



Technical Safety Review

A new technical safety
framework for Nova Scotia

Discussion Paper

Prepared by the Public Safety Division
of Nova Scotia Environment & Labour

July 2007

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Process For Providing Comments on the Discussion Paper

This discussion paper presents information and raises issues for consideration in relation to a new technical safety legislative framework for the Province of Nova Scotia. It forms a key part of the consultation process that will assist the Department in the preparation of policy advice on options for the framework.

The review project is in response to what we have heard from our stakeholders in certain industry sectors concerning the existing framework. We have heard them say that certain existing technical safety legislation and regulation is outdated and inflexible. We want to explore ways to help our stakeholders operate their businesses efficiently and effectively, without jeopardizing the protection of life or property.

This document is being widely distributed for consultation. Submissions expressing comment, suggestions, and questions are invited from all stakeholders, whether representing organizations or as individuals. When submitting a position on behalf of an organization, please indicate the name and position of the person making the submission. At **page 21** there is a form which includes the questions asked throughout the paper. Feel free to complete this form and send it to the contact information listed below.

All submissions received will be considered and evaluated before the development of recommendations to the Minister of Environment & Labour. Please note that while we welcome all your suggestions, we would like to clarify that the purpose of this consultation is not to discuss issues of a *technical* nature that may be governed by the regulations. However, any comments you provide in that regard will be kept for future consideration.

Please send your submissions no later than Tuesday, **October 30th, 2007** to

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This paper has been prepared for consultation and discussion only, and does not represent the current policy of the Nova Scotia Environment and Labour.

I. Executive Summary

Nova Scotia has enjoyed an excellent record in technical safety. However, initial discussions with certain industry sectors over the past few years have indicated a need to address existing technical safety legislation in light of advanced technology and modern standards. We have heard our stakeholders say, and we acknowledge, that certain existing technical safety legislation has not kept up with changes in technology, industry, and the workforce. As a result, the legislation has become inflexible for current industrial and operational practices.

Nova Scotia Environment and Labour (NSEL) has embarked on a review of the current legislative framework. The focus of the Technical Safety Review project is on a broader framework and how it may be streamlined to reflect technological change, improve consistency, and meet the needs of a changing economy now and in the future, while ensuring that minimum regulated safety standards are achieved. The intention is to develop a flexible, risk-managed, and performance-based legislative framework which provides for clear responsibilities and accountability. Regulatory and administrative frameworks will also be reviewed.

This paper proposes the creation of a consolidated Act for technical safety in Nova Scotia, that includes and considers --

- results-based requirements
- risk management
- clear accountability, roles, and responsibilities
- one appeal process
- one advisory process
- flexibility, to respond to changes in technology and trades
- similar licencing and audit provisions across regulated industries
- compliance policies and enforcement standards that are similar across the regulated industries
- greater harmonization across the Atlantic Region
- greater reliance on national standards, or the “best standards”, that are updated regularly, and which aid cost-effectiveness
- the current governance arrangement for technical safety.

The following Acts are included in the review project:

- *Amusement Devices Safety Act*
- *Crane Operators and Power Engineers Act*
- *Electrical Installation and Inspection Act*
- *Elevators and Lifts Act*
- *Steam Boilers and Pressure Vessels Act*

However, the creation of one Act would **initially** consolidate the *Steam Boilers and Pressure Vessels Act* and the *Crane Operators and Power Engineers Act*; and become the

enabling legislation for the *Fuel Safety Regulations* (which are currently under the *Fire Safety Act*). The new Act would complement -- but not replace -- the other above-named Acts until future phases of the review.

This paper also includes a sample of what a consolidated Act might look like. The sample is for discussion purposes only, and does not represent the current policy direction of NSEL.

II. Introduction and Background

Background

The Nova Scotia Government has an interest and a role in advancing technical safety. The Government oversees technical safety to:

- **advance** public good
- **promote** the safety of Nova Scotians
- **protect** health and environment
- **reduce** injury and death due to avoidable harm
- **invest** appropriately in the future well-being of the population
- **maintain** a strong economy
- **determine** rights, responsibilities, rules, and procedures that are fair to all
- **establish** the circumstances in which regulation is necessary, effective and appropriate.

Government is committed to improving technical safety by increasing the effectiveness and efficiency of regulatory programs related to safety by updating legislation, improving regulation, streamlining processes, and increasing compliance. The Public Safety Division of Nova Scotia Environment and Labour (NSEL) has been consulting with key stakeholders over the past several years concerning existing legislation to gain ideas on how to improve. Stakeholders have told us that -

1. They have been embracing new technology in their operations without jeopardizing the safety of employees. Stakeholders see certain provisions under the Acts and regulations as being inflexible, and impediments to effective operations. They view the legislation as being a barrier to innovation. As such, updated legislation is required.
2. There is a lack of clarity over which government Department (either NS Education or NSEL) is responsible for regulatory decisions over certain trades. There is a need to co-ordinate the responsibility for occupational certifications and licensing currently undertaken by the Departments, so as to eliminate duplication and allow for the efficient use of taxpayers dollars and resources in the corporate management of trades regulation.

It has become clear to NSEL that in order to sustain and improve the Province's level of technical safety, while at the same time responding to innovation and modernization, changes have to be made. Government's interest in advancing technical safety is reflected in NSEL's business plans. We responded to stakeholders' concerns by committing to a comprehensive review of technical safety legislation in Nova Scotia. The Technical Safety Review project has been identified as a priority by NSEL in its Business Plans.

Also, the review project is part of the Competitiveness and Compliance Initiative, which is a program designed by NSEL to improve its regulatory systems, and achieve better compliance with provincial law. The initiative will help ensure a competitive business environment, while protecting the health and ensuring the safety of Nova Scotians.

A Steering Committee consisting of NSEL staff was established during Summer 2006 to lead the strategic direction, and provide high-level leadership, of the review. The Steering Committee is responsible for the overall co-ordination and management of the project. Recognizing that it is important to have consultation with industry regarding strategic policy decisions shaping the design and development of the framework, an Advisory Group made up of NSEL staff and key stakeholders was established earlier this year. The Advisory Group is tasked with advising the Minister on the development of a new technical safety framework for Nova Scotia. The Advisory Group has contributed greatly to the development of this discussion paper.

Goals and Objectives

The Public Safety Division arrived at the following goals, objectives, and principles for the review, based on advice of both the Steering Committee and the Advisory Group:

- The overarching goal of the Technical Safety Review is to -

Recommend legislation that will position Nova Scotia as a leading regulatory environment that supports economic activity while meeting provincial safety, health, and environmental objectives.
- The primary goal of the Technical Safety Review is to -

Ensure that the governance of specified industries, occupations, equipment, and facilities, is based on principles, objectives, and standards that are harmonized under a technical safety framework to provide safety to life and property.
- The high-level objectives of the Technical Safety Review are to -

Review the existing technical safety framework to create a modern, flexible, and streamlined framework that reflects technological change, improves consistency, and meets the needs of a changing economy now and in the future, while ensuring that minimum regulated safety standards are achieved.

Focus on results and risk management to create a legislative and regulatory framework that provides for clear responsibilities and accountability.

Strive for technical safety harmonization across Canada, including an expanded partnership with New Brunswick.

- The basic principles guiding the Technical Safety Review are to:
 - ▶ ensure safety, protect health and environment, and enhance safety outcomes
 - ▶ follow “better regulation” principles, including those of NSEL’s Competitiveness and Compliance Initiative¹, for improved regulatory efficiency and effectiveness through the elimination of unnecessary regulation and regulatory burden
 - ▶ support the goals and objectives of the National Public Safety Advisory Committee and Provincial / Territorial Policy Advisory Committee on Codes², to achieve harmonization
 - ▶ support the initiatives of the Council of Atlantic Premiers³, to encourage regional cooperation, and
 - ▶ focus on clearly defined accountability.

In short, an updated technical safety framework is desired that would be capable of efficiently meeting current and future needs; clarifying roles and responsibilities; and promoting safety.

III. Current Situation

The Public Safety Division of Nova Scotia Environment and Labour (NSEL) is responsible for the technical safety program in Nova Scotia.

The Division promotes technical safety in the Province by administering Acts & regulations with regards to

- steam boilers and pressure vessels
- power engineers and operators
- crane operators
- elevators and lifts

¹For more information about the Better Regulation and Competitiveness and Compliance Initiatives see <http://www.gov.ns.ca/enla/cci/>

² The National Public Safety Advisory Committee (NPSAC) is a provincial/territorial/national body that represents all Canadian jurisdictions on public safety issues. The Provincial / Territorial Policy Advisory Committee on Codes provides a forum for the provinces and territories to discuss policy and share information on the administration of national building, fire, and plumbing codes.

³For more information about the Council of Atlantic Premiers (CAP), see <http://www.cap-cpma.ca> One of the CAP’s objectives is to identify how provincial regulations can be streamlined to reduce the burden on business.

- amusement devices
- electrical installations and equipment, and
- fuel installations and equipment.

The Division delivers its mandate through the following activities:

- **certifying, licencing, or registering** of individuals (such as power engineers, crane operators, high pressure welders, communication cable installers, elevator mechanics, ski lift and amusement devices mechanics, elevating device contractor, gas technicians)
- **registering** plants and installations (such as boiler, refrigeration, compressor plants, and gas installations)
- **issuing** approvals, operating licences, and permits (such as for the installation and operation of elevating devices, and amusement devices; gas businesses; electrical installations; fuel oil retailers and wholesalers)
- **inspecting** installations and work under permit / licence
- **auditing** sites and installations
- **supporting** advisory bodies and boards of examiners as mandated by the Acts & regulations administered by the Division
- **developing** and **providing** training on safety and emergency handling
- **participating in** the development of national and international harmonized codes and standards
- **adopting** and **implementing** applicable codes and standards
- **providing** technical expertise and advice
- **responding** to enquiries, accidents and complaints
- **investigating** incidences and accidents
- **enforcement.**

In order to move towards a modernized technical safety framework, it is necessary to review and restructure the legislation which forms the basis of the framework, and the regulations, policies, and procedures which support the framework. Identifying opportunities for legislative streamlining to reflect technological change, and improve consistency is a desired starting point. A new framework should be designed to contribute to ongoing and continuous improvement in technical safety.

A search for options revealed that the implementation of consolidated technical safety laws have proven successful in other jurisdictions, such as British Columbia, Alberta, Ontario, and Newfoundland and Labrador.⁴ For instance, Alberta's stakeholders are strongly supportive of the *Safety Codes Act*, commenting that it is superior legislation. These

⁴ British Columbia *Safety Standards Act*, S.B.C. 2003 c. 39 http://www.qp.gov.bc.ca/statreg/stat/S/03039_01.htm
 Ontario *Technical Standards and Safety Act*, 2000, S.O. 2000, c.16 http://www.e-laws.gov.on.ca/home_E.asp?lang=en
 Alberta *Safety Codes Act*, R.S.A., 1991, c. S-1 <http://www.qp.gov.ab.ca>
 Newfoundland and Labrador *Public Safety Act*, R.S.N.L. 1996, c.P41-01
<http://www.hoa.gov.nl.ca/hoa/statutes/p41-01.htm>

changes to technical safety laws in other jurisdictions have indicated to Nova Scotia the possible benefits of implementing consolidated safety legislation; and have provided examples as to how Nova Scotia may improve the existing technical safety legislation framework.

In response to requests from several industrial sectors, NSEL accelerated part of its Business Plan to make changes to the *Crane Operators Regulations* and the *Power Engineers Regulations*. The changes were made to improve industry's competitiveness through clarification and simplification without compromising the safety of workers or the public. Amendments to the *Crane Operators Regulations* became effective in January 2007; and amendments to the *Power Engineers Regulations* became effective on April 16, 2007.

IV. Proposed Changes and Items for Discussion

1. Technical Safety Act

Statutes and regulations create a matrix of powers, functions, and duties to give effect to government policy. The inter-relationship between the law, policy, and administration creates a legislative framework.

In Nova Scotia, the technical safety legislation make-up is as follows:

Amusement Devices Safety Act

- Amusement Devices General Regulations

Crane Operators and Power Engineers Act

- Crane Operators Regulations
- Power Engineers Regulations

Electrical Installation and Inspection Act

- Electrical Code Regulations

Elevators and Lifts Act

- Elevators and Lifts General Regulations

Steam Boiler and Pressure Vessel Act

- Steam Boiler and Pressure Vessel Regulations

Fuel Safety Regulations (as enabled by the Fire Safety Act ⁵)

The intent is to consolidate all of the above Acts into one principal technical safety statute for Nova Scotia. This will involve the creation of one Act that would consolidate all of the above Acts, but its provisions would not take effect all at once.

The new Act would immediately repeal the *Steam Boilers and Pressure Vessels Act*, the

⁵Minor amendments will be made to the Fire Safety Act to reflect the removal of the Fuel Safety Regulation from its authority.

Crane Operators and Power Engineers Act, and become the enabling legislation for the *Fuel Safety Regulations* (which are currently under the *Fire Safety Act*).

The new Act would complement -- but not replace -- the other above-named Acts until subsequent phases of the review. However, it will provide a framework that is sufficiently flexible to enable future amendments to encompass such laws. Also, some appropriate consequential amendments to the other statutes and regulations may be considered or required.

The phase-in approach may look like this:

Phase I *Steam Boilers and Pressure Vessels Act*
Crane Operators and Power Engineers Act
Fuel Safety Regulations

Phase II *Amusement Devices Safety Act*
Elevators and Lifts Act

Phase III *Electrical Installation and Inspection Act*

The provinces of British Columbia, Ontario, Alberta and Newfoundland and Labrador have been successful in consolidating their respective technical safety legislation. This paper proposes a legislative framework that is consistent with these other provinces. Attached as Appendix A is a sample of what a consolidated Act for technical safety in Nova Scotia might look like. This sample is for discussion purposes only and does not represent the current policy of the NSEL.

What are the benefits of having one Technical Safety Act? There are many -

- better accommodation of future changes through legislation that will not be rendered obsolete by technological change or new safety requirements
- streamlined processes (i.e. appeals, licences, advisory)
- clearer and consistent language and terminology
- clearly defined responsibilities and authority
- equal treatment of persons affected by the legislation
- consistent and consistently applied penalties
- more recognition of current and new industries and technology
- reflection of current needs and anticipation of future requirements
- a single ready reference on technical safety
- a linking of related safety issues.

Based on the above-noted benefits, we believe that a consolidated Technical Safety Act is a viable option for Nova Scotia.

What about the existing regulations? A review of existing regulations would begin with identifying provisions that belong in the Act, and vice-versa. The regulations to be in force

under a consolidated Act would also undergo review to

- address circumstances that are specific to a technical discipline
- provide for flexibility, by being able to accommodate technological changes
- reduce or eliminate administrative burden (red-tape)
- focus on outcomes rather than process, and
- establish clearly defined roles and responsibilities.

Consultation on changes to regulations will be handled through a separate consultation process, specific to each set of regulations.

Question #1

Please review the attached sample consolidated Act. How do you think a consolidated Technical Safety Act would help you? (Check any that apply)

- | | |
|---|--|
| <input type="checkbox"/> easier to read and understand | <input type="checkbox"/> clarification of roles and responsibilities |
| <input type="checkbox"/> one-stop shop for requirements | <input type="checkbox"/> other: _____ |
| <input type="checkbox"/> reduce administrative burden | _____ |

2. Results-based Legislation

There has been a growing interest among government regulators to move towards “results-based” (or “objective-based”) legislation. These types of regulations set standards or rules that specify desired outcomes, but gives industry discretion on how they meet those outcomes. As codes and standards move more towards results-based requirements, the number of ways in which any standard can be met increases dramatically. This raises the potential for new technology solutions for new and old problems, encouraging economic efficiency and innovation. Safety legislation must allow for problems to be solved in a number of different ways that maintain an equivalent level of safety. Advancing technology not even considered today could be made available to meet a specific safety need now or in the future. Our legislation needs to be able to accommodate such a possibility.

Currently, Nova Scotia’s technical safety laws are “prescriptive”, which is a traditional style of regulation currently in place in much of Canada. Prescriptive law basically tells industry what it can and cannot do. The prescriptive approach to regulation involves detailed requirements to address hazards. Despite there being advantages to the “prescriptive” style -- such as identifying known risks and prescribing controls for those risks -- there are disadvantages such as

- there is no room for developing and implementing innovative solutions to improve, promote, or ensure technical safety (less flexibility)
- provisions may become redundant and outdated, and continue with unnecessary restrictions, calling for a need for regular revisions, and

- risks which were not envisaged at the time the legislation was drafted, fail to be controlled, resulting in piecemeal and *ad hoc* amendments as issues arise and may prevent an appropriate and timely response to technical safety issues.

The disadvantages listed above are comparable to the concerns raised by stakeholders that current technical safety legislation in Nova Scotia is outdated, inflexible, and in need of change. The intention, therefore, is to develop a flexible and results-based (also known as “objectives-based”) legislative framework which provides for flexible regulations that are adaptable to technical changes and responsive to client needs. Results-based laws can get us there.

Results-based legislation requires regulators to be clearer about the actual results and goals to be achieved in regulating an entity or activity, while allowing the regulated entity to determine how to best achieve them. As well, results-based legislation holds industries accountable for the achievement of regulatory outcomes beyond following a defined set of rules.

Results-based legislation can result in -

- a flexible framework capable of adapting to risks that may not have been contemplated
- controls to be reduced if a hazard disappears (i.e. because of advanced technology)
- flexible controls which should be based on actual hazards and be appropriate to the level of risk
- proactive responses to risks, and
- a move towards national consistency through the development of outcome-focused legislation.

While there may be several advantages to the results-based approach, there are some disadvantages including:

- a hazard currently not considered a risk may have controls applied at a later date as a level of risk is identified, creating compliance costs an operator may not have foreseen, and
- may leave room for misinterpretation.⁶

As such, care must be taken in the design and implementation of results-based legislation to ensure that achievement of the results can be measured and that regulatory costs and disadvantages do not outweigh advantages and benefits.

⁶Cary Coglianese, Jennifer Nash, and Todd Olmstead, "Performance-Based Regulation: Prospects and Limitations in Health, Safety, and Environmental Regulation" (April 26, 2004). *University of California, Berkeley - Center for the Study of Law and Society Jurisprudence and Social Policy Program*.

Question #2

a. Do you agree that results-based legislation would provide more flexibility without jeopardizing safety? Yes No

b. If yes, how would results-based legislation provide more flexibility for your operation?

(Check any that apply)

- advanced technology / other technological solutions can be used
- reduced administrative burden
- enable use of equipment standards
- reduce cost to meet current code compliance
- other: _____

3. **Authority and Responsibility** (See also Section V - VIII in attached sample Act)

We all have a part to play in taking responsibility for technical safety. The intention is to develop a flexible, risk-managed, and results-based legislative framework that provides for clear responsibilities and accountability. Legislation that recognizes integral relationships, treats everyone fairly and equally, and clearly sets out roles and responsibilities of the parties, will better ensure technical safety in the future.

Legislation should empower the technical safety system and establish the roles and responsibilities of all the players:

- The **public / industry** including all persons (individuals and corporations) who are involved in particular activities, services, goods, or things which affect technical safety and which need controls to reduce risk, have responsibility to
 - ▶ **ensure** safety of life and property
 - ▶ **cooperate** with the inspectorate and
 - ▶ **comply** with legislation, codes, and standards.
- The **Department (NSEL)** has an overall responsibility for the implementation of the technical safety program and fulfils its mandate by
 - **setting** standards
 - **implementing** legislation and regulation
 - **co-ordinating** enforcement
 - **preparing** guidelines
 - **providing** information and publications
 - **monitoring** and **reporting** on the impact of regulatory activities on technical safety
 - ▶ **carrying-out** inspections or audits and to certify that legislative requirements are being met
 - ▶ **developing** policy and advice to the Minister on technical safety matters,

administration of legislation, monitoring coherence of entire policy and legislative framework.

- The **Minister** is responsible for
 - ▶ high-level priority setting and oversight;
 - ▶ reporting to the Nova Scotia government on all issues relating to improving, promoting, and ensuring technical safety.

As well, the Minister may undertake research, programs and activities to promote technical safety and may undertake such programs in co-operation with the Government of Canada or of any other province of Canada or with any person or organization undertaking similar programs.

- The **authorized persons or agencies** who undertake to promote compliance and enforcement of the legislation on behalf of the Department are responsible for
 - ▶ **monitoring** compliance
 - ▶ **conducting** inspections, risk assessment, and investigations.
- An **advisory body to the Minister** is responsible for
 - ▶ **advising** the Minister regarding the administration or reform of the Act or regulations, and
 - ▶ **promoting** and **supporting** technical safety.
- National / provincial **certification bodies** are responsible for
 - ▶ **implementing** certification and rating standards
 - ▶ **standardizing** the testing and certification of equipment
 - ▶ **providing** uniform standards to measure professional qualifications of individuals, and encouraging continuing professional development
 - ▶ **promoting** professional accountability of those who have met the standard.

The promotion of technical safety depends on the co-operation and collaboration of all parties.

Question #3

a. Considering the above summary of roles and responsibilities, do you understand your role in technical safety? Yes No

b. If no, how could your role and responsibility be better defined?

c. Are there any additional areas of responsibility that need to be defined?

4. Risk-Management Model for Certification / Authorization / Approval

Persons working in regulated areas must be qualified to safely and competently perform their work. Such qualified persons working in regulated areas may require authorization or approval to practice their work. An authorization or approval in the form of a licence, permit, registration, or recognition is important for administering technical safety legislation and can provide a powerful mechanism to compel compliance with the law. Licensing for instance allows the government to track regulated work in industry, thus enhancing technical safety. This is where co-operation between NS Education (apprenticeship and skill training) and NS Environment and Labour (safety program) is critical.

NS Education (NSE) has the mandate to train, examine and certify tradespeople to an industry standard to ensure industry has access to a skilled labour pool and that Nova Scotia benefits from a world-class workforce. Nova Scotia Environment and Labour (NSEL) has the mandate to regulate the trade practices of skilled occupations for the purpose of public, technical, employee and property safety and protection of the environment. The two Departments have a corporate responsibility to ensure those individuals operating in a skilled trade and those employers who hire skilled tradespeople meet a minimum standard.

Stakeholders have voiced concern that there is a lack of clarity over which Department is responsible for regulatory decisions over certain trades. There is a need to co-ordinate the responsibility for occupational certifications and authorizations / approvals (i.e. licensing) currently undertaken by the Departments, so as to eliminate duplication and allow for the efficient use of taxpayers dollars and resources.

Both Departments are continuing to work together to clarify their roles and responsibilities regarding trades which require certification and/or authorization / approval. The intent is to ensure the safety of the public, consumer, tradesperson and the environment as per legal responsibilities for approval of skilled trades. Clarity around the roles will ensure the government legal responsibilities for occupational authorization or approval are being met.

The two Departments have commenced a joint initiative for the clarification of roles and responsibilities of the Departments with respect to the compulsory certified trades, particularly in light of their responsibilities as government agencies regarding the safety of the tradesperson and the public, and protection of the environment. The anticipated result is that renewal of certain Certificates of Qualification (CQ), as issued by Education, will be transferred to Environment and Labour in the form of an authorization or approval (i.e. licence). This process will be rolled out under the umbrella of the Technical Safety Review through future phases of the review.

The first skilled trades to be included under the consolidated Act will be those currently certified or licenced under the Acts and regulations included in the initial phase of the consolidation. NSEL is also considering the possibility of changing Certificates of Qualification currently issued by the Public Safety Division – such as Power Engineers and

Crane Operators – into licences. As the other Acts and regulations are included under the consolidated Act, it will be determined at the appropriate phases what other skilled trades will be included under the Act.

Question #4

How will a consistent approach to licensing trades benefit you? (Check any that apply)

- | | |
|---|--|
| <input type="checkbox"/> easier to comply | <input type="checkbox"/> clarification of responsibility |
| <input type="checkbox"/> one-stop shop for requirements | <input type="checkbox"/> level the playing field |
| <input type="checkbox"/> reduce administrative burden | <input type="checkbox"/> other: _____ |

5. Compliance Promotion, Assurance, and Enforcement

Nova Scotia Environment and Labour's Compliance Framework describes the Department's overall approach and commitment to promote and achieve compliance with the legislation under its authority. The Divisions responsible to develop specific compliance and enforcement strategies, approaches, and policies must do so in a way that is consistent with the Compliance Framework.

The Compliance Framework is based on a number of core values: fairness and objectivity; integrity and honesty; respect; and performance excellence. There are a number of principles to set the standard by which NSEL delivers its compliance programs; and a range of tools available to achieve compliance depending on the issue and circumstances. The tools involve at least three groups of activities:

- *compliance promotion* to encourage voluntary compliance, through education, training, publications, partnerships, advice, and innovative technologies;
- *compliance assurance* to facilitate and manage compliance with legislation through site visits, inspections, assessments, industry self-audits, monitoring, approvals, licences, registrations, and incentives;
- *compliance enforcement* to take action to compel or require compliance with legislation through investigations, examinations, warnings, order, summary offence tickets, prosecutions, suspension or removal of approvals, corrective action, remediation, judgments, decisions on appeals, and administrative disciplinary proceedings.

In some cases compliance activities are conducted by third parties, such as under the *Building Code Act* and regulations; the *Electrical Installation and Inspection Act* and regulations; and the *Fire Safety Regulations*.

The above described Compliance Framework will continue to be applied to the compliance and enforcement component of the technical safety program.

Question #5

Fees are generally set to recover direct costs of governments services, such as licencing and inspections. Would you be willing to see fees increase if it means a direct increase in the availability and level of licencing and inspection services?

Yes No

Comments: _____

6. One Advisory Process (See also Section V of the attached sample Act)

Government values the important role of stakeholders in fulfilling its mandate. Advisory bodies are often an integral part of the administration of any mandate. Advisory body members are usually appointed by the Minister to advise the Minister in matters regarding a specific area of interest, including the administration or reform of an Act or regulations, and the promotion and support of technical safety. Currently, only the crane operators, power engineers, and fuel safety disciplines have stakeholder advisory bodies to the Minister. Each advisory body is made up of people with expertise in a technical discipline.

In some jurisdictions, the safety regulatory framework does not statutorily require safety advisory bodies. For instance, in British Columbia, the Minister has the power to establish an advisory body where necessary. As well, the British Columbia Safety Authority (the governing body for technical safety in BC) created a consultation structure that includes technology committees comprised of industry representatives. These committees assist the Authority in developing policy and making recommendations to the Minister for regulatory change.

Whether legislated or not, it is desirable to develop and maintain a single advisory structure that clearly states the advisory's role, mandate, and representation; and that will provide expert advice on safety matters to the Minister. The single advisory structure would have the ability to create sub-committees with expertise in certain technical disciplines as the need arises. There are several reasons for desiring a single advisory structure:

- eliminate duplication and allow for the efficient use of resources
- reduce difficulty in recruiting and retaining members
- arrive at a consistent process and procedure for the development of advice and recommendations to the Minister on technical safety
- decrease turn-around time to provide advice to the Minister since a single advisory body could provide advice on multiple regulated activities
- enhance synergy between the regulated technical disciplines.

A streamlined advisory process will provide consistency, efficiency, and effectiveness.

7. **One Appeal Process** (See also Section IX of the attached sample Act)

A person who is aggrieved (affected) by a decision or order issued under legislation has the right to contest the validity or appropriateness of the order by appealing to one or several levels of appeal. Currently, most technical disciplines within the technical safety program have appeal processes according to their respective legislation (steam boilers and pressure vessels, and electrical disciplines do not). For instance, in the case of crane operators, any person aggrieved by a decision of the Examination Committee, an inspector, the Chief Examiner, or any other employee of the Department may appeal to the Crane Operators Appeal Board. In the case of power engineers, any person aggrieved by a decision of an inspector, including the Inspector-Examiner, may appeal to the Power Engineers and Operators Appeal Committee.

With the creation of a consolidated Act, it is desirable to create a one-window appeal scheme. Doing so

- will eliminate duplication and allow for the efficient use of resources
- will ensure a consistent, streamlined appeal process among the technical disciplines
- may result in more expeditious decisions (at present, appeals are sometimes backlogged because there are not enough members on a board to hear an appeal)
- will result in cost-effectiveness
- may simplify dispute resolution
- may, in the case of an appeal board, improve attraction and retention of board members
- may provide for multiple levels of appeal.

An appeal scheme may involve one adjudicator who may seek expertise for decision-making; or a board of rotating members who have expertise and knowledge across the disciplines. As well, an alternative dispute resolution process may be considered. Such a process would allow for matters to be resolved before initiating an appeal.

We believe that a streamlined appeal process or alternative dispute resolution process will provide consistency, efficiency, and effectiveness.

Question #6

a. Do you agree that one, stream-lined appeal process for all the technical disciplines would be more effective than the current appeal schemes? Yes No

b. If no, why? _____

c. What changes would you like to see to the current appeal process? (Check any that apply)

- e-filing one-window access
 resolution before going to appeal less paper work (see below for more options)

□ other: _____

8. Governance

The Nova Scotia technical safety program is managed and delivered by government through the Public Safety Division of NSEL; however, the responsibility for inspection of electrical installations is delegated outside of the Department. The Chief Electrical Inspector, who is responsible for the administration of electrical safety in the Province, oversees the general direction of the inspection process which is carried out by seven electrical utilities. The utilities inspect electrical installations conducted under a wiring permit to ensure they are in compliance with the *Canada Electrical Code*.

The Public Safety Division works with the Occupational Health and Safety Division to promote safe and healthy workplaces and safe facilities and equipment by developing and enforcing safety standards and providing related educational and consulting support through the Divisions' respective programs. The Public Safety Division also enjoys partnering with provincial and federal Departments, and national boards to advance the Division's mandate.

There are significant advantages to the current governance arrangement including:

- the integrity of the technical safety program has been protected and maintained
- costs and user fees have been kept relatively low as resources are shared with other government Departments for legal, policy, financial, information technology, postal, research, communications, procurement, and human resources support
- cost-recovery practices remain fair, reasonable, consistent and transparent as possible
- there is stakeholder input and influence through advisory boards and consultations, and
- there is a strong accountability link to a Minister and government.

We are aware that other jurisdictions in Canada have taken different approaches to technical safety governance and management⁷. For instance, New Brunswick's Technical Inspection Services operates as a Special Operating Agency (SOA) within the Department of Public Safety. An SOA is another means of delivering government services. The SOA is not an independent legal entity - it remains part of the departmental organization and its employees continue as civil servants. The SOA remains accountable to the department in which it is housed, operating under a written understanding with the department. The

⁷Ontario Technical Standards and Safety (Delegated Administrative Authority - DAA) <http://www.tssa.org/>
British Columbia Safety Authority (DAA) <http://www.safetyauthority.ca/>
Alberta Safety Codes Council (DAA) <http://www.safetycodes.ab.ca/>
New Brunswick Technical Inspection Services - Special Operating Agency
http://www.gnb.ca/0276/safety/english/safcod_e.asp

SOA approach can support a cost-effective, client-centered service; while improving the management of resources, demonstrating initiative and improving results.⁸ In the provinces of Ontario and British Columbia, the delivery of technical inspection services is through not-for-profit corporations. In this model, government retains overall accountability and control of legislation, but responsibility for service delivery and regulatory administration is delegated to the corporation. The administration of the corporation is by a board of directors made up of stakeholders that oversees the organization's direction.⁹

There are costs and benefits associated with each model described above. In Nova Scotia, no specific concerns have been raised with the current governance arrangement.

Question #7

a. Should the current governance model for technical safety in Nova Scotia, as explained above, continue? (i.e. technical safety program is managed / delivered by government through the Public Safety Division; and with the responsibility for inspection of electrical installations being delegated to the electrical utilities) Yes No

b. If not, why? _____

V. Conclusion

The focus of the Technical Safety Review project is on a broader framework and how it may be streamlined to reflect technological change, improve consistency, and meet the needs of a changing economy now and in the future, while ensuring that minimum regulated safety standards are achieved. The framework will be more transparent, comprehensive, relevant, and effective in terms of guiding industry behaviour towards achieving results specified by government. The review will result in legislation that will resolve confusion relating to the interpretation and application of regulatory requirements of multiple statutes and regulations.

The intention is to develop a flexible, risk-managed, and results-based legislative framework which provides for clear responsibilities and accountability. Legislation that recognizes integral relationships, treats everyone fairly and equally, and clearly sets out roles and responsibilities of the parties, will better protect life and property in the future.

⁸Canada, Treasury Board of Canada Secretariat *Becoming a Special Operating Agency*
http://www.tbs-sct.gc.ca/Pubs_pol/oepubs/TB_B4/SOA_e.asp (1998)

⁹Ontario Government, Panel on the Role of Government: *Self-Regulation and the Protection of the Public Interest* (June 2003)

VI. Questions and Comments Form

This form is being provided for your convenience. Feel free to complete this form and send it to the contact information listed on page 3. All submissions received will be reviewed and evaluated before recommendations to the Minister for legislative change are developed.

Question #1

Please review the attached sample consolidated Act. How do you think a consolidated Technical Safety Act would help you? (Check any that apply)

- | | |
|---|--|
| <input type="checkbox"/> easier to read and understand | <input type="checkbox"/> clarification of roles and responsibilities |
| <input type="checkbox"/> one-stop shop for requirements | <input type="checkbox"/> other: _____ |
| <input type="checkbox"/> reduce administrative burden | _____ |

Question #2

a. Do you agree that results-based legislation would provide more flexibility without jeopardizing safety? Yes No

b. If yes, how would results-based legislation provide more flexibility for your operation?

(Check any that apply)

- advanced technology / other technological solutions can be used
 reduced administrative burden
 enable use of equipment standards
 reduce cost to meet current code compliance
 other: _____

Question #3

a. Considering the summary of roles and responsibilities (p.14), do you understand your role in technical safety? Yes No

b. If no, how could your role and responsibility be better defined?

c. Are there any additional areas of responsibility that need to be defined?

Question #4

How will a consistent approach to licensing trades benefit you? (Check any that apply)

- | | |
|---|--|
| <input type="checkbox"/> easier to comply | <input type="checkbox"/> clarification of responsibility |
| <input type="checkbox"/> one-stop shop for requirements | <input type="checkbox"/> level the playing field |
| <input type="checkbox"/> reduce administrative burden | <input type="checkbox"/> other: _____ |

Question #5

Fees are generally set to recover direct costs of governments services, such as licencing and inspections. Would you be willing to see fees increase if it means a direct increase in the availability and level of licencing and inspection services?

Yes No

Comments: _____

Appendix A to Discussion Paper



Technical Safety Review

**Sample Legislation for
Technical Safety in Nova Scotia**

July 2007

Sample Legislation for Technical Safety in Nova Scotia

Caveat: This paper has been prepared for consultation and discussion only, and does not represent the current policy of Nova Scotia Environment and Labour.

I. Short title, commencement, continuation of matters, repeals, and amendments

These sections of a piece of legislation provide the common name for the law (i.e. Technical Safety Act), the date the law becomes effective, continuation of matters under existing law, and the repeals and amendments of existing laws (if such exist). In some cases, it might be desirable to phase in certain provisions to give those affected by the law time to adjust to new requirements. The law generally can become effective on a certain date while providing for later effective dates for specified provisions to accomplish this.

For example:

- The Act may be cited as the *Technical Safety Act*.
- The Act would come into force by proclamation.
- Licences, permits, registrations, certificates, appointments, approvals, or orders made pursuant to former Acts, that are subsisting and in force would continue in force under the new Act.
- Rights of appeal that existed pursuant to former Acts would continue under the new Act. Appeals begun under former Acts would be dealt with according to the former Acts.
- The Acts to be consolidated by this statute would be repealed upon proclamation of the provision repealing each one.
- Where licencing of certain trades is covered under this Act, other Acts related to those trades may be referenced here.

II. Preamble and Purpose

The Preamble, while not always a necessary component of legislation, lays out the government's objectives or principles for the legislation and can establish the framework for interpreting its provisions. Alternatively, the Preamble can be omitted and replaced with a simple statement of purpose.

For example:

- The purpose of this Act is to improve, promote, and protect technical safety by providing for the efficient and flexible administration of technical standards with respect to matters under this Act.
- Principles or objectives of a Technical Safety Act may include:
 - ▶ to advance public good
 - ▶ to protect the safety of Nova Scotians

- ▶ to reduce of injury and death due to avoidable harm
- ▶ to invest appropriately in the future well-being of the population
- ▶ to maintain a strong economy
- ▶ to determine rights, responsibilities, rules, and procedures that are fair to all.

III. Application

The Application provision describes the jurisdiction of the Act.

For example:

- Scope of Act applies to the Provincial Government.
- Initially, the new Act would encompass steam boilers, pressure vessels, crane operators, power engineers / operators, and fuel safety. It would complement the other technical safety statutes administered by the Public Safety Division - elevators and lifts, amusement rides and devices, and electrical installations - and provide a framework that is sufficiently flexible to enable future amendments to encompass such laws.
- May also apply generally to “persons doing regulated work”; or to “all of the disciplines relating to regulated work or products”.
- The Act may allow the G-in-C (by regulation) to exempt any person, municipality, thing, process or activity.

IV. Interpretation

The interpretation - or definitions - Section is a critical component of legislation. Key terms used in the legislation are defined to ensure there is no ambiguity or need for subjective interpretation.

For example:

- Terms defined may include but not be limited to “competency”, “licence”, “permit”, “owner”, and “contractor”, “inspector”, “municipality”, “regulated work”, “variance”, “incident” and “accident”.

V. Advisory Body to the Minister

Government values the important role of stakeholders in fulfilling its mandate. Advisory bodies are often an integral part of the administration of any mandate. Advisory body members are usually appointed by the Minister to advise the Minister in matters regarding a specific area of interest.

For example:

- The Minister would appoint an advisory council to advise the Minister regarding the administration or reform of the Act or regulations, and the promotion and support of technical safety.
- Provisions would address the entity's composition, advice-making power, and functions.
- Sub-committees of the entity could be created.

VI. Administration and Appointments

This Section grants the authority for administering the Act, and includes provision for the personnel necessary for the administration and enforcement of the Act.

For example:

- The Minister is responsible for the supervision and management of the Act and regulations.
- Provisions would indicate the personnel necessary for the administration and enforcement of the Act and regulations (for example, Executive Director, chief inspectors, inspectors, and those with delegated authority / appointed outside of the Public Safety Division); and set out the responsibilities of such personnel.
- The Minister may designate certain personnel for the fulfillment of a specific mandate.
- The Minister may appoint officers, to administer and enforce the Act and the regulations, who are employees of federal, provincial, or municipal government or agency.
- The minister may enter into an administrative agreement or contract with a municipality, province or government to administer provisions of the Act and regulations.
- Those personnel who are designated may have the power to designate deputies or inspectors.
- Other powers may be given to a local government or authority for certain matters.

VII. Powers of Personnel

These Sections grant supervisory, administrative, and enforcement power in respect of the Act and regulations, such as inspections, right of entry, investigation, warrant for entry, order writing. Inspection and investigation powers enable the government to determine if violations of the Act or regulations have occurred. It also is important to collect evidence that supports charges of non-compliance that will follow from an inspection or investigation that reveals any violation(s). Evidence will need to be collected, handled, and preserved in such a way that is reliable and that documents the chain of custody.

For example:

- An Executive Director or chief inspector may have general supervisory and administrative responsibility with respect of all or any part of the Act or regulations; and may delegate any of his/her powers or duties to any person.
- Inspectors may be appointed as peace officers.
- Auditing Powers
 - ▶ Ability to order the retention of records, and allow inspector access to records, and require filing of reports.
- *Orders:*
 - ▶ To prevent, avoid, or reduce risk of personal injury or damage to property, an Executive Director or chief inspector may issue a safety order, verbally or in writing, to any person or class or persons, requiring compliance with the Act or regulations.
 - ▶ An order may require that something be shut down, be used in a certain way or not be used at all, removed, demolished, repaired, altered, maintained, inspected, or an activity be discontinued.
 - ▶ An order may close land or premises if necessary for immediate protection of persons.
 - ▶ An order must identify reasons for order, explain the action required, and due date for compliance.
 - ▶ An Executive Director or chief inspector may suspend an authorization or registration of a person who fails to comply with an order.
- *Seal equipment*
 - ▶ An inspector may isolate things (such as plant equipment) that is operating in a manner that is hazardous to any person or equipment, by means of seals or otherwise.
- *Right of entry*
 - ▶ For the purposes of assessing technical safety, or ensuring compliance with the Act, an Executive Director or chief inspector may without warrant, at any reasonable time, enter upon and inspect land or premises and
 - be required to provide identity and reason for entry
 - enter with any person, equipment, or material necessary for the purpose for entry.
 - close the land or premises during the inspection
 - examine documents or things; use data storage, information processing or data retrieval; collect and remove data or samples; take photographs or make videotapes; require that machinery or devices be operated under specified conditions, make any reasonable inquiry of someone
 - require the production of something, and if removed from the premises, make it available to the person from whom it was removed, and return it to the person within a reasonable time.
- *Order for entry*
 - ▶ An inspector may apply for a Justice of the Peace or court order to enter a premises.
 - ▶ An inspector acting under authority of an order may seek police assistance,

- and use necessary force to make the entry.
- *Variance / Alternative Compliance Method*
 - ▶ A variance may be issued to a person, varying the application of the Act or regulations to regulated thing, process or activity, if the variance provides the same or greater level of safety.
 - ▶ Spell out criteria for a variance.
 - ▶ Flexibility will be built in for a Chief Inspector to determine minor variances.
 - ▶ A variance may be subject to terms, conditions, and time frame.
 - ▶ Compliance with a variance would constitute compliance with the regulations.
 - ▶ Third party decision-making for alternative compliance methods requests where an alternative approach to regulated work or use of a regulated product is substituted for a requirement in the Act, regulations, code or standard.

VIII Responsibilities

These Sections of an Act outline the responsibilities of those to whom the Act applies.

For example:

- An person must
 - ▶ co-operate with inspectors and provide to them any equipment, documentation, or assistance upon request, and not obstruct an inspector
 - ▶ operate a system or device in a safe manner, and must not operate if they have reasonable cause to believe that it is unsafe or does not meet standards
 - ▶ not do work outside the scope of an authorization and must maintain current knowledge of the Act, regulations, orders, and other relevant material
 - ▶ not make a false or misleading statement
 - ▶ not interfere with anything removed by the inspector
 - ▶ not disturb the scene of an accident.
- An owner / operator must
 - ▶ take all necessary precautions to ensure the safety of people and property
 - ▶ provide written notice to Public Safety Division where an accident or incident has occurred involving a system or device
 - ▶ notify the chief inspector of defects in equipment of a system or device
 - ▶ notify the chief inspector before and immediately after installation of system or device and await authorization to operate
 - ▶ ensure the safety of an inspector during an inspection, and make available any necessary safety equipment
 - ▶ disclose a regulated product, work, or activity that creates a risk of personal injury or damage to property
 - ▶ not do work outside the scope of an authorization and must maintain current knowledge of the Act, regulations, orders, and other relevant material

- ▶ take all reasonable precautions to ensure they and their employees / agents comply with the legislation.

IX. Appeals

This Section allows a person who is aggrieved (affected) by an order issued under the Act, to contest the validity or appropriateness of the order by appealing to one or several levels of appeal.

For example:

- Set out criteria for what is appealable.
- Set out a streamlined appeal process for all the technical disciplines.
- An appeal scheme may involve one adjudicator who may seek expertise for decision-making; or a board of rotating members who have expertise and knowledge across the disciplines.
- An alternative dispute resolution process may include a review officer arrangement before entering the appeal process.

X. Approval to Practice and Registrations

An approval to practice could take the form of a licence, permit, registration, or recognition of an approved level of certification or training. Licensing is important for administering the Act and can provide a powerful mechanism to compel compliance with the law. Licensing allows the government to track regulated work in industry, thus enhancing technical safety. Licensing fees may be set out and used to cover costs associated with administering the Act and fund technical safety promotion and research.

For example:

- No person can sell, construct, install, control, operate, or supervise a system / device, or activity / process without an authorization or registration.
- An Executive Director, or a person delegated by the Executive Director, or a delegated authority has the power to assess eligibility, and to grant / accept, refuse, suspend, or revoke an approval to practice or registration.
- Approvals may be granted for up to a 3 year term but would be subject to suspension or revocation for just cause.
- Decisions to refuse issuance of approval to practice, or registration, may be appealed.
- *Licences*

Note: NSEL currently certifies persons who are power engineers, crane operators, and high pressure welders. The "certification" may become a "licence".

- ▶ A person (owner / operator) must not manage or direct individuals doing regulated work or do regulated work for another licensed person unless they

- ▶ are licenced pursuant to the Act.
- ▶ Upon proof of qualification (i.e. Certificate of Qualification), and payment of required fee, and other requirements for a licence, a licence may be issued.
- ▶ A licence may specify regulated work and be subject to terms / conditions.
- ▶ A person's qualifications may be examined to determine scope of licence.
- ▶ Written notice of refusal to issue a licence must be issued if a person does not meet requirements.
- ▶ A licenced person must not do work outside the scope of the licence, and must maintain current knowledge of the Act, regulations, orders, and other relevant material.
- ▶ Individuals working for a licenced person must maintain similar current knowledge.
- ▶ Licences may be renewed.
- ▶ A registry of current and former licencees may be established.
- *Permits*
 - ▶ If required by the Act, a person must obtain a permission to undertake regulated work or use a regulated product.
 - ▶ A permit may be subject to terms and conditions provided for under the regulations, or by the inspectors.
 - ▶ Permit holder must comply with the terms and conditions of the permit.
 - ▶ An application for a permit may be refused or issued with terms and conditions that are not agreed to by participant.
 - ▶ A permit may be renewed.
- *Registration*
 - ▶ Registration of equipment or device (i.e. pressure vessel) may be required, the particulars of which set out in regulation.
- *Recognition of an approved level of certification or training*
 - ▶ Individuals apply to for recognition of an approved level of certification or training to perform work.
 - ▶ Executive Director or delegate must examine applicant's qualifications and determine whether to accept or reject the application.
 - ▶ Executive Director or delegate must give applicant written notice of decision.

XI. Offences and penalties

This part deals both with the penalties that may be imposed for a violation or failure to comply with the Act and regulations, as well as with the legal mechanism for imposing penalties. It may also include a limitation period for prosecution of an offence.

For example:

- Every person who contravenes the Act or regulations, or creates an unsafe condition, or knowingly makes a false statement, or condones prohibited activities, or participates in the commission of an offence, is guilty of an offence and liable on

summary conviction.

- Penalty may include a monetary fine or a term of imprisonment, or both.
- Increased penalty for corporations that are guilty of offending the Act or regulations.
- Creative sentencing provisions would allow the court to impose an order directing the offender to advertise a technical safety message; perform community service; or providing training / education sessions in the area of technical safety.
- Administrative monetary penalties may be introduced.
- Increased penalty for catastrophic event.
- Court may require compliance with an order; and failure to comply is an offence.
- Court may impose a fine for each day that the offence continues.
- Application can be made to the Supreme Court of NS for an order to preclude a person from carrying out an activity that is contrary to the Act, regulations, or an order; and failure to comply with such an order is contempt of court.

XII. Regulation-making power

Regulations give detail and substance (i.e. technical requirements) to what is prescribed by an Act. Regulations are made by the Governor-in-Council (Cabinet), subject to the regulation making power granted in the Act.

For example:

- The Governor-in-Council may make regulations
 - prohibiting, allowing, establishing, governing, providing, defining, or requiring an act or thing, including the payment of fees (or cost recovery) for the promotion or protection of technical safety
 - pertaining to the use, installation, sale, procedure, or distribution of any activity, process or thing within the scope of the Act
 - pertaining to the qualifications of any person, and approvals of skilled trades.
- Regulations under repealed Acts would become regulations of the new Act.
- Limited by-law making powers for municipalities, agencies, or appeal body.

XIII. Code Adoption

Regulations can also be made through the adoption of codes and standards.

For example:

- The Minister may make regulations by adopting by reference any code, standard, guideline or procedure, and require compliance with the thing adopted.
- The Minister may modify the thing adopted.