global scale, significant progress has been made with respect to harmonizing the classification and labelling of chemicals, with 72 countries committing to harmonize. With respect to broad harmonization of OHS rules, Australia stands out as having made the most progress, and has found that achieving harmonization is challenging.

Interjurisdictional Scan

This study's interjurisdictional scan was conducted by reviewing the websites of government departments or agencies responsible for administering OHS regulation. For each of the jurisdictions scanned, features of OHS regulatory review processes were identified and compared. Jurisdictions scanned include all provincial, territorial and federal jurisdictions within Canada, United States federal and state, United Kingdom, Germany, New Zealand, Sweden and Australia.

Through the interjurisdictional scan, it was identified that there is considerable variation in approaches jurisdictions use to review and update their OHS technical rules. While no two jurisdictions follow the same process, it was identified that there are four general phases all jurisdictions follow. These are: (I) technical review of existing rules, (II) public consultation on proposed changes, (III) regulatory approval, and (IV) implementing regulatory changes.

While the interjurisdictional scan was not able to distinguish whether one process is better than another, it can be deduced that all processes work, with the differences between approaches being in the features. Different jurisdictions appear to select features that work best for them. For example, a key difference between the approach used in different jurisdictions is how often OHS rules are reviewed and updated.

Key Informant Interviews

External key stakeholders showed amazing passion for the study's topic, and provided incredibly rich and well-constructed input. The key takeaway is external key stakeholders largely perceive that Alberta's Labour department has done a good job of creating and implementing an OHS Code review and update process. This is evident from stakeholders expressing the current process is "not broken, but rather, needs some refinement." In terms of what needs refining, external stakeholders expressed two main concerns plus offered some general suggestions. The top concern expressed by external stakeholders is that their level of engagement in the OHS Code's review process is currently insufficient, which is by far their top concern.

A secondary concern that key stakeholders expressed is their desire for better predictability of when Code updates are announced, which is likely an artifact of stakeholders having participated in a 2014-15 public consultation, with Code updates not materializing after a reasonable period of time. Finally, stakeholders provided feedback on the guiding principles used to create OHS technical rules. While many of the original guiding principles were validated or modified based on stakeholder feedback, one principle stood out above all others: protection of the health and

safety of workers is of paramount importance above all other considerations, and this should be reflected in the guiding principles.

Focus Group

The study's internal focus group provided a number of suggestions to improve process efficiency, with its key suggestion being to do technical review, consultation and legal drafting work in smaller and more manageable pieces.

Recommendations

The study's recommendations are designed to meet the needs of the Government of Alberta and its stakeholders, while being true to the Labour ministry's mandate of ensuring workplaces are safe, fair, and healthy. The recommendations are developed based on the research conducted for this report.

While there are many finer details contained within the recommendations chapter of this report, the main recommended changes for a revised OHS Code review process are:

1. **Publish a three-year topic review schedule (updated annually) along with a high-level overview of the Code review process.** This will serve dual purposes to increase predictability for stakeholders as to when rules will be updated, and will help to keep government on track in reviewing topics and providing Code updates.
2. **Increase the Code's update frequency from every five years to annually:**
 - External stakeholders and internal staff expressed a variety of opinions on how often the Code should be updated, with the middle ground being every three years. However, three-years between updates represents a significant volume of changes which creates challenges for the government's internal decision-making process. An annual update frequency narrower in scope is a compromise designed to facilitate more regular updates.
 - As an alternate option, which is closer to what stakeholders have requested, government could consider aiming to update the Code every three years; however, this will make updates more susceptible to government approval delays due to the increased scope of individual updates.
 - Regardless of whether updates are completed annually or every three years, it is helpful to technically review, consult on, and legally draft updates in small pieces to keep the scope of work manageable for all involved. Reviewed topics can be queued up for enactment on the chosen update schedule. It is not necessary or desired to review the entire Code during a given update period: reviewing a small number of topics each year (approximately four) is recommended.
3. **Improve key stakeholder engagement.** The key shift is to give key stakeholder associations a new one-month comment period to flag any significant issues (such as compliance not being achievable) so foreseeable problems can be mitigated before formal public consultation occurs.
 - This stakeholder engagement approach has worked in another jurisdiction; however, it has not been tested in Alberta. Hence, it is recommended that this

feature of the process be implemented as a pilot test, with its success being evaluated following the first time it is used.

4. **Update the guiding principles used to create technical rules by introducing a two-tier hierarchy of guiding principles.** The first-tier principles are paramount where there should be no compromise – with the key principle being that rules must protect the health, safety, and wellbeing of workers. Second-tier principles are desirable such as rules that minimize administrative burden, but in practice, tier-two principles should not undermine tier-one principles.

The complete list of recommendations is included in Chapter 7 of this report.

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1.0 Introduction

This research is a capstone project for the University of Victoria's Master's of Public Administration degree program in which the researcher, who is also the author of this paper, is enrolled. The topic of the research is a formative evaluation of Alberta's Occupational Health and Safety (OHS) Code review process.

Alberta's OHS Code (Government of Alberta [GOA], 2009a) is subordinate legislation under Alberta's OHS Act (GOA, n.d.[a]) that contains the technical work site health and safety rules that employers and workers must follow to keep their workplaces healthy and safe.

As the rules are technical in nature, there is a need to update them regularly to keep pace with changes in technology, improvements in work practices, and emerging issues.

Prior to the Code being first enacted in 2003, OHS technical rules were housed in eleven separate regulations (GOA, 2003; & GOA, 2014a, slide 5). Maintaining these many regulations entailed a host of logistical challenges from coordinating high volumes of stakeholder communications when reviewing the regulations to competing for scarce government Cabinet time, which is required each time a regulation is updated (GOA, 2003; GOA, 2016; & GOA, n.d.[a], s. 40). As a result, the regulations were not updated as often as necessary to reflect technological changes and improvements in work practices (GOA, 2003). This created the impetus for creating the Code, which has two features that make it more efficient to update than the regulations it replaced: all technical rules are consolidated in a single document rather than eleven separate documents, and the Minister responsible for OHS can legally update the Code without the need for approval by Cabinet (GOA, 2002; GOA 2003; GOA, 2014a, slide 5; & GOA, n.d.[a], s. 40.1).

1.1 Defining the problem

Since the adoption of the OHS Code in 2003, the environment in which the government is operating has changed. When the Code was first introduced, the Minister responsible for OHS had the authority to update the Code autonomously. Since then, there has been a shift within Canadian jurisdictions away from Ministers being autonomous towards centralization of power with the government's executive (Canada's Public Policy Forum, 2015, pp. 4 & 7). In Alberta, Cabinet approval is now required at multiple steps of the Code review process, including determining where OHS Code updates fit within overall government priorities, approving public consultation, and adopting new rules (R. Nairne [Project Client], personal communication, March 14, 2016; & Alberta Labour, 2016a). Obtaining scarce Cabinet time and waiting for windows of opportunity to consult and update OHS rules has lengthened the process, thus negating one of the major efficiencies that was initially gained by adopting the Code.

An additional challenge to updating the Code materialized that was not initially foreseen. As new governments were elected, and through mid-term Cabinet shuffles, there became an emergence of differences in philosophies between the different ministers responsible for OHS.¹ Different ministers had considerably different ideas of how collaborative the Code review process should be. On one end of the spectrum, some ministers believed that industry and labour representatives

¹ Author's insights as employee of Government of Alberta's OHS policy and legislation unit responsible for reviewing the OHS Code (Alberta Labour, 2011, p. 7; Alberta Labour, 2016e; & GOA, n.d.[b]).

should be empowered to create the proposed technical rules themselves, and at the other end of the spectrum, other ministers believed that industry and labour should be consulted, but that government OHS staff should create the proposed technical rules.¹ In addition to changing minister-level philosophies, senior management-level philosophies within the Alberta Labour department shifted as well. These philosophies pertained to how much influence over setting the rules government OHS enforcement staff should have relative to government OHS policy staff, which ranged from enforcement staff having little influence to having an equal voice.¹

With changes in the government's decision-making process and changing philosophies at various leadership levels, the process used to update the Code changed each time the Code was updated; how the process changed is described in section 6.1 of this report. Since its original inception in 2003 (GOA, 2003; & GOA 2004), the Code was updated two times, in 2006 (GOA, 2006) and 2009 (GOA, 2009b), and at the time of this research a third update is pending approval (GOA, 2014b).

There is recognition within the Labour department (R. Nairne [Project Client], personal communication, March 14, 2016; & Alberta Labour, 2016a) and from key stakeholders (Table C-1 of Appendix C, row 12) that the Code review process would benefit from being formally evaluated. A formal evaluation can inform whether and how the process should be adjusted to meet government and stakeholder needs. In articulating the need for a formative evaluation, a Labour department executive manager responsible for overseeing administration of the OHS legislation (the Project Client), expressed the following concerns about the current process of updating the Code: (R. Nairne [Project Client], personal communication, March 14, 2016; & Alberta Labour, 2016a)

1. Ministers responsible for OHS have historically wanted to hear input directly from business owners and individual workers during the public consultation process, but business owners often delegate the task of providing input to their OHS staff; and individual workers who the OHS legislation is designed to protect are under-represented in providing feedback.
2. As the consequences of non-compliance with the rules have increased (e.g., larger penalties), some groups of business owners who perceive high compliance costs have been lobbying for more lenient rules than what currently exist. These groups have expressed a desire for greater involvement in the Code review process to help ensure the rules are reasonable from their perspective.
3. Recently, the New West Partnership Trade Agreement between British Columbia, Alberta, Saskatchewan and Manitoba has been expanded to include reviewing and updating OHS technical rules (Canada's New West Partnership, 2014, paras. 3-4; & New West Partnership, 2016). This creates a new challenge of how to incorporate interprovincial trade obligations when updating Alberta's OHS Code.
4. The timelines for updating the Code in its current review cycle have fallen behind schedule. A solution such as an enhanced project management approach is desired to handle the large volume of work involved in updating the Code.

To address these concerns, the Project Client is seeking a comprehensive solution – an enhanced process to update the OHS Code that meets the needs of the Government of Alberta and its stakeholders, which is more likely to stay on schedule than the current process.

If the Code review process is not improved, there are risks of: (i) more process delays that can result in Alberta workers waiting longer to benefit from having up-to-date rules to protect their health and safety, (ii) some stakeholder groups not being heard and their views not being considered when updated rules are developed, and (iii) Alberta being slower in meeting its interprovincial trade obligations.

1.2 Project client

The Project Client is the Executive Director of the OHS Policy and Program Development Branch of the Government of Alberta's Labour department. This Branch is responsible for administering Alberta's OHS legislation, which includes keeping the OHS Code current and relevant. In addition to administering the OHS legislation, the Branch offers other value-added functions such as publishing best practices that employers can follow to help ensure their work sites are healthy and safe. The Executive Director reports to the Assistant Deputy Minister of Strategy and Policy within the Labour department.

This project is of importance to the Project Client because the Project Client is accountable for administering the process of keeping the OHS Code up-to-date. The Project Client believes the Code review process needs improvements which this project can inform. The Project Client has the authority to implement recommendations from this study, and through the government's decision-making process, can recommend that the government adopt process changes.

1.3 Project objectives and research question

This Master's Project uses an evidence-based approach of identifying and recommending improvements to the Government of Alberta's process for reviewing and updating regulatory rules in the OHS Code. To support creation of an improved Code review process, areas explored in this research include governance, stakeholder engagement, guiding principles for OHS regulation, project management, and interprovincial harmonization. While there is scholarly and grey literature that touches on all of these subjects, there is no literature that fully addresses the problem at hand. This forms the impetus for this Master's Project.

The research question for this project is: What is a well-researched approach of creating a process to review and update the technical rules in Alberta's OHS Code in a manner that meets the needs of the Government of Alberta and its stakeholders?

To provide focus for answering the above research question, this project's research focuses on two key areas:

1. Identifying how to review and update Alberta's OHS Code as efficiently and effectively as possible, while taking into consideration how the update process can complement and support the provincial government's interprovincial trade obligations, emerging health and safety issues, and government's evolving strategic priorities.
2. Determining the type of influence different internal and external stakeholders should have in setting the OHS technical rules, and from this, recommending a process that ensures adequate collaboration, consultation and participation.

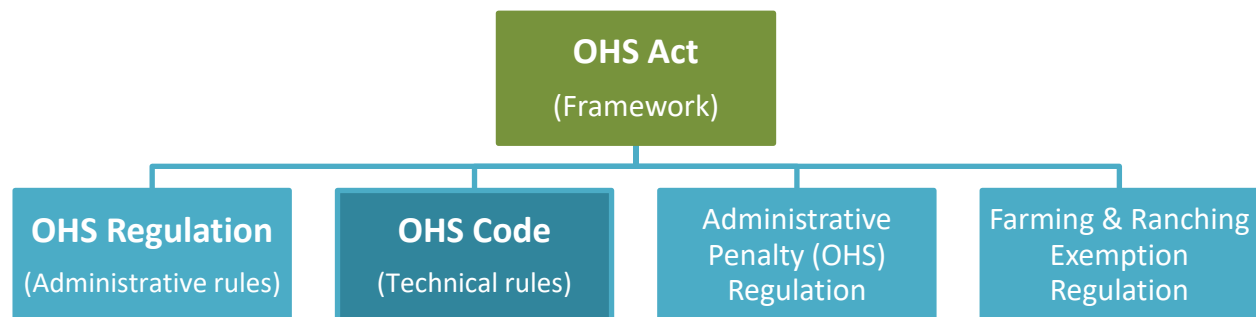
In conducting the research, consideration is also given as to the ideal frequency of how often the rules in the OHS Code should be updated, and from governance and project management perspectives, how best to ensure the update process’s timelines can be achieved.

1.4 Background

Alberta Labour’s mandate focuses on ensuring there is a labour environment that promotes safe, fair and healthy workplaces across the province (Alberta Labour, 2017a, p. 108). As part of its mandate, Alberta Labour administers the provinces OHS legislative framework (Province of Alberta, 2017, pp. 25-26).

Alberta’s OHS legislative framework consists of the OHS Act, Regulation, and Code, as well as the Administrative Penalty (OHS) Regulation and the Farming and Ranching Exemption Regulation (see Figure 1). High-level principles are set out in the Act, administrative requirements in the Regulation, and technical rules in the Code. An example of a high-level principle is an employer’s general duty to provide a safe and healthy workplace (GOA, n.d.[a], s. 2), an example of an administrative duty is for employers to provide workers with safety training (GOA, 2013, s. 15), and an example of a technical rule is specific procedures to safely operate cranes (GOA, 2009a, pp. 6-1 - 6-17). The large majority of rules are technical in nature and exist in the Code. To illustrate, the Act contains 55 sections (GOA, n.d.[a]), the regulation 39 sections (GOA, 2013), and the Code nearly 850 sections (GOA, 2009a).

FIGURE 1: ALBERTA’S OHS LEGISLATIVE FRAMEWORK



1.5 Organization of report

This report is organized as follows:

- **Methodology.** This chapter outlines the selected research methodology and provides reasons why the selected methodology was chosen. This section also clarifies the scope of the research by defining its limitations and delimitations.
- **Literature review.** This chapter provides a summary of scholarly and grey literature relating to the study topic. The conceptual framework for the study is included in the literature review section because theories from published literature inform the conceptual framework.

- **Findings.** Due to the considerable volume of findings in this study, two chapters have been created to present the findings. The first chapter contains findings from the interjurisdictional scan, and the second chapter contains findings from the key informant interviews and focus group discussion.
- **Discussion and analysis.** This chapter of the report presents the critical thinking that bridges the study's research question and conceptual framework with the findings, and the options and recommendations that follow. It is also a chapter of the report where the researcher's insights and experience are leveraged to inform the study.
- **Options to consider and recommendations.** From the Project Client's perspective, this chapter contains the key deliverables of the study. A recommended revised OHS Code review process including guiding principles is provided for the Client's consideration, along with a high-level work plan on how to move forward with implementing this report's recommendations.
- **Conclusion.** This chapter contains the researcher's reflective thoughts of the study.
- **Appendices.** The appendices contain much of the data used to inform the study. To protect the anonymity of study participants, efforts have been made to roll up the data in such a manner that anonymity of individual contributors is protected. Details of the study's recommended revised OHS Code review process are also included in the appendices.

2.0 Methodology and Methods

The methodological approach followed to answer this study's research question is outlined in this chapter of the report.

2.1 Methodology

A 'formative evaluation' is the type of evaluation used when there is a need to strengthen the object (e.g., program) being evaluated (Trochim, 2006a, "Types of Evaluation"). A formative evaluation can answer the following types of questions: (i) what is the scope of a problem, (ii) how well is a program currently being delivered, and (iii) how could a program's delivery be improved ("Evaluation Questions and Methods"). Of interest in this Master's Project, a subset (or object) of formative evaluation is 'process evaluation' ("Types of Evaluation"). According to Patton (1996), formative evaluation is normally used to evaluate a process with the results of the evaluation delivered to someone who can improve the process ("Introduction"). In the case of this Master's Project, a formative evaluation has been conducted to identify ways to strengthen Alberta's OHS Code review process, with the report being delivered to the Project Client who has the ability to implement process improvements.

A multiple methods research strategy, qualitative in nature, is used in this study. A multiple methods strategy offers the advantage of making the research more compelling than if a single method was to be used by minimizing threats to research validity (Stewart, 2009, p. 382; & Trochim, 2006b, "Minimizing Threats to Validity"). A qualitative approach is used because it provides the rich information that is necessary to answer the study's research question (Trochim, 2006c, "Are you willing to trade detail for generalizability?").

A secondary strategy used in this research is an interjurisdictional scan. A scan of published OHS regulatory review processes from around the world was conducted to provide a broad perspective of how various jurisdictions address updating their OHS regulations, which this study used for comparative analysis purposes.

The individual research methods that make up the methodology are described in section 2.2 below.

2.2 Methods

2.2.1 OVERVIEW

In support of the multiple methods research strategy, four methods were used to collect data for this project. However, before primary data collection occurred, a literature review took place that reviewed scholarly material, grey literature, and professional resources which focus on various aspects of OHS regulatory review. This literature review, which is presented in Chapter 3, provides some insights that help answer this study's research question, plus highlights gaps in existing scholarly research which, in-turn, informed this study's methods and analysis.

This project's data collection methods include:

- Document analysis – Reviewing the Project Client's pertinent internal documents, such as various iterations of past Code review processes.
- International interjurisdictional scan – Conducting a scan of published approaches other jurisdictions use to review and update OHS regulation.

- Key informant interviews:
 - Conducting key informant interviews with spokespersons from a cross-section of Alberta-based industry associations, labour organizations, and industry health and safety associations, and OHS practitioner associations to gain their perspectives.
 - Conducting key informant interviews with government officials responsible for OHS technical rule development from other Canadian jurisdictions.
- Focus group – Conducting a focus group session with Government of Alberta OHS officials involved in administering aspects of the Code review process.

Further details on these methods are provided in the sections below.

2.2.2 DOCUMENT ANALYSIS

According to Bowen (2009), document analysis is often combined with other research methods to support triangulation, and can take a variety of forms depending on the research context (pp. 28-29). In the case of this research, Project Client documents pertaining to the OHS Code review process were reviewed. Particular attention was paid to past and current iterations of OHS Code review processes including Code review workplans, government news releases, and evidence of how Code review work was completed in practice. The most significant document reviewed is the current OHS Code review process (Alberta Labour, 2011). Throughout this study, a gap analysis was performed against this document which included inputs from the literature review, interjurisdictional scan, key informant interviews and focus group discussion. In addition, the recommendations section of this study (with details articulated in Appendix D) shows how a revised recommended OHS Code review process compares against the current process.

2.2.3 INTERJURISDICTIONAL SCAN

An interjurisdictional scan, which is another form of document analysis, was conducted to get a sense of approaches different jurisdictions use to review and update their OHS technical rules. Since understanding the Canadian context is most relevant to Alberta, all provincial, territorial and federal jurisdictions within Canada are included in the scan. To provide an international perspective, the United States (both federal and state), United Kingdom, New Zealand, Sweden, Australia and Germany are included in the scan. In total, 21 jurisdictions are covered by the scan.

This study's interjurisdictional scan was conducted by reviewing the websites of government departments or agencies responsible for administering OHS regulation. For each of the jurisdictions scanned, features of OHS regulatory review processes were identified and compared. Alberta's current OHS Code review process was compared with the processes other jurisdictions use to review their OHS technical rules, which helped identify opportunities to improve Alberta's process.

There is one important caveat to note: the interjurisdictional scan considers published information only. Of the 21 jurisdictions scanned, only three, the United States, Sweden and Australia, publish their process of reviewing and updating OHS technical rules. For the remaining jurisdictions, features of processes have been deduced from available published information. Since full details of process were not found for most jurisdictions, some jurisdictions may have process features that are not captured in this scan. Aside from this caveat, the interjurisdictional scan is informative as it provides many insights of regulatory review approaches that have been adopted.

2.2.4 KEY INFORMANT INTERVIEWS

As a part of this study's data collection methodology, the researcher conducted telephone interviews with a cross-section of key external stakeholders affected by the OHS Code. These key informants were asked about their views on past Code review processes concerning what has worked well, what could improve, plus their views on the ideal approach moving forward.

The key informant interview method is selected because it provides rich content that can be used to inform process evaluation and potential process improvements. Semi-structured interviews were employed as this approach offers enough focus to keep on track, while being flexible enough to allow for exploratory conversation. Such an approach is supported by Aberbach and Rockman (2002) who explain that interviewing is a useful method of identifying what people think about a topic (p. 673), and semi-structured interviews with room for open-ended responses is particularly suitable for individuals who are anticipated to have well-formulated thoughts in their minds (p. 676).

Key informants who were invited to participate in this study were invited because they are believed to have knowledge of the OHS Code, may have contributed in some capacity to previous reviews or updates to the Code, may have experience updating OHS legislation in a Canadian context, or have a leadership role in their industry or profession, which is affected by the Code.

Three broad groups of external key informants were invited to participate in the study. These include:

1. Spokespersons representing industry and labour organizations – Employers and workers are generally considered to be the ultimate stakeholders impacted by the OHS Code as this is this group who must directly comply with the rules in the Code and who directly benefit from safer and healthier workplaces resulting from complying with the Code. As Alberta has more than 160,000 employers and nearly two million workers (Workers' Compensation Board-Alberta, 2017, p. 83), it is impractical for the researcher to connect with each employer and worker individually. Instead, spokespersons representing industry and labour organizations were invited to participate in the study as a proxy rather than surveying employers and workers directly as this facilitates a practical sample size.
2. OHS professionals – As OHS professionals have considerable expertise in relation to the OHS Code's subject matter, spokespersons from industry health and safety and OHS practitioner associations were invited to participate in the study.
3. Government officials from other Canadian jurisdictions – were invited to participate in the study to gain insights of their experience in reviewing their jurisdictions' OHS technical rules to allow for comparative analysis.

Potential participants for the study were selected by the researcher based on his understanding of the province's OHS system and sectors of Alberta's economy. After receiving University of Victoria's Human Research Ethics Board approval (University of Victoria, 2017), the researcher, through publicly available contact information, reached out to 25 potential study participants representing a cross-section of external stakeholders, including eight spokespersons from employer associations, five from labour groups, five from industry health and safety associations, three from OHS practitioner associations, and four government officials from other Canadian jurisdictions. Of this group, 10 external stakeholders participated in the study, representing a 40

percent response rate. External stakeholders who participated in the study include employer associations representing small, medium and large size businesses (n=4), a labour organization (n=1), an industry health and safety association (n=1), OHS practitioner associations (n=3), and government officials responsible for OHS rule development in other Canadian jurisdictions (n=1).

Exhibits A-1 and A-2 of Appendix A contain the interview questions that were asked to inform this research. Raw data collected from key external informants was coded via thematic analysis, and has been rolled-up to the extent possible to protect anonymity of individual contributors. Findings from the key informant interviews are presented in Chapter 5.

2.2.5 FOCUS GROUP

As a part of this study's data collection methodology, the researcher facilitated a focus group conversation with Government of Alberta staff involved in administering the OHS Code's review and update process. Focus groups generally involve a researcher facilitating a conversation with a group of between six and twelve participants, with the conversation designed to capture peoples views as they relate to a study's research question (Dudovskiy, n.d.). According to Morgan (1998), a focus group provides researchers with "a way of listening to people and learning from them" (p. 2). The dynamics of a focus group can help a researcher uncover information regarding shared experiences of group participants that might be missed if using conventional interview techniques (Liamputtong, 2015, p. 5). In this study, focus group participants were asked about their views on past OHS Code review processes concerning what has worked well, what could improve, plus their views on what they believe may be an ideal process moving forward.

Potential focus group participants were selected by the researcher based on his understanding of the Government of Alberta's mechanisms of reviewing and updating the OHS Code. After receiving University of Victoria's Human Research Ethics Board approval (University of Victoria, 2017), the researcher, through publicly available contact information, reached out to 12 potential study participants from various Government of Alberta functions, including six individuals from the Labour department's OHS policy unit, four from the Labour department's OHS delivery branch, one from the Justice department, and one from the Service Alberta department. Of this group, six individuals participated in the study, representing a 50 percent response rate. Government of Alberta staff who participated in the study include Labour department OHS policy staff (n=3), Labour department OHS delivery staff (n=2) and Service Alberta staff (n=1).

Exhibit A-3 of Appendix A contains the focus group questions that were asked. Raw data collected through the focus group was coded via thematic analysis, and has been rolled-up to the extent possible to protect anonymity of individual contributors. Findings from the focus group are presented in Chapter 5.

2.3 Data analysis

Thematic analysis was used to decipher the qualitative data collected through the study. According to Braun and Clarke (2006), thematic analysis is an ideal approach of teasing out themes from qualitative data (p. 79), where a theme represents meaning within data in relation to a study's research question (p. 82). The output of the thematic analysis is coded data (pp. 83-84).

In addition, a gap analysis was performed. According to the Encyclopedia of Management, "gap analysis" is the activity of identifying the differences between a current and desired state, the differences of which represent gaps (Brown & Plenert, 2006, p. 319). In this study, the gaps were

identified by comparing the existing OHS Code review process to what an ideal process could look like. This was informed through an analysis of the interjurisdictional scan as well as analysis of the themes emerging from the thematic analysis of what was heard from the study's key informants and focus group, as well as through analysis of the literature review. The recommendations in this report are designed to address identified gaps.

2.4 Project limitations and delimitations

2.4.1 LIMITATIONS

To complete this study, the researcher did not have access to the Project Client's key stakeholder lists, and therefore relied on publicly available information to reach out to potential study participants. As participation in the study is voluntary, not all individuals who were invited to participate opted to participate.

2.4.2 DELIMITATIONS

The study's scope was controlled as follows:

- **Reasonable sample size.** Efforts were made to interview a cross-section of individuals from each of the larger sectors of the Alberta economy of which the OHS Code applies. For reasons of having a practical sample size to facilitate the labour-intensive nature of the study's research methodology with available resources, it was not possible to have a fully representative sample of the full population of stakeholders. To some degree, this was made up for through the study's methodology that captured rich input from those who did participate in the study. While individual employers and workers are recognized as the most affected stakeholders, to control the study's sample size, industry and labour organizations were interviewed as a proxy rather than interviewing employers and workers individually.
- **Survey methods not chosen.** Surveying large numbers of stakeholders was not chosen as a research method because it would not have provided the rich information needed to answer the study's research question.
- **Scope of literature review.** The literature review is focused on items that most closely relate to OHS regulatory review, rather than on regulatory review in general.
- **Stakeholder engagement strategy.** Conceivably, a stakeholder engagement strategy can be created for an entire government ministry as there is significant overlap in stakeholders for various functional areas of a ministry. This study acknowledges this, but does not delve into creating a ministry-wide strategy. The stakeholder engagement component is limited to process-related items applicable to reviewing the OHS Code.
- **Governance.** The study's governance review is limited to the OHS Code review process itself, and excludes higher-level governance principles such as statutory authority of how the Code is legally adopted.
- **Interjurisdictional scan.** For the interjurisdictional scan, only published information is captured through this study. As most jurisdictions do not publish the full details of their regulatory review processes, it is likely that some information was not captured. While all jurisdictions in Canada were scanned, the international component of the scan was not exhaustive as the project resources were insufficient to scan every jurisdiction in the world.

- **Environmental scanning.** Environmental scanning considerations for this project are limited to how to identify and select OHS topics for technical review.
- **Interprovincial harmonization.** This study is not aiming to solve the national interprovincial harmonization issue facing Canadian jurisdictions to support interprovincial trade. Rather, the focus is on what Alberta can currently do to honour its current interprovincial trade obligations from an OHS Code review process perspective.
- **Nature of evaluation: formative.** This study, being a formative evaluation, is a process evaluation only. Items that fall outside the direct scope of the OHS regulatory review process, are out of scope for this study. Similarly, the effectiveness of the OHS Code as a regulatory instrument is out-of-scope, once again, because this project is a formative evaluation, not a summative evaluation.

3.0 Literature Review

Significant scholarly and grey literature relevant to processes used to review and update OHS technical rules is presented in this chapter. Issues explored include governance, stakeholder engagement, guiding principles for OHS regulation, project management, and interprovincial harmonization. This chapter excludes the study's interjurisdictional scan of published OHS regulatory review processes as this information is presented separately in Chapter 4 of this report.

The Summon 2.0™ search engine was used to search for topics from all University of Victoria library collections including scholarly journals and more. In addition, Google Scholar was used to search for literature that Summon 2.0™ may not have captured. Key search terms included “occupational health and safety [OHS] regulatory review,” “occupational safety and health [OSH] regulatory review,” “workplace health and safety [WHS] regulatory review,” “workplace safety and health [WSH] regulatory review,” “OHS regulation review,” “OHS governance,” “OHS stakeholder engagement,” “OHS regulation guiding principles,” “OHS harmonization,” “government project management,” “Canadian regulatory review,” and combinations of these terms.

The literature review found little in terms of the general process of reviewing OHS regulation, however, did provide significant insights in terms of guiding principles that can be used to create OHS rules, as well as insights on OHS regulatory governance, OHS stakeholder engagement, OHS harmonization, and project management within government.

3.1 Governance and stakeholder engagement

As defined by Cheema (2004), governance is “a system of values, policies, and institutions by which a society manages its economic, social, and political affairs through interactions within and among the state, civil society and private sector” (p. 3). The essence of governance is the interactions between the state, civil society and private sector – the three actors (p. 3); and good governance is how these interactions are organized to achieve the greatest benefits for citizens (p. 3). The principles of good governance are “participation, pluralism, subsidiarity, transparency, accountability, equity, access, partnership, and efficiency” (p. 3); and good governance can be promoted by bringing decision-making closer to the citizens and by promoting partnerships between the actors (p. 8).

Rasmussen and Toshkov (2013) articulate that consultation on public policy is a core value in modern democratic society (p. 367). According to Crawford and Helm (2009), there is a trend for a wider range of people to be included in the government decision making processes (p. 75), which is being coined as “public value management,” an evolution of the ‘new public management’ approach to public administration (p. 76).

With respect to OHS regulatory development, tri-partite decision making makes good sense in eras when most workers are employed by large organizations where there is considerable union representation; and in other eras, a different model may make better sense (Bluff and Gunningham, 2003, p. 29). In these other eras, consulting with industry sub-groups, trade associations, advocacy groups, and OHS professionals may be more appropriate (p. 29).

WorkSafe Victoria is a government agency of the state of Victoria, Australia, which is responsible for administering the state's OHS prevention system as well as its workers' compensation system

(WorkSafe Victoria, n.d.). WorkSafe Victoria has formalized its approach to engaging stakeholders through publishing its stakeholder engagement framework, which provides a theoretical foundation about how they approach all aspects of working with their stakeholders including consulting on OHS regulations (WorkSafe Victoria, 2016, pp. 2 & 7). WorkSafe Victoria's stakeholder engagement framework is based on principles established by the International Association for Public Participation (p. 8), which has a Canadian division including an Alberta chapter (International Association for Public Participation Canada [IAPPC], 2015a).

The International Association for Public Participation focuses on engagement through its “core values for the practice of public participation,” which revolve around the belief that those impacted by a decision should be involved in making the decision and should be provided with the information they need to participate in a meaningful way (IAPPC, 2015b). Specifically, there are seven core values are: (IAPPC, 2015b)

1. “Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.”
2. “Public participation includes the promise that the public's contribution will influence the decision.”
3. “Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.”
4. “Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.”
5. “Public participation seeks input from participants in designing how they participate.”
6. “Public participation provides participants with the information they need to participate in a meaningful way.”
7. “Public participation communicates to participants how their input affected the decision.”

3.2 Guiding principles for OHS regulation

The Australian National University has as research centre dedicated to research excellence in OHS regulation (Australian National University [ANU], 2017a). This research centre, The National Research Centre for Occupational Health and Safety Regulation, produces research that informs government OHS legislation and enforcement programs across Australia (ANU, 2017a). The Centre has a series of 143 publications that span the years of 1999 to 2015 (ANU, 2017b). A scan of these publications identified two working papers relevant to the OHS rule setting process:

- *Working Paper 9 – Principle, Process, Performance or What? New Approaches to OHS Standards Setting* is perhaps the most relevant publication identified in the literature review relating to this Master's Project. It is the only publication that delves deeply into details specific to OHS regulation setting, which is what this Master's Project is evaluating. Rather than focusing on the entire regulation setting process, the publication focuses on the guiding principles that OHS rules should reflect. According to Bluff and Gunningham (2003), the publication's authors, “in designing occupational health and safety (OHS) standards, it is vitally important to determine what kinds of measures are most likely to produce best policy outcomes, influence organisational behaviour and achieve genuine improvements in OHS performance, while being enforceable and able to be implemented

at an acceptable cost” (p. 2). To achieve this objective, Bluff and Gunningham (2003) outline the following principles:

- **Preventing injuries and illness** involves: (i) involving risk-creators in risk-reduction efforts, (ii) ensuring all workers are protected by OHS law, and (iii) addressing all types of OHS risks within the law (p. 3).
- **There are four main categories of OHS standards** that protect workers; these are: (i) general duties, (ii) systematic [process/systems]-based, (iii) specification-based, and (iv) performance-based (p. 2). All categories of standards have a role to play in protecting the health and safety of workers, and it is important to optimize the balance (p. 30), as mixing the categories provides the benefits of all categories and mitigates the disadvantages of individual categories if used alone (p. 27). The general duties and systematic-based standards best belong in statutes, and the specification and performance-based rules best belong in regulations (p. 30). In practice, actual standards can be anywhere on a spectrum between the noted categories (p. 6). These four main categories of standards are described in greater detail below:
 - **General duties** are principle-based standards with all-encompassing character that do not specify clear performance outcomes (pp. 8-9). The benefit of general duties is they enable employers to easily understand their basic obligations, which causes employers to self-regulate in areas where regulatory rules are less specific (p. 9). General duties tend to stand the test of time and do not need to be updated often (p. 9). A disadvantage of general duties is they can create uncertainty for duty holders as well as OHS inspectors concerning specifically what is expected to achieve compliance (p. 9). This limitation can be addressed through supplementing general duties with more detailed regulations and non-regulatory guidance documents (p. 9). General duties can be useful to influence attitudes to identify solutions in situations where no practical guidance is available from any source to address a given hazard (p. 17).
 - **Systematic standards** can be either process or systems-based. These standards stem from principles of OHS management systems in which a sequence of steps is followed to achieve healthy and safe outcomes – for example, identifying hazards, followed by assessing risks, followed by controlling risks; or reporting then investigating incidents (p. 13). The benefit of systemic standards is they encourage organizations to manage OHS in a proactive and holistic manner (p. 13). A disadvantage of systemic standards is they can create an over-reliance on paperwork rather than managing true risks (p. 13). Systematic standards are ideal when performance objectives cannot easily be defined or where different employers will benefit from different solutions where ‘one-size does not fit all’ (p. 27). Generally, small businesses have the most challenge in implementing systematic standards because there can be upfront costs that small businesses might not have the resources to cover, small businesses may not have needed OHS know-how, and the benefits are long-term and sometimes intangible which small business may not see as being a priority

(pp. 21-22). Hence, small businesses need systematic standards to be simple if they are to be implemented in any meaningful manner (p. 22).

- **Specification standards** tell duty holders exactly what they need to do to comply with the law with little need for interpretation (p. 6). These standards have the benefit of being easy to follow for small and medium-size employers who may not be technologically sophisticated or have OHS experts on staff, plus these standards have the advantage of making it easy for inspectors to identify whether there is compliance with the standards (p. 6). Highly-competitive businesses such as construction can benefit from specification standards as they create a level playing field for all organizations (p. 6). Disadvantages of specification standards are they can result in a mass of detailed law that cannot possibly address every aspect of managing health and safety, they are challenging to keep up-to-date, they are inflexible and do not allow for innovation, and may result in employers not using the cost-effective solutions to protect workers which may reach the point where costs exceed benefits (p. 8). Further, these standards do not encourage continuous improvement or the following of best practices (p. 8). Specification standards are ideal when there are significant risks where solutions to known hazards are well established (pp. 8 & 17-18), when it is known that a single solution will be effective (including cost-effective) for large numbers of employers (p. 27).
- **Performance-based standards** specify OHS outcomes that must be achieved, but they do not specify how to achieve the outcomes (p. 11). A benefit of performance standards is they allow organizations to be innovative and identify cost-effective solutions to protect workers (p. 11). Performance standards represent a good compromise between general duties that are vague and specification standards that are inflexible (p. 11). A disadvantage of performance standards is they do not promote continuous improvement or a holistic approach to managing health and safety (p. 11). Performance-based standards are best when performance objectives can be easily defined and measured (p. 27). Because performance-based standards do not provide guidance on how to achieve compliance, they can benefit from being supplemented with non-regulatory guidance documents that outline acceptable approaches of how to address the given health and safety risks (p. 17). Performance-based standards have the disadvantage of being inconsistently interpreted by inspectors, which creates uncertainty for business (p. 23). A further disadvantage is that in highly competitive industries such as construction, there is risk that performance-based standards will lead to a “race to the bottom” where low-cost options are favoured over protecting workers (p. 25).
- **Third-party technical standards** which can supplement the four main categories of standards by being referenced in regulations, are well suited for providing industry or sector-specific guidance (p. 30).
- **Non-regulatory guidance documents** can fill in any detail that is absent from general duties and performance standards while providing flexibility in how compliance is achieved (p. 26). A benefit of non-regulatory guidance documents

is they can be updated quicker than regulations, hence they are easier to keep current (pp. 26-27).

- **Predicted future challenges** in OHS regulatory guiding principles include going beyond addressing market failures and cost-benefit analysis, and determining what values should be emphasized within regulations (p. 29). Possible criteria to consider include fairness, effectiveness, efficiency, the precautionary principle, and goals related to national harmonization of OHS rules (pp. 29-30).
- In *Working Paper 35 – The Missing Link: Regulating Occupational Health and Safety Support*, Bluff (2005) explains that: small and medium size businesses have difficulty working with vague requirements (p. 2), particularly because they generally do not have sufficient resources to hire qualified OHS staff to interpret the standards (p. 28). Hence, specification-based standards which spell out exactly what is expected are more suitable for small businesses than performance-based standards which are vaguer (p. 3). To bridge this gap, small firms may need free OHS services to help them comply with performance-based standards (p. 28). Large organizations, on the other hand, can handle vague requirements with ease as they tend to have OHS professionals on staff (p. 2). Further, firms with OHS professionals on staff tend to have better safety performance (pp. 3-4) which meets the goals of the regulations.

Bruce Doern, professor with Carleton University in Ottawa, Canada, is known for writing about regulatory update processes in Canada. He has an extensive publication list that spans fifty years from the mid-1960s until recent (Doern, 2015). Below are his more recent findings that have relevance to this Master's Project:

- The Canadian federal government has had considerable challenges in creating appropriate regulations in general. As a result, the federal government created a set of guiding principles applicable to all regulations; these are: (Doern, 2007, pp. 37-38)
 - Justification that a regulation is needed.
 - Proof that the benefits of a regulation outweigh its costs.
 - Minimizing regulatory burden, paying attention to the needs of small business, and accepting alternate approaches from those regulated to meet the spirit of a regulation.
 - Adhering to intergovernmental agreements.
 - Public consultation.
 - Making available regulatory enforcement resources.
 - Aligning with government priorities as set by Cabinet.
- Having guidance on how to make regulatory decisions is helpful (Doern, 2007, p. 157).
- The world is currently in the “innovation age” where it is necessary to be able to update regulations quickly, efficiently and strategically (Doern, 2007, p. 158).

An independent review of OHS legislation was conducted in the United Kingdom by professor Löfstedt, with his report presented to parliament. The review focused on identifying ways to minimize regulatory burden on businesses while maintaining the same level of health and safety protections for workers that had already been achieved (Löfstedt, 2011, p. 1). Professor Löfstedt concluded that: (pp. 1-5)

- Regulations have a legitimate role to play in preventing injuries and ill health in the workplace, and that protecting workers makes good business sense.
- It further makes sense for health and safety rules to place responsibilities on those who create the risks as these individuals are best positioned to controls the risks.
- Businesses should be in control of health and safety at the workplace without interference in the form of mandated unhelpful paperwork exercises.
- Regulations that place costs on business should be removed if there are no health and safety benefits.
- Inconsistent enforcement and poorly structured or confusing regulation increases costs to businesses.
- Self-employed individuals should be exempt from OHS laws if they pose no risk to others.
- Implementing health and safety measures “so far as is reasonably practicable” is a valid OHS concept.
- Regulations should address real risks, not trivial risks.
- Regulations should be supplemented by practical guidance documents where this aids in providing clarity. The guidance documents should not be too technical or complex.
- Regulations should be evidence- and risk-based.
- The volume of rules should be kept to a minimum by consolidating similar rules.
- Rules should be easy to understand.
- Rules should be implemented consistently across the geographical area of the jurisdiction – for example, consistent enforcement.
- Enforcement of rules should be targeted towards workplaces that have the highest risks of injury or ill health.

3.3 Project management

As explained by Wirick (2009), progress in the public sector is made through projects, which are temporary endeavors to implement lasting changes (p. 17). Public sector projects are often challenging with budget overruns and missed timelines being common, and sometimes projects don't get finished at all (p. 17). Projects fail for reasons such as not properly identifying client needs, creating overly optimistic schedules, having insufficient resources, not spending enough time planning, having competing demands on staff time, lack of following good project management principles, lack of an experienced project manager, lack of sufficient stakeholder engagement, failure to heed lessons learned from earlier projects, or creating a project scope that is too broad (p. 18). While these reasons could apply to both public or private sectors, the following reasons projects fail are generally more specific to the public sector; these are: loss of project support due to a change in government after an election, and getting caught up in administrative rules and required processes of the bureaucracy (p. 19). Successfully managing projects in the public sector not only requires good project management skills, it also requires good creativity to deal with the unique constraints found in the public sector (p. 19). Fortunately, project management is a skill that can be learned (p. 19). While not each individual has the aptitude to be a great project manager, with training, everyone can become a better project manager (p. 20). In addition, a team can benefit from having on the team a Project Management Professional (PMP)

certified by the Project Management Institute, which is a ‘gold standard’ professional credential (p. 20).

While there are many benefits to project management, such as “improving the ability to achieve outcomes while providing traceability, transparency and accountability” (Crawford & Helm, 2009, p. 73), there are downsides as well. Project management can promote short-term thinking that is focused on accomplishing tasks rather than meeting an organization’s mandate, can increase psychological stress on staff by requiring accountability and performance that staff may not be able to deliver, constant project deadlines can wear out staff, and poorly applied project management principles can lead to inefficient processes that provide limited value for the resource input (Wirick, 2009, p. 23). Further, too much project management discipline will lead to the benefits of project management being nullified (p. 23). Hence, a little project management helps, but extensive project management is counter-productive (p. 23).

To help find the right balance, best practices for project management in the public sector that lead to project success include: customized project management methods for each project that minimizes project management discipline and processes based on risk (lower risk projects require less project management oversight and higher risk projects require more), ongoing dialogue with stakeholders, management support, and capable project managers with both hard and soft skills (Wirick, 2009, p. 24).

3.4 Interjurisdictional harmonization

Interjurisdictional harmonization of OHS regulations is promoted as offering benefits of improved economic productivity, improved health and safety outcomes, and increased worker mobility between jurisdictions (Atkins, Morris, Jones & Bell, 2017, “Introduction”). Despite offering these benefits, as Atkins, Morris, Jones and Bell (2017, “Current status”) and Safe Work Australia (SafeWork Australia, 2017a, “Early attempts to achieve harmonization”) have pointed out, the path to harmonization is not necessarily smooth.

Considerable progress has been made with respect to harmonizing the classification and labelling of hazardous chemicals used in the workplace (Canadian Centre for Occupational Health and Safety, 2017). So far, 72 countries have committed to implementing a globally harmonized system (United Nations Economic Commission for Europe, n.d.). However, with respect to broad harmonization of OHS rules, Australia stands out as having made the most progress.

In Australia, OHS law making is a Commonwealth (federal), state and territorial responsibility (Bluff & Gunningham, 2003, p. 29). However, even where model legislation is available as a starting point, with independent rule-making, there is considerable opportunity for standards to vary across a country (p. 29). The strategies that can improve national consistency include: (i) model legislation that can be modified from region-to-region as needed, or (ii) national legislation adopted by all with no deviation by referring provincial control to a national authority (p. 29). Generally, individual provinces/states prefer model legislation due to the political reality that regional issues consistently predominate OHS standards setting (p. 29).

Australia has been working towards national OHS harmonization for more than a decade. Australia has national, state, and territorial governments, each having regional sovereignty over OHS (Johnstone, 2008, p. 3). Australia found that inconsistent OHS legislation and enforcement across the country created inconsistent legal protections to workers facing similar hazards in

different jurisdictions, made compliance with OHS rules complex and costly for organizations that operated in more than one jurisdiction, and created incentives for companies to move to jurisdictions with less stringent standards (p. 3). In its initial implementation, Australia's harmonization process was slow and cumbersome (pp. 6-7). Australia then revamped its approach to harmonization through implementing the following principles (pp. 10-11):

- Creating model OHS legislation combined with similar enforcement strategies across the country.
- Using an inclusive approach where the needs of all jurisdictions are considered.
- Not reducing any jurisdiction's standards for legitimate safety topics.

To facilitate harmonization, Safe Work Australia was established as a national statutory body to develop national OHS and workers' compensation policy (Safe Work Australia, 2017b). While not a regulator, Safe Work Australia is the custodian of Australia's model OHS legislation which individual states may adopt (Safe Work Australia, 2017c). Within Australia, seven of its nine states have adopted the model legislation (Safe Work Australia, 2017d).

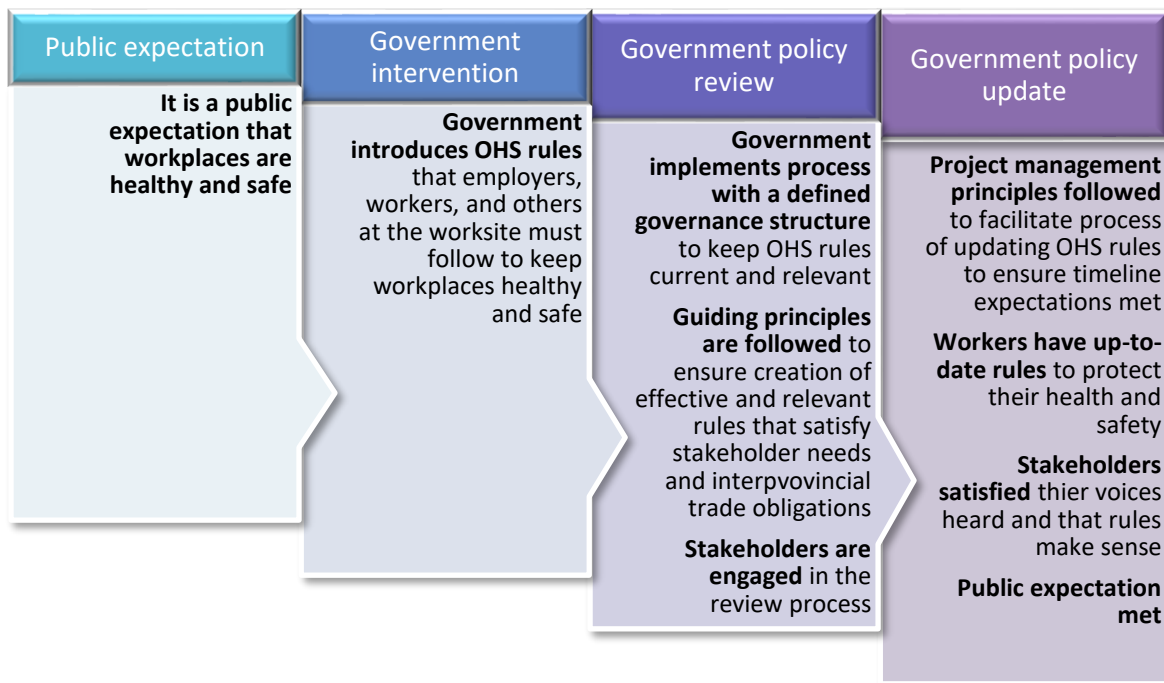
In Canada, provincial governments have entered into interprovincial trade agreements; however, there has been limited political will to do the immense amount of work that would be required to harmonize regulations (Doern, 2007, pp. 8-9).

3.5 Literature review and conceptual framework

Alberta's public has many expectations of government. One of these is the expectation for legislation that outlines minimum health and safety rules to protect workers. Such a set of rules is in the public interest because, presumably, workers will be injured less often if health and safety rules are followed (Smitha, Kirk, Oestenstad, Brown, & Lee, 2001, pp. 1009-1010), thus enhancing quality of life of families and the public at large. Arguably, these rules will be more effective if they are kept current and relevant. To illustrate this point, from 1991 to 2010, the injury rate in Alberta workplaces dropped from 4.13 to 1.41 lost-time claim injuries per 100 person-years worked, a nearly 70 per cent reduction in the injury rate (Data Development & Evaluation, n.d.). This significant progress-over-time can likely be attributed, at least in part, to improvements in best practices and technological advances, and, in part, to OHS regulatory rules keeping pace with these advancements.

Updating OHS rules on a province-wide scale is a complex exercise. Alberta's workplaces have substantial diversity ranging from restaurants to hospitals to oil refineries, to name a few, and the rules need to be applicable to address work activities in myriad of operations. Since government officials may not fully understand all of the complexities of every worksite, employers, workers and other stakeholders are well positioned and instrumental to assisting government in reviewing and updating the province's OHS rules. Aligned with this, stakeholders likely want to be heard to ensure that the rules which are ultimately adopted are reasonable from their perspective. To be effective, the regulatory review and update process can benefit through being supported by an appropriate governance structure, guiding principles, and project management principles. A conceptual framework for updating OHS rules in Alberta is presented in Figure 2.

FIGURE 2: CONCEPTUAL FRAMEWORK OF REVIEWING AND UPDATING ALBERTA'S OHS RULES



3.6 Summary

The literature review identified that governments should consult stakeholders when developing OHS regulation and that the International Association for Public Participation provides ‘gold standard’ principles of how best to engage with stakeholders.

The literature review found little with respect to the overall process of updating OHS regulation; however, did identify guiding principles that should be used in setting OHS rules, which is a subset of the broader regulatory review process. In addition, the literature described that non-regulatory guidance documents form a strong synergy when combined with regulation. The literature review further explained that small businesses have special OHS needs due to having fewer resources when compared with larger businesses, and that these special needs should be taken into consideration while creating regulation.

The literature review identified that formal project management principles should be used to manage government projects that can include updating regulation. There was a caution in the literature that project management is stressful for staff and hard project management skills should be balanced with soft skills, otherwise project management will offer little-to-no benefit. The literature suggested that the minimum amount of project management techniques should be used to support the psychological health of staff.

The literature review found that interjurisdictional harmonization of OHS rules and their enforcement is a recent trend. The literature acknowledged that harmonization is challenging and that Australia is a global leader in the area of OHS interjurisdictional harmonization.

4.0 Findings: Interjurisdictional Scan

This chapter outlines the findings of this study's interjurisdictional scan of processes jurisdictions from across Canada, the United States, Europe, Australia, and New Zealand follow to review and update their OHS technical rules.

4.1 Overview

In each of the 21 jurisdictions scanned (see section 2.2.3), there is an overarching OHS act that contains the foundational principles of the jurisdiction's OHS system, plus a set of technical OHS rules housed in subordinate legislation. In Alberta, the technical rules are housed in an OHS Code and in all other jurisdictions they are housed in regulations.

The interjurisdictional scan identified that all jurisdictions update their OHS technical rules from time-to-time and the update processes share four common phases. These are (I) technical review of existing rules, (II) public consultation on proposed changes, (III) regulatory approval, and (IV) implementing regulatory changes. Within these phases, methods used across jurisdictions vary considerably.

Individual features of OHS technical rule update processes used within the jurisdictions examined are rolled-up in Table B-1 of Appendix B. For convenience for the reader, features that match Alberta's existing approach are bolded in the table, and supplemental footnotes show which of the features are part of Alberta's formal process and which are used informally. The detailed findings from each jurisdiction is presented in Table B-2 of Appendix B. A summary and comparative analysis of jurisdictional findings is presented below.

4.2 General framework of review processes²

In nearly half (nine of 21) of the jurisdictions reviewed, the jurisdiction's labour department is responsible for administering the process of reviewing and updating OHS technical rules, which is the case in Alberta. In remaining jurisdictions, a government agency is responsible.

It is rare for a jurisdiction to legislate how often OHS technical rules are updated. No Canadian jurisdiction does this (although Manitoba's legislation stipulates its act and administration must be reviewed every five years without providing clarity on whether this applies to technical rules), and from the international scan, it was found that only Victoria, Australia legislates the frequency of its update cycle, which it accomplishes via a sunset clause. In practice, there is significant variation in how often jurisdictions review their OHS technical rules and while there is no norm, frequencies generally range between one and 10 years. Of the jurisdictions reviewed, California reviews its rules most frequently via perpetual overlapping reviews, where review of a topic can begin at any time. Other jurisdictions review their rules annually, multi-annually, once per decade, or as needed. Generally, the more frequent a review cycle, the fewer topics that are reviewed at one time. This is likely a reflection of the significant amount of resources that go into a review as there may be a practical limit whereby frequent reviews can only be effective if the scope of what is reviewed is narrow. British Columbia, for example, reviews an average of six OHS topics per year. While the interjurisdictional scan found that reviews are most often triggered by stakeholder suggestions or some period of elapsed time since a previous review, there can be other triggers as

² Table B-2 of Appendix B provides citations showing where this section's summarized information was obtained; the comparative analysis is entirely the work of the author of this report.

well. Ontario, for example, formalized that the recommendations from a coroner's inquest (known as a public fatality inquiry in Alberta) may trigger a review. Alberta reviews its rules about every five years, which is generally triggered by a defined period of elapsed time, and reviews multiple topics at a time.

While most jurisdictions do not formally publish their review processes, more information relating to the processes tends to be available during times of active public consultation, as this is a practical necessity to enable consultation to proceed. Along with most jurisdictions, this is the current approach in Alberta.

4.3 Phase I – Technical review²

Each jurisdiction has a technical working group that reviews its OHS technical rules. Some jurisdictions achieve this through statutory committees that advise the minister of labour concerning improvements to health and safety regulations. Committee makeup in other jurisdictions, including Alberta, is determined by the responsible ministry or agency, rather than by statute. Review committees in some jurisdictions include government, employer and labour representation, whereas in other jurisdictions only government officials conduct the technical review. Currently in Alberta, technical review is conducted by government officials.

OHS technical rules can be specification-based (prescriptive), performance-based or a combination of the two. The interjurisdictional scan found that it is an international trend to move away from the historical approach of highly detailed prescriptive requirements to a modern approach of more flexible performance-based rules. A balanced approach of prescriptive and performance-based rules is common in Canada, and is the case in Alberta. A notable exception to this is Quebec, which uses predominantly prescriptive rules with no indication of changing being noted. Since performance-based rules are less defined, some jurisdictions create guidance documents to supplement their performance-based rules that explain hazards and provide examples of how to comply with the rules.

Beyond the philosophical principles of prescriptive versus performance-based rules, there are other criteria that jurisdictions consider when setting their OHS technical rules. Minimizing burden on small business and keeping rules simple are international trends in rule making criteria. Sweden takes things a step further than other jurisdictions by stipulating that rules are a last resort only to be used only when other policy options are not effective. Sweden also focuses on ensuring their OHS rules are simple and easy to understand and goes beyond other jurisdictions by using a language expert to edit final regulatory wording to maximize reading comprehension. Of the jurisdictions reviewed, Australia is unique in that it implemented a program to nationally harmonize OHS technical rules, albeit, individual states can opt-out.

4.4 Phase II – Public consultation²

Conducting public consultation on proposed updates to OHS technical rules is done in every jurisdiction examined. During active consultation periods, all jurisdictions reach out to their stakeholders and publish proposed regulations for the public to comment on. Beyond publishing proposed regulations, there is little consistency in the types of information jurisdictions publish to inform their consultations.

Consultation periods range from six weeks to two years with three months being typical. Three months may be an ideal period as this provides umbrella organizations such as industry associations with sufficient time to consult their membership and roll up information before providing their input to government. Of the jurisdictions reviewed, British Columbia, Prince Edward Island, and California are unique in that they openly welcome feedback on their OHS legislation at all times.

Various formats are used to collect stakeholder feedback. While many jurisdictions offer a web survey of some sort, in addition to this, the United Kingdom and New Zealand offer downloadable questionnaires that can be completed and emailed back to the regulator. These standardized feedback tools offer the benefit of consistency in information collected so it can be analyzed easier.

Victoria, Australia has gone so far as to formalize and publish their stakeholder engagement framework, which provides a theoretical foundation about how they approach consultation. While none of the jurisdictions reviewed have a completely transparent process, British Columbia and the United Kingdom stand out as they publish past consultation materials including verbatim stakeholder feedback. While some jurisdictions offer an OHS eNews subscription service to inform stakeholders of consultations, updated regulations and other news, the United Kingdom is notable in that it offers a special consultation alert email subscription service.

In addition to consulting on regulatory changes, the Canadian federal government is unique in that it also consults on the content of non-regulatory explanation guides that supplement the regulations.

4.5 Phase III – Regulatory approval²

Regulatory approval processes are dictated by statute and various approaches are used to approve OHS regulatory changes. In some jurisdictions, government agencies can approve updated rules; in others, there is ministerial approval; and others have a blend of government agency plus ministerial approval. Alberta presently has a blended approach (although this is currently under review (GOA, n.d.[c])).

4.6 Phase IV – Implementing regulatory changes²

Publishing updated regulations on government websites and issuing news releases are the typical tools jurisdictions use to implement regulatory changes. Various jurisdictions also publish frequently asked questions documents to supplement their news releases. Some jurisdictions also publish non-regulatory guideline documents to supplement performance-based rules. Of the jurisdictions reviewed, Northwest Territories and Nunavut are unique in that they hold public information sessions after new regulations come into force, and the United States federal government is unique in that it publishes a “what we heard” summary of consultation results.

4.7 Summary

The interjurisdictional scan identified that all jurisdictions follow four common phases in reviewing and update their OHS technical rules. These are: technical review, public consultation, regulatory approval, and implementation. Within these four phases, there is considerable variability in methods used across jurisdictions.

5.0 Findings: Key Informant Interviews and Focus Group

This chapter outlines the findings from key informants and focus group participants who were asked about their views on past OHS Code review processes plus their views on the ideal approach moving forward.

5.1 Overview

A considerable amount of qualitative data was collected through the key informant interviews and focus group discussions. Rolled-up data is presented in Table C-1 of Appendix C, and a summary of key informant interview and focus group findings is presented below.

5.2 General perceptions of stakeholders (Reference: Table C-1, row 1)

Stakeholders were asked about their general perceptions of what is currently working well and what could improve with Alberta's OHS Code review and update process. Stakeholders expressed that Alberta's current process is not broken. Rather, it is quite good and just needs some minor modification. When compared with other jurisdictions, stakeholders expressed Alberta is doing quite well. When asked what could improve with the process, stakeholders had ample suggestions. The strongest theme of suggestions expressed by stakeholders is that government needs to do a better job of reaching out and engaging with its key stakeholders. While not expressed as strongly as the need for improved engagement, there were numerous suggestions to increase the predictability of Code updates.

5.3 Code update scope and frequency

5.3.1 CODE UPDATE SCOPE (Reference: Table C-1, row 3).

Stakeholders were asked about their views on the ideal scope of OHS Code review and how often the Code should be updated. While there is a mixture of opinions, stakeholders generally prefer that single topics be reviewed at a time rather than reviewing topics in large batches. Building on this concept, there were suggestions to queue up individually reviewed topics, followed with legal updates made in batches. To provide a comparative perspective, British Columbia has considerable experience reviewing single topics at a time, which for the most part has worked well, however, has the drawback of being unable to easily address systemic items that span across entire regulations.

5.3.2 CODE UPDATE FREQUENCY (Reference: Table C-1, row 3).

Stakeholder views on how often the rules in the OHS Code should be updated are mixed, ranging from yearly to every five years. Stakeholders expressed they prefer when updates to the Code are predictable, regardless of the ultimate decision of how frequently the Code will be updated. The focus group provided insight on how many topics can be realistically reviewed over a given period of time: according to the focus group, up to eight of the Code's 41 parts can be reviewed over any given two-year period. British Columbia, for comparison, experienced that solely focusing on yearly updates has drawbacks, the key drawback being some topics are too complex to be reviewed over a single year. British Columbia eventually recognized that complex topics require up to three years to review.

5.4 Governance and stakeholder engagement

5.4.1 GOVERNANCE (Reference: Table C-1, row 2)

Stakeholders expressed mixed opinions concerning the ideal approach to governance of the technical review component of the Code review cycle. Some stakeholders expressed their desire to be at the technical review table as this would represent a meaningful way to provide input into the process and to provide elements of technical expertise the government may not have in-house. Other stakeholders expressed satisfaction with the status quo of the technical review being conducted by government staff with OHS technical expertise. The focus group expressed that while government OHS staff indeed have a broad breadth of technical expertise, they do not know everything and would benefit if they could draw on technical expertise from the stakeholder community during the technical review stage. Some stakeholders as well as the focus group expressed that only individuals with OHS technical expertise should be involved in the technical review stage of the process. Some stakeholders expressed that technical review should only focus on technical items and should not be a venue for lobbying-type efforts. In addition to providing technical input, some stakeholders expressed their desire to have an equal voice in the decision-making process on proposed updates to technical rules prior to them going out for public consultation. Other stakeholders were satisfied with government making all decisions on proposed updates to technical rules that go out to public consultation, plus on finalizing rules following public consultation.

5.4.2 STAKEHOLDERS DESIRED ROLE IN PROCESS (Reference: Table C-1, row 4).

External stakeholders overwhelmingly expressed they want to be involved in the process of determining what the new or updated OHS rules will be. Stakeholders either want to be at the technical review table or consulted by those doing technical review before there is a formal public consultation. There is a broad willingness of industry and labor organizations to represent their membership as part of the process. One employer organization expressed that if they believe the needs of their membership is not being met within the formal process, they will act outside the formal process and hold press conferences to put public pressure on government as a mechanism to draw attention to their needs.

5.4.3 HOW TO HEAR FROM BUSINESS OWNERS (Reference: Table C-1, row 5).

Stakeholders were asked about the best way to obtain input from business owners. Stakeholders overwhelmingly agreed that the status quo of hearing from business owners through their industry associations or OHS staff is a valid way of hearing business owners' perspectives. Stakeholders explained that industry associations are in constant communication with their membership and are able to speak on behalf of a large number of business owners through a united voice, and businesses' OHS staff have extensive OHS insights combined with an adequate understanding of business needs.

5.4.4 HOW TO HEAR FROM WORKERS (Reference: Table C-1, row 6).

When asked how best to obtain input from workers, stakeholders identified some opportunities to better hear from workers as compared with the status quo. Specifically, stakeholders suggested that the Labour department could reach out to its Partners in Injury Reduction Program Partners, Certifying Partners and Certificate of Recognition holders, and industry associations, to request input from worker members of joint work site health and safety committees. In addition to hearing from business owners and workers, stakeholders also expressed that government should

intentionally seek out input from OHS practitioners who have the greatest understanding of OHS hazards and methods of protecting the health and safety of workers.

5.5 General process steps (Reference: Table C-1, row 9).

The focus group suggests the following sequence be followed to review and update the OHS Code: (i) selection of topics for review, (ii) technical review, (iii) pre-consultation technical validation, (iv) public consultation, (v) consideration of public feedback, (vi) public validation, (vii) legal editing, (viii) legal drafting, (ix) government approval, (x) publication, and (xi) implementation.

5.5.1 SELECTION OF TOPICS FOR TECHNICAL REVIEW (Reference: Table C-1, row 9).

The focus group suggests that a variety of channels be considered in selecting OHS topics for technical review. Channels to consider include internal and external formal calls for topics, environmental scanning such as reviewing media reports, and keeping communication channels open with the Labour department's OHS delivery branch, especially with the OHS Technical Advisors who are highly experienced OHS officers, and the government's OHS Contact Centre as this front-line service is in continuous communication with stakeholders. In British Columbia, for comparison, review topics are selected through government OHS staff suggestions and from stakeholders via an online web-form.

5.5.2 METHOD TO CONDUCT TECHNICAL REVIEW (Reference: Table C-1, row 9).

The focus group was asked to provide advice on how to conduct technical review of OHS rules. Reviewing topics in small chunks is the key suggestion. British Columbia follows this approach and reports it has worked well. The focus group plus key stakeholders largely agree that technical validation through a sample of key stakeholders should occur before a formal public consultation takes place as this will help to ensure that proposed rules are technically valid and practical to implement. Some stakeholders expressed eagerness to be engaged in this part of the process. British Columbia, which follows a pre-consultation process with a small group of external stakeholders prior to public consultation, reports that this approach is effective in helping to propose rules that are broadly acceptable to stakeholders with fewer changes to proposed rules being needed after public consultation.

5.5.3 PUBLIC CONSULTATION (Reference: Table C-1, row 9).

External stakeholders believe that consultation is the most important part of the OHS Code review process. A suggestion from the focus group is to engage the Labour department's Partners in Injury Reduction Program's Certifying Partners to help communicate public consultations to stakeholders. The focus group also suggested a two-week period for the public to validate any adjustments to proposed OHS rules after formal public consultation to provide assurance that the government adequately addressed stakeholder concerns raised during public consultation.

5.5.4 POST-APPROVAL IMPLEMENTATION (Reference: Table C-1, row 9).

The focus group suggests that after government approves an updated OHS Code, that the Queen's printer make the Code available in three formats: hardcopy, website/PDF, and website/XML. XML, which is not currently a published format in Alberta, allows third party apps that can be used on mobile devices to be created. In addition, the focus group suggests that technical briefing sessions be held with OHS officers, and that the OHS Code Explanation Guide be updated by "part leads" from the Labour department's OHS policy unit, followed by a single technical editor to finalize the explanation guide.

5.6 Guiding principles for OHS technical rules

5.6.1 GENERAL PERSPECTIVES OF STAKEHOLDERS (Reference: Table C-1, row 7).

External stakeholders were asked a variety of questions concerning the guiding principles followed in setting Alberta's OHS technical rules. Stakeholders generally support a mix of prescriptive and performance-based rules with an intentional bias towards performance-based rules, which reflects the status-quo. Some stakeholders note that performance-based rules can be supported by non-regulatory guidelines, which are currently used to a degree. Stakeholders are split on whether rules should represent minimum standards or best practices, in other words, how low or high to aim when setting the rules. Stakeholders have mixed views on how many rules there should be: stakeholders expressed that more rules offer increased guidance, whereas fewer rules allow for greater flexibility and minimize regulatory burden. Stakeholders acknowledge that employers with in-house OHS staff are in a better position to work with fewer rules and maintain adequate health and safety protections for workers as these staff have the necessary expertise to protect workers. Stakeholder views on how simple or comprehensive rules should be are mixed: stakeholders explained that on one hand, rules that people don't understand are not helpful, and on the other hand, rules that are not protective of workers are equally unhelpful – the ideal scenario is rules that sufficiently comprehensive, but framed in a manner that are easy to understand. Stakeholders strongly agree that there should be shared accountability within the rules for employers and workers; and in relation to this, stakeholders noted that the recent introduction of Alberta's OHS ticketing system resulted in workers taking their responsibilities for OHS more seriously. While stakeholders broadly agree that workers require health and safety training, stakeholders had mixed views on whether health and safety training requirements for workers should be prescribed in detail.

5.6.2 STAKEHOLDER VIEWS ON CURRENT PRINCIPLES (Reference: Table C-1, row 7).

Continuing with exploratory discussion on guiding principles, stakeholders were asked to comment on Alberta's current formalized guiding principles:

- Stakeholders unanimously agree that rules in the OHS Code should relate to OHS, be evidence-based, focus on health and safety outcomes, be clear and enforceable, and not contradict other rules.
- Stakeholders have mixed views on whether rules should be responsive to what is heard from Albertans: the general feel is that rules should protect workers regardless of what Albertans might have to say, and in particular, worker safety should trump lobbying for competing business interests, but on the other hand, stakeholder input is needed to ensure that the rules are practical. Similarly, stakeholders have mixed views on how closely Alberta's rules should align with other jurisdictions: some stakeholders believe that health and safety hazards are controlled in essentially the same way regardless of jurisdiction, therefore it makes sense for rules to be consistent; whereas others believe that Alberta should be aware of the approaches used in other jurisdictions, but that Alberta should do what makes sense for Alberta.
- Stakeholders have mixed views concerning whether rules should balance the rights of workers to have a safe and healthy work environment, and rights of employers to profitably operate their businesses: most stakeholders believe that the health and safety of workers should be paramount, and others believe balance is needed. Similarly, there are mixed views among stakeholders concerning whether rules should be 'reasonably practicable'

without administrative burden: one view is that rules need to be practical and achievable in order for industry to implement; an opposing view is that rules that protect workers trump the need for rules to be reasonable as perceived by stakeholders – some stakeholders expressed that industry will adapt to whatever rules are implemented therefore it makes best sense to have rules that adequately protect workers. In addition, stakeholders have mixed views on whether health and safety rules are needed where non-legislative options are available.

- Generally, stakeholders do not agree with the current principle that rules should not add undue cost for implementation or enforcement: stakeholders were unanimous in their focus on how important it is that rules protect workers; the only exception is a concern from small business that regulatory burden in general should be kept to a minimum.
- Stakeholders offered suggestions for additional guiding principles beyond the ones that are currently formalized: (i) rules should not create interprovincial monopolies on training providers such as by recognizing only a single training provider, (ii) CSA or other reputable standards should be adopted where possible, and (iii) rules should always be considered through a small business lens.

5.7 Legal drafting efficiency (Reference: Table C-1, row 10).

The focus group made a number of suggestions to improve the efficiency of legal drafting. The key suggestions are to review the Code in small pieces, and do the legal drafting in small pieces. In addition, the focus group suggests doing legal editing as a distinct step before legal drafting, having a dedicated legal drafting resource, and using SharePoint co-authoring as a technology tool to enable easier collaboration between Labour department OHS policy unit staff and the Justice department legal drafters. In British Columbia, for comparison, legal drafting of OHS rules is an ongoing process with legal drafters drawn from a pool, with a total of about one full-time-equivalent dedicated to OHS. In British Columbia, each change to OHS rules involves four legal drafts being created: one for pre-public consultation with select stakeholders, one for formal public consultation, one for a legally mandated public hearing, and one as final.

5.8 Team cooperation (Reference: Table C-1, row 11).

A 2016 Labour department OHS policy unit staff internal debrief identified there were times when it was challenging to receive cooperation within the team (Alberta Labour, 2016b, p. 2). Focus group participants were asked to reflect on barriers to team cooperation and provide suggestions to improve cooperation. The focus group reported that between 2009 and 2016, the OHS policy unit lost significant organizational knowledge with turnover of a number of key staff. A formal internal work process had not been established by the original key staff and the remaining staff had not received mentoring or guidance and lacked the experience necessary to work efficiently. Focus group participants from the OHS policy unit reported being over-taxed with work and being blamed by management when unable to complete tasks to the satisfaction of management. Being blamed was a regular occurrence, which made team members feel uncomfortable. To avoid the uncomfortable feeling, team members focused only on their own work and avoided helping other team members, which resulted in a break-down in team cooperation. The focus group did not offer a solution to improve team cooperation.

5.9 Interprovincial harmonization (Reference: Table C-1, row 8).

External stakeholders largely agree that moving towards interprovincial harmonization of OHS rules would be positive. Stakeholders largely believe that harmonization could result in OHS standards being maintained at the same level or improved. A benefit expressed by multiple stakeholders is that harmonization would make it considerably easier to design and recognize OHS training programs for both workers and OHS technicians. Stakeholders generally recognize that harmonization is challenging and can be slow process, and some stakeholders suggest focusing on mutual recognition as this is quicker than achieving true harmonization. In addition, some stakeholders suggested a national effort of creating model OHS legislation that individual jurisdictions can adopt.

5.10 Other comments (Reference: Table C-1, row 12).

External stakeholders offered some input beyond the questions asked by the researcher. Stakeholders expressed they perceive that enforcement of OHS rules is lacking and that more OHS officers might be needed, and that it is of key importance for workers and employers to understand the hazards of their industries. A number of stakeholders expressed this research should offer some good value, which is the reason they agreed to participate in the study.

5.11 Summary

Key informants expressed that Alberta's existing OHS Code review process is not broken, but rather, is quite good. However, the process is in need of some tweaking to better meet stakeholder needs. The key areas identified for improvement are to increase the degree of stakeholder engagement in the review process and to review the Code in smaller, more manageable, pieces. Figure 3 shows the main themes of external stakeholder responses, and Figure 4 shows highlights of the focus group discussion.

FIGURE 3: MAIN THEMES OF EXTERNAL STAKEHOLDER RESPONSES



(Photo source: Microsoft, n.d.[a])

FIGURE 4: HIGHLIGHTS OF FOCUS GROUP RESPONSES



(Photo source: Microsoft, n.d.[b])

6.0 Discussion and Analysis

This chapter includes general discussion of the OHS Code review process, followed by a discussion of insights gleaned through the literature review, interjurisdictional scan, key informant interviews and focus group discussion.

6.1 Introduction

Alberta's OHS Code review process has not stood the test of time. The 2003, 2006 and 2009 editions of the OHS Code were all created following different processes. The 2003 initial Code was developed by a Labour department internal working group following recommendations from multiple tri-partite government-labour-industry topic review committees (Alberta Public Service Commission [APSC], 2002).¹ Interestingly, the Labour department staff who conducted the regulatory review for the 2003 Code won an Alberta Premier's Award of Excellence for their consultation process (APSC, 2002). The 2006 Code was created by two separate processes: a government-labour-industry tripartite committee for larger-scope topics, and a Labour department internal working group for smaller-scope topics (Alberta Labour, 2004, pp. 1-2). The 2009 Code was created by a tri-partite government-labour-industry committee without the use of an internal working group (Alberta Labour, 2011, p. 3). The review process was updated in 2011 to have the Code reviewed by a Labour department internal working group without a tri-partite stakeholder committee (Alberta Labour, 2011, p. 7). The processes for the 2003, 2006 and 2009 Code updates were not formalized, and the process which was updated in 2011 is the first formalized Code review process,¹ which represents a positive step forward. However, while this first formalized process is reasonably comprehensive, it is written like a discussion paper more so than a process document, which makes it challenging to follow for a reader who simply wants to see the process.

Upon implementation, the 2011 Code review process was only partially followed: some formalized steps were followed, some formalized steps were not followed, and other steps not identified in the formal process were followed, each of which represents a process gap. The Code review process has not yet been perfected perhaps due to lack of formal evaluation or other factors such as effects of a changing political environment.

6.2 Literature review

6.2.1 ANALYSIS – LITERATURE REVIEW

Of particular interest to this research, it was discovered through the literature review that the Australian National University has a centre of excellence for OHS regulation (ANU, 2017a), and with over 140 publications it is a world-leader in this subject material. In contrast to a leading Canadian source, the University of British Columbia has an OHS policy and program research centre with four publications (University of British Columbia, n.d.), which as of the date of this study is far less extensive than the work of the Australian National University. From an OHS policy perspective, this is an exciting find as governments can learn from the research produced by these institutions.

The literature review identified only two papers (Bluff and Gunningham, 2003; & Löfstedt, 2011) that directly focused on the process for setting of OHS technical rules, and these papers only focused on the guiding principles element which is narrower than the scope of this Master's Project. One other paper (Doern, 2007) was identified that outlined guiding principles for setting regulation in general in a Canadian context. This finding confirms that this Master's Project is

among the first scholarly work looking into the detailed process of reviewing and updating OHS regulation.

Within these sources of literature, there is broad agreement in terms of the specific guiding principles that should be followed when setting OHS regulation. This agreement within the literature is broadly consistent with what this study heard from its key informants (Table C-1 of Appendix C, row 7).

However, Löfstedt (2011), takes an extreme approach on one item (relative to other literature sources and key informants) suggesting that in some instances, self-employed individuals should be completely exempt from OHS laws, which takes into consideration the unique needs of small business. Further, an interesting contrast was found in this study. Bluff (2005) explained that specification-based standards are better suited for small businesses than performance-based standards because they are easier to interpret (p. 3). However, the key informant interview portion of this study heard feedback from small business explaining it prefers performance-based standards over specification standards, because small business perceives performance-based standards as representing a lower level of regulatory burden (Table C-1 of Appendix C, row 7). In comparison, Löfstedt's (2011) findings (pp. 1-5) are more consistent with what this study heard from small business. Bluff (2005) provides a possible solution to this dilemma by suggesting that free OHS services should be provided to small business to assist with interpreting OHS regulation (p. 28). Alternatively, as suggested by Bluff and Gunningham (2003), small business can be supported by the provision of non-regulatory guidance documents (p. 9).

Australia made slow progress in its earlier attempts of implementing interjurisdictional OHS harmonization, and then changed its approach to a more efficient method (Johnstone, 2008, pp. 6-7 & 10-11). Alberta and the rest of Canada could potentially learn from Australia's experience to avoid making the same mistakes during early attempts of achieving harmonization.

The literature review cautioned that too much project management discipline can wear out staff or otherwise cause psychological strain (Wirick, 2009, p. 23). The focus group identified that OHS policy team may have fallen victim to too much project management discipline, which created psychological strain for staff leading to a break-down in team cooperation (Table C-1 of Appendix C, row 11). In light of these findings, it may be appropriate to treat project management as an occupational hazard, and put controls in place to protect the psychological health of staff so that project risk is minimized. There are multiple ways in which psychological hazards can be controlled; these include establishing an operational procedure for Code review work so staff know what steps need to be followed, ensuring soft skills are a part of project management skills, and doing Code review work in small batches that are manageable.

6.2.2 POTENTIAL OPPORTUNITIES GLEANED THROUGH LITERATURE REVIEW

The following opportunities to improve Alberta's OHS Code review process became apparent while analyzing the literature review:

1. Alberta's Labour department has an opportunity to follow the lead of Work Safe Victoria, which created a formal stakeholder engagement framework based on the core principles of the International Association for Public Participation. As such, there is opportunity to integrate the following concepts into its Code review process:
 - Proactively reach out and consult or collaborate with stakeholders.

- Recognize the unique needs of all stakeholders plus communicate the needs of government to stakeholders.
 - Provide stakeholders with the information they need to contribute to OHS regulatory review in a meaningful way.
 - Embrace the input of stakeholders when forming OHS rules and communicate to stakeholders how their input influenced the rules.
2. Provide Labour department OHS policy staff with training on the characteristics of the four types of OHS regulatory standards including the advantages and disadvantages of each category, pointing out that best worker protection is provided where there is an optimum mix of these four types of standards. Combined with this, provide OHS policy staff with an understanding of the role of third-party technical standards play when referenced in legislation including when best to use these, and how non-regulatory guidance documents support regulation by supporting small and medium-sized businesses. This theoretical foundation can assist staff in proposing better rules.
 3. Seek advice from Safe Work Australia regarding how to harmonize OHS rules across jurisdictions, as Australia is about 10 years ahead of Alberta and Canada in terms of OHS harmonization efforts.
 4. Formally recognize project management related psychological stress as an occupational hazard within the Labour department's internal OHS program, and control this hazard to minimize Code review project risks.

6.3 Interjurisdictional scan

6.3.1 ANALYSIS – INTERJURISDICTIONAL SCAN

Alberta follows the same four regulatory review and update phases that all jurisdictions follow; these are: (i) technical review of existing rules, (ii) public consultation on proposed changes, (iii) regulatory approval, and (iv) implementing regulatory changes. There is no substantive difference between Alberta's approach and the spectrum of approaches used by various jurisdictions. Beyond following the four common phases, there is not an interjurisdictional norm of methodologies, and aside from Northwest Territories and Nunavut which are managed by the same agency, no two jurisdictions do things the same way. This may show that there are different means to reaching similar ends. Rather than attempting to model after other jurisdictions, where it is not obvious or intuitive which methodology is best or even if there is such a thing as a best method, it may make better sense for Alberta to understand the needs of its stakeholders, and select an approach that meets these needs in an effective and efficient manner. In doing so, Alberta can review the concepts used in other jurisdictions and consider adopting those concepts if they can help meet Alberta's needs. For instance, some features used in some jurisdictions may make conceptual sense for Alberta to adopt to help achieve its mandate of preventing workers from becoming injured or ill as a result of their work. Examples include recommendations from a public fatality inquiry triggering a regulatory review, updating OHS technical rules frequently enough to keep pace with changes in technology, and allowing for a sufficient consultation period to give stakeholders a reasonable amount of time to participate.

6.3.2 POTENTIAL OPPORTUNITIES GLEANED THROUGH ANALYSIS OF INTERJURISDICTIONAL SCAN

The following opportunities to improve Alberta's formal Code review process became apparent while analyzing the interjurisdictional scan:

1. Surveying external stakeholders to determine what their needs are to inform which features should be included in Alberta's code review process. *Note: this Master's Project incorporates this approach.*
2. Adding clarity to the formal Code review process by:
 - a. Amending the process document to more thoroughly cover all four phases of the OHS technical review and update cycle. Presently, the formal process touches on all the phases, but to differing degrees, and is not as comprehensive as possible.
 - b. Removing steps from the current formal process that are not followed in practice.
 - c. Adding steps to the formal process that are followed in practice, but not currently documented in the existing formal process.
 - d. Structuring the process document to read like a process document. Presently, the document reads like a discussion paper, with it being difficult to decipher which items are discussion points and which items are adopted process steps.
3. Adopting features from other jurisdictions that make conceptual sense to achieve the Labour ministry's mandate of protecting workers, including:
 - a. Enabling recommendations from public fatality inquiries to feed into Code review process. Presently, Ontario's review process has this feature (Table B-2 of Appendix B).
 - b. Creating a convenient mechanism to formally enable stakeholders to provide suggestions on improving OHS legislation at any time, not just limited to formal consultation periods. Always listening to stakeholder feedback is expected to gather more input than relying solely on narrow consultation windows. Presently, British Columbia, Prince Edward Island, and California have this feature in their review processes (Table B-2 of Appendix B).
 - c. Providing stakeholders with sufficient time (e.g., three months) to provide feedback during public consultation periods. The present formal process suggests two months (Alberta Labour, 2011, p. 3), which may not allow sufficient time for key stakeholders to survey their membership and roll-up the results. Interestingly, during Alberta's 2014-15 OHS Code consultation, the consultation period was three months (Alberta Labour, 2015a, p. 1).
4. Moving towards the international trend of a more performance-based regulatory framework supplemented by non-regulatory guidance documents. This would have an effect of increasing the efficiency of updating the OHS Code because there will be fewer technical rules to update through the regulatory approval process. Guidance documents can be updated much easier as they are non-regulatory in nature and have fewer approval steps. This approach is already successfully used in Alberta for asbestos provisions, which are performance-based in the OHS Code (GOA, 2009a, ss. 28-31) and supplemented by the Alberta Asbestos Abatement Manual (GOA, 2012).

5. Facilitate stakeholder feedback analysis efficiency by providing a standardized downloadable public consultation feedback form made available in addition to Alberta's existing web survey feature. Non-web written submissions are accepted in practice, but there is no guidance for stakeholders as to what types of information to include. Presently, the United Kingdom and New Zealand have this feature in their review process (Table B-2 of Appendix B).

6.4 Key informant interviews and focus group

6.4.1 ANALYSIS – KEY INFORMANT INTERVIEWS AND FOCUS GROUP

Key external stakeholders largely perceive that Alberta's Labour department has done a good job of creating and implementing an OHS Code review and update process. This is evident from stakeholders expressing the current process is not broken, but rather, needs some refinement (Table B-1 of Appendix B, row 1).

In terms of what needs refining, external stakeholders expressed two main areas of concern: (i) their level of engagement in the OHS Code's review process is insufficient (Table C-1 of Appendix C, rows 1, 4 & 9), and (ii) Code updates are not predictable (row 1), albeit this second concern likely stems from a public consultation that was conducted which created an expectation for a Code update that didn't materialize in a reasonable amount of time. In addition to these main concerns, stakeholders had a number of suggestions on improving the finer details of the Code review process such as the guiding principles for setting technical rules. Stakeholders also expressed their desire for government to review the findings from this study, as it can help inform improvements to the Code review process (row 12), which may be an attempt by stakeholders to increase their influence over OHS Code updates.

The concern heard the loudest from stakeholders is they want to be more engaged in the process of updating the OHS technical rules. The existing approach of being consulted during formal public consultation periods is an insufficient level of involvement according to stakeholders (Table C-1 of Appendix C, rows 1, 4 & 9). Specifically, key stakeholders want to be engaged before proposed rules reach the public consultation phase to provide their expertise and technical input in helping to ensure proposed rules are reasonable and practical (rows 1, 4 & 9). Most stakeholders expressed their desire is not to lobby for their own interests at this stage of the process, but rather support the development of technically sound and appropriate rules that purely support health and safety outcomes for workers (rows 2 & 4).

The concern heard second-loudest from key stakeholders is that updates to the OHS Code, as of recent, have not been predictable (Table C-1 of Appendix C, row 1). From the stakeholders' perspective, predictability is helpful for business and operational planning. While stakeholders did not express lack of predictability as being crucial to their operations, they expressed a degree of frustration related to not knowing when to expect an updated OHS Code. Stakeholders attributed recent unpredictability to be the result of a recent change in the provincial government's party in power.

Interestingly, while conducting key informant interviews, the researcher sensed a degree of resentment between employer and labour spokespersons – from both sides. Each side seems to perceive the other side has too much influence in the rule setting process. Similarly, the researcher sensed that OHS practitioners have some feelings of resentment stemming from their perception

that their voices are not sufficiently heard through the formal rule setting process, as they perceive that government is listening to the views of others more than the views of OHS practitioners. In reality, all key stakeholder groups are well aligned in their intentions, as protecting workers is everyone's key objective, however the individual groups seem unaware of how well aligned they are with each other. This may be an artifact of not having everyone working together at the same table.

Drilling further down into details, external stakeholder views are similar on some of the finer aspects of the Code review process, and varied on other aspects. In areas where stakeholders all agree, there are conceivably win-win solutions if these items are adopted by government. Where views of stakeholders are mixed, a balance needs to be found by or alternatively, the government can consider items through the lens of the Labour department's mandate. For example, whether rules should balance the rights of workers and employers had some mixed views by stakeholders; aiming for what best protects the health and safety of workers as guided by the Labour ministry's mandate could be a preferred option over finding balance between the views of stakeholders. In either case, government messaging can be used to explain the reasons why the adopted process has been selected, which can assist stakeholders in their understanding of the adopted process.

From an internal Labour department process perspective, the focus group reviewed internal aspects of the OHS Code review process with the intent of identifying process efficiency improvements. The focus group provided a number of suggestions with its key suggestion being to do technical review, consultation and legal drafting work in smaller and more manageable pieces (Table C-1 of Appendix C, rows 9 & 10). According to the focus group, an average of four topics per year can realistically be reviewed (row 3); WorkSafeBC in comparison, which has considerable experience reviewing topics in small pieces, reviews an average of six topics per year (Table B-2 of Appendix B). Hence, a range between four and six topics per year is likely realistic.

6.4.2 POTENTIAL OPPORTUNITIES GLEANED FROM KEY INFORMANT INTERVIEWS AND FOCUS GROUP

The following opportunities to improve Alberta's formal Code review process became apparent while hearing from key informants and the focus group:

1. To address key external stakeholders primary concern of insufficient engagement in the OHS Code's review and update process, there is opportunity to design and implement a formal stakeholder engagement strategy. Further analysis of stakeholder engagement strategies is presented in section 6.9 of this report.
2. To address stakeholders secondary concern of Code updates not being predictable, there is opportunity to advise the government's elected decision makers of stakeholder concerns and implement a solution that addresses stakeholder needs by increasing the relative importance of predictable Code updates within the government's overall priorities. Options that could be considered include publishing an OHS Code update schedule that is supported by elected officials.
3. To address stakeholder suggestions for enhancements to guiding principles for setting OHS technical rules, there is opportunity to refine the principles. During this study, based on stakeholder feedback, it became apparent to the researcher that some guiding principles are more fundamental than others. Hence, there may be an opportunity to have two tiers

of guiding principles. As a first-tier principle, rules should put worker protection first-and-foremost above other guiding principles, which is consistent with views from the majority of stakeholders. Second-tier guiding principles should be other beneficial items such as minimizing regulatory burden, minimizing implementation costs, and framing technical rules in a manner that are sufficiently comprehensive and easy to understand. With this two-tier model, tier-two principles (which are desirable), should never be implemented at the expense of tier-one principles (which are of paramount importance).

4. While not a traditional guiding principle, some stakeholders noted that performance-based rules can be supported by non-regulatory guidance documents (Table C-1 of Appendix C, row 7), which already exist in Alberta for some topics. As this study's interjurisdictional scan identified, the approach of intentionally designing performance-based rules supported by comprehensive guidelines is becoming a trend internationally. Along these lines, Canada's federal government has already begun formalizing the process of developing guidelines. Examples of comprehensive guidelines currently being used to support performance-based rules in Alberta include the Alberta Asbestos Abatement Manual (GOA, 2012), the Forklift Health and Safety Best Practices Guideline (GOA, 2014c), and the OHS Code Explanation Guide (GOA, 2017). There may be additional opportunities to create guidelines which can be identified by stakeholder suggestions during the Code's review and update cycle.
5. To address process efficiency, there is opportunity to consider suggestions made by the focus group, with the main suggestion being to review the Code, including technical review, public consultation, and legal drafting one topic at a time, with proposed changes being queued up between official Code updates (Table C-1 of Appendix C, rows 3, 9 & 10).

6.5 How often to update the Code

One of the key questions this study answers is how often to update the Code. This has been a topic of debate for many years. Before the Code was introduced, some of the regulations it replaced hadn't been reviewed in over a decade, which was deemed unacceptable by stakeholders.¹ Upon introduction of the Code, a three-year update cycle was initially envisioned whereby the Code would be updated in its entirety (Alberta Labour, 2011, p. 3). Following implementation of the Code, stakeholders provided feedback expressing the updates were coming too quickly: as soon as new rules were enacted, the government began reviewing the same rules before stakeholders had experience with them (p. 4). Based on this feedback, the review cycle frequency was formally changed to every five years (p. 4), however, this did not materialize due to a number of factors including a shift in government priorities following the 2015 provincial general election where there was a change in the governing party in power (Tucker, 2015), turnover in key staff resulting in loss of organizational knowledge (Table C-1 of Appendix C, row 11), and project management challenges (Alberta Labour, 2016c, p. 4). Through this study, key external stakeholders suggest that the Code be updated on a frequency of between one and five years, with three years being the middle ground (Table C-1 of Appendix C, row 3). External stakeholders further suggest that the scope of individual updates be limited to select parts of the Code based on priority (row 3).

This report's recommended revised process (found in Chapter 7 and Appendix D) deviates from the middle ground of what key external stakeholders and the focus group have suggested due to consideration of operational factors within government. Operational factors cannot be ignored due

to their considerable significance. In recent years, shifts in government decision making processes and priorities has resulted in Code updates being delayed, which are due, in part, by large volumes of proposed changes overwhelming the government's decision-making process.¹ Aiming to update select parts of the Code on a more frequent (e.g., annual) basis is intended to make approvals easier as the scope of changes will be narrower and hence easier to flow through the government's decision-making process. If the government were to queue up changes to the Code based on annual topic reviews and update the Code every three years based on stakeholder suggestions, this introduces a risk of continued government approval delays as are currently being experienced.

British Columbia's and California's experience shows that the approach of annual updates can work for government and stakeholders alike. With a more frequent Code update frequency, it is anticipated that stakeholders in Alberta will adapt by becoming accustomed to the shift in approach. An anticipated adjustment is how stakeholders will access information in the Code. In Alberta, where the Code is currently updated relatively infrequently (as compared with British Columbia and California), stakeholders commonly use hardcopies of the Code. The Alberta Queen's Printer reports that it along with authorized third-party distributors have sold over 322,000 hard copies of the current edition of the OHS Code and counting (Alberta Labour, 2017b). In British Columbia, stakeholders more commonly refer to electronic copies of the regulations since it is less practical to rely on printed copies of regulations that are being updated frequently (Table C-1 of Appendix C, row 3).

To mitigate concerns from stakeholders about not allowing sufficient time for implementation before reviewing the same rules (Alberta Labour, 2011, p. 3), this report's recommended revised process (found in Chapter 7 and Appendix D) suggests that same parts of the Code should not be reviewed two years in a row.

Despite the argument that OHS technical rules should be kept up-to-date, it would be remiss not to speak the truth concerning how necessary this actually is. According to the interjurisdictional scan, most jurisdictions do not update their technical rules frequently, and in the grand scheme of things, they seem to be doing okay. However, there is likely little harm in keeping rules up-to-date which is in all likelihood a better practice.

6.6 Doing work in smaller pieces and queuing-up reviewed topics

A key success factor identified by this research is doing Code review work in smaller pieces as a mechanism to alleviate process bottlenecks and to meet stakeholder suggestions of narrowing the scope of individual updates.

When work is done in smaller pieces, there is a choice on whether to enact updates as each topic is reviewed, or to queue-up reviewed topics for enactment on a given schedule. British Columbia and California, the jurisdictions that update their rules most frequently, enact updates as topics are reviewed (Table B-2 of Appendix B) – i.e., they don't queue-up topics. However, through this research, key external stakeholders and the focus group suggested queueing-up reviewed topics for later enactment. At the same time, the key stakeholders and focus group envisioned updates on about a three-year frequency, which is different than the more frequent updates this project is recommending due to practical process considerations. With the government's current decision-making process, all decisions need to go through Cabinet, and approaching Cabinet multiple times

per year for OHS Code updates is likely not feasible. Another practical consideration is the timing of political ‘red zones’ prior to provincial elections where policy decisions are typically placed on hold until after a new government is formed. The recommended revised process in this report (found in Chapter 7 and Appendix D) aims to bridge these gaps by queuing-up reviewed topics and aiming to enact updates on an annual basis while recognizing that there may be times when more than a year elapses between updates. Enacting updates more frequently than what stakeholders are asking for is a mechanism to help ensure the process does not stall, which offers the benefit to stakeholders of Code updates being more predictable.

6.7 Guiding principles

From both process and outcomes perspectives, it is helpful for there to be a set of guiding principles that both external stakeholders and government OHS policy staff can reference to help with the setting of OHS technical rules. Through this study, scholarly and grey literature was scanned for OHS guiding principles (section 3.2), and external stakeholders were asked for their views on guiding principles (section 5.6). These findings were compared against the Labour ministry’s mandate of providing safe, fair and healthy workplaces as well as the current Code review process’s set of guiding principles (analysis presented in sections 6.2.1 and 6.4.1). The outcome of this is a revised set of guiding principles, which are listed in the recommendations section of this report (found in Chapter 7 in general, and more specifically section D-6 of Appendix D). Section D-6 of Appendix D illustrates which guiding principles have been validated from the original guiding principles, which have been modified, and which are new. Sections D-7.3 and D-7.4 provide further detail about guiding principles that have been modified or struck from the original set of guiding principles, including the reasons why.

6.8 Governance of OHS Code review process

Governance is a ubiquitous term with various meanings (Bevir, 2011, p. 2). For the purpose of this paper, the term represents how government works with its stakeholders and how decisions are made concerning the design of regulation.

With respect to updating the OHS Code, governance relates to who has influence, and to what degree, in regards to determining the final rules that get enacted. Formally, the Labour Minister is the one who adopts the rules (GOA, n.d.[a], s. 40.1), but from a practical perspective the Minister has a large breadth of responsibility and cannot attend to every discussion on every rule. Hence, the Minister needs to trust a process of adequate consultation and on technically competent staff to create a reasonable proposal.

According to the interjurisdictional scan (Appendix B), the main consideration around governance is the relative influence government, labour, and industry have in establishing the rules. Two approaches are commonly followed: government-in-control or a tri-partite approach. Alberta has employed both approaches; however, has moved between these approaches as each has advantages and disadvantages. The advantage of a tri-partite approach is excellent stakeholder engagement; however, the downside is government has less control which is not always compatible with the political ideologies of the government party in power. Political ideologies based on control will prefer government in charge. Political ideologies based on consensus building will prefer a tri-partite approach. There is likely no right or wrong answer as this is a matter of ideology; however, it impacts the process. A balanced approach can be a government-led process with a good degree

of stakeholder engagement, or a tri-partite process that is advisory in nature with final details to be determined by the government. As the current political environment is one of centralization of power in government (Canada's Public Policy Forum, 2015, pp. 4 & 7), this report (in Chapter 7 and Appendix D) is recommending a government-led approach with adequate stakeholder engagement. This approach can be revisited in the future if and when the political environment changes.

6.9 Stakeholder engagement

Stakeholder engagement is generally defined as the process of involving individuals and groups in discussions on matters that affect them (Sloan, 2009, p. 26).

Through this study's key informant interviews, it was identified that key stakeholders are not as engaged in the OHS Code review process as they would like to be (Table C-1 of Appendix C, rows 1, 4 & 9). According to the interjurisdictional scan and key informant interviews, there are two main choices of how to engage key stakeholders: have them participate at the technical review table as a part of a committee of collaborative partners, or consult with them. As government has evolved over time, political preferences of how to engage stakeholders have shifted from involving stakeholders at the technical review table to consulting stakeholders.¹ Stakeholders expressed they are okay with being at the technical review table or being consulted; the specific mechanism does not matter to them so long as government listens to them and creates OHS rules that meet their needs (row 2).

With respect to stakeholder engagement, Alberta's Labour department has had some reasonably good success with its Occupational Exposure Limit (OEL) technical review: a technical topic of OHS having to do with chemical exposure limits. The approach used to review OELs received mostly positive ratings as identified through an earlier survey (Alberta Labour, 2015b, pp. 3-4), which was conducted separately from this research. This survey was conducted as the result of some stakeholders expressing dissatisfaction concerning the OEL review process (p. 4), which was subsequently refined after taking stakeholder feedback into consideration. Conceivably, aspects the revised OEL review process could be considered for application in the broader OHS Code review process. A key item that can be adopted from the OEL review process is to establish tripartite technical working groups to address highly technical issues (Alberta Labour, 2016d, p. 6); this can be particularly helpful where the outcome of the technical review has potential to be contentious such as where stakes are high. In addition, Alberta may be able to learn from Victoria, Australia, which implemented a formal stakeholder engagement framework to update its OHS technical rules among other items; a key item that can be adopted from Australia is to adopt the core values of the International Association for Public Participation (WorkSafe Victoria, 2016, p. 8), as described in sections 3.1 and 6.2.2 of this report.

6.10 Interprovincial harmonization

The project delimitations section of this report (section 2.4.2) stipulates that solving Canada's national harmonization issue is out-of-scope for this study. What is in scope is how the Code review process can mesh with Alberta's current interprovincial trade obligations, in particular, the New West Partnership Trade Agreement.

While key external stakeholders interviewed through this study are okay with interprovincial harmonization in principle, most expressed this is not a significant concern of theirs (Table C-1 of

Appendix C, row 8). Alberta's external stakeholders suggest that Alberta should be aware of what other jurisdictions are doing, but Alberta should do what makes sense for Alberta, even if this means not harmonizing with other jurisdictions (row 8). The New West Partnership premiers, on the other hand, are leaning towards harmonization of OHS rules that impact interprovincial trade (Canada's New West Partnership, 2014, paras. 3-4). Hence, there is risk that forcing harmonization might result in rules not supported by Alberta's stakeholders. Interestingly, this shows there may be some misalignment between the premiers and their key stakeholders, which may be a result of the premiers listening to some stakeholders but not having conducted a thorough public consultation. As Bluff and Gunningham (2003) pointed out, OHS tends to be a regional more so than a national issue (p. 29).

6.11 Project management

The literature review explained that organizations progress through projects (Wirick, 2009, p. 17). Project management involves applying logic to planning and completing work of a temporary duration, where there is a beginning and end to achieve a specific objective (Brown & Mason, 2006, p. 714). Each review cycle of the OHS Code represents a project, which can benefit from the application of project management principles.

As a large amount of work is involved in updating the Code, good project management is important. A review of internal Project Client documents identified some project management challenges, which included there not being an assigned project manager, lack of a formalized work plan covering role clarity and key milestones, and absence of terms of reference for technical working groups (Alberta Labour, 2016a, pp. 2-3). In addition, the legal drafting process got out of control. There were 27 legal drafts of the proposed Code updates (Alberta Labour, 2016b, p. 2), each containing about 480 pages of text and distributed via email to approximately 13 internal reviewers (Alberta Labour, 2016e). About half of these internally distributed copies were emailed back to the legal drafter with edits or comments.¹ All told, approximately 500 copies of the draft Code were floating around. With such a high volume of drafts, some things were missed and errors resulted, and extra work was required to identify and correct the errors (Alberta Labour, 2016f, p. 1).

While the literature suggests that such project challenges can be addressed through the application of project management principles, it also cautions of the downside of too much project management discipline, which can nullify the benefits of project management efforts (Wirick, 2009, p. 23). Through this study's focus group, it was identified that too much project management discipline at one stage of the process caused psychological stress to staff that led to a break-down in team cooperation, which introduced additional project risks (Table C-1 of Appendix C, row 11).

Project management enhancements to address these identified concerns as informed by both the literature review and focus group discussion are included in this report's recommended revised Code review process and ancillary recommendations (presented in Chapter 7 and Appendix D).

6.12 Summary

Alberta's OHS Code review process has not stood the test of time as the process changed each time the Code has been reviewed. Despite this, the study's key informants expressed that Alberta's Code review process is not broken; it just needs some refining. The key refinement that is suggested is to improve the degree of stakeholder engagement in the review process, with a

secondary refinement being the need to increase predictability of Code updates. Tertiary refinements include the need for updating the guiding principles for the OHS technical rules themselves.

The interjurisdictional scan identified that while all jurisdictions follow four common phases in updating their OHS technical rules, there is considerable variation within each of the phases. Considering the broad range of approaches jurisdictions follow in updating their OHS technical rules, there is no substantive difference between Alberta's current approach and the approaches of other jurisdictions in general. As there is no obvious model to follow, it makes sense to ask stakeholders in Alberta what their needs are, and learn from other jurisdictions to help inform how to meet these needs. This Master's Project incorporates this approach.

The literature review found limited scholarly research in the area of setting OHS regulation. The literature that does exist focuses mostly on guiding principles for OHS technical rules which is one component of the broader process of reviewing and updating the rules. The literature, along with this study's key informants broadly agree on the ideal makeup of guiding principles, which have been included in this report's recommended revised Code review process (Chapter 7 and Appendix D).

There are two broad approaches for governance of OHS regulatory development: government in charge or a tri-partite decision-making process. This report is recommending a government-led approach as Canada including Alberta is currently in an era of centralization of power within government. To ensure adequate stakeholder involvement, stakeholders can be engaged by following the core values of the International Association for Public Participation as described in section 3.1.

Key external stakeholders suggest that the Code be updated at a frequency of between one and five years (with three years being the middle-ground), and that the scope of review be limited to select parts of the Code based on priority, rather than updating the entire Code in each cycle. However, this report is recommending that the Code be updated more frequently than what stakeholders suggest, which is intended to address challenges in the government decision-making process. Updating the Code more frequently with a narrower scope of changes for each update has the anticipated benefit of reducing the risk of the update process stalling due to government approval delays, as is currently being experienced.

Similarly, the key suggestion of the internal focus group is to do Code review work in smaller, more manageable pieces to avoid creation of process bottlenecks; which have also been incorporated into this report's recommendations (Chapter 7 and Appendix D). In addition, it is recognized that reviewing the Code involves a large amount of work, and review process can benefit from the application of project management principles, which have been integrated into the revised Code review process as recommended in this report.

7.0 Options to Consider and Recommendations

When conducting the interjurisdictional scan, the researcher recognized there are four common phases to OHS regulatory review and update processes. This chapter of the report presents options and recommendations that comprehensively cover the four phases of Alberta's OHS Code review and update cycle which offer enhancements to Alberta's existing process.

Criteria used for the development of options, and by extension, recommendations, include process efficiency and effectiveness, stakeholder participation, government resource capacity, political acceptability, implementation feasibility, government accountability, legal needs, and alignment with the Labour ministry's mandate.

7.1 Options to consider

A key item to consider is how frequently the OHS rules should be updated as this sets the stage for the remainder of the process. The researcher recognizes that in practice, regardless of which update frequency is formally selected, the government executive (Cabinet) ultimately determines its priorities on a dynamic basis and it is foreseeable that the update schedule, regardless of whether the government has approved it in principle or not in advance, might not be approved by the government in the end. Hence, the process options are designed to be robust enough to handle any update frequency.

However, there is one option, that while available, should be avoided as it would have a detrimental effect on the robustness of the process. This is doing work in large batches, which has proven itself to be prone to introducing process delays and generating considerable numbers of errors in legal drafts of the updated OHS technical rules.

Rather than following the traditional approach of presenting all possible options in sequence, this report presents sub-options in graphical form – as an illustrative 'control panel' (Figure 5). This approach is used because it is an efficient way of presenting the myriad of combinations and permutations of individual options that are available. While all options in the 'control panel' are available, the illustrated 'settings' reflect the recommended options.

OPTION 1: STATUS QUO

This option pertains to not implementing any of the recommendations presented in this report.

Advantages:

- This formative evaluation found that the existing OHS Code review process is not broken, and compares well with the processes used by other jurisdictions in general. Hence, there is rationale to continue with the status quo as there is not a critical need to adjust the process.
- Requires no effort to implement.

Disadvantage:

- This evaluation identified opportunities to enhance the Code review process to better meet the needs of the Government of Alberta and its stakeholders. There would be 'missed opportunities' if this option is selected.

OPTION 2: PROCESS ENHANCEMENT ONLY

This option pertains to implementing this report's core recommendations (see Figure 5 and recommendations 1 through 3, presented in section 7.2).

Advantages:

- Leverages identified opportunities to better meet the needs of the Government of Alberta and its stakeholders.
- Requires minimal effort to implement.

Disadvantage:

- This approach does not minimize process implementation risks.

OPTION 3: PROCESS PLUS SUPPLEMENTARY ENHANCEMENTS (RECOMMENDED)

This option pertains to implementing all of the recommendations presented in this report (see Figure 5 and section 7.2).

Advantages:

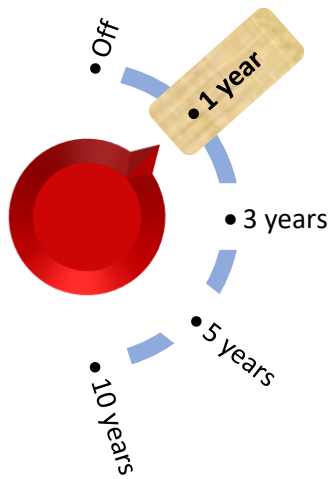
- Leverages identified opportunities to better meet the needs of the Government of Alberta and its stakeholders.
- Minimizes process implementation risks.

Disadvantage:

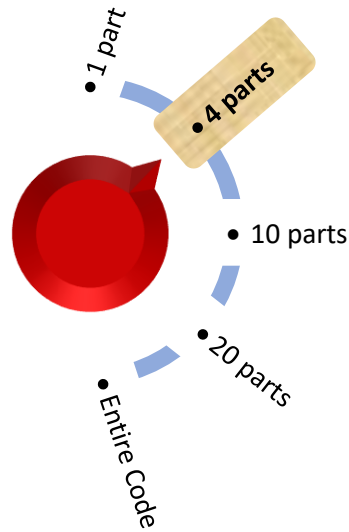
- Requires more effort to implement as compared with option 2.

FIGURE 5: OPTIONS **OHS CODE REVIEW PROCESS CONTROL PANEL** Main options
(Illustrated 'settings' represent recommended options)

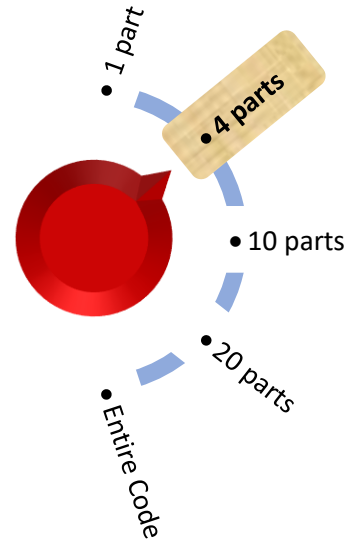
Code update frequency
(pace of change)



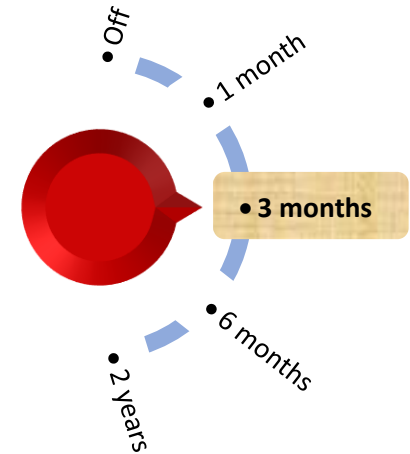
Topics updated per year
(pace of review)



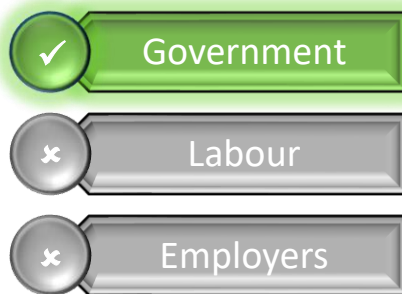
Number topics reviewed at a time
(review, consultation, & legal drafting)



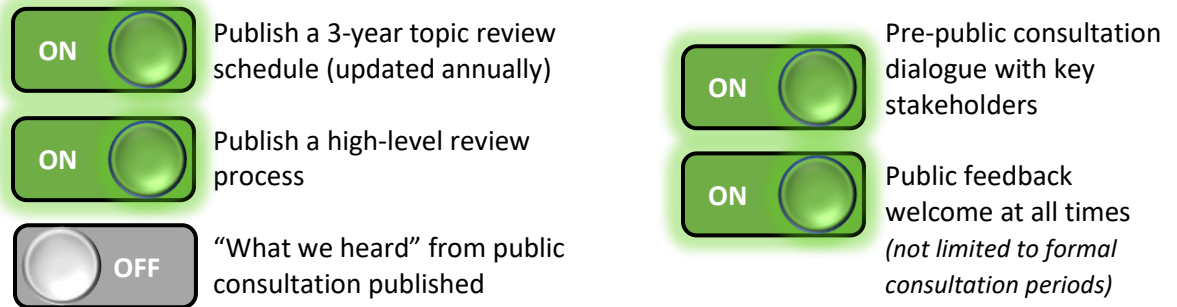
Public consultation period
(speed-quality balance)



Makeup of technical review working group*
(who has greatest influence)



Process transparency and stakeholder engagement options
(to support transparency, quality, stakeholder engagement and awareness)



**Tri-partite committees may review select topics*

OHS CODE REVIEW PROCESS CONTROL PANEL
(Illustrated 'settings' represent recommended options)

Advanced options

Call for topics for review informed by:

- Public and government OHS staff suggestions
- Public fatality inquiry recommendations
- Public meetings

Information provided to support public consultation:

- Draft proposed changes
- Downloadable feedback template
- Discussion papers

Public feedback formats accepted:

- Online survey
- Email, regular mail, and facsimile
- Anonymous feedback submissions accepted
- Public meetings

Communications methods:

- News release and OHS eNews announcing consultations and updated Code
- PIR Partners engaged to communicate consultations and updated Code
- Website postings, and email to key stakeholder list
- Letter mail to key stakeholder list
- Stand-alone consultation alert subscription service

Implementation items (after updated Code approved):

- Updated Code published on government website (regular text & XML)
- Hard copy of OHS Code available for purchase by public
- FAQ document published regarding changes to OHS Code
- Comparison document published (previous vs. new OHS Code)
- Regulatory explanation guide and best practices guidelines published
- OHS officers trained on changes to rules
- Changes to rules presented at conferences and other stakeholder venues
- Verbatim stakeholder feedback published
- Government response to individual stakeholder feedback published
- Historical records of past consultations published

Guiding principles for OHS rules:

(T1=tier 1 [paramount]; T2=tier 2 [desired])

- Protect health, safety & wellbeing of workers (T1)
- Necessary as demonstrated by evidence (T1)
- Not contradict other rules (T1)
- Shared accountability for work site parties (T2)
- Performance-based where possible (T2)
- Sufficiently comprehensive, clear & easy to understand (T2)
- Practical and achievable (T2)
- Compliance with rules enforceable (T2)
- Enable employers to profitably operate businesses (T2)
- Not add undue cost to government (T2)
- Recommendations from public fatality inquiries considered (T2)
- Approaches used in other Canadian jurisdictions considered (T2)
- Not create monopolies (e.g., training monopolies) (T2)
- Recognize reputable standards (e.g., CSA) (T2)

7.2 Recommendations

A series of eight recommendations follow. The first three are the core recommendations of this study: a recommended revised OHS Code review process including considerations to enhance stakeholder engagement, which takes into consideration the province's interprovincial trade obligations. The next four are ancillary recommendations to support the success of the Code review process. The final recommendation is a recommended approach of implementing this project's recommendations.

7.2.1 CORE RECOMMENDATIONS

The following three recommendations represent a revised approach of reviewing and updating Alberta's OHS Code, which is the key deliverable of this project.

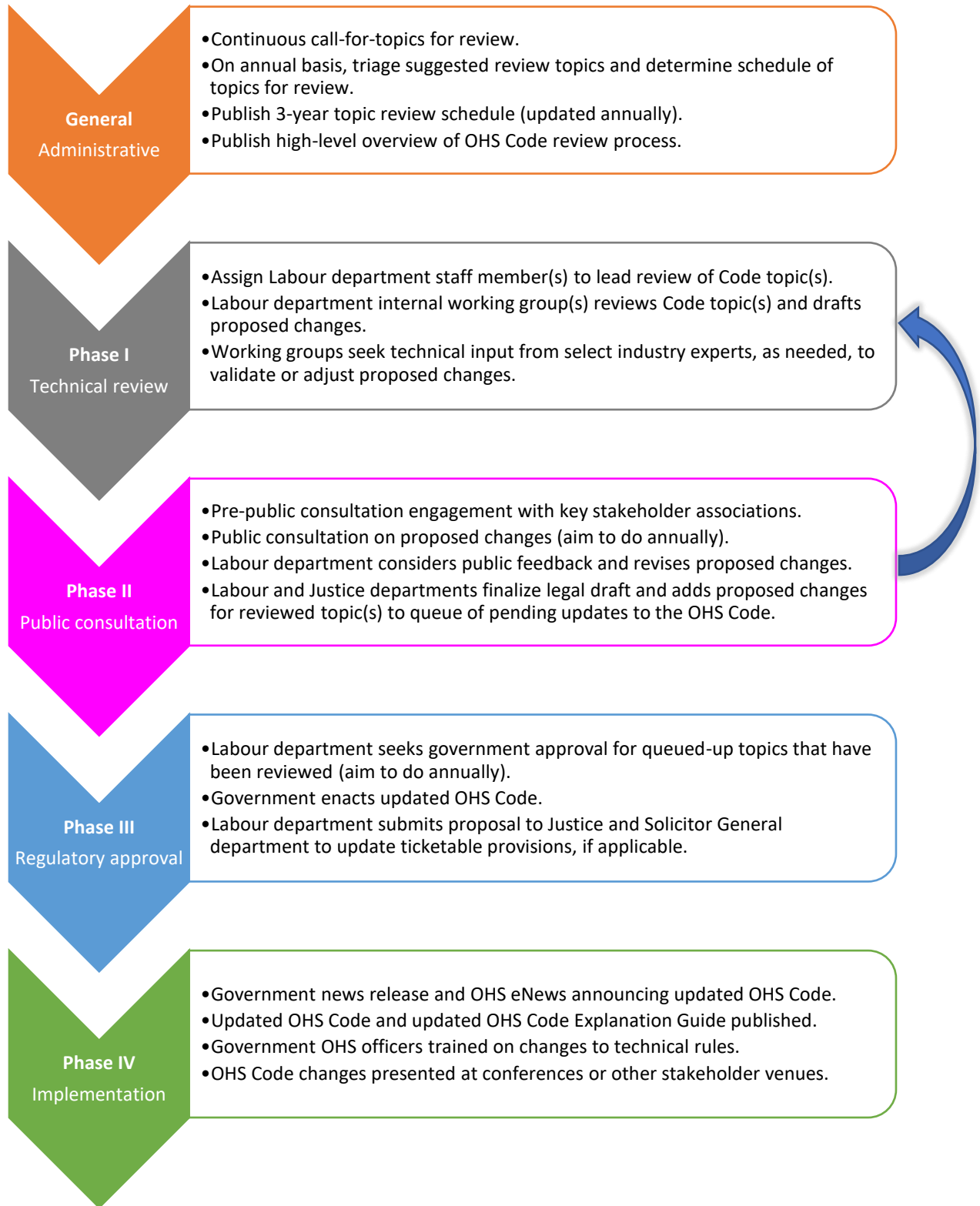
RECOMMENDATION #1: RECOMMENDED OHS CODE REVIEW PROCESS

As informed through this research, a recommended revised process to review and update Alberta's OHS Code has been developed. The revised process builds on aspects of earlier approaches used to review the Code that have proven effective plus includes solutions to address gaps identified through this research.

Broadly speaking, the revised process is designed to update the Code more frequently than the current process. It is designed with recognition that managing the scope of work by not allowing it to get too large is a key success factor, as doing work in smaller pieces can reduce process bottlenecks and improves quality by lessening the likelihood of legal drafting errors. In terms of guiding principles, the revised process puts greater emphasis on the protection of workers, rather than aiming to balance the needs of workers and employers per the original guiding principles. This tipping of the scale to benefit the wellbeing of workers aligns with the Labour ministry's mandate and its performance objectives to promote fair, safe and healthy workplaces. To ensure updates to the OHS Code are reasonable and practicable, the recommended revised process places greater emphasis on stakeholder engagement.

A high-level overview of the revised process is presented in Figure 6 and the detailed revised process is presented in Appendix D. Within the detailed revised process, notations are made to denote whether elements of the revised process represent new concepts, modified concepts, or whether original concepts have been validated through the research. Appendix D also includes a set of revised guiding principles for the setting of OHS technical rules, and a summary of the differences between the original and revised Code review processes.

FIGURE 6: HIGH-LEVEL OVERVIEW OF RECOMMENDED REVISED OHS CODE REVIEW PROCESS*



*See Appendix D for details.

RECOMMENDATION #2: STAKEHOLDER ENGAGEMENT STRATEGY

It is recommended that when reviewing the OHS Code, Alberta's Labour department:

- Reach out to industry experts on an as-needed basis to provide technical support to the technical review internal working group. [*Included in section D-2 (Appendix D) of the detailed recommended process.*]
- Establish tri-partite technical review committees consisting of industry, labour and government for select topics that are highly technical in nature where the outcome of the review could have major impacts on industry. [*Included in section D-2 (Appendix D) of the detailed recommended process.*]
- As a part of pre-public consultation, proactively reach out and consult or collaborate with stakeholders who will be affected by the parts of the Code being reviewed. For example, if electrical safety standards are being reviewed, reach out the electric utility industry. [*Included in section D-3 (Appendix D) of the detailed recommended process.*]
 - Note: While this stakeholder engagement approach has worked in another jurisdiction (British Columbia), it has not been tested before in Alberta. Hence, it is recommended that this feature of the process be implemented as a pilot test, with its success being evaluated following the first time it is used.
- Build upon the Labour department's positive track record of recognizing employer associations and labour organizations as key stakeholders, by expanding this to recognize OHS practitioner associations as key stakeholders as this group can contribute to solutions that benefit employers and workers and support the Labour department in meeting its mandate of protecting the health and safety of workers. Engaging OHS practitioners during the technical review and public consultation phases of the recommended revised process may be ideal. [*Can achieve through sections D-2 and D-3 (Appendix D) of the detailed recommended process.*]
- Recognize and communicate the needs of all stakeholders and government. Specifically, let labour organizations know the needs of employers and vice-versa. Let all stakeholders know the needs of the Labour department to meet its mandate of providing fair, safe and healthy workplaces. This can be done at multiple stages of the review process where there is communication with stakeholders [*in sections D-1, D-3 and D-5 (Appendix D) of the detailed recommended process*].
- Conduct public consultation and communicate with stakeholders as outlined in sections D-1, D-3, and D-5 (Appendix D) of the detailed recommended process.
- Provide stakeholders with the information they need to contribute to the Code review in a meaningful way. During public consultation, this should include showing proposed changes to rules next to the existing rules and providing rationale for the proposed change. [*Included in section D-3 (Appendix D) of the detailed recommended process.*]
- Embrace the input of stakeholders to form OHS rules and communicate to stakeholders how their input influenced the rules. This can be done in the public consultation and implementation stages [*in sections D-4 and D-5 (Appendix D) of the detailed recommended process*].

RECOMMENDATION #3: INTERPROVINCIAL TRADE OBLIGATIONS

This report recommends addressing the immediate harmonization needs through the guiding principles of the recommended revised process, which are presented in section D-6 (Appendix D) of this report until which time a regional or national approach to harmonization is more fully determined.

While solving the national harmonization issue is out-of-scope for this Master's Project, the Project Client may wish to liaise with Safe Work Australia to seek advice on national harmonization. Safe Work Australia has made significant progress and is a decade ahead of Alberta and Canada in terms of working towards OHS harmonization.

7.2.2 ANCILLARY RECOMMENDATIONS

The following four recommendations are designed to ensure the core recommendations are successful by minimizing implementation risks.

RECOMMENDATION #4: DOCUMENT CONTROL

Document control is an important mechanism to proactively prevent Code update drafting errors, for both technical review and legal drafting phases of the review and update process.

It is recommended that document co-authoring information technology solutions be used so that there is only a single draft of each document that multiple authors can be contributing to simultaneously. This is addressed in section D-1 (Appendix D) of the recommended Code review process, however is highlighted here for emphasis as it addresses a major process bottleneck that this research identified. In practice, this means that documents will no longer be emailed between staff.

RECOMMENDATION #5: OPERATIONAL PROCEDURE

It is recommended that the Code review process be treated as a formalized operational procedure with management-level sign-off. While the Code review process may evolve over time, the operational procedure should be updated to keep pace. This way, staff will always have an all-inclusive procedure to reference, which addresses a key issue identified by this research.

RECOMMENDATION #6: STAFF TRAINING

It is recommended that the Labour department's OHS policy staff receive education on the four types of OHS regulatory standards along with how these can be supported by third-party technical standards and non-regulatory guidance documents. Through having a solid theoretical foundation of how mixing these six elements in optimal proportions can result in the best protection for workers, staff will be in a better position to propose excellent regulation.

RECOMMENDATION #7: PROJECT MANAGEMENT (INCLUDING PSYCHOLOGICAL HEALTH OF STAFF)

It is recommended that:

- The Labour department's OHS policy team have project management capacity, and that project managers have a balance of both hard and soft project management skills.
- Project management be recognized as an occupational hazard within the Labour department's internal OHS program, with the psychological health risks of project management being identified, assessed and controlled. There are multiple ways in which psychological hazards can be controlled, and some have been built-in to this report's

recommendations; these include: establishing an operational procedure for Code review work so staff know what steps need to be followed; ensuring soft skills are a part of project management skills; and doing Code review work in small batches that are manageable. In addition, the psychological health of the Labour department's OHS policy staff can be increased by using the minimal level of project management discipline and management processes to achieve tasks. In instances where higher levels of project management discipline or processes is a bona-fide need to address higher project risks, provide staff with psychological health supports. It is anticipated that ensuring the psychological health of staff will contribute to minimizing Code review project risks, which will in turn contribute to project success.

7.2.3 RECOMMENDED APPROACH TO IMPLEMENTING PROJECT RECOMMENDATIONS

The following recommendation represents a recommended approach of implementing this project's recommendations.

RECOMMENDATION #8: HIGH-LEVEL WORK PLAN

A recommended high-level work plan is as follows:

Short-term (e.g., implement in Year 1)

1. Labour department management reviews options and recommendations from this report and selects preferred options.
2. Labour department creates a formalized internal operational procedure from the preferred options, and trains OHS policy staff on the operational procedure.
3. Labour department educates OHS policy staff on the theory of the types of OHS regulatory standards, supporting third-party technical standards and non-regulatory guidance documents, and how elements these work together to maximize protection for workers.
4. Labour department creates a public-facing high-level overview of the OHS Code review process (modelled after Figure 6 of this report) and publishes the process on the department's OHS website.
5. Labour department creates an online web form to receive public suggestions for OHS topics for review, and publishes this form on the department's OHS website.
6. Labour department assigns a staff member as a project manager to coordinate the OHS Code review process.
7. Labour department creates terms of reference for its OHS technical review working group(s), and if needed topic-specific tri-partite technical review committees.

Medium-term (e.g., starting in Year 2)

8. Annually (e.g., January of each year), Labour department's overarching technical review working group reviews public and internal suggestions for technical review and creates a three-year review schedule, which is published on the department's OHS website.
9. Labour department develops work plans and reviews and consults on OHS Code topics following review schedule as per adopted operational procedure.
10. On an annual basis, Labour department seeks government approval and adoption of proposed OHS Code updates following topic reviews.

11. Labour department implements OHS Code changes following government approval.

Long-term (e.g., starting in Year 3)

12. Labour department evaluates operational procedure on a periodic basis and formally updates operational procedure if changes are deemed necessary.

8.0 Conclusion

The Government of Alberta's Labour department faced a problem in not knowing whether its process of reviewing and updating Alberta's OHS Code was as effective and efficient as possible, whether the process adequately addressed the needs of its stakeholders, and whether the process could be improved to address the government's interprovincial trade agreements. This formed the impetus of this Master's Project, which took a well-researched approach to evaluate the OHS Code review process.

This study looked to the approaches taken across Canada, the United States, Europe, Australia and New Zealand to gather perspectives on the range of methodologies taken to review OHS regulation. This study also looked to scholarly literature to determine if there is any existing research that can help inform a path forward. The study also gathered input from a cross-section of Alberta's key stakeholders as well as Alberta and other Canadian government officials involved in reviewing OHS regulation.

This study found that while Alberta's OHS Code review process is not broken, it is less efficient than optimal. As such, this research includes a recommended revised process for reviewing and updating the technical OHS rules found within Alberta's OHS Code, along with some ancillary recommendations to support the review process.

While the scope of this research focused on a formative evaluation of an OHS regulatory review process within Alberta, all other Canadian jurisdictions responsible for OHS regulation may benefit from considering the findings of this research. This is especially true, considering this is the only formal research of this type conducted in Canada, and considering that Canadian jurisdictions have aspirations to work towards harmonizing their OHS legislation.

To support these aspirations, further research opportunities include building on this project's research by considering the national perspective of OHS regulatory review and recommending an approach to solve Canada's OHS harmonization needs in a manner that meets the needs of all jurisdictions.

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Appendix A: Data Collection – Telephone Interview and Focus Group Questions

Exhibit A-1: Telephone interview questions (key external informants)

1. **Effectiveness and efficiency:** From your perspective, looking at the current OHS Code review and update process:
 - a. What has worked well?

Response:
 - b. What could improve and how?

Response:
2. **Your role:** In a perfect world, what do you see as your organization’s role in updating Alberta’s OHS technical rules, which are contained within the OHS Code? How would you like to participate?

Response:
3. **Hearing from business owners:** Business owners (executive leaders) sometimes delegate the task of providing feedback on updates to the OHS Code to their in-house OHS staff or to their industry association. Do you believe this is a valid approach to capturing business owner (leader) perspectives, or if not, do you have suggestions on how to better capture this group’s input?

Response:
4. **Hearing from workers:** Individual workers tend to be under-represented in providing their input into updates to the OHS Code. Often organized labour groups speak on behalf of individual workers. Do you believe this is a valid approach to capturing worker perspectives, or if not, do you have suggestions on how to better capture this group’s input?

Response:
5. **Update frequency:** In your opinion, how often should the rules in the Code be updated? Specifically:
 - a. Should the rules be updated frequently in small batches with only a few rules being updated at a time or in large batches with many rules being updated all at once?

Response:
 - b. Based on your selection, what is the ideal update frequency (e.g., in months or years)?

Response:
6. **Guiding principles for technical decisions:** What guiding principles should be used to update rules in the OHS Code? Specifically:
 - a. Should rules be flexible and performance based with the desired outcome (safety objectives) stated but with less clarity on how to achieve the outcome, or less flexible and prescription based with the “how to” specified to maximize clarity of what is expected?

Response:
 - b. Should the rules reflect innovation and the use of “best practices” or should they represent minimum standards that might in some cases be less effective than best practices?

Response:
 - c. Should there be as few rules as possible to cover basic key items or as many rules as possible to be comprehensive?

Response:

- d. Some OHS rules such as wearing of safety glasses are simple to understand by the majority of people, and other rules such as exposure to multiple chemicals while simultaneously being exposed to noise can be complex due to technical nature. What is more important: rules that protect workers in all circumstances or rules that are easy to understand? How basic or complex should the rules in the Code be?

Response:

- e. Should the rules reflect shared accountability by all worksite parties (e.g., rules for workers and employers for each safety topic)?

Response:

- f. Should the rules emphasize worker education and appropriate training, and to what degree?

Response:

- g. Which of the following currently used screening criteria for rules in the Code make the most or least sense from your perspective?

- i. rules in the Code need to directly relate to OHS
- ii. the rules must be necessary as demonstrated by evidence
- iii. rules should be responsive to what is heard from Albertans
- iv. rules must be designed with health and safety outcomes in mind
- v. rules must be clear to reduce the need for interpretation
- vi. compliance with the rules must be enforceable
- vii. rules must not cause negative or contradictory impact on other Parts of the Code, or on provisions in the OHS Act or the OHS Regulation
- viii. implementation of the rules at a work site must be 'reasonably practicable' and not add an undue administrative burden
- ix. rules must not add undue cost for implementation or enforcement to industry or government
- x. rules must balance the right of workers to a safe and healthy working environment with the right of employers to profitably operate their business
- xi. rules should be avoided if a non-legislated guide/industry practice could as effectively address the issue
- xii. how the issue is addressed in other jurisdictions should be considered when creating rules

Response:

- h. What other guiding principles should there be in setting the OHS technical rules?

Response:

7. **Interprovincial harmonization:** To support employers and workers who work in multiple Canadian provinces, how similar should Alberta's OHS technical rules be to those of other provinces? How best can government achieve making rules more similar?

Response:

8. **Governance:** Presently, government staff coordinate the process of reviewing the Code, which consists of a technical review and public consultation. Potential changes are then provided to the OHS Council who reviews/approves pending adequate consultation and presents updates to the Minister for adoption. From a governance perspective:

- a. Who do you see as the most appropriate “body” to conduct technical review of the Code before proposed changes go out for public consultation and to review and incorporate feedback from public consultation?

Presently this is done by government staff with OHS subject-matter expertise.

Response:

- b. Do you have any other suggestions about improving the governance structure of how the Code is reviewed and updated?

Response:

9. **Other:** Do you have any further input that you would like to share concerning the OHS Code review and update process?

Response:

Exhibit A-2: Telephone interview questions (government officials: other Canadian jurisdictions)

1. **Process:** What process does your jurisdiction follow in updating its OHS technical rules?

Response:

2. **Update frequency:** How often does your jurisdiction update its OHS technical rules? Are your rules updated in small batches or in large batches?

Response:

3. **Experience:** What has your experience been with your current process? Has it been formally evaluated? Is it perfect, or are there areas that could improve? Please elaborate.

Response:

4. **Interprovincial harmonization:** To support employers and workers who work in multiple Canadian provinces, there is interest in making Alberta’s OHS technical rules more similar to those of other provinces. If political direction is provided to increase harmonization of OHS technical rules, how best do you see provinces working together?

Response:

5. **Other:** Do you have any final thoughts you would like to share that may assist Alberta in evaluating its process of reviewing and updating its OHS technical rules?

Response:

Exhibit A-3: Focus group questions

1. **Governance:** Presently, government staff coordinate the process of reviewing the Code, which consists of a technical review and public consultation. Potential changes are then provided to the OHS Council who reviews/approves pending adequate consultation and presents updates to the Minister for adoption. From a governance perspective:
 - a. Who do you see as the most appropriate “body” to conduct technical review of the Code before proposed changes go out for public consultation and to review and incorporate feedback from public consultation?

Presently this is done by government staff with OHS subject-matter expertise (this precedes legal drafting and the “making” of the Code by the Council before the Minister considers adopting).

Response:

- b. What key elements should the terms of reference for the technical working groups include?

Response:

- c. What do you see as the ideal role of OHS Delivery in the OHS Code review and update process?

Response:

2. **Scope of review:** The current Code review process consists of full review of Parts identified by stakeholders, plus miscellaneous sections (i.e., not full Parts) identified by internal staff. Internal staff indicated miscellaneous changes were the most challenging from a review and legal drafting perspective. In the future:

- a. Should only entire Parts be reviewed; i.e., with no additional miscellaneous sections?

Response:

- b. Should internal staff be permitted to determine additional Parts that need reviewing, or should this only be informed by external stakeholders?

Response:

- c. Should the rules be updated frequently in small batches with only a few rules being updated at a time or in large batches with many rules being updated all at once?

Response:

3. **Legal drafting:** Legal drafting consumed considerable time in the current OHS Code review and update cycle. How can legal drafting speed be increased?

Response:

4. **Team cooperation:** The staff debrief identified that there were times when it was difficult to receive cooperation within the team. What were the barriers to cooperation? How can cooperation be improved in the future?

Response:

5. **Process:** Broadly speaking, key stages in the OHS Code’s review and update cycle include (1) public call for topics for technical review, (2) technical review of topics, (3) public consultation on proposed updates to the Code, (4) legal drafting of proposed changes, (5) OHS Council review/approval of proposed changes, (6) government approval of changes, and (7) implementation of an updated Code.

- a. Does this process continue to make sense or should there be adjustments, and if so, what could those adjustments be?

Response:

- b. For each of the key stages, please identify the key steps?

(1) Public call for topics for technical review.
Response:
(2) Technical review of topics.

Response:

(3) Public consultation on proposed updates to the Code.

Response:

(4) Legal drafting of proposed changes.

Response:

(5) OHS Council review/approval of proposed changes.

Response:

(6) Government approval of changes.

Response:

(7) Implementation of an updated Code.

Response:

6. **Interprovincial harmonization:** To support employers and workers who work in multiple Canadian provinces, there is interest in making Alberta's OHS technical rules more similar to those of other provinces. If political direction is provided to increase harmonization, how best do you see provinces working together?

Response:

7. **Other:** Do you have any further input that you would like to share concerning the OHS Code review and update process?

Response:

Appendix B: Interjurisdictional Scan of OHS Technical Rule Review Processes

Table B-1: Features of OHS technical review and update processes identified from interjurisdictional scan of published information

To aid in comparing Alberta’s features to other jurisdictions, features of Alberta’s current practice are bolded.*

General (administrative)	Phase I – technical review	Phase II – public consultation	Phase III – regulatory approval	Phase IV – implementing regulatory changes
<p>Process transparency:</p> <ul style="list-style-type: none"> ✓ process not published² ✓ partial details of process published² ✓ full process published ✓ records of past consultations not published² ✓ records of past consultations published online ✓ consultation responses available for public viewing in government office ✓ stakeholders can request their input be confidential (not publicly available) <p>Review cycle:</p> <ul style="list-style-type: none"> ✓ perpetual ✓ annual ✓ multi-year¹ ✓ infrequent/not pre-determined ✓ not legislated² ✓ legislated – 10 years <p>Review triggered by:</p> <ul style="list-style-type: none"> ✓ period of elapsed time ✓ stakeholder recommendation ✓ recommendation from public fatality inquiry³ <p>Topics reviewed at one time:</p> <ul style="list-style-type: none"> ✓ single topic ✓ multiple topics¹ <p>Email subscription service:</p>	<p>Review committee composition:</p> <ul style="list-style-type: none"> ✓ government, labour and employer representation (statutory) ✓ government, labour and employer representation (non-statutory) ✓ government representation only (non-statutory)¹ <p>Review informed by:</p> <ul style="list-style-type: none"> ✓ research, analysis, evaluation ✓ stakeholder suggestions early in review process¹ ✓ government OHS policy staff suggestions² ✓ public meetings <p>Criteria of technical rules:</p> <ul style="list-style-type: none"> ✓ prescriptive only ✓ performance-based only ✓ balance of prescriptive and performance-based¹ ✓ minimize burden¹, especially on small business⁴ ✓ rules simple and easy to comprehend ✓ streamline and modernize ✓ rules only permitted if other policy options do not work ✓ national harmonization ✓ enforceable¹ <p>Criteria published:</p> <ul style="list-style-type: none"> ✓ criteria not published² ✓ criteria published 	<p>Call for public feedback via:</p> <ul style="list-style-type: none"> ✓ government news release² ✓ open letter from minister ✓ website posting¹ <p>Information provided:</p> <ul style="list-style-type: none"> ✓ objectives of proposed regulatory amendments ✓ discussion papers ✓ draft regulations¹ ✓ regulatory impact assessment ✓ FAQs <p>Stakeholder feedback windows:</p> <ul style="list-style-type: none"> ✓ feedback on improving OHS legislation welcomed at all times³ ✓ feedback welcomed during public consultation periods¹ <p>Public consultation period:</p> <ul style="list-style-type: none"> ✓ 6 weeks ✓ 2 months ✓ 3 months^{2,4} ✓ 2 years <p>Feedback criteria:</p> <ul style="list-style-type: none"> ✓ anonymous submissions not accepted ✓ anonymous submissions accepted² <p>Feedback format:</p> <ul style="list-style-type: none"> ✓ online survey¹ ✓ email² ✓ downloadable feedback template (complete & email)⁴ 	<p>Technical rules approved by:</p> <ul style="list-style-type: none"> ✓ government ✓ government board/agency ✓ blend of government and board/agency² <p>Technical rules housed in:</p> <ul style="list-style-type: none"> ✓ regulation ✓ code¹ <p>Intermediate step:</p> <ul style="list-style-type: none"> ✓ “What we heard” report created but not published² ✓ “What we heard” report including government’s response to public feedback published 	<p>Communication methods:</p> <ul style="list-style-type: none"> ✓ news release announcing enactment of new regulations² ✓ new regulations published on government web site² ✓ rules published in federal register/gazette ✓ hard copy of rules can be purchased² ✓ FAQ document published² ✓ information sessions ✓ regulatory explanation guide published² ✓ guideline documents published to support performance-based rules² <p>Other:</p> <ul style="list-style-type: none"> ✓ regulatory explanation guides created without consultation² ✓ public consultation occurs on content of regulatory explanation guides

<ul style="list-style-type: none"> ✓ consultation alert emails ✓ OHS newsletter subscription² 		<ul style="list-style-type: none"> ✓ regular mail / fax ✓ public hearings/meetings 		
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¹Feature practiced in Alberta and exists in Alberta’s current formal process.

²Feature practiced in Alberta informally (i.e., is not in Alberta’s current formal process).

³Item Alberta could consider adopting that may conceptually positively influence effectiveness of provincial OHS program.

⁴General enhancement Alberta could consider adopting.

*Features listed in table are items that could be deduced from published information. Citations for jurisdictions in which these features were identified are presented in Table B-2. Since not all information is published across jurisdictions, actual processes may include features that are not listed in the table.

Table B-2: Interjurisdictional scan of published information on OHS technical rule review and update processes

Jurisdiction	Summary of OHS technical rules review and update process	Analysis notes
Canada		
British Columbia (BC)	<ul style="list-style-type: none"> ▪ WorkSafeBC is a government agency (WorkSafeBC, 2016a, p. 2) that administers the process of updating OHS technical rules (WorkSafeBC, 2016b, pp. 1 & 8). ▪ WorkSafeBC publishes its process of reviewing OHS technical rules (WorkSafeBC, n.d.[a]), which includes the following steps: <ul style="list-style-type: none"> ○ Suggestions for regulatory change are accepted from internal and external stakeholders. ○ Internal policy staff including staff with OHS subject matter expertise draft proposed regulatory amendment. ○ Small group of external subject matter experts engaged to provide early feedback on regulatory proposal so any needed clarifications can be made. ○ Public consultation is held, and proposal adjusted based on public feedback. ○ Public hearings are held across the province prior to rules being finalized. ○ WorkSafeBC must (by statute) hold a public hearing prior to rules being updated. ▪ In addition to the formal process, other process steps can be deduced from available information (searched worksafebc.com and gov.bc.ca Feb 13, 2017). Records from past consultations are archived online (WorkSafeBC, n.d.[b], “Closed public hearings & consultations”), and show that: <ul style="list-style-type: none"> ○ A single topic is reviewed at one time. ○ A public facing discussion paper is provided to inform public consultation for each review. ○ Stakeholders may provide feedback through written submissions (online, email, fax, mail). ○ Anonymous submissions to the consultation process are not considered (WorkSafeBC, 2016b, p. 10). ○ Discussion papers and verbatim stakeholder feedback from past reviews are archived online. Names of organizations that provided input are listed alongside their input; names of individuals that provided input are not listed. ○ Stakeholders, at any time, can submit a formal request for a change to the technical rules (WorkSafeBC, 2017). ▪ Plus, WorkSafeBC each year publishes a 3-year Regulatory Amendment Workplan (WorkSafeBC, n.d.[c], “OHS Regulation and Policy Workplans”). The workplans show that about 6 OHS topics per get reviewed (WorkSafeBC, n.d.[d], pp. 1-6). 	<p>Review process is arms-length from government.</p> <p>A relatively transparent process is followed. The process and a 3-year regulatory amendment workplan is published. Posting discussion papers and stakeholder feedback enables the public to see how adopted policies align with rationale for rules and public feedback.</p> <p>Stakeholders can request changes to technical rules at any time. Rules are updated relatively frequently and one topic is reviewed at a time.</p> <p>Rules are designed to balance between prescriptive and performance-based.</p> <p>Anonymous consultation submissions are not accepted.</p>

	<ul style="list-style-type: none"> ▪ The Institute for Work and Health, an Ontario-based not-for-profit research organization, in a 2010 report briefly explains British Columbia’s OHS regulation review process (Institute for Work and Health, 2010, pp. 3-4): <ul style="list-style-type: none"> ○ WorkSafeBC is required by legislation to review and consult on regulations on an ongoing basis, however intervals are not specified. In practice, regulations are reviewed annually. ○ The review is supported by a standing consultation forum, the “Policy and Practice Consultative Committee,” which has representation from WorkSafeBC staff (Senior Vice-President of Corporate Affairs, Senior Vice-President of Operations, Executive Director of Employers’ Advisers Office, Executive Director of Workers’ Advisers Office), BC Ministry of Labour, four worker representatives (plus two alternates), and four employer representatives (plus two alternates). ○ After public consultation, regulations are adjusted then go to public hearings. Once finalized, regulations are approved by WorkSafeBC’s board of directors. ▪ The institute for Work and Health further explains that (p. 3): <ul style="list-style-type: none"> ○ Technical OHS rules are designed to be a balance of prescriptive and performance-based standards. <p>References: Institute for Work and Health (2010). British Columbia: description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_british_columbia_2010.pdf</p> <p>WorkSafeBC (2016a). 2015 Annual Report and 2016–2018 Service Plan. Retrieved February 19, 2017 from https://www.worksafebc.com/en/resources/about-us/annual-report-statistics/2015-annual-report/2015-annual-report-and-2016-2018-service-plan?lang=en</p> <p>WorkSafeBC (2016b). Discussion paper: joint health and safety committee OHSR changes. Retrieved February 19, 2017 from https://www.worksafebc.com/en/resources/law-policy/discussion-papers/discussion-paper-joint-health-and-safety-committee-related-ohsr-changes?lang=en</p> <p>WorkSafeBC (2017). Request for changes to the Occupational Health and Safety Regulation. Retrieved April 8, 2017 from https://www.worksafebc.com/en/law-policy/public-hearings-consultations/policy-regulation-workplans/request-for-changes-occupational-health-safety-regulation</p> <p>WorkSafeBC (n.d.[a]). OHS regulatory development process. Retrieved April 8, 2017 from https://www.worksafebc.com/en/resources/law-policy/variousohs-regulatory-development-process?lang=en</p> <p>WorkSafeBC (n.d.[b]). Closed public hearings & consultations. Retrieved February 13, 2017 from https://www.worksafebc.com/en/law-policy/public-hearings-consultations/closed-public-hearings-and-consultations</p> <p>WorkSafeBC (n.d.[c]). Policy & regulation workplans. Retrieved July 13, 2017 from https://www.worksafebc.com/en/law-policy/public-hearings-consultations/policy-regulation-workplans</p> <p>WorkSafeBC (n.d.[d]). Policy, Regulation and Research Division (“PRRD”) 2017 - 2019 regulatory amendment workplan. Retrieved July 13, 2017 from https://www.worksafebc.com/en/resources/law-policy/regulation-policy-workplans/2017-2019-regulatory-amendment-workplan?lang=en</p>	
<p>Alberta</p>	<ul style="list-style-type: none"> ▪ The Alberta Labour department administers the process of updating OHS technical rules (Government of Alberta [GoA], 2014). 	<p>Review process resides within government.</p>

	<ul style="list-style-type: none"> ▪ While the process for reviewing OHS technical rules is not published by Alberta Labour (searched work.alberta.ca Feb 13, 2017), a number of process steps can be deduced from available information: <ul style="list-style-type: none"> ○ A news release from a recent OHS Code review (GoA, 2014) indicates multiple health and safety topics are reviewed at the same time and that public consultation is one step of the review process. ○ Information concerning a currently active industry-specific consultation on the OHS Code is available that outlines the use of technical working groups (GoA, n.d.). ▪ A regulatory explanation guide is published to provide guidance to stakeholders on the updated rules (Alberta Labour, 2017). <p>References: Government of Alberta (2014). Public input sought on workplace health and safety rules. Retrieved February 19, 2017 from https://www.alberta.ca/release.cfm?xID=37292A4C66AD1-0486-4BF9-03E5C5B48429CBB6</p> <p>Government of Alberta (n.d.). Consultations. Retrieved February 19, 2017 from https://www.alberta.ca/farm-and-ranch-consultations.cfm</p> <p>Alberta Labour (2017). OHS Code Explanation Guide 2009. Retrieved February 19, 2017 from http://work.alberta.ca/occupational-health-safety/ohs-code-explanation-guide.html</p>	<p>Similar to most Canadian jurisdictions, the process is relatively non-transparent.</p> <p>Rules are updated with moderate frequency with multiple topics being reviewed at the same time.</p>
<p>Saskatchewan</p>	<ul style="list-style-type: none"> ▪ The Labour Relations and Workplace Safety (LRWS) ministry administers the process of updating OHS technical rules (Government of Saskatchewan [GoS], 2007). ▪ While the process for reviewing OHS technical rules is not published by LRWS (searched saskatchewan.ca and worksafesask.ca Feb 16, 2017), some process information can be deduced from available information: <ul style="list-style-type: none"> ○ A news release from a past OHS regulation review (GoS, 2007) indicates that multiple health and safety topics are reviewed at the same time and public consultation is one step of review process. <p>References: Government of Saskatchewan (2007). Consultations on proposed workplace health and safety improvements begin. Retrieved February 16, 2017 from http://www.saskatchewan.ca/government/news-and-media/2007/february/09/consultations-on-proposed-workplace-health-and-safety-improvements-begin</p>	<p>Review process resides within government.</p> <p>Process is relatively non-transparent.</p> <p>While multiple topics are reviewed at the same time, it is not clear how often the rules are updated.</p>
<p>Manitoba</p>	<ul style="list-style-type: none"> ▪ The Growth, Enterprise and Trade (GET) ministry administers the province's OHS legislation (Province of Manitoba, n.d.). ▪ The process for reviewing OHS technical rules is not published by GET (searched safemanitoba.com and gov.mb.ca Feb 16, 2017). ▪ There is a non-specific requirement that the Workplace Safety and Health Act and its administration be reviewed every five years; however, it is not clear if this pertains to OHS technical rules (Province of Manitoba, 2016, s. 16(3)). <p>References: Province of Manitoba (n.d.). Labour & Regulatory Services: Workplace Safety and Health. Retrieved February 19, 2017 from http://www.gov.mb.ca/labour/safety/</p> <p>Province of Manitoba (2016). Manitoba Workplace Health and Safety Act and Regulation. Retrieved October 28, 2017 from http://www.gov.mb.ca/labour/safety/pdf/1_2016_wsh_ar_oc.pdf</p>	<p>Review process resides within government.</p> <p>Process appears non-transparent as no information concerning the process was identified on the regulator's website.</p>

<p>Ontario</p>	<ul style="list-style-type: none"> ▪ The Ontario Ministry of Labour (MoL) administers the process of updating OHS technical rules (Ontario Ministry of Labour [MoL], 2015; & Institute for Work and Health [IWH], 2010, p. 1). ▪ While the process for reviewing OHS technical rules is not published by the MoL (searched labour.gov.on.ca Feb 16, 2017), some process information can be deduced from available information: <ul style="list-style-type: none"> ○ A news release from a past OHS regulation review (Ontario MoL, 2015) indicates that one health and safety topic is reviewed at a time and public consultation is one step of the process. ▪ The Institute for Work and Health, an Ontario-based not-for-profit research organization, in a 2010 report briefly explains Ontario’s OHS regulation review process (IWH, 2010, p. 4): <ul style="list-style-type: none"> ○ Legislation does not specify how often OHS technical rules need to be updated. There are a number of statutory standing advisory committees with management-labour bi-partite membership that advise the Minister of Labour concerning improvements to regulatory standards. ○ Recommendations from coroner’s inquests concerning occupational fatalities often result in regulatory amendments. ▪ The institute for Work and Health further explains that (p. 4): <ul style="list-style-type: none"> ○ Technical OHS rules are designed to be a balance of prescriptive and performance-based standards. <p>References: Institute for Work and Health (2010). Ontario: description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_ontario_2010.pdf Ontario Ministry of Labour (2015). Bulletin: province consulting on amendments to the mining regulation. Retrieved February 16, 2017 from https://www.labour.gov.on.ca/english/news/2015/bul_miningreg20151126.php</p>	<p>Review process resides within government.</p> <p>Process is relatively non-transparent.</p> <p>One topic is reviewed at a time.</p> <p>Rules are designed to balance between prescriptive and performance-based.</p> <p>Of the jurisdictions reviewed, Ontario is the only jurisdiction where recommendations from a coroner’s inquest (known as a public fatality inquiry in Alberta) can trigger an OHS regulatory review.</p>
<p>Quebec</p>	<ul style="list-style-type: none"> ▪ The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) (formerly Commission de la santé et de la sécurité du travail [CSST]), is a government agency that administers the province’s OHS legislation (Commission des normes, de l'équité, de la santé et de la sécurité du travail, “An Act respecting occupational health and safety,” para. 1; & Institute for Work and Health [IWH], 2010, p. 1). ▪ While the process for reviewing OHS technical rules is not published by the CNESST (searched English content of csst.qc.ca on Feb 18, 2017), the Institute for Work and Health, an Ontario-based not-for-profit research organization, in a 2010 report briefly explains Quebec’s OHS regulation review process (IWH, 2010): <ul style="list-style-type: none"> ○ While there are no legislated requirements for regulations to be reviewed, in practice, regulations are reviewed annually by committees that include worker and employer representation, which is followed by a public consultation process (p.3). ○ Technical OHS rules are designed to be prescriptive (p. 2). ○ The CSST’s Board of Directors (now CNESST), which has a broad mandate over OHS and workers’ compensation (p.1), approves the regulatory changes (p.3). <p>References: Institute for Work and Health (2010). Quebec: description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_quebec_2010.pdf</p>	<p>Review process is arms-length from government.</p> <p>Process appears non-transparent as no information concerning the process was identified on the regulator’s website.</p> <p>Third-party information was identified suggesting regulations are reviewed on an annual basis.</p> <p>Rules are designed to be prescriptive.</p> <p><i>Note: only English content of the CNESST website (which is a subset of the more</i></p>

	<p>Commission des normes, de l'équité, de la santé et de la sécurité du travail. Legislation. Retrieved February 19, 2017 from http://www.csst.qc.ca/en/Pages/en_legislation.aspx</p>	<p><i>comprehensive French content) was reviewed.</i></p>
New Brunswick	<ul style="list-style-type: none"> ▪ WorkSafeNB is responsible for administering OHS legislation (WorkSafeNB, 2017, "Acts and regulations," para. 1). ▪ While the process for reviewing OHS technical rules is not published by WorkSafeNB (searched worksafenb.ca Feb 20, 2017), some process information can be deduced from available information: <ul style="list-style-type: none"> ○ A news release from a past regulatory amendment showed one topic being reviewed at a time, and that "research, analysis, consultation and evaluation" was part of the process (WorkSafeNB, 2010, para. 1). <p>References: WorkSafeNB (2017). Acts and regulations. Retrieved February 20, 2017 from http://www.worksafenb.ca/acts-and-regulations WorkSafeNB (2010). News release: amendments to fall protection legislation will improve safety. Retrieved February 20, 2017 from http://www.worksafenb.ca/docs/NR_FallProtectionLeg_e.pdf</p>	<p>Review process is arms-length from government.</p> <p>Process appears non-transparent. Due to limited information including sparse news releases, it appears that safety regulations are not reviewed very often and when they are, only a single topic is reviewed.</p>
Nova Scotia	<ul style="list-style-type: none"> ▪ The Department of Labour and Advanced Education is responsible for administering OHS legislation (Government of Nova Scotia, 2017). ▪ The process for reviewing OHS technical rules is not published (searched novascotia.ca and workplaceinitiatives.novascotia.ca Feb 20, 2017). <p>References: Government of Nova Scotia (2017). Occupational health and safety. Retrieved February 20, 2017 from http://workplaceinitiatives.novascotia.ca/nshrtoolkit/links/ohs.asp</p>	<p>Review process resides within government.</p> <p>Process appears non-transparent as no information concerning the process was identified on the regulator's website.</p>
Prince Edward Island (PEI)	<ul style="list-style-type: none"> ▪ The Workers Compensation Board (WCB) of PEI is a government agency that administers the process of updating OHS technical rules (Workers Compensation Board of Prince Edward Island [WCB-PEI], 2011a). ▪ While WCB-PEI does not specifically publish its process of reviewing OHS technical rules, a number of process steps are published in a piecemeal form: <ul style="list-style-type: none"> ○ WCB-PEI consults with stakeholders prior to updating policies relating to OHS legislation (WCB-PEI, 2011b). ○ WCB-PEI welcomes feedback on its legislation at all times (WCB-PEI, 2011c). ○ WCB-PEI publishes draft legislation and proactively requests feedback (WCB-PEI, 2011d). ○ The feedback form is simple; it requests a person's name, email, phone number, and the person's comment (WCB-PEI, 2011c). <p>References: Workers Compensation Board of Prince Edward Island (2011a). OHS Act and regulations. Retrieved February 21, 2017 from http://www.wcb.pe.ca/Workplace/OHSActAndRegulations Workers Compensation Board of Prince Edward Island (2011b). Policy consultation. Retrieved February 21, 2017 from http://www.wcb.pe.ca/Information/PolicyConsultation Workers Compensation Board of Prince Edward Island (2011c). Feedback on legislation. Retrieved February 21, 2017 from http://www.wcb.pe.ca/Information/LegislativeFeedback Workers Compensation Board of Prince Edward Island (2011d). Legislative feedback. Retrieved February 21, 2017 from http://www.wcb.pe.ca/Information/LegislativeReview</p>	<p>Review process is arms-length from government.</p> <p>While the general process is published, it is very general and there is no indication of a pre-determined review cycle.</p> <p>Public consultation feedback form is generic and basic.</p> <p>PEI along with BC and California are unique in that they openly welcome feedback on OHS technical rules at all times.</p>

<p>Newfoundland and Labrador</p>	<ul style="list-style-type: none"> ▪ Service NL administers the process of updating OHS technical rules (Government of Newfoundland and Labrador [GNL], 2017a). ▪ While the process for reviewing OHS technical rules is not published (searched servicenl.gov.nl.ca Feb 22, 2017), a number of process steps can be deduced from available information: <ul style="list-style-type: none"> ○ OHS technical rules are reviewed one topic at a time, and records of past consultations are posted on Service NL’s website (GNL, 2017b). ○ An open letter from the minister to stakeholders is published for each consultation inviting stakeholders to submit comments (GNL, 2017c; & GNL, 2017d). ○ Consultation periods range between 45-days (GNL, 2017b) and 3 months (GNL, 2017c; & GNL, 2017d). ▪ OHS technical rule principles are published: regulations are designed to be consistent with other jurisdictions, not overly prescriptive, user friendly, and with obsolete provisions removed (GNL, 2017c). ▪ A regulatory explanation guide is published to provide guidance to stakeholders on the updated rules (GNL, 2017e). <p>References: Government of Newfoundland and Labrador (2017a). Occupational health and safety division. Retrieved February 22, 2017 from http://www.servicenl.gov.nl.ca/department/branches/divisions/ohs.html</p> <p>Government of Newfoundland and Labrador (2017b). Consultations. Retrieved February 22, 2017 from http://www.servicenl.gov.nl.ca/Consultation/index.html</p> <p>Government of Newfoundland and Labrador (2017c). Letter for the OHS consultation process. Retrieved February 22, 2017 from http://www.servicenl.gov.nl.ca/consultation/pdf/letter_for_the_ohs_consultation_process.pdf</p> <p>Government of Newfoundland and Labrador (2017d). Introduction letter. Retrieved February 22, 2017 from http://www.servicenl.gov.nl.ca/Consultation/pdf/consultation_letter_mines_regualtions.doc</p> <p>Government of Newfoundland and Labrador (2017e). Occupational health and safety explanation guide (revised). Retrieved February 22, 2017 from http://www.servicenl.gov.nl.ca/ohs/guide/index.html</p>	<p>Review process resides within government.</p> <p>Process is semi-transparent. Records of past consultations are published (unlike British Columbia and the United Kingdom, the records do not include stakeholder feedback).</p> <p>The frequency of review does not appear pre-determined.</p> <p>Rules are designed to balance between prescriptive and performance-based. The principles that rules are to follow is published.</p> <p>Of the jurisdictions reviewed, a feature unique to Newfoundland and Labrador are open letters from the Minister to stakeholders inviting participation in consultations.</p>
<p>Yukon</p>	<ul style="list-style-type: none"> ▪ The Yukon Workers Compensation Health and Safety Board (YWCHSB) is a government agency that administers OHS legislation (Yukon Workers Compensation Health and Safety Board, 2017, p. 3). ▪ The process for reviewing OHS technical rules is not published (searched wcb.yk.ca and gov.yk.ca Feb 20, 2017). <p>References: Yukon Workers Compensation Health and Safety Board (2017). YWCHSB Board of Directors Board Member Profile. Retrieved February 23, 2017 from http://www.wcb.yk.ca/getattachment/1af0f8fa-18d0-4ad5-931f-136221557593/Board%20of%20Directors%20-%20Board%20Member%20Profile.aspx</p>	<p>Review process is arms-length from government.</p> <p>Process appears non-transparent as no information concerning the process was identified on the regulator’s website.</p>
<p>Northwest Territories and Nunavut</p>	<ul style="list-style-type: none"> ▪ The Workers Safety and Compensation Commission (WSCC) of the Northwest Territories and Nunavut is a government agency that administers the process of updating OHS technical rules for both the Northwest Territories and Nunavut (Workers’ Safety and Compensation Commission [WSCC], 2016, October 19). ▪ While the process for reviewing OHS technical rules is not published by WSCC (searched wscn.nt.ca and wscn.nu.ca [mirror websites] Feb 23, 2017), a number of process steps can be deduced from available information: <ul style="list-style-type: none"> ○ Multiple OHS topics are reviewed at the same time (WSCC, n.d.[a]). 	<p>Review process is arms-length from government.</p> <p>Process is semi-transparent. While the process itself is not published, features of the</p>

	<ul style="list-style-type: none"> ○ Public meetings are part of the consultation process, and consultation period lasts about six weeks (2016, October 19). ○ A frequently asked questions document is published to introduce regulatory changes prior to enactment (WSCC, n.d.[a]). ○ A news release is provided to announce regulatory changes (WSCC, 2016, April 7). ○ In-person information sessions are provided after regulatory changes come into force (WSCC, 2016, May). A related PowerPoint presentation is published online (WSCC, n.d.[b]). <p>References: Workers’ Safety and Compensation Commission of the Northwest Territories and Nunavut (2016, October 19). Media Release - Workers’ Safety and Compensation Commission seeks input on proposed legislative changes. Retrieved February 23, 2017 from http://wsc.nt.ca/news/media-release-workers%E2%80%99-safety-and-compensation-commission-seeks-input-proposed-legislative</p> <p>Workers’ Safety and Compensation Commission of the Northwest Territories and Nunavut (n.d.[a]). Occupational health and safety regulations: frequently asked questions. Retrieved February 23, 2017 from http://www.wsc.nt.ca/sites/default/files/documents/0009-518-Item-04-INDESIGN-FAQ-Template%203%20-%20MINUS%20FIRST%20QUESTION.pdf</p> <p>Workers’ Safety and Compensation Commission of the Northwest Territories and Nunavut (n.d.[b]). Occupational health and safety (OHS) regulations: Nunavut [PowerPoint presentation]. Retrieved February 23, 2017 from http://www.wsc.nt.ca/sites/default/files/documents/0009-518-Item-04-INDESIGN-FAQ-Template%203%20-%20MINUS%20FIRST%20QUESTION.pdf</p> <p>Workers’ Safety and Compensation Commission of the Northwest Territories and Nunavut (2016, May). Employers: the new occupational health and safety regulations are now live in Nunavut. Retrieved February 23, 2017 from http://archive.constantcontact.com/fs134/1101703870503/archive/1124602789295.html</p> <p>Workers’ Safety and Compensation Commission of the Northwest Territories and Nunavut (2016, April 7). New Occupational Health and Safety Regulations are law in Nunavut. Retrieved February 23, 2017 from http://wsc.nt.ca/news/new-occupational-health-and-safety-regulations-are-law-nunavut</p>	<p>process can be identified from other published information.</p> <p>Of the jurisdictions reviewed, a unique feature is a single government agency through a shared-service agreement administers OHS legislation for multiple jurisdictions (i.e., Northwest Territories and Nunavut).</p>
<p>Canada (Federal)</p>	<ul style="list-style-type: none"> ▪ Employment and Social Development Canada (ESDC) administers the process of updating OHS technical rules (Government of Canada [GoC], 2016a). ▪ While the process for reviewing OHS technical rules is not published by ESDC (searched canada.ca Feb 24, 2017), a number of process steps can be deduced from available information: <ul style="list-style-type: none"> ○ Objectives of proposed regulatory amendments along with a cursory assessment of potential business impacts are published (GoC, 2016a). ○ Public consultation periods can last from as little as six weeks up to two years, plus stakeholders can provide feedback after intended changes are published in the Canada Gazette (GoC, 2016a, “Occupational Exposure Limits-Asbestos” & “Confined Spaces: Canada Occupational Health and Safety Regulations”). ○ A regulatory explanation guide is published to provide guidance to stakeholders on regulatory requirements. In addition to consulting on what is in the regulations, the federal government consults on what is in the regulatory explanation guide to ensure it is suitably clear and meets the needs of stakeholders. (GoC, 2016b). <p>References:</p>	<p>Review process resides within government.</p> <p>Process is semi-transparent. While the process itself is not published, features of the process can be identified from other published information.</p> <p>Of the jurisdictions reviewed, the federal government offers the longest public consultation window of up to two years.</p>

	<p>Government of Canada (2016a). 2016 - 2018 forward regulatory plan. Retrieved February 24, 2017 from https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/forward-plan-2016-2018.html</p> <p>Government of Canada (2016b). Improvement plan. Retrieved February 24, 2017 from https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/improvement.html</p>	<p>Some jurisdictions publish guidance documents to supplement performance-based rules. Of the jurisdictions reviewed, the federal government is unique in that they consult with stakeholders concerning the content of their explanation guides.</p>
International		
<p>United States (Federal)</p>	<ul style="list-style-type: none"> ▪ In the United States, the Occupational Safety and Health Administration (OSHA) within the Department of Labor sets and enforces minimum health and safety standards. Individual states have the option of accepting the federal standards and not regulating OHS themselves. Alternatively, individual states may create their own OHS legislation so long as it meets or exceeds the minimum federal requirements, which is known as a state plan. About one-half of states have an OSHA-approved state plan. (United States Department of Labor, n.d.[a]) ▪ OSHA regularly reviews its technical OHS standards by a process called “lookback reviews” which have the following elements (USDOL, n.d.[b]): <ul style="list-style-type: none"> ○ Goal is to make standards more effective and less burdensome with a particular emphasis on minimizing the burden on small business. ○ One topic is reviewed at a time. Review notices are published in the Federal Register and the public is asked for their feedback concerning their experience with the topic under review. Feedback mechanisms include public meetings. ○ OSHA analyzes all feedback received, then publishes a “what we heard” report including OSHA’s conclusions about whether to maintain, change or rescind a standard. Public has one last chance to comment, particularly to express any serious concerns with OSHA’s conclusions. ○ Final rule is published in Federal Register. <p>References: United States Department of Labor (n.d.[a]). State plans. Retrieved February 27, 2017 from https://www.osha.gov/dcsp/osp/ United States Department of Labor (n.d.[b]). Occupational Safety and Health Administration. Retrieved February 27, 2017 from https://www.osha.gov/dea/lookback.html</p>	<p>Review process resides within government.</p> <p>Process is transparent and published.</p> <p>One topic is reviewed at a time. Reviews are conducted infrequently.</p> <p>Individual states have an option of following the federal rules, or creating their own set of rules so long as they are at least as stringent as the federal rules.</p>
<p>United States (California)</p>	<ul style="list-style-type: none"> ▪ California is an example of a state that has created its own State Plan to regulate OHS (United States Department of Labor, n.d.). ▪ The Department of Industrial Relations (DoIR) administers the update of OHS technical rules in California (State of California Department of Industrial Relations [SoCDoIR], 2017a), and the Office of Policy, Research and Legislation analyzes proposed legislation including costs and benefits (SoCDoIR, 2017b). The Occupational Safety and Health Standards Board (OSHSB), a seven-member body appointed by the Governor sets the OHS standards for the state, which are at least as effective as the federal standards (SoCDoIR, 2017c). 	<p>Review process resides within government.</p> <p>Process is semi-transparent. While the process itself is not published, features of the</p>

	<ul style="list-style-type: none"> ▪ While the process for reviewing OHS technical rules is not published by the DoIR or OSHSB (searched dir.ca.gov Mar 3, 2017), a number of process steps can be deduced from available information: <ul style="list-style-type: none"> ○ Standards are to be “reasonable and enforceable” (SoCDoIR, 2017c). ○ OSHSB holds monthly public meetings throughout California where the public can propose any change to any rule; consultation never stops (SoCDoIR, 2017c). ○ Regulatory review of specific items can be triggered by public comments or board staff considerations. Public comments are requested on proposed regulatory changes before they are finalized. (Occupational Safety and Health Standards Board, 2017a, p. 1). ○ Public comment period on proposed regulations is seven weeks (OSHSB, 2017b, p. 2). <p>References: United States Department of Labor (n.d.). State plans. Retrieved February 27, 2017 from https://www.osha.gov/dcsp/osp/</p> <p>State of California Department of Industrial Relations (2017a). Cal/OSHA. Retrieved March 3, 2017 from https://www.dir.ca.gov/dosh/</p> <p>State of California Department of Industrial Relations (2017b). Office of Policy, Research and Legislation. Retrieved March 3, 2017 from https://www.dir.ca.gov/OPRL/Statistics_Research.html</p> <p>State of California Department of Industrial Relations (2017c). Cal/OSHA. Retrieved March 3, 2017 from https://www.dir.ca.gov/oshsb/oshsb.html</p> <p>Occupational Safety and Health Standards Board (2017a). Notice of proposed modifications to California Code of Regulations. Retrieved March 3, 2017 from https://www.dir.ca.gov/oshsb/documents/Process-Safety-Management-for-Petroleum-Refineries-15day.pdf</p> <p>Occupational Safety and Health Standards Board (2017b). Title 8. California Code of Regulations. Retrieved March 3, 2017 from https://www.dir.ca.gov/oshsb/documents/noticeMar2017-Electric-Power-Generation-Electrical-Power-Equipment-Final-Rule.pdf</p>	<p>process can be identified from other published information.</p> <p>Of the jurisdictions reviewed, California is unique in that it is the only jurisdiction that never stops consulting on its OHS technical rules. Monthly public consultation meetings covering all stages of the review process are perpetual.</p>
<p>United Kingdom (UK)</p>	<ul style="list-style-type: none"> ▪ The Health and Safety Executive (HSE) administers the process of updating OHS technical rules (Health and Safety Executive [HSE], n.d.[a]). ▪ While the process for reviewing OHS technical rules is not published (searched hse.gov.uk Feb 25, 2017), some process information can be deduced from available information: <ul style="list-style-type: none"> ○ HSE publishes its consultation procedure. Responses to consultations can be accessed by members of the public for a period of three years following consultation by visiting any HSE office (not available online) (HSE, n.d.[b]). Respondents have the option of requesting that their input be treated as confidential and not available for public viewing (HSE, n.d.[b]). ○ HSE publishes information on past, current and future consultations and allows people to subscribe to consultation alert emails (HSE, n.d.[c]). For future consultations, a 1-year regulatory review consultation schedule is published (Health and Safety Executive [HSE], n.d.[d]). Consultations have a duration of three months and are supported by a detailed consultation document (HSE, n.d.[e]). Stakeholders may participate in consultation either through completing an online questionnaire or by downloading a Microsoft Word questionnaire template form and emailing the completed form to the HSE (HSE, n.d.[e]). 	<p>Review process is arms-length from government.</p> <p>Process is semi-transparent. While the process itself is not published, features of the process can be identified from other published information.</p> <p>Of the jurisdictions reviewed, features that are unique to the UK include consultation alert emails, and three-year public accessibility (via in-person visit) to view consultation responses, with an option for respondents</p>

	<ul style="list-style-type: none"> ▪ The Institute for Work and Health, an Ontario-based not-for-profit research organization, in a 2010 report briefly explains the United Kingdom’s OHS regulation review process (Institute for Work and Health, 2010, p. 4): <ul style="list-style-type: none"> ○ Scientific research is used to inform the creation of health and safety rules. ○ Public consultation is done before regulatory proposals are presented to ministers. Public consultation is supported by widely distributed consultation documents and is done through advisory committees consisting of key stakeholders and through consulting the general public. ○ Expert advice is provided throughout the process by health and safety specialists and industry experts. ○ Regulatory development process is supported by government policy staff. ▪ The Institute for Work and Health further explains that (p. 4): <ul style="list-style-type: none"> ○ OHS rules are designed to be highly flexible by having the rules focus on goals and general principles. ○ Detailed methods of complying with the rules are provided in guidance documents. ○ Employers have the freedom to follow the methods in guidance documents or be prepared to defend their approaches as equally valid ways of protecting workers if they deviate from the guidance documents. <p>References: Health and Safety Executive (n.d.[a]). HSE’s work. Retrieved February 25, 2017 from http://www.hse.gov.uk/aboutus/hseswork.htm</p> <p>Health and Safety Executive (n.d.[b]). The procedure. Retrieved February 25, 2017 from http://www.hse.gov.uk/consult/procedure.htm</p> <p>Health and Safety Executive (n.d.[c]). Public consultations. Retrieved February 25, 2017 from http://www.hse.gov.uk/consult/index.htm</p> <p>Health and Safety Executive (n.d.[d]). Future consultations. Retrieved July 13, 2017 from http://www.hse.gov.uk/consult/future.htm</p> <p>Health and Safety Executive (n.d.[e]). CD282 - the implementation of Directive 2013/59/EURATOM laying down basic safety standards for protection against the dangers arising from exposure arising to ionising radiation. Retrieved February 25, 2017 from http://www.hse.gov.uk/consult/condocs/cd282.htm</p> <p>Institute for Work and Health (2010). United Kingdom: description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_united_kingdom_2010.pdf</p>	<p>to request that their responses be treated as confidential and not publicly available.</p> <p>Of the jurisdictions reviewed, a feature unique to both the UK and New Zealand is a downloadable MS Word consultation template that stakeholders can complete then email back to the regulator.</p>
<p>New Zealand</p>	<ul style="list-style-type: none"> ▪ WorkSafe New Zealand administers the OHS legislation (WorkSafe New Zealand [WSNZ], 2016a). ▪ While the process for reviewing OHS technical rules is not published (searched worksafe.govt.nz Feb 26, 2017), some process information can be deduced from available information: <ul style="list-style-type: none"> ○ Both open and closed consultations are publicly listed (WSNZ, 2016b). ○ Consultation periods have a duration of two months (WSNZ, 2016c). ○ Stakeholders may participate in consultation by downloading a Microsoft Word submission form template and emailing or mailing the completed form to WorkSafe New Zealand (WSNZ, 2016c). ▪ The Institute for Work and Health, an Ontario-based not-for-profit research organization, in a 2010 report briefly explains New Zealand’s OHS regulation review process (Institute for Work and Health, 2010, p. 4): <ul style="list-style-type: none"> ○ There are no requirements for how often OHS rules need to be reviewed. 	<p>Review process is arms-length from government.</p> <p>Process is semi-transparent. While the process itself is not published, features of the process can be identified from other published information.</p> <p>Rules are designed to be performance-based.</p>

	<ul style="list-style-type: none"> ○ Consultation with industry stakeholders is a required part of the regulatory review process. ▪ The institute for Work and Health further explains that (p. 4): <ul style="list-style-type: none"> ○ The criteria used for setting OHS rules is to: (i) minimize compliance costs, (ii) set minimum standards for management of hazards, and (iii) provide greater clarity on what is required by the OHS Act. ○ New Zealand is transitioning from prescriptive rules to performance based rules where employers choose how to protect workers. <p>References: WorkSafe New Zealand (2016a). About us. Retrieved February 26, 2017 from http://www.worksafe.govt.nz/worksafe/about</p> <p>WorkSafe New Zealand (2012). Taskforce Health and Safety Taskforce Consultation Document Released. Retrieved February 26, 2017 from http://www.worksafe.govt.nz/worksafe/news/releases/2012/taskforce-health-and-safety-taskforce-consultation-document-released</p> <p>WorkSafe New Zealand (2016b). Consultation. Retrieved February 26, 2017 from http://www.worksafe.govt.nz/worksafe/about/who-we-work-with/consultation</p> <p>WorkSafe New Zealand (2016c). Consultation on HSNOCOP 25. Retrieved February 26, 2017 from http://www.worksafe.govt.nz/worksafe/about/who-we-work-with/consultation/open-for-consultation/consultation-on-hsnocop-25</p> <p>Institute for Work and Health (2010). New Zealand: description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_new_zealand_2010.pdf</p>	<p>Of the jurisdictions reviewed, unique to New Zealand and the UK, are downloadable consultation templates that can be completed by stakeholders and emailed back to the regulator.</p> <p><i>New Zealand has a relatively poor health and safety record (WSNZ, 2012); although they are working towards improvement, they might not be an ideal role model to follow until they show improvement in OHS outcomes.</i></p>
<p>Sweden</p>	<ul style="list-style-type: none"> ▪ The Swedish Work Environment Authority (SWEA) administers the OHS legislation (Swedish Work Environment Authority [SWEA], 2015a). ▪ Sweden reviews its technical OHS standards as follows (SWEA, 2015b): <ul style="list-style-type: none"> ○ Rules should be simple and as few as possible in number. If there is another way to achieve safety and health outcomes (e.g., by providing information), rules should be avoided. ○ Rules are reviewed regularly based on new information about hazards and new EU directives. ○ Rules are reviewed by SWEA policy staff with expert knowledge in OHS. The work is very time consuming to make it scientifically and legally correct. ○ Early input in the review cycle is sought from key stakeholders and OHS officers. ○ Final regulatory language is reviewed by language expert to maximize ease of comprehension. ○ Regulatory proposal is sent out for public consultation with amendments made based on public feedback. Normal consultation period is three months. ○ The Director-General of SWEA approves the new rules, and they come into effect six months after enactment. ○ The regulations are available for free download from the SWEA website or can be purchased in hard copy format. <p>References: Swedish Work Environment Authority (2015a). About us. Retrieved February 28, 2017 from https://www.av.se/en/about-us/</p>	<p>Review process is arms-length from government.</p> <p>The process is transparent and published.</p> <p>Rules are reviewed regularly.</p> <p>Relative to other jurisdictions reviewed, there is a particular emphasis on minimizing the number of rules and keeping them simple and easy to understand: Sweden is the only jurisdiction where writing experts adjust the language of regulations for ease of comprehension.</p>

	<p>Swedish Work Environment Authority (2015b). Work with regulations and provisions. Retrieved February 28, 2017 from https://www.av.se/en/about-us/work-with-regulations-and-provisions/</p>	
<p>Australia (Victoria)</p>	<ul style="list-style-type: none"> ▪ WorkSafe Victoria administers the OHS legislation in Australia’s state of Victoria (WorkSafe Victoria, n.d.[a]), and engages with stakeholders regarding regulatory change (WorkSafe Victoria, 2016, p. 5). ▪ Australia has undertaken an effort to harmonize OHS legislation across member states. The state of Victoria has opted not to participate in national harmonization of OHS rules. (WorkSafe Victoria, n.d.[b]) ▪ Basic information about Victoria, Australia’s OHS technical rule review and update process is as follows (WorkSafe Victoria, n.d.[c]): <ul style="list-style-type: none"> ○ OHS regulations expire after 10 years and must be reviewed in their entirety before they can be renewed. ○ Goal is to streamline and modernize rules. ○ A regulatory impact analysis is done to estimate benefits and costs of OHS rules to businesses, and to consider non-regulatory alternatives. ○ A six-week public consultation period is used. ○ Responses are provided for all public comments. ▪ In addition (WorkSafe Victoria, n.d.[d]): <ul style="list-style-type: none"> ○ A live roadmap of where the regulatory review and update process stands is published. ○ Proposed regulations with a summary of proposed changes, a regulatory impact statement, a reconciliation table and FAQs are made available for public viewing during the consultation period. ▪ Plus public comments received are posted online (WorkSafe Victoria, n.d.[e]). ▪ After regulations are updated, WorkSafe Victoria provides non-statutory guidance documents to help people understand the rules. Those who follow the guidance documents will be deemed to have complied with the <i>OHS Act</i> (Institute for Work and Health, 2010, p. 6). <p>References: WorkSafe Victoria (n.d.[a]). About WorkSafe. Retrieved March 1, 2017 from http://www.worksafe.vic.gov.au/about-vwa/about-vwa WorkSafe Victoria (n.d.[b]). National harmonisation of work health and safety laws. Retrieved march 1, 2017 from http://www.worksafe.vic.gov.au/laws-and-regulations/occupational-health-and-safety/national-work-health-and-safety-reform WorkSafe Victoria (n.d.[c]). OHS regulations reform. Retrieved March 1, 2017 from http://www.worksafe.vic.gov.au/laws-and-regulations/occupational-health-and-safety/regulation-overviews WorkSafe Victoria (n.d.[d]). OHS regulations reform. Retrieved March 1, 2017 from http://consultation.worksafe.vic.gov.au/OHS-Regulations-Reform WorkSafe Victoria (n.d.[e]). OHS regulations reform: documents. Retrieved March 1, 2017 from http://consultation.worksafe.vic.gov.au/OHS-Regulations-Reform/documents WorkSafe Victoria (2016). Stakeholder engagement framework. Retrieved March 1, 2017 from http://www.worksafe.vic.gov.au/_data/assets/pdf_file/0005/198617/STAKEHOLDER-ENGAGEMENT-FRAMEWORK_EXTERNAL_FINAL.pdf</p>	<p>Review process is arms-length from government.</p> <p>The process is relatively transparent.</p> <p>Of the jurisdictions reviewed, Victoria, Australia is the only jurisdiction with OHS technical rules that expire unless reviewed and updated in their entirety. During active review periods, a live roadmap is published that shows stakeholders what stages are completed, where the process is currently at and what stages are coming next.</p> <p>In Australia, there is an effort to nationally harmonize OHS technical rules, however, the state of Victoria has opted out.</p>

	<p>Institute for Work and Health (2010). Victoria (Australia): description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_victoria_2010.pdf</p>	
<p>Germany</p>	<ul style="list-style-type: none"> ▪ The Institute for Work and Health, an Ontario-based not-for-profit research organization, in a 2010 report briefly explains Germany’s OHS regulatory system and regulatory review process (Institute for Work and Health, 2010, pp. 1-3): <ul style="list-style-type: none"> ○ Germany has a ‘dual’ OHS regulatory framework where workplaces across the country must follow the federal rules which contain national and European directives, plus supplemental regional rules. ○ Germany has shifted from a historical approach of prescriptive requirements to a modern approach of performance-based standards. ○ There is no regulated frequency of regulatory review and update. ○ The impact of regulatory standards on workplace prevention practices are evaluated. ○ Guideline documents are created in support of performance-based rules. <p>References: Institute for Work and Health (2010). Germany: description of the organization of the occupational health and safety system and the delivery of prevention services. Retrieved February 19, 2017 from http://www.iwh.on.ca/system/files/documents/iwh_interjurisdictional_review_germany_2010.pdf European Agency for Safety and Health at Work (2017). Germany. Retrieved March 4, 2017 from https://osha.europa.eu/en/about-eu-osha/national-focal-points/germany</p>	<p>Germany has a dual process. Review process at the federal level resides within government. Review process at the regional/state level is mixed – some residing within government and some arms-length. (European Agency for Safety and Health at Work, 2017)</p> <p>Germany takes a modern approach of using performance-based rules combined with guidelines that provide examples of how to comply.</p>

Appendix C: Telephone Interview and Focus Group Responses

Table C-1: Coding of telephone interview and focus group responses in relation to Alberta OHS Code review and update process¹

Row	Topic	Stakeholder responses ²
1	General impressions on effectiveness and efficiency of current OHS Code review and update process	<p>Things that are currently working well:</p> <ul style="list-style-type: none"> ▪ Relative to other jurisdictions, Alberta is doing a good job (OHS practitioner association) ▪ While improvement in Alberta over the past 30 years has been slow, it is visible (OHS practitioner association) ▪ Current process is quite good; just needs some minor tweaking (2 OHS practitioner associations) ▪ A process is in place whereby the Code is updated on a pre-determined cycle without the need to go through the legislature (OHS practitioner association) ▪ 3-month public consultation period gives industry, labour and professional associations just enough time to discuss proposed changes with their membership before submitting a meaningful response to government (employer association, OHS practitioner association) ▪ Public consultation is done on actual proposed changes – as opposed to consulting on vague concepts (employer association) ▪ Public consultation feedback format showing proposed changes next to current requirements in adjacent columns is easy to read and very helpful (employer association) ▪ Government actually considers stakeholder’s feedback (employer association) ▪ The use of technical working groups to review rules works well (employer association) <p>Things that could improve:</p> <ul style="list-style-type: none"> ▪ Increase communication with and generally reach out to stakeholders (employer association, OHS practitioner association, focus group) ▪ Aim for two-way conversation with key stakeholders to fine-tune proposed rules and to ensure practicality prior to public consultation (OHS practitioner association, employer association) ▪ As policy makers may be unaware of what happens in the field, collaboration between policy makers and stakeholders is needed (employer association, focus group) ▪ Consulting industry experts earlier in consultation process is suggested (employer association) ▪ Partners in Injury Reduction Program Partners want to be more involved (focus group) ▪ Having a transparent process of selecting technical working group members (employer association) ▪ Doing a better job of advertising public consultation periods with key stakeholders (2 OHS practitioner associations) ▪ A three-month consultation period not sufficient to review large volume of proposed changes, especially considering the consultation period overlapped with Christmas break last time (employer association) ▪ Increasing the regularity/predictability of Code updates (labour organization, industry health and safety association, OHS practitioner association) ▪ Increasing the frequency of Code updates (OHS practitioner association) ▪ Align Code cycle with political cycle to avoid public consultation and rule updates during political red zones (focus group) ▪ Too many people involved in OHS reviews slows the process (employer association) ▪ Strengthening workers’ voice in process (labour organization, OHS practitioner association) ▪ Current review seems sporadic; there seems to be delays; some loss of confidence in government with things being delayed (OHS practitioner association, employer association, focus group) ▪ Perception that there is a pre-determined agenda as to what makes it into the Code, hence, not motivated to participate in process (OHS practitioner association) ▪ Creating more industry-specific rules (labour organization) ▪ Strengthening the health component of the technical rules (OHS practitioner association) ▪ OHS rules are too lenient – lower than professional standards (OHS practitioner association)

		<ul style="list-style-type: none"> ▪ Move safety bulletins into OHS Code explanation guide (focus group) ▪ Can update explanation guide more frequently than Code (focus group)
2	Governance	<p>Recommended body to conduct technical review:</p> <ul style="list-style-type: none"> ▪ Technical review conducted jointly by government, external OHS practitioners, employer representatives, and labour representatives (OHS practitioner association, labour organization, 2 employer associations, focus group) ▪ Status quo – technical review conducted by government staff with OHS subject matter expertise (OHS practitioner association, industry health and safety association, OHS practitioner association, employer association) <p>Elements the terms of reference for a technical review body could include:</p> <ul style="list-style-type: none"> ▪ Labour department’s OHS policy unit should act as secretariat/facilitator plus represent government; i.e., two OHS policy representatives at table – one as a neutral facilitator and one technical expert to represent government (focus group) ▪ Third party to facilitate technical review with input provided by employers, government and others (employer association) ▪ Individuals who conduct the technical review must have technical subject matter expertise (OHS practitioner association, labour organization, focus group) ▪ Labour department’s OHS policy unit to provide staff seconded or dedicated to Code review (focus group) ▪ Ensure labour is not under-represented during technical review (labour organization) ▪ Labour department’s OHS delivery branch to provide perspective concerning enforceability of proposed rules; OHS Technical Advisors should be the OHS delivery branch representatives (focus group) ▪ Government should make final decision on rules (OHS practitioner association) ▪ Labour department should not make decisions on what Occupational Exposure Limits of chemical substances will be if there is not consensus at the technical working group level as Occupational Exposure Limits need to be achievable for industry (employer association) <p>Other feedback:</p> <ul style="list-style-type: none"> ▪ Status quo minimizes non-technical lobbying, which is a plus (OHS practitioner association) ▪ OHS Council offers a check-and-balance function (OHS practitioner association) ▪ OHS Council is too biased towards employers (labour organization)
3	Ideal Code update scope and frequency	<p>Review single or multiple-topics at a time:</p> <ul style="list-style-type: none"> ▪ Review single topics at-a-time based on needs/priority; don’t need to review all rules in a given cycle (2 OHS practitioner associations, 3 employer associations) ▪ Review one topic at a time, queue up changes, then update in batches (employer association, labour organization, focus group) ▪ Comprehensive review in each cycle (labour organization, industry health and safety association, employer association) ▪ Can realistically review 8 parts over a two-year period (focus group) ▪ Updating one topic at a time may confuse people (industry health and safety association) ▪ British Columbia model: rules are updated as needs identified – no comprehensive review. Cautionary note: reviewing single topics at a time have the drawback of not being able to address systematic issues that span across different topics, e.g., how standards are referenced. (other jurisdiction) <p>Frequency of rule updates:</p> <ul style="list-style-type: none"> ▪ 5 years (labour organization, industry health and safety association, OHS practitioner association, employer association) ▪ 3 years (2 employer associations) ▪ 2 years (OHS practitioner association, focus group) ▪ Once per year maximum (OHS practitioner association) ▪ No preference (employer association) ▪ “Mid-cycle” updates are appropriate for new topics or to fix existing items that are broken/not working (OHS practitioner association) ▪ British Columbia model: quick update periods (e.g., one year) provided insufficient time to update complex or broad topics. British Columbia adjusted its model to have simple topics reviewed in a single year; and topics that are complex or have broader scope reviewed over a two or three-year period (other jurisdiction)

		<p>Other feedback:</p> <ul style="list-style-type: none"> ▪ If frequent updates (e.g., yearly) are done, demand for electronic (e.g., website) access to the Code may increase and demand for hard copies of Code may decrease as is the case in British Columbia (OHS practitioner association) ▪ Updating with a consistent multi-year frequency means people will know what to expect (industry health and safety association)
4	Stakeholder's desired role in Code review and update process	<p>Stakeholder's desired role in Code review and update process:</p> <ul style="list-style-type: none"> ▪ To be at the table during technical review (OHS practitioner association, labour organization, employer association) ▪ To be informed; will reach out to membership and consolidate responses on behalf of membership (employer association) ▪ To be informed; will notify membership so they may provide consultation input as individuals (OHS practitioner association) ▪ To speak with a single united voice representing entire industry (employer association) ▪ Provide technical input if requested (industry health and safety association) ▪ Participate in two-way dialogue after initial proposal to ensure rules are framed in a way that can be followed from a practical application perspective – basic consultation is not sufficient (employer association) ▪ Develop industry best practices that can be referenced in the Code (industry health and safety association) ▪ Can provide government with a venue to address membership in person (OHS practitioner association) ▪ To work outside the formal process to facilitate public pressure if consultation proposals cause extreme concern to membership (employer association) ▪ Help membership implement changes after OHS Code is updated (industry health and safety association, employer association) <p>Other feedback:</p> <ul style="list-style-type: none"> ▪ While participating in technical working groups is preferred form of engagement, to be consulted by technical working groups is an acceptable alternative (employer association) ▪ Stakeholders should have the ability to engage to the degree they desire – from simply being informed to being an active participant (OHS practitioner association)
5	How to hear from business owners	<p>Methods to hear from business owners:</p> <ul style="list-style-type: none"> ▪ Status quo is valid – government reaches out to stakeholder organizations, and the organizations select a representative to liaise with government (3 OHS practitioner associations, industry health and safety association, 3 employer associations) ▪ Through business's OHS staff because these staff have the best OHS insights plus understand basic business needs (3 OHS practitioner associations, industry health and safety association) ▪ Through employer associations as the associations understand employer perspectives (employer association, 2 OHS practitioner associations) <p>Other feedback:</p> <ul style="list-style-type: none"> ▪ For transparency, labour organizations are interested in seeing a paraphrased summary of what business owners had to say during consultation (labour organization) ▪ It is also important to hear from OHS practitioners (OHS practitioner association)
6	How to hear from workers	<p>Methods to hear from workers:</p> <ul style="list-style-type: none"> ▪ Voice of organized labour is a reasonable mechanism to hear from workers as unions are worker advocates (labour organization, 2 OHS practitioner associations, employer association) ▪ It is desirable to hear from workers directly rather than through organized labour groups (employer association) ▪ Joint Work Site Health and Safety Committee worker co-chairs/members can participate (labour organization, OHS practitioner association, employer association) ▪ Partners in Injury Reduction Program Certifying Partners and Certificate of Recognition holders, as well as Safety Associations can reach out to workers (employer association) ▪ Invite general workers to participate in public consultation (OHS practitioner association) ▪ Educate workers that their voices can be heard and they won't get fired for participating (employer association)

		<ul style="list-style-type: none"> ▪ Industry associations can facilitate the process to enable workers to provide feedback (employer association) ▪ Government should pay for workers' time to participate (labour organization) <p>Other feedback:</p> <ul style="list-style-type: none"> ▪ Status quo is not comprehensive (employer association) ▪ Unions have workers needs at heart, however, might not have the expertise to craft suitable/protective technical rules (industry health and safety association) ▪ Challenge: who pays workers when they are contributing to a government consultation? (OHS practitioner association)
7	Guiding principles for the design of OHS technical rules	<p>Preference for performance-based or prescriptive-style rules:</p> <ul style="list-style-type: none"> ▪ A mix of performance-based and prescriptive rules (status quo) whereby each rule is assessed on a case-by-case basis is best (2 OHS practitioner associations, employer association) ▪ Prescriptive rules are best because there is less room to cut corners (industry health and safety association) ▪ Performance-based are generally better, but prescriptive rules have a place (employer association) ▪ Performance based rules best because one-size-fits-all does not work and there can be more than one way to achieve a goal (2 employer associations, OHS practitioner association) ▪ Performance based rules supported by guidelines is a good approach (OHS practitioner association) ▪ Chemical exposure limits should be prescriptive (OHS practitioner association) ▪ Rules surrounding Personal Protective Equipment and ladders should be prescriptive (OHS practitioner association) ▪ Sophisticated companies do not require prescriptive rules; however, less sophisticated companies may benefit from prescriptive rules (OHS practitioner association) ▪ If rules are performance-based, different OHS officers might see things differently, which may result in inconsistent enforcement (labour organization) <p>Preference for rules to represent 'minimum standards' or 'best practices':</p> <ul style="list-style-type: none"> ▪ Minimum standards (2 employer associations, OHS practitioner association) ▪ Best practices (labour organization, OHS practitioner association, industry health and safety association, 2 employer associations) ▪ Minimum standards for small employers; large employers should do better than minimum (OHS practitioner association) ▪ Employers who don't care about health and safety won't meet any standard, hence best practices make sense as those who care will follow them thus bringing up standards (employer association) ▪ Not all employers have the resources to be implementing best practices (employer association) ▪ Best practices support continuous improvement (OHS practitioner association) <p>Preference for few or many rules:</p> <ul style="list-style-type: none"> ▪ More rules is better (industry health and safety association, employer association, labour organization) ▪ Moderate number of effective rules (employer association) ▪ As few as possible to minimize regulatory burden (employer association) ▪ There can be fewer rules if there is an explanation guide (labour organization) ▪ Fewer rules better for employers with OHS staff who can provide the needed expertise; more rules offer helpful guide for employers who do not have in-house OHS staff (OHS practitioner association) ▪ Consider rules on a case-by-case basis using a risk-based approach; high hazards, e.g., lockout, can justify more rules (2 OHS practitioner associations, employer association) <p>Preference for rules to be simple to understand or comprehensive:</p> <ul style="list-style-type: none"> ▪ Simple to understand (OHS practitioner association, 3 employer associations) ▪ Determine on a case-by-case basis – as comprehensive as needed to protect workers (2 OHS practitioner associations, labour organization, employer association)

	<ul style="list-style-type: none"> ▪ Comprehensive – even if this means employers needing resources to comprehend the more complex rules (industry health and safety association) ▪ Have rules stipulating when employers need to consult an accredited OHS professional (OHS practitioner association) <p>Preference of accountability of employers and workers within the rules:</p> <ul style="list-style-type: none"> ▪ Shared responsibility (status quo) is best (3 OHS practitioner associations, labour organization, 4 employer associations) ▪ Employer should have greater responsibility (status quo) (industry health and safety association) ▪ There should also be a supervisor component (OHS practitioner association) ▪ Employers should be responsible to provide training and equipment; workers should be responsible to make safe choices when doing their work (employer association) ▪ More workers would be injured if they do not have shared accountability for working safe (employer association) <p>Worker education and training should be emphasized within the rules:</p> <ul style="list-style-type: none"> ▪ Yes, emphasize training (OHS practitioner association, labour organization, 2 employer associations) ▪ Basic training with competency test/requirement (OHS practitioner association, industry health and safety association, employer association) ▪ Focus training requirements on items where there is large potential for injury based on evidence (2 OHS practitioner associations) ▪ Culture of training based on industry standards is good, but prescribed training should not be mandated (2 employer associations) ▪ Government should provide employers with training materials that meet minimum standards (OHS practitioner association) ▪ Construction and oil and gas industries do a good job of training workers – this can be used as an example for other industries (labour organization) ▪ Current approach to asbestos worker training is excellent example of making workers aware of hazardous work and how to work safely (OHS practitioner association) ▪ Refresher training is also needed (employer association) <p>Rules in the OHS Code should relate to OHS:</p> <ul style="list-style-type: none"> ▪ Agree (industry health and safety association, OHS practitioner association, 3 employer associations) <p>OHS rules should be necessary as demonstrated by evidence:</p> <ul style="list-style-type: none"> ▪ Injury statistics should be used to inform what rules are needed (3 OHS practitioner associations, labour organization, 4 employer associations) ▪ Old adage: safety rules are written in blood (employer association) <p>Rules should be responsive to what is heard from Albertans:</p> <ul style="list-style-type: none"> ▪ Weak principle – delete (3 OHS practitioner associations, employer association) ▪ Rules should be responsive to what is heard from affected parties only – not from Albertans in general (employer association) ▪ Agree with principle (industry health and safety association, 2 employer associations) <p>Rules should be designed to achieve health and safety outcomes:</p> <ul style="list-style-type: none"> ▪ Agree (labour organization, 2 OHS practitioner associations, industry health and safety association, 3 employer associations) ▪ Too general (OHS practitioner association) <p>Rules need to be clear to reduce need for interpretation:</p> <ul style="list-style-type: none"> ▪ Agree with principle (3 OHS practitioner associations, labour organization, industry health and safety association, 2 employer associations) ▪ Disagree with principle (employer association) <p>Rules need to be enforceable:</p> <ul style="list-style-type: none"> ▪ Agree (3 OHS practitioner associations, labour organization, industry health and safety association, 3 employer associations) <p>Rules should not contradict other rules:</p> <ul style="list-style-type: none"> ▪ Agree (OHS practitioner association, industry health and safety association, OHS practitioner association, 3 employer associations)
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8	Approach to achieving	<p>Interprovincial harmonization of OHS technical rules:</p> <ul style="list-style-type: none"> ▪ Agree in principle with interprovincial harmonization (labour organization, 3 employer associations, 2 OHS practitioner associations, industry health and safety association)

	<p>Interprovincial harmonization</p>	<ul style="list-style-type: none"> ▪ Similar rules can be beneficial; however, status quo with rules not being harmonized is working (employer association) ▪ Ways to protect workers are generally the same between jurisdictions – harmonizing rules is not a stretch (employer association) ▪ Alberta can look to see what other provincial rules are to inform Alberta’s rules, but Alberta’s goal should not be to adopt other province’s rules; rather, Alberta’s rules need to make sense for Alberta (employer association) ▪ Harmonization will have an effect of increasing standards (labour organization) ▪ Provinces should share their best practices with one another – a national “OHS Code” might take too much effort to create and maintain (industry health and safety association) ▪ Implement a national effort to harmonize led by a council of provincial regulators – be careful not to lower standards – aim for wins where there is a cost-benefit – in end, Alberta needs to do what makes sense for Alberta (OHS practitioner association) ▪ Consider Australia’s approach where model legislation was created that individual states can choose to adopt if desired (other jurisdiction) ▪ Need to harmonize qualifications of OHS health technicians – audiometric and pulmonary function testing technicians are presently negatively impacted by interprovincial monopoly on training providers (OHS practitioner association) ▪ Harmonization would be helpful for training (employer association) ▪ Provincial construction safety associations have on their own been moving towards national harmonization on training standards (OHS practitioner association) ▪ Harmonize beginning with western provinces, address one topic at a time (OHS practitioner association) ▪ The New West Partnership Trade Agreement is excellent – it is desirable to achieve goals through mutual recognition (faster) as true harmonization can take a long time (too long) (employer association) ▪ The current New West Partnership Trade Agreement approach of achieving harmonization or mutual recognition of OHS rules has been slow (other jurisdiction) ▪ New West Partnership Trade Agreement objectives should be considered alongside and given equal consideration to meeting the needs of any stakeholder (focus group)
<p>9</p>	<p>Recommended key steps of Code review and update process</p>	<p>Recommended key steps of Code review and update process:</p> <p>1) Selection of topics for review</p> <ul style="list-style-type: none"> ▪ Have a stakeholder (internal & external) call for topics (focus group) ▪ Use media reports/environmental scanning to identify topics (focus group) ▪ Keep communication channels open with the Labour department’s OHS delivery branch and the OHS Contact Centre to identify topics (focus group) ▪ Focus on problematic items – have a triage process as not all items can be reviewed (focus group) ▪ Have a schedule of what items will be reviewed (flexible, living document) (focus group) ▪ British Columbia model: topics are selected through government OHS staff suggestions and a web form that external stakeholders can use to submit suggestions (other jurisdiction) <p>2) Technical review</p> <ul style="list-style-type: none"> ▪ Do technical review of small chunks frequently (focus group) ▪ Annual technical working groups (OHS practitioner association) ▪ For emerging issues, have solutions prepared in advance for when political will to implement changes arrives (focus group) ▪ British Columbia model: an internal technical review is completed as a first cut; items selected for further review are prioritized to match staff capacity as part of the operational planning process (other jurisdiction) <p>3) Pre-consultation/technical validation</p> <ul style="list-style-type: none"> ▪ Government to seek industry input before formal public consultation (employer association) ▪ Some employers can pilot new rules and provide feedback before law is changed (labour organization) ▪ Industry associations can draw input from industry subject matter experts when needed (employer association)

		<ul style="list-style-type: none"> ▪ British Columbia model: pre-consultation is done with small group of external stakeholders on first legal draft; public consultation on second legal draft; third legal draft goes to a legally-mandated public hearing (other jurisdiction) 4) Public consultation <ul style="list-style-type: none"> ▪ Public consultation to follow technical review (employer association) ▪ Consultation is the most important part of the process – need to hear from all key stakeholders (employer association) ▪ Engage Partners in Injury Reduction Program Certifying Partners to help communicate public consultation (focus group) 5) Consideration of public feedback <ul style="list-style-type: none"> ▪ Public feedback considered then revise draft Code involving industry experts (focus group) 6) Public validation <ul style="list-style-type: none"> ▪ Provide public with two weeks to validate changes (focus group) 7) Legal editing <ul style="list-style-type: none"> ▪ This is a step before legal drafting (focus group) 8) Legal drafting <ul style="list-style-type: none"> ▪ Engage the Justice department’s Legislative Counsel to prepare legal draft (focus group) ▪ British Columbia model: four legal drafts are prepared by the Justice department’s Legislative Counsel, one for pre-consultation, one for public consultation, one for public hearing, and one as final (other jurisdiction) 9) Government/legal approval <ul style="list-style-type: none"> ▪ Seek formal approval as per legislation and government decision making processes to adopt updated Code (focus group) 10) Publication <ul style="list-style-type: none"> ▪ Alberta Queen’s Printer to publish updated OHS Code on official website and print batch of hardcopies for sales inventory (focus group) ▪ Alberta Queen’s Printer to publish OHS Code in XML format so third-party apps can be created (focus group) 11) Implementation <ul style="list-style-type: none"> ▪ Technical briefing sessions with OHS officers to advise of rule changes (focus group) ▪ Labour department OHS Policy “part leads” to prepare explanation guide; have one technical editor for explanation guide (focus group)
10	Legal drafting efficiency (internal process)	<p>Suggestions to improve legal drafting efficiency:</p> <ul style="list-style-type: none"> ▪ Review the OHS Code in small pieces, and do the legal drafting in small pieces (focus group) ▪ Have a dedicated legal drafting resources such as a contracted lawyer (focus group) ▪ Draft small chunks at a time (presently there is no slack in the system) (focus group) ▪ Utilize SharePoint co-authoring for legal drafting (focus group) ▪ Have a single Labour department OHS policy unit contact for Justice department’s Legislative Counsel (focus group) ▪ Workflow: Labour department’s OHS Policy staff to typeset Code changes initially; a professional legislative editor (e.g., hired under contract) can improve wording; then the updated content can be sent to a legal drafter (focus group) ▪ British Columbia model: WorkSafeBC has a team of 8-10 OHS policy staff, approximately half with practical OHS experience (occupational hygienists, engineers, etc.) and half with legal backgrounds. The policy team leads the review of technical rules and coordinates with legal drafters within the province’s Legislative Counsel area which resides within the Ministry of Justice. For each update to the OHS regulations, the legal drafters create a series of legal drafts, including pre-public consultation, public consultation, public hearing and final. A pool of individual legal drafters is drawn from; about 1 FTE in total is dedicated for OHS. (other jurisdiction)
11	Team cooperation (internal process)	<p>Suggestions to improve team cooperation:</p> <ul style="list-style-type: none"> ▪ Between 2009 and 2016, the OHS policy unit lost significant organizational knowledge with turnover of a number of key staff. A formal process had not been established by original key staff and the remaining staff had not received mentoring or guidance and lacked the experience necessary to work efficiently. (focus group)

		<ul style="list-style-type: none"> ▪ Team members reported being over-taxed with work and being blamed by management when unable to complete tasks to the satisfaction of management. To avoid the uncomfortable experience of being further blamed, team members avoided helping other team members, which led to a break-down of team cooperation. (focus group)
12	Other feedback	<p>Feedback not captured elsewhere:</p> <ul style="list-style-type: none"> ▪ This master’s project should provide some good value (employer association, OHS practitioner association) ▪ 144 work-related deaths in Alberta last year is evidence that OHS rules are still needed and need to continue to improve (employer association) ▪ Government needs to do a better job enforcing the rules; more OHS officers may be needed (2 OHS practitioner associations) ▪ Greater enforcement is desired but status quo is acceptable (employer association) ▪ Ticketing and administrative penalties as enforcement tools are excellent compliments to the OHS Code (employer association) ▪ Government OHS Officers are easy to work with (employer association) ▪ Government OHS program treats employers as client more so than workers – case in point: OHS officers give copy of contact reports to the employer, but not to workers who lodge complaints – better balance is needed (labour organization) ▪ Businesses need to understand their own hazards; if employers don’t assess their hazards, the rules are moot (2 OHS practitioner associations) ▪ It is desirable to have an OHS champion at the minister level as this supports Code updates (focus group)

¹Responses of study participants have been rolled-up to protect anonymity of individual participants.

²Respondent categories: employer association, labour organization, industry health and safety association; OHS practitioner association; focus group (Government of Alberta staff involved in OHS Code review and update process); other jurisdiction (government officials from other jurisdictions responsible for OHS policy development).

Appendix D: Details of Recommended Revised OHS Code Review Process

This appendix contains the detail pertaining to the recommended revised OHS Code review process presented in section 7.2.1 of the main report. Within this detailed process, notations are made to denote whether elements of the revised process represent new concepts, modified concepts, or whether original concepts have been validated through the research. Also included in this appendix is a set of revised guiding principles for the setting of OHS technical rules, and a summary of the differences between the original and revised Code review processes.

D-1.0 GENERAL ADMINISTRATIVE ITEMS

- **D-1.1 Process transparency:** Labour department publishes a high-level overview of the Code review process [*new concept*]. Figure 6 in the main report presents an appropriate level of detail.
- **D-1.2 Topic review schedule published:** Labour department publishes a 3-year topic review schedule, updated annually, on its OHS website [*modified concept*].
 - Simpler topics can be reviewed over a one-year period, and more complex topics can be reviewed over two-or-three years.
- **D-1.3 Update cycle frequency:** aim to enact updates to the Code on a 1-year cycle (with flexibility to avoid political cycle ‘red zones’ and allow for timing adjustments based on point-in-time government priorities) [*modified concept*].
- **D-1.4 Topics updated per year:** aim to update approximately 4 topics per year based on the review schedule [*new concept*].
 - Implementation example: if a Code update is not made for two years due to a political ‘red zone,’ then the subsequent update would cover 8 topics to keep pace with the review schedule.
- **D-1.5 Number of topics to review at a time:** review, consult on, and draft proposed changes on up to four topics concurrently (e.g., parts of the Code) and queue up the items for legal Code updates [*modified concept*].
 - It is not necessary for the entire Code to be reviewed during a single update cycle [*validated original concept*]; however, aim to review each Part of the Code at least once every twelve-years [*new concept*].
- **D-1.6 Identification of potential review topics:**
 - Continuously call-for-topics for review and invite feedback about rules via a web form on the Labour department’s website [*new concept*], by actively accepting suggestions from external stakeholders and internal OHS program staff [*modified concept*], and capturing recommendations from public fatality inquiries [*new concept*].
 - Suggestions for topic reviews should include: reference to existing requirement (section or part number of Code, if applicable) [*modified concept*]; clear description of change being requested [*modified concept*]; and rationale for the suggested change including supporting evidence [*modified concept*].
 - Review topics can be an existing part or section of the Code or a new issue [*validated original concept*].

- **D-1.7 Composition of technical review committee:** Labour department OHS technical staff (subject-matter-experts) [*validated original concept*].
- **D-1.8 Stakeholder engagement stages:** call for topics for review [*validated original concept*], pre-public consultation key stakeholder engagement [*new concept*], public consultation [*validated original concept*].
- **D-1.9 Stakeholder engagement:** provide acknowledgment to stakeholders who provide input at any stage of the process.
- **D-1.10 Communication methods:** Labour department's OHS eNews [*new formal concept (occurs informally in practice)*]; posting on the Labour department's OHS website [*validated original concept*]; communicating directly with health and safety associations, industry associations and labour groups via email [*modified concept*]; and engaging the Labour department's Partners in Injury Reduction Program Certifying Partners and Partners [*new concept*] to communicate Code review news items, including calls for topics to review, notices of public consultation requesting employer and worker feedback, and Code updates.
- **D-1.11 Document control (internal):** Labour department employs software solutions that enable co-authoring of single documents to avoid introduction of errors from having multiple versions of documents from multiple contributors [*new concept*].
- **D-1.12 Project management:** Labour department assigns a staff member as an overall project manager [*new concept*].

D-2.0 PHASE I – TECHNICAL REVIEW

- **D-2.1 Selection of topics for review:**
 - Annually, or more often if needed, Labour department's overarching OHS policy technical review committee reviews suggestions for review topics, triages topics based on relative priority and updates 3-year topic review schedule [*modified concept*].
 - Criteria used to select topics can include:
 - Emerging issue requiring consideration [*new concept*].
 - Heightened public awareness of a health and safety topic [*new concept*].
 - Error has been identified in existing rules [*new concept*].
 - Existing standards are out-of-date [*new concept*].
 - New technologies introduced in the workplace [*new concept*].
 - Topic review is of importance to stakeholders [*validated original concept*].
 - Injury statistics demonstrate a need for review [*validated original concept*].
 - A research study identifies need for review [*validated original concept*].
 - There are current compliance issues [*validated original concept*].
 - Prosecution findings identify issue [*validated original concept*].
 - Public fatality inquiry recommends a topic review [*new concept*].
 - Jurisdictional considerations [*validated original concept*].
 - Avoiding reviewing the same topic two years in a row [*new concept*].

- All decisions for topics to be reviewed (selected or rejected) are documented with reasons for decision (internal Labour department document) [*validated original concept*].
- Items not selected for 3-year review schedule can be placed in parking lot for consideration in future years [*new concept*].
- **D-2.2 Project management (internal to Labour department):**
 - **Terms of reference:** terms of reference created for Labour department's overarching technical review committee as well as individual topic review working groups outlining scope of work and key deliverables.
 - **Topic review leads assigned:** individual Labour department OHS technical staff members ('part leads') assigned to lead review of individual topics (e.g., parts of Code) [*new formal concept (occurs informally in practice)*].
 - **Topic review work plan:** 'part lead' creates work plan to complete review as per topic review schedule [*new concept*]. Generally, work plans can span one-to-three years depending on complexity of topic [*new concept*].
 - **Topic review working group established:** Labour department internal working groups established for each topic, which includes membership from OHS policy and delivery areas [*new formal concept (occurs informally in practice)*].
- **D-2.3 Technical review of topics:** Labour department internal working groups led by 'part leads' reviews topics and develops proposed changes to OHS Code [*modified concept (occurs informally in practice)*], while following guiding principles (see section C-6.0 below for guiding principles). Technical working groups may reach out to industry experts to seek advice, subject to management approval [*validated original concept*].
- **D-2.4 Jurisdictional scan:** for each of the topics reviewed, Labour department internal working group prepares a cross-Canada jurisdictional scan to inform the technical review and provide information for political decision makers on approaches taken in other jurisdictions to support regulatory approval (Phase III, section C-4.5 below) [*new concept*].
- **D-2.5 Tri-partite technical review committee (for select topics):** [*validated original concept*]
 - Certain topics may warrant a tri-partite technical working group consisting of industry, labour and government representation to address highly technical subject matter where the outcome of the review could have major impacts on industry. One example is the Occupational Exposure Limit (chemical exposure limit) review.
 - A formal review process or terms of reference should be established for each technical committee to guide committee makeup, scope of work, decision making process, key deliverables, etc.

D-3.0 PHASE II – PUBLIC CONSULTATION

- **D-3.1 Pre-public consultation engagement with key stakeholders:** Labour department to share proposed changes with key stakeholder associations (industry associations, labour organizations, and OHS practitioner associations, and if applicable, other government ministries) and allow one month for pre-public consultation preliminary feedback to flag

significant issues such as compliance not being achievable [*new concept*]. Feedback from key stakeholders can be accepted via written submission, teleconference call, or in-person meeting [*new concept*].

- Note: this concept, requested by key stakeholders to increase their engagement in the Code review process, represents a new approach not tested before in Alberta. While this approach has had success in British Columbia, it will be important to evaluate how well this concept works if implemented in Alberta. An alternate approach would be to create government-labour-industry tri-partite committees to review individual topics, which is the process that was used for the 2003 Code review that resulted in the project team winning a Premier’s Award for Excellence for its consultation work.
- **D-3.2 Consideration of pre-public consultation feedback:** Labour department ‘part leads’ reconvene technical working groups to consider pre-public consultation key stakeholder feedback, and revise proposed changes as appropriate [*new concept*].
 - If major concerns are raised by key stakeholders, the topic review work plan may need to be amended if additional review time is needed [*new concept*].
- **D-3.3 Public consultation documents:**
 - Provide web survey showing proposed changes alongside current rules [*validated original concept*] and rationale for the change [*new formal concept (occurs informally in practice)*], plus a standardized downloadable consultation feedback form to facilitate a solution for organizations or individuals who prefer not to communicate via web survey [*new concept*].
 - As a part of the web survey and downloadable feedback form:
 - Ask stakeholders for basic demographic information concerning their submission – for example, whether they are a worker, employer, OHS practitioner, government entity, government OHS officer, academic, member of general public, industry association, labour organization, or other [*new formal concept (occurs informally in practice)*]. For industry, labour, or OHS practitioner organizations, formally ask for name of organization and how many members they represent [*new concept*].
 - Ask stakeholders for each proposed section if they ACCEPT the proposal as presented, wish to MODIFY the proposal and provide comments, or REJECT the proposal and provide rationale [*modified concept*].
- **D-3.4 Public consultation period:** provide stakeholders with three months to provide feedback during public consultation periods [*modified concept*]. Extend by two weeks if consultation period covers times when many people are away from work such as summer vacation season or Christmas break [*new concept*].
- **D-3.5 Stakeholder feedback formats accepted:** online survey [*validated original concept*]; emailed, mailed or faxed standardized feedback form [*new concept*]; other submission by email, mail or fax [*validated original concept*].
- **D-3.6 Anonymity options:** accept both identifiable and anonymous submissions [*new formal concept (occurs informally in practice)*].

- **D-3.7 Summary of public consultation feedback:** For each topic reviewed, following public consultation, Labour department staff prepare a “what we heard” internal document [*new formal concept (occurs informally in practice)*].
- **D-3.8 Consideration of public feedback:** Labour department ‘part leads’ reconvene technical working groups to review public feedback, and revise proposed changes as appropriate based on public feedback [*validated original concept*].

D-4.0 PHASE III – REGULATORY APPROVAL

- **D-4.1 Legal editing:** Justice or Labour department legislative editor prepares revised proposed changes for legal drafting [*new concept*].
 - A legislative editor is a person with strong English language writing skills, generally with a background in a legal environment, who can prepare documents to reduce the quantity of legal drafting resources needed. This helps to solve a process bottleneck stemming from legal drafting resources being scarce due to limited supply and high demand. This approach is used successfully elsewhere within the Government of Alberta (Table C-1, Row 10 of Appendix C).
- **D-4.2 Legal drafting:** Justice department in collaboration with Labour department staff creates legal draft of updates to the OHS Code [*modified concept*].
- **D-4.3 Queue-up legal draft:** Labour department adds legal draft topic to queue for future adoption [*new concept*].
- **D-4.4 Third-party standards:** If third-party standards are referenced in legal draft, Labour department OHS policy unit to retain permanent library copy of referenced third-party standards [*new concept*].
- **D-4.5 Annual OHS Code update:**
 - Annually (with flexibility to avoid political cycle ‘red zones’ and allow for timing adjustments based on point-in-time government priorities) [*modified concept*], Labour department prepares all necessary documentation and seeks regulatory approval by putting proposal for queued-up OHS Code updates into government’s decision-making process in accordance with procedures outlined in the *OHS Act* [*validated original concept*].
 - Within the regulatory approval package, Labour department identifies which proposed changes represent shifts in public policy (e.g., new items employers or workers will become responsible for) to bring this to the attention of political decision makers, and which proposed changes represent technical updates with no substantive change in public policy (e.g., updating a referenced third-party standard to its newer edition) [*new formal concept (occurs informally in practice)*].
- **D-4.6 Formal adoption of updated Code:**
 - Labour minister adopts updated Code as per procedures outlined in *OHS Act* [*formally done in practice, but not mentioned in original process*].
 - Regulation filed to formally and legally communicate OHS Code has been updated [*formally done in practice, but not mentioned in original process*].

- **D-4.7 OHS ticketable provisions updated:**
 - Labour department submits proposal to Justice and Solicitor General department to update ticketable provisions (specified penalties), if applicable [*formally done in practice, but not mentioned in original process*].

D-5.0 PHASE IV – IMPLEMENTATION

- **D-5.1 Publicly announcing regulatory changes:** Labour department issues government news release and OHS eNews announcements with accompanying Frequently Asked Questions document; Alberta Queen’s Printer issues newsletter announcement; Labour department’s Partners in Injury Reduction program Certifying Partners and Partners engaged to communicate update [*formally done in practice, but not mentioned in original process*].
- **D-5.2 Regulatory documents published:**
 - Updated OHS Code published on Labour department’s OHS website [*formally done in practice, but not mentioned in original process*].
 - Alberta Queen’s Printer creates an index for the OHS Code and prepares print and XML versions of updated OHS Code [*new concept*].
- **D-5.3 Communicating and explaining details of rule changes:**
 - Comparison document of new versus previous rules published on Labour department’s OHS website [*new formal concept (occurs informally in practice)*].
 - OHS Code Explanation Guide updated and published on Labour department’s OHS website [*new formal concept (occurs informally in practice)*].
 - OHS Best Practices guidelines created or updated and published on Labour department’s OHS website [*modified concept*].
 - OHS bulletins created or updated and published on Labour department’s OHS website [*new formal concept (occurs informally in practice)*].
- **D-5.4 Government OHS officers trained on changes to technical rules:** [*new formal concept (occurs informally in practice)*].
- **D-5.5 OHS Code update stakeholder presentations:**
 - Labour department prepares presentation materials [*new concept*].
 - Labour department staff presents changes to OHS rules at OHS conferences or other stakeholder venues [*new concept*].
 - Labour department’s Partners in Injury Reduction Certifying Partners and Partners present changes to stakeholders, leveraging presentation materials provided by the Labour department [*new concept*].

D-6.0 RECOMMENDED GUIDING PRINCIPLES

Evaluation of guiding principles for setting OHS technical rules has been informed by interviewing key external stakeholders.

The Code’s original review process has 15 guiding principles, 11 of which have been validated, two of which have been modified, and two removed. Six new concepts have been added and

blended within the guiding principles. These changes are noted in the recommended revised guiding principles.

The following are recommended revised guiding principles for the establishment of OHS technical rules:

Tier 1 Principles (must always be met) [*having tier levels is new concept*]

Rules must: [*simplified wording*]

- i. Protect the health, safety and wellbeing of workers [*validated original concept*].
- ii. Be necessary as demonstrated by evidence [*validated original concept*].
- iii. Not contradict other rules or other parts of OHS legislation [*validated original concept*].

Tier 2 Principles (follow wherever possible, but not at the expense of tier 1 principles) [*having tier levels is new concept*]

Rules should: [*simplified wording*]

- i. Have shared accountability for all work site parties [*validated original concept*].
- ii. Be performance-based (outcome-focused) where possible such as where non-legislative guidelines or best practices are available or flexibility is needed, and prescriptive where necessary [*modified concept*].
- iii. be sufficiently comprehensive [*new concept*], framed in a manner that is clear and easy to understand minimizing the need for interpretation [*validated original concept*].
- iv. be practical and achievable [*validated original concept*].
- v. be enforceable [*validated original concept*].
- vi. enable employers to operate without undue administrative burden [*validated two original concepts, now combined, but also modified in the sense that there are now tier levels*], including being sensitive to the needs of all sizes of businesses including small businesses [*new concept to add small business emphasis*].
- vii. not add undue cost to government [*validated original concept*].
- viii. take into consideration recommendations from public fatality inquiries [*new concept*].
- ix. take into consideration approaches in other Canadian jurisdictions [*validated original concept*] to meet the spirit of interprovincial trade agreements to minimize trade barriers [*new concept*].
- x. not create monopolies (e.g., for specific training providers) including those that could create interprovincial trade barriers [*new concept*].
- xi. recognize reputable standards (e.g., Canadian Standards Association standards) where appropriate [*new concept*].

Note: There are four broad categories of OHS standards, all of which have an important role to play in minimizing occupational injuries and ill health; these are: (i) general duties, (ii) systematic process-based, (iii) performance-based, and (iv) specification-based (Bluff & Gunningham, 2003, p. 6). The first two categories are best placed in the OHS Act, and the

final two in the OHS Code. In addition, performance-based rules should be supplemented by non-legislative guidelines; as such guidance can be helpful for small business (Bluff & Gunningham, 2003, p. 17).

- Reference: Bluff, L. and Gunningham, N. (2003). *Working Paper 9 – Principle, process, performance or what? New approaches to OHS standards setting*. Canberra, Australia: National Research Centre for OHS Regulation. Retrieved from http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/WorkingPaper_9_0.pdf

D-7.0 DIFFERENCES BETWEEN ORIGINAL AND REVISED PROCESSES

- **D-7.1 Concepts that have been modified:** As compared with the original process, the following concepts have been modified for the recommended revised process:
 - The original process envisioned a five-year cycle, with years one-to-three devoted to reviewing stakeholder suggestions and drafting proposed updates, year four for public consultation and legal drafting, and year five for regulatory approval and enactment. The revised recommended process envisions a one-year cycle with continuous call for topics for review, annually-updated three-year review plans, technical reviews, public consultation and legal drafting for individual topics in all years, and regulatory approval and legal enactment every year. The most significant change between original and revised processes is the original process had work completed in large batches, and the revised process breaks items up into smaller, more manageable pieces.
 - The original process suggested that a 5-to-10-year review schedule be created, and published. In practice, this was not implemented. The revised recommended process involves a 3-year review schedule be published, updated annually.
 - The original process sought topic review suggestions only from external stakeholders, but not from the Labour department's internal OHS staff. The revised process seeks input from everyone who has suggestions.
 - The original process called for a schedule of reviews to be communicated with stakeholders via website posting and communicating directly with safety associations, industry associations and labour groups. The revised process is to communicate a review schedule via the Labour department's OHS eNews, a posting on the department's website, by emailing health and safety associations, industry associations and labour groups, and by engaging the department's Partners in Injury Reduction program Certifying Partners and Partners.
 - The original process had a two-month public consultation period. The revised process has a three-month period as requested by stakeholders.
 - The original process asked stakeholders, during the formal public consultation period, whether they ACCEPT, MODIFY or REJECT a proposed change without requesting any rationale for the responses. The revised process requests that stakeholders provide rationale when recommending to MODIFY or REJECT a proposed change.

- The original process sought legal input including legal drafting in updating proposed requirements before public consultation. The revised process calls for legal drafting after public consultation, thus using resources more efficiently.
- The original process had OHS policy staff collaborating the legal services staff to create a legal draft without necessarily engaging a formal legal drafter from the Legislative Counsel area of the Justice department. This is replaced with a legal editor from the Labour department collaborating with OHS policy staff to create a preliminary legal draft, followed by formal legal drafting by the Justice department's Legislative Counsel. This streamlines legal drafting resources and paves the way for a higher quality final product.
- In the original process, formal legal drafting by the Justice department's Legislative Counsel area was optional, which resulted in the Code being drafted in a manner not consistent with legal drafting best practices. In the revised process, legal drafting is mandatory.
- The original process had health and safety bulletins being updated. In addition to updating health and safety bulletins, the revised process has new best practices guideline documents being created.
- **D-7.2 Concepts struck from original process:** The following concepts have been struck from the original process for the recommended revised process:
 - Technical briefing sessions with key stakeholders (not part of original formal process; however, occurs informally in practice), which consisted mainly of one-way communication, is struck because meaningful input was not provided by stakeholders to the Labour department as a result of these sessions. Item is struck in favour of methods that allow for more holistic two-way dialogue with stakeholders.
 - The original process required 75 per cent of submissions to public consultation to be in support of proposal in order for it to be accepted. This is a mathematically flawed concept because some respondents provide their personal input representing one person or one company, whereas other respondents are representing entire industry sectors – hence, this metric mixes 'apples and oranges' making it mathematically invalid. Further, voting is not necessarily the best approach since some astute individual respondents may make suggestions that make excellent technical sense, pointing out issues others have missed. The revised process has the Labour department's technical review committee working with intelligence to determine what stakeholders generally accept, and which issues need to be modified or flagged for further consideration.
- **D-7.3 Modified guiding principles:** As compared with the original guiding principles, the following concepts have been revised:
 - Original concept of "balance the right of workers to a safe and healthy working environment with the right of employers to profitably operate their business" replaced with a two-tier approach, with worker health and safety being paramount, and business profitability, while still an important priority, secondary

- there was broad (but not unanimous) support from stakeholders to adjust this concept, which is supported by the Labour ministry’s mandate of protecting the health and safety of workers.
 - Original concept of avoid creating rules if “a non-legislated guide/industry practice could as effectively address the issue” replaced with using performance-based rules where they can be supported by non-legislated guidelines or best practices
 - there was broad (but not unanimous) support from stakeholders to adjust this concept.
 - **D-7.4 Discontinued guiding principles:** The following concepts have been struck from the original guiding principles:
 - Rules should emphasize “innovation and use of best practices” removed as stakeholder support was strongly divided on this principle.
 - Rules should emphasize “worker education and appropriate training” removed as stakeholders, while unanimously agreeing in principle with the importance of worker education and training, broadly (but not unanimously) expressed a preference for details of worker education and training not to be prescribed in legislation. Note: Alberta’s OHS legislation has existing general requirements mandating that workers receive appropriate training (OHS Regulation, section 15; & OHS Code, sections 211.1 & 256).
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