

Title

Prevention – A Universal Responsibility

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Abstract:

Effective leadership reflects the organisations values and beliefs in a way that faces up to and deals with internal and external pressures. Organisations that are good at managing OSH create an authoritative, multi-directional, leadership structure to maximise the contribution of competent individuals and groups in the delivery of successful prevention and loss control programs.

“Prevention” derives from both the common law and statutory duties of care that, in the specific relationships we establish, we are obligated to act in a manner that will not cause harm to others, whether by design or through negligence. The courts and the legislature have defined and interpreted what those duties and concomitant responsibilities are. This paper makes the case that the simple commandment, “thou shalt not harm...” imposes specific responsibilities on everyone involved in work relationships where others are affected by their actions.

In particular it will be argued that “Prevention” is a universal responsibility to be competently exercised by different partners in the stakeholder framework; statutory, company, contractor and supplier. With reference to the Operational Analysis and Control methodology this paper will further demonstrate that this universal responsibility can be exercised effectively within the matrix of authority extant in any given company, contingent upon authority being addressed as an essential constituent of responsibility.

Finally the authors will present the evidence of how the application of a dynamic approach to operational analysis and control involving client-supplier relationships has engendered effective leadership and management resulting in enhanced prevention strategies.

Background

The principle that prevention is a universal responsibility is predicated on the concept that competent organisations with the appropriate resources and authority have the technological and intellectual capability to deliver a safe and healthful product or service. Why then do an estimated 2 million men and women die annually as a result of occupational accidents and work-related disease. Across the globe, there are some 270 million occupational accidents and 160 million work related diseases each year. The International Labour Organisation (2005) contends that it has never accepted the notion that injury and disease “go with the job”, arguing that prevention works, citing;

“In the course of the 20th Century, industrialised countries saw a clear decrease in serious injuries, not least because of real advances in making the workplace safety and healthier. The challenge is to extend the benefits of this experience to the whole working world”.

Facts on Safe Work, ILO 2004¹

Acknowledging that prevention works is not proof that it is a universal responsibility, therefore it necessary to examine the relevant key industrial drivers more closely. McAleenan and McAleenan (2002)² argue, “that effective operational management necessarily requires the core participants in the production process; worker, contractor, client and legislature to adopt a perspective that acknowledges and acts upon the duties and obligations each owes to the others. These obligations extend to the participant’s need to be fully cognisant of the operation and competent in the exercise of their particular role”. In essence the competent execution of a project or work activity relies upon the team having collective and individual competence that incorporates resources and authority, consistent with the nature and scope of the activity. The measure of the true and correct inputs to the project relies

¹ See also Report iv, Promotional framework for occupational safety and health, ILO 93rd session, 2005.

² McAleenan & McAleenan, “A Different Approach – Operational Analysis and Control”, NSC 2002

upon full knowledge of and acceptance that in its execution the organisation or any of its agents will not cause harm to anyone who come into to contact with the product or service. In other words the organisation owes a duty of care to ensure that they are proactive in the prevention of harm.

Operational analysis and control advocates that a work operation or activity must be safe before it starts, offering a mechanism for employers and employees to ensure that they consistently achieve their 'duty of care' obligations. In a critique of the operational analysis and control approach one responder to the NSC 2002 paper replied;

“Safety doesn't require "duties and obligations". It just requires that where there's a hole in the floor, you don't step in it. "Roles and responsibilities" are written into ES&H Manuals to protect management from plaintiff's attorneys, not to protect anybody from hazards in the workplace... Why would you think anybody is "obligated" to be either cognizant or competent?”

Notwithstanding the world-weary cynicism that is evident in this response there are two issues that arise namely;

- The historical duty of care that is owed to our neighbours, and that,
- That duty requires everyone to act in a competent manner in business and in their working relationships.

Duty of Care Examined

Duty of care derives from the common law obligation to act towards another in a manner that is reasonable in all circumstances, so as to avoid injury to him or his property. It requires that there is a sufficiently proximate relationship between the parties such that obligates them to behave towards each other in way that will not lead to loss or injury either through a reckless act, an

unintentionally careless act or an omission³. There is a long established history of the courts upholding the duty of care principle⁴ and in the modern world the duty is often incorporated into contracts and statutes, which define the nature of the relationship between parties, e.g. employers/ employees, client/ contractor, the specifics of any duty owed by one to the other and the remedies that may be sought for breaching the duty. Nevertheless, the general duty of care, as outlined, continues to exist through the nature of the relationship between the parties, regardless of any contractual obligations.

In this regard it may be argued that statute law, from the primary legislation through its supporting regulations and codes of practice add substance to (make specific) the fundamental duties and rights necessary for the proper functioning of social relationships. Statute law and the courts interpretations, although often the final arbiter, do not present the final word. The qualification of Duty of Care by the legislatures of many States is indicative of the universality of the principle.

For those countries that are party to the intergovernmental OECD the development of and adherence to the corporate governance principles will ensure that the interests and rights of stakeholders are taken into account and respected by the Boards of corporate bodies⁵. The principle is further made manifest through the UN wherein the International Labour Office promotes social justice and internationally recognised human and labour rights in a tripartite structure that involves employers, employees and governments through the development of standards and conventions applicable to the world of work. With 178 member countries⁶, there is little doubt as to the universality of the principle and the advent of Decent Work Agenda⁷ (2002),

³ In the UK the authority for duty of care is the leading Scottish case of *Donoghue v Stevenson 1932 SC (HL) 31*

⁴ "Duty" was first put forward as a unifying concept in the law of tort in Buller's *Nisi Prius* published in 1768.

⁵ Organisation for Economic Co-operation and Development, *Principles of Corporate Governance*. The Principles were endorsed by Ministers at the OECD Council meeting at Ministerial level on 26-27 May 1999, last revised 2004. The OECD has 30 member countries including, Ireland, UK, USA, Japan, Korea, Canada, Australia, NZ, Mexico and 20 other European countries.

⁶ The level of participation from the member countries will determine the success of the prevention principle

⁷ Decent Work – Safe Work, Introductory report to XVI World Congress on Safety & Health at Work, 2002

which advocates the necessity for safe work guarantees that the prevention is an international (if not yet a universal) responsibility.

Remember an understanding or awareness of the universality of the principle of duty of care does not automatically translate into knowledge of how we are obliged to act. The issue often only arises when there has been a failure of that duty and individuals or organisations are faced with defending their actions.

Concept of Reasonableness

Where duties are made manifest in statute and contract, the issues are very clear; “what we must do is often prescribed by these statutes and therefore the test of failure, is simplified in proceedings”. Did I fail to do something that was specifically prescribed? If yes, then I have breached a statutory duty, if no, then I have not”. Furthermore was the act or omission such that it would constitute a gross breach of duty⁸?

However in the generality of the principle above and beyond specific statutes, the issue appears much less clear. The duty of care principle does not prescribe or prohibit any specific actions or behaviours, but requires that we exercise reasonable care in our relationships with others so as not to negligently bring about any foreseeable harm or injury.

It has been argued that this is all too encompassing to have any sensible meaning in the real world or that as an historical accident the duty of care principle is superfluous as cases may well be decided on other grounds that do not depend upon a duty at all⁹. The argument goes that statute law has been developed and has quantified what the principle means, which

⁸ In the UK's proposed corporate manslaughter legislation (2005) 'Gross breach' would occur when the failure falls far below what can be reasonably expected and the test for that would include; senior managers knew (or should have known) that they were failing, to comply with legislation and guidance, senior managers were aware (or ought to have been) of the risk of death or serious harm posed by the failure to comply, senior managers sought to cause the organisation to profit from the failure.

⁹ Percy Winfield, The History of Negligence in the Law of Torts (1926)

effectively limits the duty to practical considerations. Yet the principle is neither embedded in some insubstantial realm of academic intellectualism nor is it one that leads to impracticable or unworkable situations. The courts have had a long time to assess and pronounce on the different elements of the principle and have come up with clear interpretations that ensure that the principle is not only workable, but is in many ways stronger than the statutory interpretations that have been developed to make it manifest.

- Negligence is the failure to take reasonable care to avoid acts or omissions that you can reasonably foresee would be likely to injure your neighbour.
- Foreseeability is the faculty to contemplate the consequences of an act or omission that results from a reasonable standard of competence on the part of the actor¹⁰.
- Reasonable in the circumstances of the particular case is that which is required from an average and prudent person who is guided by considerations that ordinarily regulate the conduct of human affairs¹¹.

When we apply this to the world of work where does that take us?

With respect to risk assessment (a prevention strategy tool), practised in many countries, the concept of “reasonable foreseeability” has been well established since the 1970s, when many of the principal occupational safety and health (OSH) Acts came into force.¹² However, an important yet little publicised court decision by the Irish Supreme Court in 1977 introduced an

¹⁰ *Donoghue v Stevenson* 1932 SC (HL) 31, *Blyth v. Birmingham Waterworks Co* (1856) LR 11 Ex. at p.784, *Hall v. Brooklands Autoracing Club* (1933) 1 KB at. P.224

¹¹ per. Alderson B., *Blyth v Birmingham Waterworks Co.* (1856) LR 11 Ex. at p. 784

¹² **USA**, Occupational Safety and Health Act of 1970. **UK**, Health and Safety at Work etc Act 1974. **Canada**, Canada Labour Code Part II. **Australia**, National Occupational Health and Safety Commission Act 1985. **South Africa**, Occupational Health and Safety Act (OHSA), 1993. **India**, The Dock Workers (Safety, Health and Welfare) Bill, 1985.

enlightened understanding of what duty of care means when applied to the work situation, thus further strengthening the case for a universal principle of prevention. In the case of *Dalton v Frendo*¹³, it was held that having due regard to the age, skill and experience of a worker, he or she will know the hazards associated with their work and be able to apply the controls necessary to prevent harm. In other words, competence entails the ability to carry out work in a safe manner.

Concept of Competence

Regulations in many different States carry specific definitions of competence in respect of particular occupations or work operations to which the State regulations apply. These are often couched in terms of the training required by the operation and sometimes in terms of the amount of experience as well. The debate about what is competence and how it can be defined is wide ranging and judging by the various OSH discussion forums on the internet it continues to be an ongoing one. Frequently the debate centres on what particular qualifications are relevant and how much of a particular experience operators and their managers¹⁴ require. Strangely, OSH training is often couched in such a way that it is an add-on (albeit essential) to core training or education, rather than an integral aspect of the core training. Whereas in reality OSH is an integral element in job competencies and therefore the OSH training and education should be integrated into competence based programs for each particular job. This point was presented to the consultation on a UK qualification strategy for OSH¹⁵.

There can be no doubt that individual competence is essential when deciding who to employ or engage (workers, managers or directors). What Dalton did

¹³ See *Dalton v Frendo* (1977), Irish Supreme Court

¹⁴ The term manager is used to refer to anyone in the management chain from Board members through to first line management/ supervisors.

¹⁵ McAleenan, C (2005), acting as corresponding member of the Institution of Civil Engineers Health and Safety Board, presented a paper to the Employment National Training Organisation, who are developing a UK qualification strategy for OSH.

was negate the dichotomy between core training for the job and safety ensuring that decisions on competence, of necessity, mean safe to function. In applying the Irish Supreme Court judgement it is possible to come up with a definition of competence that should effectively lay to rest the debate on what it means. The definition focuses on what is fundamentally required of a competent person rather than on the type of qualification or number of years experience that are in essence elements by which competence may be measured.

A more appropriate definition of competence would be “*the consistent skilful application of skills and knowledge to any specified work operation (at whatever level that may be within the company)*”, where the use of the term skilful implies conducting the operation to the highest standards within the field¹⁶. Here there is no dichotomy between the skills required to do a job and occupational safety and health.

Compliance in the Matrix of Authority

Within the competency definition there is an inference that the competent person has the resources necessary to act and the authority to decide appropriate actions. Without either the resources or the relevant powers of authority competence is negated and consequently the person is in the position where a breach of his duty of care becomes a distinct possibility.

McAleenan & McAleenan (2000)¹⁷ noted nine factors that contribute significantly to accidents and compliance failures;

1. Deliberate violations
2. Contracting out hazardous work with the intention of keeping the company's recordable injury record down.

¹⁶ McAleenan & McAleenan, Safety in Design – A Risk Assessment Approach, NSC, 2004

¹⁷ McAleenan & McAleenan, Confined Spaces Certification and Licensing Program, ASSE 2000

3. Lack of competence of workforce (includes authority and resources)
4. Inadequate training and supervision.
5. Enforcement or standards shadowing.
6. Variation in standards across states.
7. Cost of training.
8. Quality failures.
9. Unauthorised activities¹⁸.

A close study of the various causes show that it is not simply those that specifically highlight lack of competence or training, which illustrate poor prevention strategies, but even matters such as deliberate violations or work being inappropriately contracted-out are, in the final analysis, examples of failures to act with competence. Competence, as a concomitant to the duty of care, is a universal responsibility that must be exercised by all parties within the stakeholder framework, from the Board via the management team to production operatives, and between Government, private companies, contractors and suppliers¹⁹. Indeed in the draft Corporate Manslaughter Bill²⁰ presented in the UK Parliament, March 2005, Home Office Minister, Charles Clarke proposed that;

“A “relevant duty of care” in relation to an organisation, means a duty owed under the law of negligence by the organisation –

- (a) to its employees as such,*
- (b) in its capacity as occupier of land, or*
- (c) in connection with –*
 - i. the supply by the organisation of goods or services (whether for consideration or not), or*
 - ii. the carrying on by the organisation of any other activity on a commercial basis, ...”*

The proper exercise of responsibility requires that all within the matrix of work not only hold the competences appropriate to their own post but give respect

¹⁸ Tyson, Patrick R. *A Different Era*, Safety & Health, November 1999. Atkinson, William, *Risky Business*, Safety & Health, August 1999

¹⁹ OECD Principles of Corporate Governance, 2004

²⁰ http://www.homeoffice.gov.uk/docs4/con_corp_mans.html

and due consideration to the competences and requirements of others within the matrix. This idea is inherent in the concepts developed by the International Labour Conference;

“A national preventative safety and health culture is one which the right to a safe and healthy working environment is respected at all levels, where governments, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority”.²¹

In practice this means that everyone comes to his or her respective position or job competent to function in that role. Those with management and directorial responsibilities ensure that the people they manage are provided with adequate resources to carry out their jobs and have been given the authority to make all the decisions necessary to achieve a successful outcome. In general there is common agreement that the provision of sufficient resources is necessary for work processes to be carried out competently, whether those resources are human, material or financial. Statutory regulations and attendant codes of practice when addressing responsibilities regularly include a resources requirement, although what is frequently overlooked is that authority is a necessary adjunct to responsibility. How often has an individual been held responsible for a task or function where they have not been given the relevant authority to make the correct decisions necessary for success? That individual is usually the person subsequently held responsible or accountable when something does go wrong. Consequently responsibility is equated with blame, and blame has the habit of filtering down through the management hierarchy, rather than upwards.

Where each participant in a work situation is armed with the three elements, (authority, resources and competence) then the requirements for a preventative safety culture is met.

²¹ ILO, Promotional framework for Occupations Safety & Health, para. 26.

Necessary Function in Organisational Structure

The belief that this [OSH] business is everybody's business is steadily gaining recognition as a core value, among enlightened organisations but that does not happen automatically. It takes a conscious act to make it a reality and vigilance, commitment and competence to sustain the belief.

For the concept of prevention as a universal responsibility to become successfully embedded in the organisations' values and effective within their operational methodology, an acceptable perspective on the roles of the various players in the organisational framework is required. Regardless of the socio-political environment in which an organisation exists it is fundamentally a holistic entity, whether it is a corporation wholly owned and controlled by a single individual or a co-operative owned and controlled by the all participants in the organisation. The effectiveness of an organisation is predicated upon each participant within the framework performing up to and within the parameters of their position and being influential in such directions as is necessary for the effective working of others. An effective organisation²² is comprised of a range of roles or positions that are necessary for and whose function it is to achieve the successful outcome of the aims, objectives and targets of the organisation. Each role has a clearly defined and necessary function that is occupied by personnel who are competent, resourced and in possession of the appropriate level of authority to control their particular task.

Roles that exists above and beyond the functions needed to successfully execute the organisation's business are superfluous and create a draining effect on the vitality of core functions by abstracting from them authority, responsibility and resources. For example, if a financial manger exercises control over resources that should necessarily be controlled by operational

²² McAleenan & McAleenan, "A Different Approach – Operational Analysis and Control", NSC 2002

managers, or a safety officer strays into the role of trying to manage the safety aspects of an operation the consequential outcome is to neuter the effectiveness and compromise the competence of operational staff. In the process you negate the practice of universal responsibility thus mitigating against prevention as a universal responsibility within each necessary function.

Companies using the OAC management model examine the requirements necessary for successful and therefore safe outcomes and ensure that the resources; human, material and financial, are in place to control their operations. The OAC approach is expandable from simple everyday tasks to the comprehensive task of governing the organisation. Its effectiveness requires that each functional role has a sphere of control and a sphere of influence. Individuals operating within the necessary functions must have the competence to manage within their sphere of control interacting with neighbouring functions to the extent necessary to co-ordinate their activities and communicate essential information, within each contributor's sphere of influence. Overlaps within the sphere of influence exist to the extent that they support smooth operations. Greater overlaps lead to an unnecessary duplication of role and a subsequent reduction in organisational effectiveness.

Conclusion

It is the goal of the International Labour Organisation to have Prevention as a core concept accepted and implemented throughout the world of work. Equally there is a fundamental obligation that we all owe our neighbour a duty of care and this requires that we conduct ourselves in a manner that prevents harm and injury to him. Prevention should not be viewed merely as a policy goal, rather it needs to be recognised as a universal responsibility exercised by businesses globally and by all in the local workplace. When the circle of competence for each participant in the work environment is complete, that is individuals possessing the pre-determined skills have access to all of the

necessary resources and have the authority to act within their sphere of control then the requirements for a preventative safety culture are met. Anything less is an abdication of responsibility. Organisations exercising corporate and individual responsibility work to ensure prevention is a universal responsibility and the success of their strategies will guarantee that the fall in the number of accidents at work continues.

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OAC as a Prevention Strategy - Case Study

In 1997 the operational analysis and control methodology was first introduced to Roads Service, a government agency in N. Ireland with circa 2,000 employees. At the time the Agency had six Safety Advisory Officers and a Senior Safety Advisor. A widely held feeling at that time was that they were the 'safety guys', the inference being that they were responsible for ensuring safe and healthy working conditions. The changing emphasis, post 1997, was an acknowledgement that all its employees, from members of the Board to operatives out on the ground had responsibility to ensure safe and healthy working conditions, within their sphere of control and influence²³.

The simple, although not simplistic, approach of OAC was designed to make this transition as smooth as possible. Safety advisors were reduced in numbers and assumed a more appropriate role of providing technical assistance when requested by management and staff. Two key requirements were central to the success of this approach;

1. The Board defined their priorities as, the OSH, free movement of the travelling public and Value for Money,
2. Competence was a principal requirement for employees and contractors, (noting that competence extends to having adequate resources, responsibility to achieve and the authority to act within their sphere of control).

The effectiveness of this approach is managed through controls assurance, senior management interventions, and a robust procurement process. In order to ensure consistency the control measures are defined and provided through operational safety control sheets, linked to method statements. The key message across the organisation is that competence is an absolute and that there is a duty of care and a duty to act upon every employee from the Boardroom down.

Since the introduction of OAC to Roads Service the reportable (recordable) accident levels have fallen by 50% from a high of 68 in 1998 to 34 for 2001. The rolling three-year average has fallen from 59.07 in 1998 to 38 in 2003. The prediction from preliminary figures for the 2004 calendar year is that the level will fall below the Chief Executive's target of 32. With each target met the Board set new and more challenging reportable accident reduction targets.

²³ McAleenan & Orr, "Safety – Turning the Event into a Process", 1999