



## Executive Director's Report

### DON'T PANIC WHEN A SAFETY INSPECTOR SHOWS UP ON YOUR JOB SITE



I recently read the following article and I thought it was worth reprinting. The article is from Don Wall of the DCN on Feb 26, 2020.

DON WALL — Kevin Brown, founder and CEO of Cobalt Safety and former Ontario Ministry of Labour inspector, spoke on inspection readiness at the recent OSWCA conference held in Blue Mountain, Ont.

Health and safety discussions in the construction sector generally start with motherhood pleas, literally, that all parties should ensure workers return home safely to their loved ones at the end of each day.

But as health and safety consultant Kevin Brown told delegates attending the Ontario Sewer and Watermain Construction Association conference held in Blue Mountain, Ont. Feb. 9 to 12, prudent contractors ought to supplement extensive health and safety training with well-developed protocols for health and safety record-keeping and dealing with Ministry of Labour (MOL) inspectors.

Brown's presentation was titled 'Due diligence and what to do when the MOL shows up.' Workplace safety is first and foremost about saving lives and preventing injuries, he said, but it's also about avoiding the workplace costs and turmoil associated with those incidents.

"We are in the production business, we are in it to make money," said Brown, a former executive in the heavy civil sector turned MOL (now Ministry of Labour, Training and Skills Development) inspector who now operates the consulting firm Cobalt Safety.

The average lost-time injury in Ontario costs \$30,000, a WSIB study reported, but with legal fees and indirect costs such as damage to property and equipment, hiring of experts, investigations and extra training — not to mention the damage to a firm's reputation — Brown said the estimated total average cost of an LTI is \$480,000.

"That was profit," he remarked. "It comes right out of your pocket."

Brown said about 75 per cent of charges laid under the Occupational Health and Safety Act (OHSA) result in convictions. Meanwhile, the penalties for OHSA convictions have recently gone up — for a corporation, the maximum fine is now \$1.5 million per offence, up from \$500,000 before 2018, while for an individual director, supervisor or worker, the maximum fine is now \$100,000 per offence, quadruple the old amount.

Since 2004, firms can also be prosecuted under the Criminal Code based on the Westray provisions, with jail terms or fines among the penalties.

"Which is cheaper, the shortcut or doing it correctly?" Brown asked.

MOL inspectors enforce the OHSA and ensure workplace parties are maintaining an effective Internal Responsibility System, he explained. They have the right to enter any workplace without a warrant or notice.

The first piece of advice Brown gives to employers when an inspector shows up? It's better to treat them with honey than with vinegar. Don't run around hiding evidence when the inspector's vehicle shows up — attempts to hinder, obstruct, molest or interfere with inspectors in the exercise of their power is prohibited by law.

In a discussion of "boots versus suits," the MOL represents suits, Brown said, enforcing legislation.

"They are playing the game of law, that is their job, they are the regulator," he explained.

Inspectors are looking to see that there is care, control and responsibility being demonstrated for the health and safety of the workers. They are checking for potential hazards or risks that may endanger a worker.

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## DON'T PANIC WHEN A SAFETY INSPECTOR SHOWS UP ON YOUR JOB SITE (continued)



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Among their powers, they may test equipment, and they have extensive rights to ask for documents, drawings, specifications, licenses and records.

To minimize the chances of charges and convictions, Brown recommends the following strategies:

- Do not allow anyone to hinder an MOL inspector in their inspection.
- Request that the firm's health and safety representative be allowed to accompany the inspector.
- The firm's representative should carry a notebook and write down what the inspector is saying. "If you are writing and they are not it's a good indication of cooperation," Brown suggested.
- If the inspector spots a hazard, immediately make appropriate phone calls and start to address it if possible.
- If your representative spots a hazard, take steps to have it corrected. Don't wait for the inspector to say it or issue an order.
- Ask for clarification in case the rep is unsure of an order.
- Be professional, never confrontational.

Asserting due diligence as a defence to charges requires that an employer prove they have health and safety policies and programs in place, workers and managers have undergone training, and systems are monitored and enforced, Brown said.

"Due diligence is your only legal defence," he said.

It means litigation readiness, Brown added: "Are you ready to go to court now?"

Wrapping up the session, OSWCA executive director Giovanni Cautillo said contractors should take away the message that good documentation goes a long way.

"When it comes down to it, make sure you document everything," he said. "And especially now with the Construction Act, with adjudication, you have to be prepared at all times."

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## MINISTRY OF LABOUR, TRAINING & SKILLS DEVELOPMENT

### UPDATE



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The Working at Heights (WAH) training program and the Joint Health and Safety Committee (JHSC) Part 2 training program are currently under review. JHSC Part 1 training has been reviewed and it's expected that it will be posted soon.

## Update

With the departure of Chief Operating Officer, Brian Jarvis at the end of December, the WSIB has restructured its senior leadership team. Jennifer Anderson, formerly the Chief Service Excellence Officer, was confirmed as the new Chief Operating Officer and the service excellence cluster will continue to report into her office.

The Director of the Office of the Employer Advisor (OEA), Michael Zacks, will be retiring at the end of March 2020. I have known Michael for many years and he has great respect among the construction industry. Representations have been made to senior level officials in government regarding his successor and we hope a person of Michael's caliber is selected.

The term of office of WSIB Chair Elizabeth Witmer, terminates in May 2020. It is not known if she is seeking an extension. COCA has expressed support for Mrs. Witmer's leadership and the need to have a competent person leading the WSIB's Board of Directors to senior officials in the government.

The WSIB's Rate Framework was implemented on January 1, 2020. AAO has received few enquires or complaints regarding the new rate classification system/individual rates.

## Upcoming Events



### March 2020

**COCA COO/AGM Meeting**      March 3, 2020 Mississauga      (Paul Gunning attending)

**IHSA Construction Legislative Review Committee Meeting**

March 4, 2020 Toronto (Paul Gunning attending)

**Ontario Construction Secretariat's 20<sup>th</sup> Annual State of the Industry and Outlook Conference**

March 5, 2020 Toronto (Bob Grassing and Paul Gunning attending)

**AAO Board Meeting**      March 12, 2020 Toronto

**IHSA Drywall Labour-Management Committee Meeting**

March 17, 2020 Mississauga      (Paul Gunning attending)

**AWCI Annual Convention and INTEX EXPO**      March 22 – 26, 2020 Las Vegas, NV

**CECCO 1<sup>st</sup> Quarter Meeting**

March 26, 2020, Toronto      (Paul Gunning attending)

**IFSTC Trustee Meeting**

March 31, 2020 Toronto      (Nat Figliano, Paul Gunning attending)

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# MARCH 2020



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## **UPCOMING Mathews Dinsdale Seminars/Webinars**

Copy the following URL to your browser to register for new sessions (in-person or webinar training) or review archived session videos:

<http://www.mathewsdinsdale.com> (click on events at top)

### **CompClaim – Workers’ Compensation Bootcamp (Level 1)**

Friday March 10, 2020  
9:00 am to 4:00 pm

### **CompClaim – Workers’ Compensation Bootcamp (Level 2)**

Thursday March 31, 2020  
9:00 am to 4:00 pm

If you have any questions, please call me at 519-671-5930.

Paul Gunning  
Executive Director