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12.1   Introduction

For over two decades, governments in various jurisdictions in Canada have been experimenting with mandatory joint worker-management committees. For the most part, these committees have been "limited purpose," with worker representatives mandated to participate on committees with management in an advisory capacity on a specific issue or topic, such as education and training, technological change, or plant closure (Adams 1986). In most instances these committees are confined to organized work sites, although in a limited number of cases they may be required by all firms of a certain size or in a particular industry or sector, such as in mining or forestry. By far the most comprehensive experience in Canada with mandated joint committees is in the area of occupational health and safety. Today, a majority of Canadian jurisdictions require firms to establish joint committees with elected worker representatives as vehicles for worker participation in reducing work-related disease and injury and improving the workplace environment. While these mandated joint health and safety committees (JHSCs) are a far cry from European-type comprehensive works councils, they nevertheless constitute a significant development in North American industrial relations by taking the giant step of legislating worker participation outside of and beyond the framework of traditional collective bargaining.

In this paper, a North American contribution to a comparative study on works councils, we will examine the evolution of mandated occupational health and safety joint committees with respect to the following questions:

How were JHSCs introduced into a North American adversarial industrial relations system?

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How do they perform?

To what extent do mandatory committees substitute for trade unions and/or government enforcement of regulations?

What is the role of government in assisting and promoting such a system of internal responsibility?

In particular, we will concentrate on the evolution and function of JHSCs in Ontario. While there are common features to the enabling legislation and regulations in most Canadian jurisdictions, Ontario, as Canada's industrial heartland and the most populous province, has had the most instructive and far-reaching experience with JHSCs. Ontario was one of the first jurisdictions to promote joint committees, at first voluntarily, then as mandated since 1978. Today it has the most extensive legislation, which not only requires committees in most workplaces but also mandates worker representatives in work sites with too few employees for a full committee. Ontario has evolved toward an "internal responsibility system" in occupational safety and health. This system seeks to empower both workplace parties through joint committees that take mutual responsibility for reducing hazards and injuries in the workplace. With the most recent amendments to the province's health and safety legislation, Ontario moved beyond the level of the firm and has created a bipartite authority, the Workplace Health and Safety Agency (WHSA), with the power to establish and administer a unique certification process with mandatory training for members of health and safety committees. It has also proposed a yet-to-be-developed accreditation system for employers who operate successful health and safety programs and policies. Ontario's creation of the WHSA represents an attempt to extend the bipartite approach beyond the enterprise level and to promote a cooperative approach to the work environment at the sectoral and provincial levels. In this paper, we will begin with an overview of the evolution of the legal and institutional framework for mandated joint committees throughout Canada. We will then look at the specific case of Ontario and the development of sectoral and provincewide bipartite support entities. We will examine joint committees' relationships with employers, unions, and workers and, in the case of Ontario, with the WHSA. Finally, we will examine the role of government in nurturing bipartite committees and forums at the sectoral and provincial levels as well as at the level of the firm.

12.2   Legal Environment

While there are important differences, Canadian labor law is in many ways similar to the Wagner Act in the United States. That is, the law proceeds from an assumption that the "natural state" of a new enterprise is nonunionized. In order for workers to organize a union and receive the designation of exclusive bargaining agent, they must surmount legal barriers constructed to prove that the employees freely chose to form or join a union. It is generally conceded

that the organizing and certification process is somewhat easier in Canada than in the United States in that the whole process is much faster and there are stronger legal sanctions against employer interference in the process. But in marked contrast to Western Europe, the general North American industrial relations framework assumes that workers have little or no right outside of collective bargaining to participation in decision making in the workplace.

Although the framework of Canadian labor legislation was originally modeled after the U.S. National Labor Relations Act (NLRA), there are some important differences that affect the policies discussed in this paper. Most significant, Canadian governments at all levels have tended to be more interventionist in their approach to industrial relations. From the Industrial Disputes Investigation Act of 1907 to today, governments in Canadian jurisdictions have assumed a more active role in mediation and conciliation of disputes. Also, Canadian governments have sought to promote labor and management cooperation through funding of training and education and through the establishment of joint labor and management research and education centers such as the Canadian Labour Market and Productivity Centre.

In contrast to the U.S. NLRA, Canada has no single labor code for the entire country. In all, there are 13 different jurisdictions in Canada—ten provinces, two territories, and a federal jurisdiction. The federal jurisdiction accounts for only 10 percent of the workforce (Meltz 1989) covering federal government employees, workers in banks, communications, and interprovincial and international transportation. Most workers fall under their respective provincial or territorial jurisdiction, with each province or territory legislating labor standards, industrial relations, and occupational health and safety standards within its own territory. While there is great potential for interprovincial variation in legislation, for the most part unions have been successful in extending supportive labor legislation from province to province. In recent years, with the election of labor-supported social democratic governments in Ontario, parts of Western Canada, and Quebec, provincial labor legislation has played a leading role in extending rights for workers and in improving standards and procedures.

Until the 1970s, work environment standards in most jurisdictions were a patchwork of divergent statutes and administrations. Some work sites were covered by a variety of conflicting and competing statutes, while others were left without any legislative health and safety protection at all. In Ontario, for example, there were different statutes administered by separate ministries for mining, construction, industrial, and logging enterprises (Dematteo 1991). In all Canadian jurisdictions, the previous norm was state standard setting and enforcement. Worker participation was limited to unionized workers lobbying government agencies on standards and contract negotiations where unions could bargain the "terms and conditions" of employment (Tucker 1990, 20–21).

Since the 1970s, however, there have been substantial changes in the public

policy approach to the work environment. These changes can be attributed to an overall increased "awareness of and concern about the relationship between the general environment and human health," an interest in lowering health care costs associated with work-related illness and injury, and increased labor mobilization creating pressure for a greater voice for labor in workplace decision making (Tucker 1990).

Saskatchewan in 1972 passed the first omnibus occupational health and safety statute, creating the model for other Canadian jurisdictions. The Saskatchewan legislation established in North America for the first time the workers *right to know* about hazardous materials, the *right to refuse* dangerous work, and the *right to participate* in decision making concerning the work environment through mandatory worker-management health and safety committees (Bryce and Manga 1985, 272).

In spite of its small population (about one million, constituting one twenty-fifth of the Canadian population), Saskatchewan has often been in the forefront of introducing innovative legislation of national significance. The birthplace of the socialist farm-labor party in Canada, the Cooperative Commonwealth Federation (which later with the Canadian Labour Congress cofounded the New Democratic party [NDP]), Saskatchewan was the first jurisdiction in North America to grant collective bargaining rights to public employees. In 1961 the Saskatchewan NDP government developed a universal, comprehensive health insurance system that became the model for Canada's national health care system introduced less than a decade later.

Losing power to the Liberals between 1964 and 1971, the NDP was returned to power in Saskatchewan in 1971 with strong support from the labor movement. Building on the success of their earlier health care plan, the new Saskatchewan government's initiatives in the area of occupational health and safety complemented both the proworker stance of the NDP government and its concern for health promotion through preventive care.

The 1972 legislation consolidated occupational health and safety activities into the province's Department of Labour, Occupational Health and Safety (OHS) Branch. Joint worker-management committees were made mandatory for most workplaces with 10 or more employees. Within a few years, the OHS Branch was able to report that there were over 2,500 joint committees throughout the province, providing coverage for 80 percent of Saskatchewan's nonagricultural workforce (Sass 1990, 3).

Throughout the late 1970s and 1980s most provincial jurisdictions and the federal government moved to consolidate the various pieces of work environment legislation into "omnibus" statutes. These were administered by a single government department or commission with the power to administer and write regulation in its jurisdiction. While not originally conceived of as deregulation, the move toward an "internal responsibility" regime in the workplace can be seen as both a method of simplifying, consolidating, and streamlining complex regulation as well as a means for shifting the burden of authority and responsibility for improving the work environment onto the parties in the workplace.

Concurrent with this legislative consolidation, workers in most jurisdictions won statutory guarantees of what have come to be known as the three basic rights in the area of occupational health and safety: the right to know about hazards in the work environment, the right to refuse unsafe work, and the right to participate in the detection, evaluation, and reduction of workplace hazards (Sass 1990).

The scope of the new health and safety legislation was similar to labor standards legislation, in that it extended rights to workers whether or not they were unionized. But rather like blanket labor standards, certain groupings of employees were exempted from the health and safety legislation either by the limited number of employees at their work site or by the type of work they were involved in. In most jurisdictions, for example, police, prison guards, firefighters, and retail, agricultural, and construction workers were excluded.

While there is some variation in the specific wording and procedures for exercising these rights, all jurisdictions today have guaranteed in some way the right to refuse dangerous work and the right to know about workplace hazards. The federal and provincial governments' adoption of the Workplace Hazardous Materials Information System (WHMIS), which stipulates requirements for labels on hazardous materials and mandates the availability of uniform material safety sheets and training of employees using hazardous materials, has assured at least a baseline of "the right to know" in all jurisdictions.

In all but four jurisdictions the establishment of committees is required as the normative structure for ensuring workers' "right to participation" (see table 12.1). With the exception of Quebec, in the nine jurisdictions where committees are mandated no worker or union action is required to form a committee and the legislation generally requires the employer to assure that a joint com-

Table 12.1   **Health and Safety Regulations by Jurisdiction**

Jurisdiction	Mandated JHSC	Right to Know	Right to Participate	Right to Refuse
Canada	X	X	X	X
Yukon	X	X	X	X
Northwest Territories	a	X		X
British Columbia	X	X	X	X
Alberta	a	X		X
Saskatchewan	X	X	X	X
Manitoba	X	X	X	X
Ontario	X	X	X	X
Quebec	b	X	X	X
New Brunswick	X	X	X	X
Nova Scotia	X	X	X	X
Prince Edward Island	a	X		X
Newfoundland	a	X		X

[a]Discretionary.

[b]On union initiative or by request of 10 percent of workers.

mittee is functioning. In Quebec, the following preconditions are sufficient to require management to assure the formation of a joint committee: a demand by the local union, or a request by 10 percent of the employees in an unorganized work site; or a request by at least four workers at a work site of fewer than 40 workers (Quebec National Assembly 1979, section 69). Even in the four jurisdictions where committees are "discretionary," committees may be required by either the minister of labor or a designated government official.

The specific responsibilities, functions, and requirements for committees vary tremendously from jurisdiction to jurisdiction. However, there are a number of features common to most jurisdictions. Generally, the firm-size threshold for requiring the formation of a committee is 20 or more employees (Saskatchewan, with the lowest threshold, requires only 10 or more employees). In a few jurisdictions, such as Ontario, provision is made in smaller work sites (of over five employees but fewer than 20) for the election of a single worker representative with powers similar to that of a joint committee (Ontario Legislature 1990, section 8–1).

There is no general rule for defining what constitutes a "workplace" for the purposes of forming a joint committee. As an Ontario study reports, "a workplace defined as a single workplace for ministry inspection purposes" could be divided by a JHSC into several subareas. Similarly, a single JHSC might serve in what the ministry may define as several "workplaces" (Ontario Advisory Council 1986, 17). In Ontario, where negotiated joint committee structures sometimes preceded the legislation in some industries such as steel and mining, the regulations are purposely silent in order to permit existing negotiated arrangements and to maximize flexibility for committees. Whether by design or oversight, the legislation in most jurisdictions is similarly silent on the issue.

The construction industry presents one of the most difficult workplace organizational problems for joint committees. The temporary transitory nature of the work site, the diversity of trades active on a work site, and the potential for large numbers of contractors and subcontractors coming and going throughout the life of the project make it especially difficult to transfer the general JHSC model into this industry. In many jurisdictions, this problem is avoided by simply exempting construction from the general legislation and by writing special codes and regulations for the industry. In Ontario and Quebec, however, both jurisdictions have included construction in their provisions and have provided for joint committees on large construction sites.

In Quebec, a "job-site" committee is required on work sites "where it is foreseen that activities on a construction site will occupy at least twenty-five construction workers simultaneously at a particular stage of the work" (Quebec National Assembly 1979, section 204). The job-site committee includes representatives from the principal contractor, each employer, one representative of the person in charge of the plans and specifications, and one representative from each of the unions with members on site. This committee is to meet at least once every two weeks, during regular working hours (Quebec National

Assembly 1979, sections 205 and 207). In Ontario, a nonmandated "trades committee" is formed from all the represented trades on a job site, and this committee forwards problems and suggestions to the mandated joint committee.

All mandated JHSCs function as bipartite bodies requiring equal numbers of worker and management members on the committee—with a sharing of chairing duties or some other provision for joint leadership of the committee. Some jurisdictions have a formula for committee size according to the total number of employees in an enterprise, others are silent on maximum or minimum committee size. Most jurisdictions prohibit employer representatives from outnumbering the worker representatives.

As is often the rule in Canada, Quebec is a special case, adding an additional element to the general trend of bipartite committees. Taking advantage of the province's unique system of health care and social service delivery, joint occupational health and safety committees in Quebec have the right to choose a physician approved by a designated hospital center or department of community health to prepare and monitor a work site "health plan" and to be "in charge of health services in the establishment." While the joint committee hires the physician, management is responsible for the costs both of the physician and of implementing the health program (Quebec National Assembly 1979, section 78). The designated physician is a member of the joint committee but does not have a vote in meetings. Quebec is the only jurisdiction in which committees regularly include physicians or other outside experts.

In all jurisdictions, management is expected to select its own committee members. In some legislation, such as in the Ontario act, the law seeks to assure that management representatives be persons who exercise "managerial functions" and "to the extent possible" are employed at the workplace (Ontario Legislature 1990, section 9–9). In unionized work sites, the local union is normally empowered in the legislation to determine the method for selecting the worker representatives. In some instances, where more than one union represents the workers, the unions are "encouraged" to work together to ensure that the interests of all the employees are represented by the work representatives on the committee.

In nonunionized work sites, employees select their own representatives—although in most legislation the exact method of selection is not detailed. In Ontario, for example, the employer has the responsibility at the nonunionized work site to "cause a joint committee to be established" and to assure that "members of the committee who represent workers shall be selected by the workers they are to represent" (Ontario Legislature 1990, section 9–4). In Quebec, the legislation simply states that "the workers' representatives on a committee shall be designated from among the workers of the establishment" (Quebec National Assembly 1979, section 72). The legislation normally stipulates the minimum number of meetings for committees, which varies from four times a year to once a month depending on the jurisdiction. Legislation in most

jurisdictions also spells out the general terms, functions, responsibilities, and rights of committee members. Worker committee members, for example, have the right to participate in such areas as regular workplace inspections for hazards, accident and incident investigation, and communications and recommendations to management. They also have the right to be present during an inspection or investigation by a provincial health and safety inspector and to engage in other committee-related work and responsibilities during regular working hours with no loss or reduction in pay. In Quebec, the legislation gives committees the right to select the individual protective devices and equipment "best adapted to the needs of the workers in their establishment," which management is required to purchase for their employees (Quebec National Assembly 1979, section 78).

Most legislation includes language to assure that workers in general, and committee members specifically, are not disciplined, threatened, or subject to reprisals by employers either for exercising their right to refuse or for performing work related to their joint committee responsibilities (Ontario Legislature 1990, section 50). The Ontario legislation also includes an "immunity" clause, prohibiting lawsuits for neglect or default arising from "good faith" actions of committee members (Ontario Legislature 1990, section 65).

The joint committees are usually required to keep and in some cases post minutes of all committee meetings. Beyond very rudimentary instructions about number of meetings, minutes, and size of the committee, most legislation does not detail how committee meetings are to proceed—for example, whether by consensus or by vote. Usually these decisions are left to the committees themselves.

Most legislation is silent on what happens if a committee becomes deadlocked. The exception to this is Quebec, where provisions in the legislation give specific procedures for problem resolution when a committee fails to reach an agreement. The legislation permits either party to appeal to the provincial oversight agency, the Commission, for a binding resolution after both parties have submitted their case in writing (Quebec National Assembly 1979, section 79). The Quebec legislation also assures balanced representation at committee meetings by stating that "workers' representatives as a whole and the employer's representatives as a whole are entitled to only one vote, respectively, on a committee" (Quebec National Assembly 1979, section 73).

In most jurisdictions, the function of the committee is primarily advisory and the legislation (except in Quebec) is vague on what is to happen with a committee recommendation, or what procedure is to be followed in case of a conflict on the committee. The B.C. legislation, for example, states that the committee "shall assist in creating a safe place of work, shall recommend actions which will improve the effectiveness of the industrial health and safety program, and shall promote compliance with these regulations" (Workers' Compensation Board [WCB] of British Columbia 1980, 4.06). In response to criticisms over committee deadlock, recent amendments to the Ontario legisla-

tion give a timeline of 21 days for management to respond in writing to a committee recommendation (Ontario Legislature 1990, section 8–12).

In most jurisdictions there appears to be little ongoing monitoring of enterprises to assess whether committees have been established and whether they are functioning as mandated. In British Columbia, for example, while the regulations require employers to forward committee minutes to the WCB, a recent administrative inventory reports that "in practice this is seldom done" (Rest and Ashford 1992). While all jurisdictions have the power to levy fines and other penalties for noncompliance, this is an extremely rare occurrence.

The absence of detailed monitoring has led many observers to speculate on the degree to which there is compliance in forming and maintaining joint committees. An important exception to this lack of empirical data is an extensive survey of joint committees commissioned by the Ontario Advisory Council on Occupational Health and Occupational Safety, a tripartite body set up to advise the minister of labor in Ontario on occupational health and safety matters. This 1986 study, designed to measure the effectiveness of the Ontario internal responsibility system after its first five years of operations, surveyed both worker and management JHSC members in a random sample of over 3,000 Ontario workplaces (Ontario Advisory Council 1986, 178). It concluded that JHSCs were established in 93 percent of the workplaces where required, including 88.4 percent of the nonunionized workplaces and 96 percent of the unionized workplaces (Ontario Advisory Council 1986, 35).

Aside from simply assuring that committees are organized, compliance in most jurisdictions also requires that the committees carry out the many functions specified in the legislation. In this area, the Ontario study reported rather elliptically that "most firms comply fully with *most* features of the act, but few are in full compliance" (Ontario Advisory Council 1986, 107). Overall, it concluded that "compliance with *specific* provisions of the act is poor among workplaces with JHSCs: only some 22% of workplaces with JHSCs appear to be in full compliance with the act" (Ontario Advisory Council 1986, v).

There is wide variation throughout Canada in the role of government in supporting and promoting committees, and in monitoring and enforcing compliance. Aside from differences between jurisdictions, even within a given jurisdiction, such as in the case of Saskatchewan, changes in government or policy can lead to increased or decreased interest in compliance. During the first 10 years of the new health and safety legislation in Saskatchewan, the OHS Branch played a very active role in promoting and monitoring the work of joint committees. With a change in government in the early 1980s, however, the branch ceased to play as active a role in assuring that committees functioned (Parsons 1989).

In the two largest jurisdictions in Canada, Quebec and Ontario, governments have sought to augment and extend the enterprise-based "internal responsibility system" through the creation of bipartite administrative bodies responsible for overseeing occupational health and safety and implementing joint business-

labor training and decision making at the provincewide level. The Commission de la Santé et de la Sécurité du Travail (CSST) in Quebec and the WHSA in Ontario have essentially similar functions in their respective provinces, including the right to develop, direct, and fund research, to raise general public awareness of the issue, and to conduct training and education in occupational health and safety (Quebec National Assembly 1979, section 167; Ontario Legislature 1990, section 13).

The creation of the WHSA in Ontario is part of an ambitious program to strengthen the "internal responsibility system." In keeping with the recommendations of the 1986 study of joint committees in Ontario, the WHSA was given an extensive mandate to improve training and support for the estimated 50,000 joint committees in Ontario and to encourage the bipartite approach to health and safety throughout the province. The WHSA was also given the special responsibility to establish and administer a mandatory certification process for committee members throughout the province and to develop an accreditation program for employers. Ontario is the first province to take this further step into mandatory training for committee representatives.

12.3   Training, Certification, and the Evolution of the Internal Responsibility System in Ontario

The Ontario Occupational Health and Safety (OHS) Act of 1978 remained substantially unchanged until the summer of 1990, when the provincial Liberal government under pressure from the labor movement and the NDP opposition introduced Bill 208, an extensive package of amendments to the act. These hotly debated reforms expanded the requirement for joint committees to most work sites in the province with over 20 employees, creating an estimated 30,000 new committees, and required committees in all work sites where designated substances were being used. In addition, the reforms extended the right to refuse to workers previously excluded, such as provincial government employees, police, firefighters, and correctional workers.

Most significant, Bill 208 established the 20–2 member bipartite WHSA, to be chaired by a nonvoting government appointee and to have equal employer and labor cochairs and board members. The WHSA was given a provincewide role in promoting the bipartite approach in health and safety, and its creation constituted an important new vehicle for facilitating worker/employer jointness beyond the enterprise-based JHSCs.

As its first major task, the WHSA was given the power to develop the mandated "certification" program for committee members. Originally, the certification requirement was linked to proposed special powers for JHSC members to be able to "shut down" a job site. While the 1978 OHS Act had recognized an individual worker's right to refuse dangerous work, the early drafts of Bill 208 proposed empowering certified worker representatives on a JHSC with the additional right to unilaterally stop work where there was a violation of the act

and where any delay in controlling the hazard might seriously endanger a worker. Under considerable pressure from the business community, which was concerned about the unilateral right to stop work, this provision was dropped from the final version of the bill. As a result, the labor movement and the prolabor NDP opposed the bill in the legislature.

While unilateral work stoppage was limited in the legislation, it was not entirely ruled out. Certified members can gain this authority either through an employer giving the authority (and depositing a letter to this effect with the JHSC) or through an adjudicator extending this right in cases where the adjudicator finds that the bilateral stop-work procedure is not sufficient to protect workers.

In place of the proposed unilateral work stoppage, a bilateral procedure was substituted requiring both the management and worker certified representatives to agree in order to stop work. In cases of a disagreement, work was to proceed (though individual workers retained their right to refuse dangerous work) and an inspector was to be called.

Although the majority Liberal government was able to pass Bill 208, in the election that followed the Liberal government was defeated and replaced by a majority NDP provincial government. The new NDP government committed itself to labor law reform but decided not to make revisions to the recently amended OHS Act. Rather, the NDP decided to support the creation of the new bipartite body, the WHSA, and encourage its educational and administrative role in promoting bipartism and internal responsibility in health and safety.

Although it did not provide labor with the breakthrough that it had hoped for—the unilateral right to stop work—in general the Bill 208 amendments did strengthen the power of joint committees and the "internal responsibility system" in the workplace. Many of the specific changes flowed from the recommendations of the 1986 Ontario Advisory Council's study, which found that while workers' rights and resources had been greatly expanded by the 1978 act, their ability to make a *full* contribution was still limited by lack of information, lack of training, and lack of resources. The study concluded "that unless fully developed through careful legislation *and* implementation, through training and education, and unless fully integrated with the workplace, the JHSC leads not to self-regulation, but rather self-deception" (Ontario Advisory Council 1986, 2:169–70).

With the adoption of Bill 208 and the creation of the WHSA in 1991, the controversy moved from the work stoppage question to the mandatory training requirements for certified representatives. The new provision in the act creating certified representatives required that employers pay for training, instruction materials, and salaries of at least one worker and management member on their respective JHSCs. The specifics of the training and the curriculum were to be worked out by the bipartite WHSA. Specifically, the WHSA needed to resolve who would be trained and who would deliver the course. It also needed to draft a curriculum, set the length of training, and decide on a method for evaluating

competence upon completion. Through consensus, the WHSA was able to re-
solve almost all of these questions. There was consensus that at least one
worker and one employer representative from every committee in the province
was to be certified. A 300-page Core Certificate Training Program Participant's
Manual was drafted. And the province's existing 12 health and safety delivery
organizations were to be made bipartite and designated as authorized trainers
for the certification curriculum.

The program became stalled on the issue of the length of training. Employer
representatives on the WHSA board felt that one week of training would be
adequate, whereas the labor members were adamant that no less than three
weeks would suffice. Eventually, with no consensus in sight, a majority voted
for a compromise, with three levels of core training (depending on the type of
industry): category 1 would be one week of training plus two days at the work-
place, where candidates would jointly draw up a hazards analysis and health
and safety work plan; category II would be two weeks of training plus two days
in the workplace on the analysis and work plan; and category III would be
three weeks of training plus three days in the workplace devoted to the analysis
and work plan. This majority decision, viewed by some employer representa-
tives as a breach of the commitment to consensus, provoked the resignation of
five of the nine employer board members, who claimed that the compromise
was being forced on the employer community by the NDP provincial gov-
ernment.

Complicating the discussions and contributing to the consensus breakdown
on the WHSA board was the business community's heated campaign against
the NDP provincial government's extensive labor law reform bill that was
passed by the legislature in the fall of 1992. With the WHSA less than two
years old, there was some fear that the employer resignations would lead to the
demise of the bipartite experiment. With four employer representatives re-
maining on the board, new board members were recruited and a provincewide
certification program was launched in April 1993 with the objective of training
the estimated 100,000 committee members requiring certification.

A second major problem for the WHSA was the resistance of the delivery
organizations to adopting bipartite boards. At the time of the creation of the
WHSA, the WCB funded 12 different organizations charged with the delivery
of occupational health and safety programs. They were: eight sectoral safety
associations, which were traditional management safety associations oriented
to specific sectors; the Workers Health and Safety Centre, which was founded
by the Ontario Federation of Labour (OFL) in the early 1980s to provide
worker-oriented programs; and three programs developed to cover the public
sectors (divided into the municipal sector, the educational sector, and the tour-
ism and hospitality sector). The new legislation placed these organizations un-
der the "authority" of the WHSA and gave it the power to withhold their
grants—amounting to $50 million in 1991—if it judged the organizations not
to "have an equal number of representatives of management and of workers."

Commissioning a report on the delivery organizations, the WHSA was advised that in the short term these organizations could not be supplanted or replaced (SPR Associations, Inc. 1991, 14). With the delivery organizations already offering over 500 programs throughout the province, and with their expertise and links to their respective workplaces and industries, the ambitious certification campaign required the cooperation of the experienced delivery groups.

While a level of cooperation was developed between the employer-oriented safety associations and the union-oriented Workers Health and Safety Centre, there was strong resistance to integrating their boards. A compromise was eventually found with the creation of a new bipartite oversight board—the Council of Ontario Health and Safety Sectoral Organizations. The creation of this special council permitted the worker-oriented Workers Health and Safety Centre and the employer-oriented sectoral safety associations to maintain their unitary boards while at the same time meeting the legislated requirement of jointness.

12.4   Relations with Employers

The resistance by the sectoral safety councils to opening their boards to joint participation by worker representatives reflects the fact that there are still profound differences in philosophy and approach between employers and organized labor on occupational health and safety (SPR Associates, Inc. 1991, 7). Simply put, the traditional employer view of the work environment is that it is a "safety management" problem that along with productivity and quality is a responsibility of management (Industrial Accident Prevention Association [IAPA] 1991, 17). The sectoral safety organizations tended to reflect this "loss control" approach, which assumed that employers would be motivated to prevent accidents if they were held financially responsible for them (OFL 1991, 6). Until the 1970s, regulation throughout Canada also shared the assumption that safety and health were primarily a management responsibility. The sectoral employer safety organizations were established in most Canadian jurisdictions concurrently with workers' compensation legislation—1914 in Ontario, 1917 in British Columbia and Manitoba, 1918 in Alberta, and 1919 in New Brunswick. These organizations, funded by grants from provincial workers' compensation assessments, were staffed by safety professionals and managers, as well as hundreds of volunteers from member organizations. They provided expertise, education, and training on health and safety for businesses. If firms were to be fined and assessed according to their safety records, then management needed to retain control over the workplace and train its managers to reduce hazards and accidents. As management was responsible for workplace safety, it needed the right to organize and design the workplace to meet this responsibility. In this context, the development of the internal responsibility system premised on workers and managers having "equal power to act on

health and safety manners" was viewed as a major intrusion into the area of management rights (WHSA 1992b, 11).

Historically, the concept of labor and management as "equal partners" in the workplace was associated almost exclusively with unionization and collective bargaining. Legislated joint committees introduced this concept—at least in health and safety—to workplaces that had rejected or successfully avoided unionization. The most vociferous opposition to the legislation came from non-unionized and smaller firms. Both the quantitative data from the 1986 Ontario Advisory Council's study, which shows that firms with fewer workers were less likely to have a joint committee, and the recent battles in Ontario over certification, which focused on the hardship of lengthy and expensive training programs to small firms with few employees, tend to confirm this trend. Fears by some small business owners that mandated participation in decision making might lead to unionization do not appear to have been realized, however. Neither the labor movement nor the business community have linked JHSCs to union growth or avoidance.

In spite of its initial resistance to joint committees and the subsequent strengthening of the internal responsibility system, management has learned to work with the new regulation. And in the case of Ontario, the large sectoral safety organizations have played an important role in facilitating acceptance among employers. The great majority of the funding for health and safety training has continued to be allocated to the employer-oriented safety associations. Funding for 1991, for example, was allocated as follows: $41.7 million to the eight sectoral safety committees, $6.9 million to the Workers Health and Safety Centre, and $1.8 million to the three public sector programs (WHSA 1992a, 25). By retaining and, indeed, even increasing the role of the safety associations and the funds allocated to them, the Ontario government has avoided a major confrontation with these organizations. Yet, it has tied them to its bipartite approach in the long term, both by demanding the restructuring and integration of their boards and by involving them in the bipartite certification and accreditation programs.

With the certification program only recently launched, it is still too early to assess the degree to which the WHSA and the new legislation will be successful in transforming the safety delivery organizations into genuine bipartite entities. However, the experience from the earlier reforms, when committees were first mandated at the level of the firm, shows that management soon learns to work with the new regime and, in many cases, even view it as a positive change.

After only five years' experience with mandated joint committees in Ontario, for example, the 1986 Ontario Advisory Council's study found that management members on JHSCs were quite positive in their assessment of committee relationships and functioning. Allaying management fears that mandated participation and jointness would introduce confrontation and conflict into work sites, the assessment of management committee members has

been overwhelmingly positive. Management committee members described committee relationships as being cooperative (89.4 percent), with good mutual respect (90.2 percent), trusting (89.4 percent), and overall friendly (90.8 percent) (Ontario Advisory Council 1986, 70).

On the crucial measure of the effectiveness of committees in reducing hazards and improving safety, management respondents to the 1986 Ontario study were overwhelmingly positive. On the overall record of improving safety and reducing accidents, 56.2 percent judged their committees to be "more than adequate to excellent." Only 9.2 percent saw the committee's role as "poor to less than adequate" (Ontario Advisory Council 1986, 97).

Experience with joint committees appears to have convinced many employers that these committees can play a useful role in reducing accidents and improving safety—and that management does not lose control of the workplace. The Ontario survey, for example, noted that 66.9 percent of managers and 60.3 percent of workers generally agreed that their committee had achieved the stated goal of "equal" influence by both parties. Nevertheless, it also concluded that managers tended to have more influence on committees than workers. Management ultimately retained the power to implement JHSC recommendations. While management was required to discuss decisions with the joint committees, it also had wide discretion over what decisions it felt were appropriate for committee discussion. The study also noted that management representatives on joint committees had closer links to ministry inspectors and the enforcement agencies. Finally, it was noted that management representatives were, for the most part, better trained and more knowledgeable on health and safety issues and legislation than most worker representatives (Ontario Advisory Council 1986, 69–81). In Ontario, a further positive feature of the internal responsibility system for employers has been its evolution toward self-regulation. While not originally conceived as "deregulatory," the growing emphasis on empowering the workplace parties has been seen as a method of reducing the need for government intervention through monitoring and inspection.

12.5   Relations with Unions

Unions have been generally supportive of mandatory JHSCs. The mandating legislation is viewed as enhancing and complementing rights gained by a minority of unions through collective bargaining and extending those rights to all workers through legislation. In most instances, the legislation is viewed as either labor inspired or minimally supportive of organized labor. However, in spite of union support for bipartite committees, unions in Canada view cooperation with management in occupational health and safety with some ambivalence. In particular, unions reject the notion that health and safety is a "neutral" technical issue. Rather, they see it as an economic and political one—with labor seeking to continually improve safety standards and levels which are

socially determined and politically mediated. Because of what labor sees as the "political" nature of health and safety, Canadian unions have jealously guarded their role in the education of their members not simply against management-oriented programs delivered by the sectoral safety associations, but in opposition to many university- and college-based programs (Procenko 1991; Bernard 1991).

Labor fears that occupational health and safety training will focus on the seemingly "neutral" technical issues and not give sufficient attention to the wider economic and political ones. As Bob Sass explains:

> In all "technical" questions pertaining to workplace health and safety is the "social." This refers to the power relations in production—who tells whom to do what and how fast! After all, the machine does not go faster by itself; someone designed the machinery, organized the work, designed the job. . . . The widespread view or notion that both labour and management have equal concerns regarding occupational health and safety because we are dealing with pain and suffering is one of the major myths in industrial relations. The betterment of working conditions costs money and management members on the committee are forever aware of this fact as legal agents of the share-holders who are primarily concerned with optimatizing their return on capital investment. (Sass 1990)

Many of these concerns over the politics of health and safety are at the root of the tensions and maneuvering around the "certification" process in Ontario and especially labor's (as well as management's) resistance to attempts by the newly formed WHSA to force the delivery organizations to adopt bipartite boards. Because Ontario is attempting to develop bipartite and cooperative structures throughout the province and especially beyond the level of the firm, its experience is helpful in shedding light on labor's seemingly ambivalent attitude to bipartism.

At the level of the workplace, health and safety bipartitism has been accepted by labor because it has increased labor's influence, in that the work environment is no longer viewed by government as exclusively management's concern. Mandated joint committees have given added strength to labor's participation in creating a safer and healthier work environment. A key provision in the legislation retained the unions' power to select the worker representatives in organized work sites. This assured that unions would view the joint committees as a complement to their role in the workplace, not as a threat.

Organized labor also came to see the creation of the WHSA as a factor increasing its influence—this time by giving it greater voice in decision making at the level of the provincial authority. As noted earlier, labor at first opposed the reforms that created the WHSA and was even somewhat concerned about its bipartite training role. After lengthy debate and discussion within the OFL, however, labor agreed to participate in the WHSA, announcing that "it was better for labour to participate in order to ensure the highest quality of

training materials and delivery systems for all workers in Ontario" (OFL 1991, 3).

The WHSA has considerably more power and financial resources than the old Ontario Advisory Council, which was essentially an advisory board with a very narrow mandate. Labor also has significantly more power in the WHSA, a bipartite organization, than it did on the Advisory Council—a tripartite board. Labor in Canada has long preferred bipartite to tripartite boards, arguing that because government is itself a large employer, tripartism simply represents a two-to-one outnumbering of labor on such boards, as opposed to bipartism where the government plays no direct role and labor and management are equally represented. Establishing a bipartite structure for the WHSA was again viewed as an important gain for labor.

But at the intermediate level in Ontario, that is, with the 12 delivery organizations, labor (and management) have both resisted bipartitism. Part of this can be attributed to the fact that the WHSA was a new entity that labor could help to design from inception. The delivery organizations on the other hand were significantly older than the WHSA and were initiated either by employer safety councils or (in the case of the Workers Health and Safety Centre) by labor. Most were set up long before the adoption of the internal responsibility system in Ontario. While they varied greatly in their understanding of the new philosophy in health and safety, a government study commissioned by the WHSA advised that the delivery organizations could not be supplanted or replaced in the short term without "undesirable dislocation of services" (SPR Associates, Inc. 1991, 14). Although there have been important breakthroughs in moving the delivery organizations toward greater collaboration and cooperation, such as the jointly designed curricula, for the most part the organizations still see their approaches as very different and distinct. The labor-oriented Workers Health and Safety Centre, for example, includes chapters on "strategies for change," "collective bargaining," and "violence in the workplace" in its training manual. All these topics are viewed as "political" by the IAPA and are not part of the jointly authored curriculum for the province's certification program (OFL 1992).

Most unionists recognize that the adoption of the internal responsibility system means a significant rebalancing of worker and management roles, with labor gaining new rights and powers on work environment issues. However, many union health and safety specialists remain critical of the system, arguing that worker representatives are not yet "fully empowered as partners in workplace decision making" and have "responsibility without authority." These critics refer to the system as the *eternal* responsibility system. The term "eternal responsibility" was coined to describe the frequent failure to resolve issues because of the relative powerlessness of the committees. Greater responsibility, argue labor representatives, must be balanced with greater authority—and some labor activists had expected that greater authority to be the right of worker representatives to unilaterally stop work.

Gary Cwitco. director of occupational health and safety with the Communications Workers of Canada. observes that there is tremendous turnover and burnout among worker committee members. Cwitco. a critic of the internal responsibility system. explains that with the adoption of the three rights and the joint committees as vehicles of participation. activists misread the changes and assumed that they would now have real joint authority in work environment matters. But in Cwitco's estimation. the purely advisory role of joint committees has meant. in effect. that management can still choose to ignore committee recommendations. Cwitco argues that "responsibility without authority is meaningless and frustrating" (Cwitco 1992). He admits that while the power of argument alone may be effective with an already cooperative management. there is little that a committee can do in a situation where management chooses to "stonewall" recommendations and gives low priority to the work of the committee. In a similar vein. union health and safety expert Bob Dematteo argues that there is a "need for mechanisms which would provide workers with greater influence over health and safety decisions. and the enhancement of the external system of enforcement" (Dematteo 1991. 15).

While unions remain critical of what they view as the imbalance of power in the internal responsibility system. they are generally supportive of the gains that unions and workers have made with the mandating of committees and the winning of the three rights. There is a recognition that even the relatively weak "right to participate" provisions have provided for ongoing discussions with management—an improvement over the old regime of exclusive management rights with periodic collective bargaining. In one example cited by Cwitco. after a series of studies conducted by joint committees at Bell Canada proved that individual performance monitoring of employees caused harmful stress. the worker representatives on the joint committee were able to persuade the company to eliminated the practice—something the union had sought but was unable to achieve through regular collective bargaining.

12.6   Relations with Workers

There are few quantitative studies that look at joint committees in non-unionized work sites. Indeed. it is often asserted that in a majority of non-unionized work sites the committees simply do not exist. though the lack of detailed studies makes this assertion questionable. An important exception to the lack of studies. however. is the 1986 Ontario Advisory Council's survey. While this study shows that nonunion work sites are less likely than unionized work sites to have a joint committee. it nevertheless found an impressive level of compliance even in nonunionized work sites (see table 12.2).

The Ontario study's historical pattern shows that even before the legislation mandated joint committees. many large work sites and unionized work sites had already established committees. There was a significant increase in committee formation after 1976 with the passage of the Employee Health and

Table 12.2   **JHSCs in Ontario (% of workplaces with JHSCs)**

Type of Workplace[a]	Size of Workplace[b] (number of workers)			
	20–74	75–249	250–499	500+
Nonunionized with no designated substances	86.3	91.4	92.1	90.9
Unionized with no designated substances	92.5	98.2	99.5	100.0
Nonunionized with designated substances	92.4	96.4	96.9	100.0
Unionized with designated substances	97.5	100.0	99.5	100.0
Total			93.2	

Source: Data from screening survey.

[a]Note that status of workplace with regard to size, unions, and presence of designated substances is always estimated from 1985 status (Ontario Advisory Council 1986, 34).

[b]Workplaces of 20 or more workers, where a JHSC is required by the Occupational Health and Safety Act.

Safety Act of 1976, which encouraged, though did not mandate, the forming of committees. Under the voluntary regime, however, committees in non-unionized work sites were rare. With the passage of the OHS Act in 1978 and the mandating of committees, the smaller work sites and nonunionized firms still tend to lag behind the large unionized firms. By 1984, compliance by nonunionized work sites stood at 88.4 percent compared to unionized work-sites at 96 percent (see table 12.3).

Although simply registering the existence of committees is a relatively easy task, registration alone sheds little light on their functioning. The Ontario study did, however, record the assessment of committee members of overall commit-tee functioning and reported a generally favorable attitude among worker members of JHSCs: 59.4 percent rated the record of committees in improving safety and reducing accidents as very positive (Ontario Advisory Council 1986, 95).

In attempting to isolate factors contributing to the success of committees, the report found that when the distribution of influence in the committee was in favor of workers, it was seen as a moderate facilitator of JHSC success in the estimation of *both* manager and worker members of committees (Ontario Advisory Council 1986, 149). While this might appear to run counter to the stated intent of "equal partners," it makes sense in the context of advisory com-mittees where management alone ultimately decides whether to implement a JHSC recommendation. Strong worker representation on these committees, judged as "more worker influenced," increases worker input into the commit-tee. However, only about 10 percent of committees were judged by both man-agement and workers to be more influenced by workers, as opposed to 25 to 35

Table 12.3   **Historical Pattern of JHSC Establishment (% of workplaces with JHSCs, by year of JHSC establishment)**

Type of Workplace[a]	Pre-1970	1971–76	1977	1978	1979	1980	1981	1982	1983	1984
All workplaces with										
20+ workers	9.2	25.8	29.7	37.4	49.5	65.3	74.6	81.3	88.0	92.9
Workplaces by union status										
Nonunionized	4.2	13.9	16.7	21.8	33.4	51.8	64.0	73.8	81.8	88.4
Unionized	12.7	34.0	38.7	48.2	60.7	74.7	82.0	86.5	92.3	96.0
Workplaces by presence of designated substances										
Not present	7.1	22.1	25.8	33.1	45.7	62.6	71.8	79.0	86.2	91.6
Present	16.5	38.7	43.1	52.2	62.8	74.8	84.4	89.1	94.1	97.6
Workplaces by size (number of workers)										
20–74	5.1	18.3	20.9	28.3	40.3	56.7	67.9	75.3	83.0	90.1
75–249	13.4	32.0	38.3	46.2	57.6	74.9	82.2	88.5	94.3	96.4
250–499	17.7	44.6	51.2	58.8	73.0	82.4	88.7	91.3	95.8	97.9
500+	21.0	52.6	54.5	64.1	79.1	87.6	90.2	96.2	98.2	98.9

Source: Data from screening survey.

[a]Note that the status of workplace with regard to size, unions, and presence of designated substances is always estimated from 1985 status (Ontario 1986, 35).

percent viewed as more influenced by management (Ontario Advisory Council 1986, 71).

The problem of management influence of committees exists at a number of levels. First, there is the imbalance of resources. The right to participate does not usually guarantee workers access to resources, including communications with experts, time for preparation and investigation, and training in the field of health and safety. For example, the recent Ontario OHS Act amendments and certification program includes compulsory training for at least one worker representative per committee and stipulates that work representatives are to be given at least one hour paid "preparation time" before committee meetings. Despite this fact, there is still an imbalance of resources between management and workers on the committees.

At a second level, employer influence can be felt over the selection of worker representatives. The 1986 Ontario study found, for example, that in about one-third (35 percent) of the committees worker members of JHSCs were selected by management either through direct appointment by management or by management overseeing the selection of volunteers. This study found that worker committee representatives were selected by the following means (percentages given in parentheses): appointed by management (19), management acceptance of volunteers (16.2), appointed by union executives (18.1), appointed by employee association executive (2.3), chosen by workers at election (31.7), accepted by workers at a meeting where volunteers come forward (12.7) (Ontario Advisory Council 1986, 47). The recent Ontario legislation included a number of measures to assure worker representatives independence from man-

agement influence. However, it did not require a secret ballot election or general meeting of all affected employees.

A final level of management influence is sometimes referred to as "company capture" of the committee, with management ignoring worker representatives' concerns and simply using the committee as a forum to justify its practices and explain why workers' fears are unfounded. This is the most difficult phenomenon to measure. Bryce and Manga, for example, noted in their study of committees in Saskatchewan that worker committee members come to "understand" the financial constraints of the enterprise. Robert Sass, on the other hand, contends that this often-cited "maturing" of a committee, one marked by fewer "disputes" and "concerns," might in fact simply be a result of company capture (Sass 1992). Generally, the problem of company capture has tended to focus on committees in nonunionized work sites, where workers have few resources and where there are fewer assurances of independent selection of worker representatives.

A weakness observed in both the 1986 study and the current legislation is the link between the worker representatives and the workers they represent. While the curriculum for the new certificate program in Ontario emphasizes the importance of worker representatives seeking input from workers and the need for representatives to report back to the workers, this link is still tenuous—with no formal reporting procedures required. The 1986 study found that of JHSCs in nonunionized work sites, 46.5 percent reported to worker meetings at least quarterly (compared to 61 percent in unionized work sites), and 37.9 percent of JHSCs in nonunionized work sites never reported to worker meetings at all (compared with 17.5 percent in unionized work sites) (Ontario Advisory Council 1986, 84).

Through Ontario's provincewide certification program worker representatives will have guaranteed access to some training, and it is expected that they will seek to build an ongoing relationship with the delivery organization that provided their training. A major question for the near future will be who will train and service the worker representatives on committees in nonunionized settings. With 12 delivery organizations to chose from, ranging from the labor-oriented Workers Health and Safety Centre to the management-oriented sectoral safety organizations, and no requirement that management and worker representatives take training from the same organization, it remains to be seen how the worker representatives in nonunionized settings will respond to this opportunity.

12.7   Nurturing Joint Committees

The Canadian experience in mandating joint occupational health and safety committees is still relatively new, with less than 15 years practice in most jurisdictions. It marks an important departure from traditional North American in-

dustrial relations, which sees worker self-organization into unions and collective bargaining as the primary (if not sole) vehicle for worker participation in workplace decision making. The experience with the JHSCs shows that the seemingly opposing systems of adversarial collective bargaining and cooperation are able to coexist.

An important factor in making coexistence possible is that neither organized labor nor management views the mandated joint committees as either a substitution for or facilitator of unionism. From the management perspective, experience has demonstrated that these committees do not become incipient organizing committees prompting employees to unionize. At the same time, they provide management with independent worker participation and voice in decision making. From the union side, the legislation does not attempt to circumvent unions and by generally extending worker rights has augmented union influence in organized work sites. Unions, for the most part, do not fear the committees will become substitutes for unions because they believe that the full exercise of workers' rights and empowerment requires both self-organization (and independence from management influence) and resources that only the labor movement can deliver to employee representatives.

For nonunionized employees empowered with the new rights and joint committees, the experience has been at best uneven. Compared to the old regime of health and safety as an exclusive management right and responsibility, the new system constitutes an important breakthrough for workers. But, with little active monitoring of the regulation and few resources available to the nonunionized workers, substantial numbers of employees have not been able to fully exercise these rights.

Ontario's recent attempts to establish self-regulation through an internal responsibility system have demonstrated the crucial role that government must play in facilitating and promoting this system. Working with both the existing delivery organizations (and most especially the employer-based sectoral safety committees which constitute rare multiemployer forums in sectors where employers are otherwise highly decentralized) and creating a new entity, the bipartite WHSA, the provincial government has moved the joint system beyond the level of committees in the workplace to provincewide structures. By continuing to work with the existing delivery organizations, the government enlisted these organizations into accepting bipartitism on behalf of the two most powerful parties, the employers and the unions. Transforming the role of government, the move to self-regulation has meant increased rights for workers, new government regulation that seeks to promote and finance training, and the creation of a new bipartite body to administer and promote the new approach.

It remains to be seen whether the mandated joint committee experience will extend beyond occupational health and safety. Possible areas for mandated joint committees are technological change, training, and restructuring. To date, however, no jurisdiction in Canada has taken the initiative in mandating joint committee participation for the workforce in general on other issues. Neither

labor nor management seem particularly inclined to promote the extension of bipartitism into other fields. On the other hand, government, under increasing financial pressures and out of a desire to limit regulation, might find the internal regulation system an attractive alternative to direct intervention. Finally, if there is pressure to introduce new forms of employee representation, the mandated JHSCs could provide an instructive prototype.

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