

What Inspectors and Courts Examine When Evaluating Workplace Safety Performance



For many organizations, safety performance is still summarized in a handful of numbers. Lost-time injury rates, recordable injury frequency, and annual incident counts dominate safety dashboards and boardroom reports. These figures may provide a snapshot of past outcomes, but they are rarely the first thing regulators or courts examine when something goes wrong.

When a serious workplace incident occurs in Canada, inspectors do not begin by asking whether a company had a good injury rate the previous year. Instead, they ask a far more consequential question: Did the employer exercise due diligence to prevent the incident?

That distinction is critical. Canadian occupational health and safety law focuses less on injury statistics and far more on whether employers have implemented effective systems to identify hazards, train workers, supervise work, and correct unsafe conditions. In other words, investigators examine the structure and functioning of the safety management system, not the historical injury record.

For OHS leaders seeking to benchmark their organization's safety culture, understanding how regulators actually evaluate workplace safety provides a far more meaningful measure of performance than incident statistics alone.

The Legal Standard of Due Diligence

Across Canada, occupational health and safety legislation is built around the principle of prevention. Rather than penalizing employers simply because injuries occur, the law evaluates whether the employer took every reasonable step to prevent harm.

This concept is known as due diligence, and it forms the cornerstone of Canadian OHS enforcement.

In Ontario, the Occupational Health and Safety Act requires employers to take “every precaution reasonable in the circumstances for the protection of a worker.” Similar language appears across the country. British Columbia’s Workers Compensation Act requires employers to ensure the health and safety of workers and maintain effective safety programs. Federally regulated employers operating under the Canada Labour Code Part II face comparable duties.

These statutes do not measure compliance using injury rates. Instead, regulators examine whether the employer implemented systems capable of identifying hazards and controlling risks before incidents occur.

The Supreme Court of Canada confirmed the central role of due diligence in occupational safety law in the landmark case *R v Sault Ste Marie*. In that decision, the Court established the legal framework that still governs regulatory offences today. Employers may avoid liability if they can demonstrate that they took all reasonable steps to prevent the violation.

This principle fundamentally shapes how workplace incidents are investigated. The question is not simply what happened. The question is whether the employer had systems in place that should reasonably have prevented it.

What Inspectors Look for After an Incident

When regulators investigate a serious incident, they typically reconstruct the chain of events that led to the hazard. However, the investigation quickly expands beyond the immediate circumstances of the accident.

Inspectors begin examining the broader safety management system.

They review training records to determine whether workers had been properly instructed on safe work procedures. They examine supervision to determine whether supervisors were present and actively enforcing safety rules. They analyze hazard assessments and risk controls to determine whether the danger had been identified in advance.

If these elements appear weak or inconsistent, regulators may conclude that the employer failed to exercise due diligence.

This investigative approach can be seen clearly in prosecutions following workplace fatalities.

In December 2009, four construction workers were killed when a suspended swing stage collapsed while they were repairing a Toronto high-rise building. Only one worker survived by clinging to a safety line.

The criminal prosecution that followed became one of the most significant workplace safety cases in Canadian history. In *R v Metron Construction Corporation*, the employer was convicted of criminal negligence causing death.

The court did not evaluate the company's safety performance based on previous injury statistics. Instead, prosecutors focused on systemic failures that had allowed the tragedy to occur.

Investigators discovered that six workers had been placed on a swing stage designed for only two. Several workers were not wearing fall protection. The site supervisor had failed to enforce basic safety rules, and the equipment itself had serious defects.

These systemic failures demonstrated that the employer had not implemented effective oversight or risk controls. As a result, the company was fined \$750,000 and the project manager received a prison sentence.

The case illustrates a central lesson in OHS enforcement. Regulators focus on whether the safety system worked, not whether injuries had been rare in the past.

System Failures Often Precede Major Incidents

Many workplace disasters reveal the same pattern. The catastrophic event is often preceded by a series of warning signs that were ignored, misunderstood, or normalized.

One of the clearest examples in Canadian history remains the explosion that destroyed the coal mine involved in the Westray Mine disaster. Twenty-six miners were killed in the blast, and the tragedy prompted sweeping reforms in Canadian criminal law related to workplace safety.

The public inquiry into the disaster concluded that unsafe conditions had been widely known before the explosion occurred. Methane gas levels were dangerously high, ventilation systems were inadequate, and workers feared speaking out about safety concerns.

Despite these warning signs, production pressures continued to override safety considerations.

The inquiry ultimately concluded that the disaster was the result of systemic negligence rather than a single operational

mistake. The mine's safety culture had allowed hazards to accumulate unchecked until a catastrophic explosion became inevitable.

In response to the tragedy, Parliament later enacted the Westray amendments to the Criminal Code, which clarified that corporate leaders and supervisors could face criminal liability for workplace safety failures.

These provisions are now found in section 217.1 of the Criminal Code and impose a legal duty on organizations and their representatives to take reasonable steps to prevent bodily harm to workers.

The legal implications are profound. Corporate leaders can now face criminal prosecution if they demonstrate a marked departure from reasonable safety practices.

The Role of Documentation and Safety Systems

During regulatory investigations, documentation often becomes one of the most important forms of evidence. Inspectors review safety manuals, training records, inspection reports, maintenance logs, and corrective action documentation.

These records help investigators determine whether safety procedures were actually implemented in practice or existed only on paper.

For example, an employer may have a written lockout procedure designed to protect workers performing maintenance on machinery. If an incident occurs involving hazardous energy, inspectors will examine whether workers were trained on the procedure, whether supervisors verified compliance, and whether equipment was properly maintained.

If these elements cannot be demonstrated, the written policy alone provides little legal protection.

Canadian courts have repeatedly emphasized that safety systems must function in practice rather than exist solely as formal documentation.

In *R v Bata Industries Ltd*, the Ontario Court of Justice outlined several factors that demonstrate due diligence in regulatory compliance. Although the case involved environmental legislation, its reasoning has influenced occupational safety enforcement as well.

The court emphasized that organizations must establish clear safety policies, assign responsibility for implementation, provide adequate training, monitor compliance, and respond quickly to identified hazards.

These principles now form the backbone of modern safety management systems across Canada.

Why Safety Culture Matters to Regulators

While legislation focuses on due diligence and safety systems, investigators often assess something more subtle during inspections: the organization's safety culture.

Culture becomes visible through behavior.

Inspectors observe how supervisors interact with workers, how hazards are reported, and how management responds to safety concerns. They look for signs that safety policies are actively enforced rather than ignored in day-to-day operations.

For example, inspectors often interview workers privately during investigations. These conversations can reveal whether employees feel comfortable reporting hazards or whether they fear retaliation.

If workers consistently report that safety concerns are ignored or discouraged, regulators may conclude that the

organization's safety culture is weak.

Conversely, when workers describe a workplace where hazards are reported openly and addressed quickly, inspectors may view the organization as demonstrating strong preventive practices.

In this way, culture becomes a powerful indicator of system effectiveness.

Benchmarking Safety Performance Through a Regulatory Lens

Organizations seeking to benchmark their safety culture can learn a great deal by examining how regulators evaluate workplace safety.

Rather than focusing exclusively on incident statistics, OHS leaders should ask whether their safety systems would withstand the scrutiny of a regulatory investigation.

Would supervisors be able to demonstrate active oversight of safety procedures?

Would training records show that workers received instruction before performing hazardous tasks?

Would hazard reports reveal a responsive system that addresses concerns quickly?

If the answer to these questions is uncertain, the organization may have deeper vulnerabilities that incident statistics alone cannot reveal.

Benchmarking safety performance through this regulatory lens often produces more meaningful insights than injury statistics ever could.

Looking Beyond Injury Statistics

Injury statistics will always remain part of safety reporting. They provide useful historical context and can highlight

emerging trends in workplace risk.

However, regulators, courts, and safety professionals increasingly recognize that incident statistics alone provide an incomplete picture of safety performance.

The true test of an organization's safety culture lies in the strength of its preventive systems. Effective training, consistent supervision, open hazard reporting, and rapid corrective action all provide evidence that the organization is actively managing risk.

When these systems function properly, incidents become less likely. When they fail, even the most impressive injury statistics can quickly become irrelevant.

For OHS leaders, the lesson is clear. Safety performance should be measured not only by what has happened in the past, but also by how well the organization is prepared to prevent what might happen next.

Understanding what inspectors and courts actually examine provides one of the most reliable benchmarks available.