Andrea MacPhee-Lay was a massage therapist at the Fairmont Chateau Lake Louise hotel near Banff, Alberta. The hotel spa provided a range of massage treatments, including a hot-rock treatment where basalt rocks are heated in water to 49 degrees Celsius and strategically placed on the client’s back. Ideally, the rocks should be heated in a purpose-built, stone kettle. Fairmont had developed a practice of using two stainless steel roasters filled with hot water.

At a staff meeting on September 12, 2012, the Spa Director announced plans to replace the roasters with a household-grade electric Black and Decker grill. MacPhee-Lay expressed concern about the proposed change, citing a variety of safety concerns, including the risk of the rocks exploding on the dry heat grill and the fact that dry stone heating was not an approved use of the household grill. After the meeting, MacPhee-Lay conducted internet research into using grills for heating basalt rocks. She later presented her findings to the Spa Director, the Lead Therapist, and a worker representative on the JHSC. Over the next few weeks, she repeatedly raised her concerns about the safety of this practice and also sought advice from Alberta Occupational Health and Safety officials.

On September 28, MacPhee-Lay was suspended and on October 1 terminated. No reasons for the termination were provided, although the employer asserted that there were performance issues that warranted termination.

Learning Objectives

After reading this chapter, you will be able to:

- Identify how power in the employment relationship shapes how health and safety is practised in workplaces.
- Discuss the practical shortcomings of the Internal Responsibility System.
- Explain why workers’ rights to know, participate, and refuse are considered weak rights.
- Describe the effects of self-enforcement and weak regulatory enforcement on safety in workplaces.
- Outline practical steps that can be taken to improve safety in workplaces.
Andrea MacPhee-Lay was a massage therapist at the Fairmont Chateau Lake Louise hotel near Banff, Alberta. The hotel spa provided a range of massage treatments, including a hot-rock treatment where basalt rocks are heated in water to 49 degrees Celsius and strategically placed on the client’s back. Ideally, the rocks should be heated in a purpose-built, stone kettle. Fairmont had developed a practice of using two stainless steel roasters filled with hot water.¹ At a staff meeting on September 12, 2012, the Spa Director announced plans to replace the roasters with a household-grade electric Black and Decker grill. MacPhee-Lay expressed concern about the proposed change, citing a variety of safety concerns, including the risk of the rocks exploding on the dry heat grill and the fact that dry stone heating was not an approved use of the household grill. After the meeting, MacPhee-Lay conducted internet research into using grills for heating basalt rocks. She later presented her findings to the Spa Director, the Lead Therapist, and a worker representative on the JHSC. Over the next few weeks, she repeatedly raised her concerns about the safety of this practice and also sought advice from Alberta Occupational Health and Safety officials. On September 28, MacPhee-Lay was suspended and on October 1 terminated. No reasons for the termination were provided, although the employer asserted that there were performance issues that warranted termination.
MacPhee-Lay filed an OHS complaint over her dismissal, claiming she was disciplined for acting in compliance with the OHS Act, which requires her to report workplace hazards that pose an imminent danger. The investigating officer dismissed her complaint, finding insufficient evidence to link the dismissal to the dispute over the grill. MacPhee-Lay appealed the officer’s decision to the Alberta Occupational Health and Safety Council, who upheld the decision.

The decision to uphold the officer’s ruling was based mostly on technical grounds. Alberta’s OHS Act requires a worker to report and refuse unsafe work if the work poses an imminent danger. The Act also protects workers who exercise this right from retaliation. The panel reasoned that the grill, which was not yet in use, did not pose an imminent danger at the time of the refusal. For this reason, MacPhee-Lay’s actions were not strictly “in compliance” with the Act and she could not claim protection under the Act. Interestingly, Fairmont eventually decided not to use the grill for hot-rock treatment.

While the facts are complex, this case illustrates how health and safety issues develop differently in practice than they do in textbook examples. In theory, MacPhee-Lay acted appropriately. She expressed concerns about a hazard and conducted research to support them. Yet her employer seems to have fired her for trying to ensure her workplace was safe. In considering this case, we need to recognize that the circumstances of her complaint cannot be disentangled from the dynamics of her employment relationship, which had begun to deteriorate prior to the complaint. We should also be cognizant that she was challenging her employer’s ability to implement a new work process, behaviour that employers often suppress by disciplining one worker as an example to the rest.

The case also points out weaknesses in OHS laws and government enforcement activity. MacPhee-Lay’s case was not decided on the merits of her safety concern. Neither the OHS officer nor the panel disputed her claims about the grill’s safety hazards. Instead, her complaint was dismissed based upon a narrow reading of the Act that produced a procedural loophole the appeal panel used to excuse the employer’s conduct. Research suggests that arbitration and labour boards often defer to employers in matters of disciplining workers who refuse unsafe work.²

This chapter examines OHS in practice to reveal the ways in which working toward safety in real workplaces is more complex than we might anticipate. It extends our analysis of how power shapes workplace health and safety. It looks at how the internal responsibility system does not work exactly as
intended. And it also considers the nature of government OHS enforcement in the 21st century and how it can impede workplace safety. The chapter concludes by offering some practical tips for workers, OHS activists, and safety practitioners about how to improve safety in Canadian workplaces.

REALITIES OF WORKPLACE SAFETY UNDER CAPITALISM

Throughout this book, we have considered how the power imbalance in Canadian workplaces—an imbalance that favours employers and allows them to advance their interests at the expense of workers’ interests—affects OHS policy and practice. We have already discussed many of the mechanisms that benefit employers, from the careless-worker myth to behaviour-based safety. This section extends this analysis to consider how contemporary OHS arrangements developed and how they have slowly eroded the role of workers in workplace safety.

Today, OHS is a highly technical and highly professionalized field. Safety professionals are often extensively trained, and research has improved the effectiveness of hazard recognition, assessment, and control tools. OHS is also a multi-million dollar industry. Employers hire consultants and safety specialists to provide a wide range of services, from training to technical monitoring and control to designing safety systems. Most industries have developed industry safety associations (more on this below), both to offer many of these services and to lobby governments on employers’ behalf.

Safety was not always a sophisticated industry. The modern OHS movement arose out of worker activism and (sometimes illegal) workplace action that forced employers and governments to address safety concerns. During the 1960s, a series of wildcat strikes in industrial plants across Canada raised the profile of OHS issues. In the 1970s and 1980s, worker safety activists formed a network that pushed for better hazard control, trained workers to protect their health, and forced legislative change that created the contemporary health and safety regime. Most often the activism was conducted in the face of opposition from both employers and government.

Despite government reluctance to take action on OHS, early government regulators recognized and enacted legislation and enforcement practices designed to mitigate the power imbalance in the workplace. For example, OHS pioneer Robert Sass, who wrote Canada’s first OHS legislation (in Saskatchewan) and was the architect of the three worker rights (i.e., the rights to
know, participate, and refuse), argued that employer and state resistance to improving workplace safety was driven by the profit imperative of capitalism. This view was consistent with historians’ understanding of government and employer safety efforts in the late 19th and early 20th century, which were designed to ensure that unsafe workplaces did not compromise employers’ ability to make a profit. It is useful to remind ourselves that the profit imperative is also present, somewhat indirectly, in public and non-profit sector workplaces as well.

Over the last 30 years, the link between OHS and the broader struggle between worker and employer interests in the workplace has been obscured by employer efforts to professionalize safety. Professionalized OHS entails segregating safety issues from the rest of work by transforming OHS into a “neutral” practice of objectively measuring and correcting hazards. Employers benefit from narrowing OHS to a merely technical undertaking because, for example, it allows them to address safety issues with inexpensive (and often inadequate) controls (such as issuing workers PPE) rather than altering the work process to eliminate or at least control workers’ exposure to the hazard. This narrow approach has also legitimized employer’s cost-benefit analysis in OHS, as discussed in Box 11.1. Overall, this professionalization has rendered invisible the conflicting safety interests of employers and workers.

In professionalized OHS, safety becomes another tool with which the employer can control how the worker will perform their work. Safety becomes a monologue by the employer, rather than the dialogue between workers and employers that was envisioned by Sass and others. The implications of this change are evident in most workplaces across all sectors. There is little discussion between workers and their supervisors about how to control hazards. There is little debate about whether PPE is sufficient or whether something more is required. And the experiences of workers like Andrea MacPhee-Lay tell us what can happen when a worker speaks up about safety.

**Box 11.1 The consequences of cost-benefit analysis in OHS**

The Ontario Workplace Safety and Insurance Board (that province’s WCB) partnered with the Ontario division of the Canadian Manufacturers & Exporters association to produce a health and safety
guidebook for employers, entitled *Business Results through Health and Safety*. The guide makes the economic case for safety:

In 1999 there were over 100,000 lost time injuries and occupational illnesses in Ontario workplaces. Over $2.6 billion (including administrative costs) was paid in compensation claims to injured and ill employees. In addition, indirect costs associated with workplace accidents and illness are conservatively estimated to be at least 4 times the direct costs. Together with direct costs this means there was over a $12 billion drain on Ontario productivity in 1999, and a loss of competitive advantage.⁸

The average workplace lost time injury in Ontario costs over $59,000. Surprised? The average lost time workers compensation claim cost is over $11,771, and other costs add up more quickly than most people realize. Property damage, lost production, manager and supervisor time due to an accident and with the injured person, costs to comply with Ministry of Labour orders, and the employee’s lower productivity while on light duty; the source of additional costs is extensive. . . . If your profit margin is 10%, it requires $590,000 in sales to produce $59,000 of profit. . . . A reduction of a lost time injury costing $59,000 has the equivalent profit effect as increasing sales by $590,000 at a 10% profit margin.⁹

These excerpts represent the classic economic argument for health and safety: safety pays. While this argument may persuade some employers to address safety issues, there is an unstated corollary: workplace safety should only be improved when it reduces costs and increases profit. The idea that safety should not be pursued if it costs too much is a pivotally important implication of this cost-benefit approach to OHS.

In this view, safety becomes a commodity that an employer can purchase so long as it has utility. Implied in this reasoning is that some degree of unsafe work is acceptable and that it is an employer’s right to decide the level of (un)safety experienced by workers. That OHS—and the human beings that OHS protects—might have
intrinsic value is simply ignored in cost-benefit analyses. In this construction of workplace safety, safety is framed as a commodity.

This way of conceiving of occupational safety and health . . . reinforces the cognitive tendency to believe individuals make free choices in market transactions, including the choice to work in jobs that have greater safety and health risks. Second, it crowds out the democratic values that led to earlier legislation protecting workers. An economic point of view treats workplace safety and health policy as an issue to be determined using market values, rather than as a matter for democratic deliberation.10

Framing health and safety as a way to increase profits may on the surface be an appealing strategy for engaging employers. Yet this cost-benefit approach to OHS also legitimizes danger and ill health and undermines the workers’ role in achieving safe workplaces.

Another consequence of professionalized OHS is that the safety role of unions is diminished. When safety is seen as part of the employment relationship, the union has a legitimate role to play in safety (e.g., training workers, inspecting workplaces, raising issues on JHSCs) and safety is a condition of work that can be negotiated. Indeed, many unions appoint or elect a safety representative who engages with the employer to negotiate appropriate safety provisions. When employers outsource OHS to consultants and broadly treat it as a function separate from the work process, the union loses some of its ability to shape workplace safety.

The sidelining of unions is more than just a theoretical labour relations problem. Unions make workplaces safer. Unionized workplaces have lower incident and injury rates than non-union workplaces.11 Unionized workers are also more likely to hold beliefs—for example, that taking risks is not part of their job—that contribute to safer work practices.12 Unionized workplaces are safer due to a combination of better training (that teaches workers how to use their safety rights to make the workplace safer13), a more formalized process for worker participation (such as safety meetings and JHSCs14), and less fear among unionized workers of repercussions for exercising their rights.
The safety effect of unions demonstrates that OHS is most effective when workers are actively engaged in dialogue about safety and empowered to make change. This more democratic approach to safety runs counter to employers’ interests in maintaining control over the work process. Thus employers use their greater power in the workplace to shape OHS in ways that diminish workers’ roles. The reality of workplace safety under capitalism is that employers and workers want different (and often mutually exclusive) types of OHS, and over the past 30 years employers have slowly been winning this struggle.

INTERNAL RESPONSIBILITY SYSTEM IN PRACTICE

Chapter 2 examined how the IRS is built upon the premise that employers and workers are jointly responsible for safety and that, by working together, they can make workplaces safer. After almost 40 years of operation, the IRS has not lived up to its potential. While workplaces are safer than they were 40 years ago, particularly when it comes to the dangers posed by physical hazards, workers continue to have little success in exercising their three safety rights and work-related ill health remains largely ignored.

The right of workers to know what hazards they are exposed to in the workplace is a foundational one. Without knowing about workplace hazards, workers cannot meaningfully participate in safety activities or know which work they ought to refuse as unsafe. In practice, most workers rely upon their employer for safety information. This reality has two consequences. First, whether the worker is informed about a hazard depends on the employer’s ability and willingness to provide information. Training has been found to be one of the most effective methods for creating safety awareness and behaviour. Yet, as we saw in Chapter 8, a recent study found that only 1 in 5 Canadian workers received safety training in their first year on a job. In practice, then, employers often don’t provide safety information to workers and this employer decision (or, less charitably, this employer strategy) cannot help but hamstring workers’ ability to participate and refuse.

Second, the employer controls what information it gives workers and can use this power to highlight (or downplay) certain hazards and control measures. For example, an employer has an interest in focusing attention on hazards that are within the workers’ control or that can be controlled by worker vigilance (such as physical hazards) because these hazards are
relatively cheap to control. Using this same logic, an employer also has an interest in downplaying hazards that require the employer to take action to control (e.g., workload and shift work, chemical hazards) because these controls are relatively expensive or difficult or challenge their authority to manage. While it is often said that knowledge is power, in OHS, the distribution of knowledge appears to mean that knowledge most often increases employers’ power.\(^{18}\) While unions can counter the employer monopoly on information, union membership is in a slow decline. Further, unions are virtually absent in growing industries, which also happen to employ large numbers of precarious workers.

The right to participate gives workers a process for addressing safety issues, usually via a JHSC. While JHSCs can be effective at improving safety outcomes, not every worker has access to a JHSC.\(^ {19}\) In most jurisdictions, only employers with more than 10 or 20 employees are required to have JHSCs—meaning about a third of workers have no access to JHSCs—and Alberta and the Territories do not require any employer to have JHSCs. Even if an employer voluntarily creates a JHSC, there are no requirements for equal participation by workers, appropriate investigative powers, or even regular meetings. What this means is that workers at smaller employers, which tend to both employ more vulnerable workers and have higher rates of incidents and injuries, have basically no right to participate.

In workplaces with JHSCs, the committees often struggle with employers ignoring recommendations, agendas dominated by minutiae and pro forma processes, lack of safety knowledge among committee members, inadequate resources (both time and money), and, not surprisingly, worker disengagement. Non-functioning JHSCs fundamentally limit the right to participate. As we saw in Chapter 2, there are ways workers can improve the effectiveness of JHSCs. These efforts are most likely to be successful in unionized workplaces where the union can train and empower workers. Yet even with the support of a union, workers’ efforts to increase the effectiveness of JHSCs can face profound limits if the employer resists and the state refuses to regulate.\(^ {20}\) Even the most effective JHSCs have no ability to compel employers to address unsafe workplaces. Leaving it up to the employer to decide whether and how to address hazards reinforces the greater power of employers in the workplace. Rather than provide workers with a platform from which to assert their rights, JHSCs become a means to channel worker discontent around safety issues.
into a process that employers can manage and control. Further, some critics of the IRS argue that the creation of a formal structure and location for airing safety grievances delegitimizes other informal forms of worker expression (e.g., on the shop floor, at union meetings) and thus undermines the ability of workers to act outside of the internal responsibility system.  

Many recent employer safety initiatives are designed to bypass the traditional IRS processes—particularly in large workplaces. Safety management systems are programs that construct goals and performance measures related to safety, often with the assistance of an outside consultant. These systems may engage workers at a rhetorical level (e.g., by involving them in the creation of “value” statements), but mostly they further concentrate control over safety in the hands of employers who set and measure safety targets. Some employers also create workplace wellness systems that promote forms of wellness that financially benefit employers (see Box 11.2). In this way, the growing professionalization of safety also undermines workers’ right to participate.

**Box 11.2 Workplace wellness programs**

*Workplace wellness programs* (WWPs) are health and well-being services provided by or through an employer that focus on health promotion and illness prevention. The range of services might include gym memberships, organized physical activities, flu vaccinations, yoga classes, healthy snack food, financial and retirement advice, and health screening. Some employers also include in WWPs the services found in employee assistance programs (EAPs). As we read in Chapter 10, EAPs include employer-sponsored psychological counselling services for employees and their family members experiencing personal or mental health issues. WWPs have gained popularity in recent years.

WWPs are not subject to any government regulation. Employers are often motivated to implement a comprehensive WWP in order “to reduce health insurance claims, increase their bottom-line and increase productivity.” Other reasons include improving corporate image, employee recruitment and retention, and employee engagement. The logic underlying a WWP is that improving the overall health of employees means the rates of illness, absenteeism, and presenteeism
(i.e., being present but not productive) will decline, triggering a reduction in benefit plan premiums and an increase in productivity.

There is strong evidence that WWPs improve productivity and generate cost savings through reduced absenteeism and lower health insurance costs. WWPs are also linked to increased job satisfaction and employee engagement. Some employers and WWP providers also argue that WWPs increase workplace safety by drawing attention to issues of health. There is little data to support the position that WWPs lead to fewer incidents and injuries in the workplace.

The benefits for a WWP for workers are less clear. Employers make no effort to track the health outcomes of workers through these programs, so data suggesting that participants experience less stress and better health is not reliable. Most workers simply do not participate in WWPs. Research suggests that low participation rates reflect that WWPs do not offer the services that workers desire. Indeed, some researchers suggest organizations would be better off improving supervisory practices and employee treatment—changes that would substantively benefit workers—than offering flu shots or yoga classes.

WWPs are another example of how employers have sought to increase their influence in OHS and thereby subvert the joint nature of the IRS. In WWPs, employers tend to encourage activities that focus on changing workers’ personal behaviour. While these changes are likely positive, this focus reinforces the notion that health and safety begins (and ends) with workers. It is also an extension of the cost-benefit model of health and safety, as WWPs are justified mostly on the grounds of profit and productivity.

The right to refuse at first seems to be the strongest worker safety right. Indeed, the right to refuse represents one of the few times when a worker can legally disobey his or her employer (by refusing to perform dangerous work). In practice, though, refusing unsafe work has turned out to be a weak right. Three factors have undermined the power of the right to refuse. First, most legislation and its interpretation have narrowed the instances when workers can legally refuse. They cannot refuse simply because a hazard exists. There must be some degree of immediacy to the risk of injury, which effectively
precludes refusing work on the basis that the work puts the worker at risk of occupational disease. Also, the danger must not be “normal” for the worker’s occupation. These restrictions make refusing unsafe work difficult for many workers.

Second, the rules around the right to refuse only require the employer to investigate the refusal and preclude the employer from punishing the worker for their refusal. No other action is required. Employers are allowed to assign a different worker to perform the same task. Or the employer can make minor changes to reduce the risk just enough that the worker will agree to do the task. Or they can do nothing at all and say everything is fine. If the worker continues to refuse, the resolution process is lengthy and legalistic. Further, pursuing the matter requires the worker to confront their employer, possibly over a period of weeks, in a direct manner that can be intimidating for many and, as Andrea MacPhee-Lay found out, can end in termination.

As a result, workers rarely invoke the right to refuse. One of the few studies examining the frequency of refusals found that only 1% of Ontario workers used their legislative right to refuse.27 Workers are more likely to refuse in a unionized setting, where additional protections from employer retaliation are present. In most workplaces, instead of formally refusing unsafe work, workers are more likely to adopt informal methods to avoid dangerous situations, including quietly altering the work process or pace of work, refusing overtime, calling in sick, or requesting a transfer.28 Workers’ reluctance to engage in a direct confrontation with their employer over safety matters reflects the third factor undermining the right to refuse: employment is a relationship of power, and workers’ three safety rights do not adequately mitigate employers’ greater power in the workplace such that workers can protect themselves. A recent study found that one third of Ontario workers expected that raising a health and safety concern would have a negative affect their future employment. The percentage was even higher among racialized workers and among workers facing a high degree of precarity.29

This discussion suggests the IRS is not very effective at protecting workers’ safety. This conclusion is consistent with the large number of workplace injuries in Canada each year. Some workers are able to increase the effectiveness of the IRS via unionization, but the most vulnerable workers (such as women, racialized workers, youth and precarious workers—groups whose memberships often overlap) are less unionized and thus receive little (or no) protection from the IRS.
The other cornerstone of the modern OHS regime is government regulation and enforcement. Government legislation is intended to complement the IRS by establishing safety standards and practices and intervening in cases when employers fail to meet them. Essentially, state enforcement is designed to address instances where the IRS system fails to result in safe workplaces. In practice, OHS enforcement has evolved to reinforce the employer-dominated IRS rather than regulate its operation.

Governments mostly rely upon complaint-driven enforcement wherein workplace inspections are triggered by individual complaints or in response to incidents (i.e., a serious injury or fatality). Complaint-based investigations may at times be supplemented by targeted inspections of specific industries (e.g., residential construction) or working situations (e.g., employers of migrant workers). Complaint-based enforcement has been adopted due to the limited resources allocated to OHS inspections relative to the number of employers in the jurisdiction. For example, in 2008, Alberta had 84 OHS inspectors to cover 144,000 employers.30

The primary goal of workplace inspections is to achieve compliance with the OHS legislation. When a violation is found, a compliance order is normally issued that requires the employer to remedy the violation within a set timeline. (One exception to this norm is that stop-work orders are sometimes issued if the violation poses imminent danger of harm.) Given the limited budgets allocated to OHS inspection, a follow-up inspection may occur weeks later or not at all.

Research finds that inspections are up to 10 times more likely to occur in industrial and other so-called traditionally dangerous worksites (e.g., manufacturing, construction, mining) than other industries (e.g., education, health care, office environments). Forestry workers are 20 times more likely to be the subject of an inspection than nurses, despite the significant hazards faced by nurses (e.g., physical hazards associated with lifting, violence, exposure to biological hazards).31 Further, the vast majority of inspections are conducted during regular business hours (Monday to Friday, 9 to 5).32

An important consequence of the lack of resources, use of compliance orders, and the tendency to prioritize inspections of male-dominated, blue-collar workplaces is that OHS enforcement in Canada is both uneven and scarce. The vast majority of workplaces are never inspected. Even workplaces
known for non-compliance are likely to be inspected no more than once or twice a year. In practical terms, employers face almost no risk of being caught violating OHS laws and, if they do, they face almost no risk of being punished. In this way, OHS enforcement allows employers significant opportunity to violate OHS rules, rather than pressuring employers to address safety issues through IRS. The present approach to enforcement also ignores the changing nature of work by continuing to focus on traditional workplaces. Workers in the service industries or working non-traditional hours are largely ignored. These workers are more likely to be women, racialized workers, youth, and precarious workers. They are also more likely to be working for small employers. The present regulatory structure was not built with these workers, workplaces, or working conditions in mind and, not surprisingly, does a poor job regulating them.

While OHS enforcement has changed over time, most of these changes have eroded the effectiveness of the system. In comparison to today, OHS enforcement in the 1970s and 1980s was more active: governments conducted more inspections, laid more charges, and achieved more convictions than they do today. The move away from active enforcement was caused by pushback from employers, who were unhappy with practices such as unannounced inspections, prosecutions, increased workers’ compensation premiums, and a growing list of prescriptive regulations, which stipulated specific requirements an employer must meet (e.g., standards for fall protection equipment).

In response, governments changed the roles that government, employers, and workers play in enforcement. While the details of this shift differ between jurisdictions, there is a clear pattern across Canada away from enforcement and toward education and collaboration. Governments conduct fewer unannounced inspections, implement intermediary steps before issuing compliance orders, and conduct fewer inspections and prosecutions overall. Employer groups have been given a larger role in drafting of regulations, which has shifted OHS from prescriptive regulations toward performance-based regulation, which identifies desired outcomes and leaves the specifics of how to achieve them to the employer.

**Industry safety associations** (ISAs), bodies formed by employers in an industry to deliver safety services and advocate on behalf of the employers on safety issues, have also achieved greater influence. ISAs have become more involved in establishing regulatory standards and delivering training
and education to workers. In some jurisdictions, ISAs have been authorized to conduct *workplace safety audits* to determine eligibility for safety incentives, such as workers’ compensation premium reductions. Audits differ from inspections in that they do not identify hazards or non-compliance with regulations. Instead, audits assess whether a workplace has an appropriate safety system in place to deal with safety matters. They evaluate the quality of paper flows and communications systems, the presence of training and safety manuals, and whether appropriate paperwork is completed. Employers prefer audits to inspections, as audits are educative in nature rather than punitive.

Proponents of this shift (including employers, industry associations, safety professionals, and right-wing governments) assert that cooperation is a more effective way to achieve employer compliance. This assertion sits uncomfortably with the actual result of the partnership approach: employers have increased their control over safety in their workplaces and increased their influence over government policy. Research has shown that so-called *tripartite consultations*, which involve government, employers, and labour as equal partners at a table to discuss OHS issues, reproduce power imbalances and provide a structural advantage to employers in determining the shape of new safety regulations. The partnerships model of OHS works in concert with the professionalization of OHS to remove safety issues from the work floor, where workers are active agents, and place them in boardrooms, where workers become passive recipients of negotiated agreements between employers and governments.

The two sawmill explosions in British Columbia in 2012 (detailed in Chapters 1 and 9) help us understand the perils (for workers) of overly close relations between employers and the state. Shortly after the Babine sawmill blew up, an internal WorkSafeBC memo identified expected employer pushback as a reason to delay additional enforcement focused on reducing the risk of wood dust explosions:

> Industry sensitivity to the issue given the recent event and limited clarity around what constitutes an explosion could lead to push back if an enforcement strategy is pursued at this time.35

Roughly 20 days later, the Lakeland mill exploded—due to wood dust accumulation. In effect, government concern about employer interests delayed enforcement action that might have saved workers’ lives. Box 11.3
examines how Alberta’s shift toward a partnership model set the stage for the regulatory capture of provincial OHS enforcement by employers. Overall, government decisions to shift away from active OHS enforcement in favour of collaborating with employers have profoundly undermined an important bulwark for workers against the power of the employers in the workplaces and further weakened the IRS.

Box 11.3 OHS partnerships and the risk of regulatory capture

In the mid-1990s, the province of Alberta was the first jurisdiction to move away from a more active approach to OHS enforcement to a collaborative, self-enforcement model. A 1997 strategic plan laid out the core elements of Alberta’s so-called Partnerships approach to OHS and repudiates an active regulation and enforcement model:

Partnerships is based on the premise that more can be achieved through a cooperative, collaborative approach than by a one-sided, dictatorial or interventionist approach. . . . Partnerships strives to promote a culture of increased proactive health and safety attitudes and behaviour in the workplace. These cannot be legislated!36

The framework emphasizes government and industry “working in harmony with one another to ensure continuity.”37 The role of government is to facilitate “dialogue and consensus building amongst Partners.” The framework also shifts the nature of enforcement, indicating the government “enforces regulatory standards through voluntary compliance.”38 Workers are not identified as one of the partners, and the role of unions in the framework is to “collaborate” with employers, government, and other partners. At the heart of this approach is a government commitment to not proceed with policy changes without the agreement of employers.

Some critics suggest that the partnership model has, over time, contributed to Alberta’s OHS system being “captured” by employer interests. Regulatory capture occurs when a state agency designed to act in the public interest instead acts to advance the interests of an important stakeholder group in the sector that its regulates. Under a
situations of regulatory capture, the dominant stakeholder group can use the captured regulator to impose costs on other stakeholders, even if such costs are contrary to the public interest. Captured regulators may see themselves as partners of the captors they are supposed to regulate and may even find themselves financed by that group.39

There is ample evidence to suggest that regulatory capture occurred in Alberta’s OHS system under the Partnerships framework. The evidence includes the government:

- ineffectively regulating workplace safety
- being reliant on employer funding of regulatory activity (through workers’ compensation premiums)
- allowing employers preferential access to policy making
- enacting policies that reward the appearance of safety rather than safety itself (through the Certificate of Recognition program that awards WCB premium rebates based on safety audits)
- promulgating a narrative that blames another stakeholder (i.e., workers) for workplace injuries40

While the framework has shifted slightly over the years, the core principles remain operative and Partnerships still guides the Alberta government’s approach to OHS. In particular, the COR remains a central feature of the framework and regulatory change is created through consensus of the partners.

**HOW TO GET THINGS DONE**

Given the above discussion, one might be forgiven for being pessimistic about the prospects for safer and healthier workplaces. The shortcomings of the current OHS system are significant. Nevertheless, we should not lose sight of the fact that workplaces today are, in some ways, safer than they were 40 years ago and there is a higher degree of awareness of safety issues in the workplace. This suggests that it is possible for committed individuals (and groups of individuals) to make positive change in workplaces and in policy—even if the extent and speed of those changes is constrained by unfavourable circumstances.
Historically, workers made advances in health and safety when, armed with information, they mobilized collectively and politically. While this mobilization was not sustained when OHS energies were channelled into the structures and processes of the IRS regime, this history is informative. Specifically, it identifies the components of effective OHS advocacy, for workers, OHS activists, and safety professionals:

1. Education and information: Research has shown that, when workers are armed with information about the hazards they face and options for controlling them, they act upon this knowledge to the degree to which they are able.

2. Increasing power: Power in the workplace is essential to ensuring accurate and complete information is available and that workers can meaningfully act upon it. By recognizing the importance of power in OHS, we acknowledge that OHS advocacy must extend beyond technical arguments about safety and requires political action to create power.

3. Using the IRS: While the IRS has many shortcomings, effective advocates learn how to work within the IRS system as it exists and then supplement those actions with pressure from outside the system (e.g., via government enforcement, outside expertise, mobilization of workers).

Alan Hall and his colleagues have studied what makes worker representatives effective in OHS matters. Their research has identified three types of OHS activists:

1. Technical-legal representatives are well-informed workers who immerse themselves in the technical and legal aspects of OHS and perform those functions well. These workers typically act as if OHS is divorced from other labour-management issues and see their job as working with the employer to achieve solutions cooperatively.

2. Politically-active representatives, by contrast, understand well the power relations at work and see OHS as just another field of conflict with the employer. These workers tend to dismiss the importance of research and accurate information. As a result, while they are
willing to engage the employer on OHS issues, they do not bring an independent source of information to their argument.

3. Knowledge-active representatives are thought to be the most effective activists because they recognize the political nature of OHS but also actively pursue independent and autonomous information to bolster both their legitimacy and their capacity to challenge the employer. They are also likely to equally divide their time between IRS-related activities (i.e., attending JHSC meetings, conducting inspections) and political activities (i.e., educating and mobilizing workers, engaging government enforcement). Box 11.4 provides a more detailed description of knowledge-active representatives.

**Box 11.4 Qualities of a knowledge-active OHS representative**

Hall and his collaborators have found the effective knowledge-active representatives tend to display the following qualities and behaviours:

- Actively seek out independent knowledge about OHS through personal research, often on their own time.
- Use the knowledge to strategically and tactically achieve change.
- Actively spread their knowledge by training and teaching other workers.
- Recognize that effectiveness depends upon being known as a reliable “knower” of health and safety issues.
- Recognize that not all hazards are self-evident or easily recognized.
- Present management with alternative solutions.
- Recognize that change can and must be achieved outside the formal IRS structures, but that they must also work within those structures to increase effectiveness.
- Work on both small and big issues. Believe that technical and legal issues cannot be ignored, but that real change occurs when advocates push for larger-scale change in the workplace.
The significance of this research is that being effective in advocating for health and safety change requires a high degree of knowledge, strategy, tactics, and determination. This may seem like a daunting task, but workers have historically exhibited those qualities—both in the workplace and in their everyday lives.

This analysis suggests some practical ways in which a person (or group) can increase the effectiveness of OHS efforts. Workers who have access to a JHSC (or other OHS venue in their workplace) can improve safety by ensuring the worker representatives are informed and engaged. Safety practitioners and managers can improve JHSCs effectiveness by ensuring employer representatives are senior enough to have influence over how the organization responds to safety concerns. In addition, all actors can ensure there are clear meeting agendas, minutes, and timelines that are communicated to all workers, ongoing training of JHSC members, and that the members of the JHSC get out of the meeting room and regularly inspect the workplace and interact with workers.

Increasing workers’ input into (or autonomy over) training enhances workers’ knowledge of workplace hazards and control strategies. This undermines the employer’s ability to shape hazard identification and control through limiting what workers know. Allowing worker involvement may also result in training that is more engaging to participants and recognizes the varied motives workers have for participating in it. Worker-oriented training might also draw attention to psycho-social hazards in the workplace or the health effects of employment practices.

While OHS legislation and regulation have value, workers’ experience with the IRS is that it is not adequate to protect them or guarantee safe and healthy workplaces. One strategy for building upon the IRS is to entrench stronger levels of OHS protections in collective agreements and company policies. These protections might include enhanced participation rights, greater protection for refusals, and protection from reprisals. Similarly, OHS rights and obligations—such as conducting and publishing hazard assessments every time work processes change—can be incorporated into work routines. As part of this process, workers might encourage (or pressure) their employer to adopt the precautionary principle. For example, they might create an expectation...
that no new chemicals or processes will be introduced until the employer can demonstrate that the chemicals or processes do not create a hazard.

Workers, OHS activists, and safety practitioners also need to take steps to generate power. Power can come from one’s position. For example, an employer can delegate responsibility for safety to a safety professional and workers can elect a safety representative. Power can also come from knowledge and expertise. Moral authority—the capacity to convince others of the rightness (or wrongness) of certain decisions—can also be a source of power that can be derived from compelling arguments and a past record of principled behaviour.

Finally, workers and OHS activists can draw upon political and economic power derived from collective action. We usually think of unions as the vehicle by which workers act collectively. For some workers, joining a union may well be a pathway to healthier and safer workplaces. Yet workers should be mindful of the history of OHS wherein change has come from groups of workers acting outside of established organizations—engaging in political lobbying, public demonstrations, and wildcat strikes. While trade unions can be a source of valuable resources, access to those resources often comes with an expectation that workers will act within the IRS. Given the limitations of the IRS, gaining union support may reduce the capacity of some workers to effect health and safety change.

Workers who cannot or do not want to join a union may rely on legal challenges to seek legislation that better protects their right to health. This right is found both within the Canadian Charter of Rights and Freedoms and the International Covenant on Economic, Social and Cultural Rights (which itself builds upon a more general right articulated in the Universal Declaration of Human Rights: “Everyone has the right to work, to just and favourable conditions of work and to protection against unemployment”).45 Such legal strategies, while appealing, move conflict into the courts—yet another venue dominated by the employers and governments.

In the end, workers and OHS activists may well end up back where they began—cooperating with one another by sharing information, pooling resources, and politically agitating for safer workplaces. This is a lonely and dangerous path because, in capitalist economies, there is no necessary link between the interests of workers and employers around occupational health and safety. Defying the will of the employer and the state is risky.
Yet perhaps better this risk (with its prospect of safer and healthier workplaces) than the certain risk of allowing employers to organize work as it suits their interests.

**SUMMARY**

The irony of Alison MacPhee-Lay’s case discussed at the beginning of the chapter is that she might have won her complaint had she waited until the grill proposal was implemented. If customers were in the room and she was required to use it, she may have been able to invoke her right to refuse—although no one can be sure whether that hazard would have been deemed an “imminent danger.” This case highlights one of the shortcomings of Canada’s health and safety system: it prioritizes procedural issues (i.e., did the worker refuse correctly) over substantive ones (i.e., was there a legitimate OHS hazard).

The current OHS regime was intended to empower workers to advocate for their own health and safety. Instead, it has entrenched employer power to control the work process. Workers do advocate for their own interests, but they often do it in spite of the system rather than because of it. The system has become highly technical and specialized, separating the issues from the people who are most affected by them—workers. The evolution of the system is best understood within a context of capitalism and the ways in which employers under capitalism act to further their interests.

Nevertheless, change is always possible in any system. Existing processes and structures in the safety regime can be utilized to make change. Advocates must also step outside the formal structures to force change from the outside. It is the combination of strategic engagement with the structures and mobilization of workers that will ultimately make workers safer.

**DISCUSSION QUESTIONS**

- How does the practice of OHS differ from the intention of its designers in the 1970s? Why?
- What features of IRS have led to the reproduction of the power imbalance in the workplace?
What factors led to changes in how governments enforce OHS regulations in Canada?

What are the key features of an effective OHS advocate?

EXERCISES

A Reread the case of 15-year-old Andrew James at the beginning of Chapter 3 and write 150-word answers to the following questions:

1. What hazards were present at the worksite?
2. How would you prioritize the identified hazards?
3. What controls should have been implemented?

B Compare your answers to those you wrote when you did the exercise at the end of Chapter 3. How have your answers changed after reading the rest of the textbook? What practical steps would you take to try to implement change at that workplace?

C Consider your workplace, or a workplace you are familiar with, and write 150-word answers to the following questions:

1. Which aspects of IRS are functioning properly?
2. Where are areas for improvement?
3. Identify five ways in which you would improve the practice of health and safety at that workplace.

NOTES


9 Ibid., p. ix.


Barnetson, B. (2010).

Ibid.


37 Ibid., p. 7.

38 Ibid., p. 9.


