

# **‘Evolve To Succeed’ Part 3: Communicating the Safety and Health Message in the Due Diligence Phase**



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This article is the third in a series providing the author's insight into the changing communications role of the safety professional (Read Part 1 and Part 2 ). As discussed in the previous articles, much of a safety professional's effectiveness is dependent on an ability to clearly articulate important safety and health issues in a manner that a management group can easily put in a business context, facilitating the adoption of solutions to these issues. As the organization's OHS program or safety culture matures, safety professionals must change their approaches and communications styles to maintain the effectiveness of their messaging.

# OHS Maturity Phases



## Communicating in the Due Diligence Phase

Stepping aside from the court decisions that exist on due diligence, simply put, it's not enough to implement and maintain an effective OHS program in the workplace; you must also record and be able to demonstrate that you did so to prove due diligence.

For effective safety communication in the due diligence phase, the safety professional must now present initiatives to management in terms of both the potential for that activity or action to improve the current state of safety and health in the workplace and the methods by which this improvement can be recorded and tracked to demonstrate its positive results.

*Example:* Take a workplace with a recent history of several small flash fires attributable to oxy-acetylene cutting and burning practices. To build a convincing case to management for the need to address these fires, the safety professional should do the following:

- Verify the existing records on these incidents, noting that they may constitute "discoverable evidence" in the event of an OHS or criminal prosecution;
- Analyse the incidents to establish the actual or basic and immediate causes of the fires to identify an effective solution;
- Develop the identified solution, such as a new policy, procedure, practice, equipment, training, etc., demonstrating how its application will eliminate or control the identified basic cause(s) of the fires; and
- Include a suitable recordkeeping system to demonstrate that a corrective action was put into place, the workforce was made aware of its existence and trained on it, it was monitored for success and, when necessary, adjusted to increase its effectiveness in managing the original incident causes.

Yes, the above may seem to be an overwhelming burden for the safety professional to conduct for every incident. However, your knowledge of the OHS law applicable to an incident (especially in light of its actual or potential consequences) will help you focus on using this approach for only the most critical incidents or safety hazards. And in addition to helping you build compelling cases for senior management, remember that when you have such a diligent process in place and use it frequently, its existence and the records of its application will support the defence of due diligence should your organization come into the legal cross-hairs.

### **Bottom Line**

The main point of this article is that safety professionals must establish the underlying due diligence procedural framework within their organization to support their effective safety messaging and build the basis for a due diligence defence if needed down the road. Communications must now be more targeted. Plan your case and your communication of it. The sophistication of your corporate culture at this stage requires an equally sophisticated messaging approach to management, incorporating the identification of the risk of potential liability and the benefits in terms of reducing that potential.

At this level of organizational maturity, we need to reverse the memorable tenet of that historic Canadian communicator, Marshall McLuhan. Now, *the medium is the message*, where the medium is the underlying organizational approach to its diligent application of effective safety practices and the message communicated to management by the safety professional is "this exists and must be part of your thinking for the prosperity of the organization."

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### **Impact of C-45 on Safety Communication**

Since the March 31, 2004 coming into effect of significant amendments to the *Criminal Code* through Bill C-45, there has been much attention paid to the impact of these changes on liability for workplace safety incidents. For example:

- Media attention has specifically focused on whether almost every major incident in a workplace involving serious injury or a fatality "qualifies" for consideration under the *Criminal Code* provisions;
- JHSC training in all jurisdictions (whether or not compulsory) now incorporates modules on the impact of the *Criminal Code* on workplace incidents; and

- There have been high profile prosecutions and judicial sentences handed down for breaches of the sections of the *Criminal Code* relating to organizational responsibilities for supporting workplace safety.

These events have, to some extent, simplified the messaging for many safety professionals. The old “crutch” of “threatening” senior management with fines for non-compliance with the OHS laws can be supplemented or replaced with the “Sword of Damocles” approach—“If you don’t exercise due diligence, then you could be convicted of a crime and fined or even go to jail.”

This communication technique isn’t a desired, or even particularly effective, one over the long term. Fear of consequences works as a motivator for change—once or twice—but isn’t particularly reliable after multiple incidents that don’t result in the feared outcome. But in companies where management needs the “old school” approach to focus their attention, at least the possibility of criminal prosecution can be presented as a plausible consequence to a risk of serious workplace harm that could result in a fatality or serious injury.

### **OHS Insider Resource**

For more information on Bill C-45 and the changes to the *Criminal Code*, go to the C-45 Compliance Centre. [/box]