

## **Chapter 8: Due Diligence in Delivering the BCTS Safety Program**

### **Introduction**

The primary goal of BCTS in understanding and showing due diligence in implementing the safety program is to ensure BCTS employees do everything they can to reasonably foresee and identify safety hazards arising from activities engaged in and to take reasonable care to prevent a harmful event from occurring. Being fully diligent with safety is not only essential for the human elements, it is also essential for the business elements. Organizations who are diligent with safety and have good safety records tend to be well organized and successful with the business elements as well.

When it comes to worker safety, BCTS employees must understand their roles and responsibilities clearly and, in doing so, understand what it means to show due diligence in executing those roles and responsibilities. Diligence in all aspects of work in the organization will solidify a culture of safety for all BCTS employees.

BCTS staff are fully qualified in the work they do in areas such as strategic and operational planning, forest engineering, silviculture planning, and administration.

However, BCTS staff are not expected to be expert in many of the disciplines of work completed under the broader BCTS program goals. BCTS work involving tree falling, yarding, road construction, blasting, and silviculture activities are almost always carried out by contractors who are qualified or employ qualified persons in these areas and who maintain their own safety programs and safe work procedures.

In the same way, BCTS staff are not expected to be safety professionals. Instead we will rely on qualified safety contractors and/or WorkSafeBC Board officers to provide input or advice on safety legislation and practice. BCTS staff have responsibilities for safety and must understand and comply with safety rules and legislation, but they do not administer or enforce provincial safety legislation. That is the role of WorkSafeBC.

To show due diligence, BCTS employees must understand how this applies to:

- Senior management
- Supervisors
- Workers
- Dealing with timber sale holders
- Dealing with contractors
- Dealing with visitors, service providers and the public.

### **What is Due Diligence?**

Due diligence means that one must be able to show in a measured and objective way that they have taken all reasonable precautions to protect the health and safety of workers, even to the point of exceeding generally accepted practices.

In tort law, the term "duty of care" or "due care" is often used. This has been described as:

*"...a concept to indicate the standard of legal duty one owes to others. Negligence is the failure to use due care, which is the amount of care that would be taken by a reasonable person in the circumstances."*

A "reasonable person" has been described as an *"imaginary person who possesses and uses the qualities of carefulness, intelligence and judgement that society requires of its members for the protection of their interests of the interests of others."*

Health and safety roles, responsibilities and accountabilities in the workplace are set out by the *Workers Compensation Act* and Regulation. In the event of an incident where there was non-compliance with the *Act* or *Regulation*, a penalty sanction (administrative monetary penalties) can be administered against an employer.

Workers are not subject to penalty sanctions, but can be prosecuted.

In some situations WorkSafeBC may attempt to prosecute the employer (including a manager), a supervisor or a worker under the *Workers Compensation Act* or under the *Criminal Code of Canada* for failure to take all reasonable steps to ensure worker health and safety.

For the purpose of showing compliance with health and safety legislation and establishing a defence if prosecuted or issued an administrative penalty, the employer, a manager, a supervisor, or a worker, must be able to show they have met the standard of 'due diligence'.

If prosecuted, a defence of 'due diligence' cannot be successfully established by simply stating that you intended to provide a safe workplace or that you had a program in place to provide a safe workplace. One must be able to provide proof of real actions taken. A defence of due diligence can only be established by using the actions taken prior to the incident /infraction.

As with any organization, BCTS and its employees must do everything possible to limit any liability that may stem from prosecutions or administrative penalties.

### **A Due Diligence Framework for Senior Management**

For senior management, a due diligence defence may be created where strong evidence indicates a corporate commitment to safety at a workplace. This commitment may be demonstrated by:

- providing adequate financial support
- providing necessary training
- providing support to the Joint Safety Committee or worker safety representative
- delegating responsibility for health and safety to specific individuals (supervisors) and providing those individuals with the necessary support and authority to ensure applicable legislation is implemented in the workplace
- providing and ensuring adequate supervision (quality and quantity)
- ensuring the appropriate systems exist and are used to identify and eliminate hazards
- implementing the health and safety policy and safe work procedures and ensuring these are reviewed periodically and at least annually
- providing for open communications about health and safety, and
- undertaking to correct any deficiencies known to exist in the workplace.

It is not enough for senior management to simply 'delegate' safety responsibilities and expect that these responsibilities have been carried out. The courts have held that there must be effective systems in place for senior management to reasonably ensure that key supervisory responsibilities have been carried out.

### **A Due Diligence Framework for Effective Supervision**

The following general points have contributed favourably to a determination that the direct supervisor has been duly diligent in implementing safety legislation so as to ensure the safety of workers under the supervisor's control.

Supervisors must:

- know and comply with relevant sections of the Regulation and established safe work procedures
- hold regular safety meetings with those they supervise and document such meetings
- carefully plan jobs, identify, consider and address foreseeable job hazards
- communicate hazards and take reasonable steps to protect workers from reasonably foreseeable hazards to workers
- develop/follow systems in their area of operations to ensure safe work procedures have been communicated and followed
- ensure effective two-way communication between the workers and the supervisor
- issue detailed instructions to workers performing the work
- conduct worker briefings prior to commencement of work, and

- observe and evaluate worker performance and take effective steps to correct poor performance.

In addition, there are several legislated duties that specifically identify accountabilities for the supervisor and/or the employer. These are to:

- ensure workers (including supervisors) know their right/responsibility to report hazards and refuse unsafe work
- ensure workers know how and to whom to report hazards and refuse unsafe work
- promptly investigate reports from workers of what may be unsafe acts/conditions, and
- correct or effectively control unsafe acts and conditions without delay.

### **Due Diligence for Workers**

There are several legislated duties that specifically identify accountabilities for the worker. The worker must:

- take reasonable care to protect the workers health and safety and the health and safety of other workers affected by him/her;
- follow safe work procedures;
- use or wear protective equipment;
- not engage in horseplay or activities that would endanger himself/herself or others;
- ensure the worker's ability to work is not impaired
- report hazards or contravention of safety rules to the employer; and
- co-operate with the joint committee, safety representative and WorkSafeBC.

### **Examples of Not Showing Due Diligence**

A person (manager, supervisor or worker) has not been duly diligent if they:

- should have reasonably known about a hazard, and did not address it
- knew about a hazard and did nothing to correct it, or did not refer it to someone who could/would correct it
- knew about the hazard, but did not warn or advise workers
- did not follow established safety rules or safe work procedures
- did not comply with relevant OHS legislation
- did not ensure personal protective equipment was available, maintained and used as required, and/or
- did not cooperate with others in the workplace to make a safe work environment.

### **BCTS Due Diligence with Timber Sale Holders**

Timber sale holders are owners and may often be employers and must maintain their own safety programs.

Two areas where BCTS must show due diligence with timber sale licence holders are:

- to clearly identify and communicate to bidders /licence holders reasonably known hazards (i.e., known rockfall and avalanche areas, terrain stability concern areas, steep grades or other known unusual road circumstances) pertaining to a licence area including access/egress, and
- in the licence planning process, identify all work activities or circumstances that could cause a significant risk of injury or occupational disease to workers or other persons that could be present.

Chapter 18 of the manual describes in more detail, the roles and responsibilities of BCTS when dealing with timber sale holders.

### **BCTS Due Diligence with Contractors**

BCTS engages contractors to achieve program goals. BCTS remains the owner of the work and the workplace where contractors are doing the work.

Whether a contractor is an employer or a person, BCTS must require the contractor to implement and maintain a safety program to meet the requirements of the Workers Compensation Act and SAFE Company standard.

As the owner of the work, BCTS retains a responsibility to ensure contractors implement and maintain an adequate safety program. Requiring a person or company to be certified as a Safe company does not in itself show due diligence in this regard. Therefore, BCTS must check to see this is occurring.

Chapter 19 of this manual describes the roles and responsibilities of BCTS when dealing with contractors.

### **BCTS Due Diligence with Visitors, Service Providers and the Public**

Chapter 21 of this manual describes the roles and responsibilities of BCTS when dealing with visitors, service providers, and the public

### **Summary of Key Points in Establishing Due Diligence**

- Know and understand this program and your specific responsibilities described within it.
- Implement the program and abide by its expectations.
- Communicate, provide input, and work to improve the program.
- Document your efforts, meeting minutes, pre-work conferences, 'tailbox' safety meetings, on the job training, reporting of hazards, reporting or incidents and close calls.

**Note:** *A defence of due diligence can only be established by using the actions taken prior to the incident /infraction. This must be real proof – appropriate written records.*

Ensuring a record of due diligence will protect BCTS in penalty situations and, more importantly, it will cause all BCTS employees to think about and do the things that will result in safer workplaces and improved worker safety.

**Note:** *The above information does not constitute legal advice; it is offered as guidance and should be used accordingly. Additional questions or advice on specific action should be discussed with appropriate legal counsel.*

#### **Additional Information**

- Additional information on due diligence is available at WorkSafeBC website: <http://www.WorksafeBC.com>

#### **Local Procedures**

None.

#### **Forms and Checklists**

None.