

# **Duty of Care and Risk Communication**

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PDPS 276 OS-TRI-1 CHIN OF

**ASSIGNMENT 2**

Planning for Civil Care and Security

submitted to

The University of New England

And

The Chinese University of Hong Kong

for the degree of

Bachelor of Professional Studies

in

Civil Care and Security

**PREPARED**

2006-04-04

Faculty of Education, Health and Professional Studies, UNE

## Topic: Duty of Care and Risk Communication

### Background

There was a case stated that the Incorporated Owners of Sun Hing Mansion assigned an electrician to check a leaking water pipe, which was collapsed causing him to fall and paralyzed from neck down, when he climbed onto the scaffolding. Finally, this electrician sued the Sun Hing IO for damages. The judge said the Incorporated Owners of Sun Hing Mansion, as occupier, liable for the electrician's injuries, and awarded him \$25 million damages. (MingPao News, 1997-10-31,

<http://www.mingpao.com>)

The above cases illustrate the significance of occupiers' liability to our daily life. Therefore, government set of rules, enforceable by the courts regulating the relationship between the state and its subjects, and conduct of subjects towards one another. (HarperCollins Publishers, 1993, Law - Collins English Dictionary & Thesaurus)

There are totally five points of view to talk in this assignment. The first topic introduced is "what duty of care is and what risk communication is?" The second topic discussed is "what are the duty of care responsibilities of Government and Employer?" The third issue concerned is "risk communication benefits" The fourth

issue is “the relationship between risk communication and risk management” and the last issue is “how does it add value to both the planning process and the planning outcomes?”

## **Introduction**

Did you hear construction workers are at a higher risk than most workers of sustaining a manual handling injury?

“Manual handling injuries are the largest single cause of injury resulting in construction workers having to take time off work.

As well as costing millions of dollars per annum these injuries result in pain and suffering to the injured worker and their families and a loss of experience, skills and productivity to the industry.” ([www.safetyline.wa.gov.au/pagebin/solnmanh0075.htm](http://www.safetyline.wa.gov.au/pagebin/solnmanh0075.htm))

Consequently, I myself have been looking for different materials and magazines to enhance my safety knowledge. I had attended a course, which highly exaggerated that holding a green card would give you a full safety concept. It is well-known fact that most construction workers also at least have a green card, which it is a fundamental requirement for construction worker

## **Definition of duty of care**

Firstly, let’s start with a definition of what duty of care is: Duty of care of Common law stated that employers have a single overriding managerial responsibility

to safeguard employees from unreasonable risks in regard to the fundamental conditions of employment. (Note of Students Legal Studies Yr.1 Volume 2, Ian R. Dobinson, University of Hong Kong, 1998, P.13)

Different duties and liabilities apply to different people, such as parents have a duty to care for their children, landlords have a duty to keep a residence habitable for their tenants, each duty is applicable to the pertinent responsibility at hand, professionals are held to a higher standard of care than the average person in society. These people take oaths in their professions and need to maintain that level of duty when they perform their professional activities, etc. (Note of Students Legal Studies Yr.1 Volume 2, Ian R. Dobinson, University of Hong Kong, 1998, P.13)

The duty element is the legal basic requirement that the person being sued for negligence must adhere to a standard of conduct in protecting others from unreasonable risk of harm. The duty element may be considered a formalization of the implicit responsibilities held by an individual towards another individual within society. (Note of Students Legal Studies Yr.1 Volume 2, Ian R. Dobinson, University of Hong Kong, 1998, P.13)

There is a rule said that “you are to love your neighbor becomes in law, you must not injure your neighbor.” That main we ought to take reasonable care to avoid acts or omissions, which you can, reasonably foresee would be likely to injure your

neighbors who are closely and directly affected by your act. (Note of Students Legal Studies

Yr.1 Volume 2, Ian R. Dobinson, University of Hong Kong, 1998, P.13)

“Successful risk communication is not about giving out information or about making stakeholders understand. Today, successful risk communication can result only when the quality of debate among government, the public and all stakeholders is ought to know.” said Rachel Thamm, Lecturer of University of New England.

“Risk Communication identifies the need for a two-way, rather than a one way, flow of information. Effective civil care and security management depends on the public’s understanding of the risks and the risk management options. (If the public’s understand or don’t agree, then they just will not act!) It is about enabling the best service provision based on the needs of the client – finding out those needs through useful and mature two-way dialog.” (John Salter, 2006, Unit Note-PDPS 276 Planning for Civil Care & Security, UNE, P. 36)

## **Definition of Risk Communication**

On Internet defined that “Risk communication is an interactive process of exchange of information and opinion among individuals and groups, and institutions. It involves multiple messages about the nature of risk and other messages (not strictly about risk) that express concerns, opinions, or reactions to risk messages or to legal and institutional arrangements for the management of risk.” (<http://frost.ca.uky.edu/agripedia>)

An effective construction site risks management will be considered the hazards effect on the community and the interaction of both with the stakeholders so all member have a duty to care for their personal welfare and the welfare of their fellow colleagues. We ought to take our reasonable care to prevent personal injury or injury to others.

“Duty of Care is a key focal point for civil care and security managers and Risk Communication is a fundamental part of duty of care.” (John Salter, 2006, Assessment-PDPS 276 Planning for Civil Care & Security, UNE, P.5)

“Risk communication, which further examined that Communication is of fundamental importance in the regulation of risks, allows people to participate, represented in decisions about managing risks.” said Rachel Thamm, Lecturer of University of New England.

### **Fatal Industrial Accidents breakdown**

. Fall of person from height is the top killer in the construction industry (Table 1 & 2). The statistics shows that the deceased persons fell from bamboo scaffolds, working platforms/false works or unfenced dangerous places in nearly half of the fatal cases.

**Table 1**

**Fatal Industrial Accidents breakdown by place of fall in the Construction Industry in Year 2004**

	<u>2004</u>
<b>Bamboo scaffolds</b>	0
<b>Working platforms / False works</b>	3
<b>Unfenced edges &amp; Lift Shaft Openings</b>	1
<b>Fragile Structures</b>	1
<b>Ladders</b>	1
<b>Material Hoist ways</b>	0
<b>Unfenced / insecurely covered openings</b>	1
<b>Others</b>	1
<b>Totals</b>	<b>8</b>

**Table 2**  
**Fatal Industrial Accidents in the construction Industry in Year 2004**

	<u>2004</u>
<b>Fatal accidents in the construction industry</b>	17
<b>Fall of person from height in the construction industry</b>	8
<b>Percentage of fall of person from height (%)</b>	47.1

(Source: Accidents in Construction Industry of Hong Kong, Accident Analysis & Information Division, Labor Department, 2005)

The basic causes for accidents at construction sites lie mostly with the problems in management. (Questionnaire Survey on the Occupational Safety and Health of Construction Workings attending the Green Card Course, 2003, Occupational Safety and Health Council).

## **Government's responsibilities**

Hong Kong is following other developed countries in launching safety management systems as they have obtained considerable achievements.

At the government level, the Department of labor has responsibility for enforcing the standards and regulations of OSHA. The standards also can be enforced at the state level using local laws.

Occupational Safety & Health Council and Education Manpower Department

will analysis the accident for promoting and educating how to prepare, prevent, reduce and recover these risks. ([www.oshc.com.hk](http://www.oshc.com.hk))

Although the scope of safety management (thirteen elements) has already been defined in the “Factories and Industrial Undertakings (Safety Management) Regulation” enacted in November 1999, and the Labor Department is drafting the Code of Practice for industry, there may be resistance and difficulties when it comes to implementation. Besides, some elements may require certain tools for smooth implementation.

The main elements of safety management system in the “Factories and Industrial Undertakings (Safety Management) Regulation” are:

1. Safety Policy: Describing the commitments by contractors on safety and health at work
2. Safety Organization: Ensuring the execution of commitments in relation to safety and health at work
3. Safety Training: Equipping workers with knowledge about working safety
4. In-house Safety Rules: Giving instructions on how to achieve objectives of safety management

5. Program of inspection of hazardous: Identifying hazards and make remedies regularly or at proper moments of any dangerous
6. Personal Protection Program: Identifying hazards worker may face and determining the risks may affect workers, and providing suitable personal protection equipment when emergency control measure out practically feasible
7. Accidents incidents investigation: Finding out the causes of the accidents or incidents and making immediate emergency arrangements against reoccurrence accidents incidents
8. Emergency Preparedness: A set of contingency management plans designed to come into effect in case of emergencies
9. Evaluation, Selection and Control of subcontractors: Ensuring that subcontractors are fully aware of their responsibilities and discharge these responsibilities
10. Safety Committees: Setting up communication / consultation channels for manager, staff members and subcontractors to address safety and health issues
11. Promotion of safety and health awareness: Improving, developing and maintaining consciousness of safety and health at works sites
12. Program for Accident Control and Elimination of Hazards: A plan developed to control accidents and eliminate hazards before allowing workers to face any adverse working conditions

### 13. Program on Protection of Occupational Health: Preventing Occupational diseases

(Factories and Industrial Undertakings (Safety Management) Regulation, Cap 59)

Overall, they include the duty to provide competent staff, safe plant and equipment, a safe system of work, and effective instruction, training and supervision of employees. It includes an obligation to safeguard the health and safety of contractors and their employees.

#### **Employer's responsibilities**

Risk management aims at identifying, evaluating and controlling both risks and opportunities. It is an iterate process of seven easy steps that can be applied to every work or life situation. Risk management strategy is mostly based on the Standards Australia Risk Management Standards 4360:2004, and other 'world best' practices and processes.

Generally, each man have a duty to exercise due diligence in overseeing the activities of the organization that they serve. They are required to act in good faith and in the best interest of the organization. Being a director totally has three basic duties:

STEP 1 – Identify hazards

STEP 2 – Decide who may be harmed

STEP 3 – Evaluate risk

Use the information assimilated in step 2 to determine how the organization is performing in relation to each risk. Identify stress hot spots and priority areas. Communicate the results of Step 2 to all staff, and involve staff at all levels in finding solutions through team meetings and/or focus groups. Ask if we are doing enough, what control measures are already in place and what else needs to be done. To help with this process, Australia Risk Management Standards 4360:2004 has produced Management Standards for each risk factor, including targets for organizations to aim towards.

1. Auditing company safety condition for inspections and checks to ensure standards are being implemented and that the management controls are operating correctly.
2. Establishing company safety policy to state the overall objectives and a commitment to improving performance.
3. Organizing company safety organization for management and employees to be actively involved and committed to the policy. This participation can be achieved by ensuring management control, the effective co-operation of employee and their safety representatives, the establishment of an effective safety

communication system, achieving co-ordination of activities and ensuring the competence of all employees.

4. Planning and implementing company operation to conduct risks identification, risk assessment and risk control, legal and other requirement, objective and the risk management program.
5. Measuring company handle risk performance for inspections and checks to ensure standards are being implemented and that the management controls are operating correctly.
6. Reviewing company handle risk performance for monitor and result of audits of the management system. The review should be considered the standard of compliance with the policy and legislative requirements; the accident and ill-health performance and how well objectives have been met.

(Establish Occupational Safety Management Policy, Occupational Safety& Health Council, 2002, P.4)

### **Risk Communication Benefit**

In general, risk management include transferring the risk to another party, avoiding the risk, reducing the negative effect of the risk, and accepting some or all of the consequences of a particular risk. “Traditional risk management, which is

discussed here, focuses on risks stemming from physical or legal causes.”

(<http://en.wikipedia.org/wiki/Special:Search?search=risk+assessmentmanagement>).

Being an occupier also would like to exclude his liabilities. The first defense against potential liability problems is to anticipate risks and eliminate or reduce them, a process known as risk management. Once we will to inspect our properties regularly for all types of potential hazards, such as trails in need of maintenance, unsafe buildings, dangerous areas, etc.

A leading risk communications theorist, Dr. Ortwin Renn of Germany, stated that through risk communication, which helping you communicate with the right audiences, both those internal to your organization and external stakeholders who are affected by what your organization does, would increase your organization's effectiveness. ([europa.eu.int/comm/food/risk/session1\\_1\\_en.pdf](http://europa.eu.int/comm/food/risk/session1_1_en.pdf))

## **Risk communication system**

Risk Communication is the ability to establish, maintain or repair relationships with stakeholders, internal or external on any challenging issue. The issue may be health, environmental, safety, fairness/justice, economic, political, social, cultural or historical.

There are many risk communication types for risk management. Safety Management Cycle provided by government's, risk communicators, Occupational Safety & Health Council Table 3. It also presented the relationship between risk communication and risk management.

**Table 3**

<b>Risk communication Types</b>	<b>Elements of Risks management</b>
Morning Safety Meeting	Safety Organization (Communication) Safety Promotion (Safety Awareness) Safety Training (Worker) Analysis & preventing of Accidents
Hazard Identification Activity	Risk assessment and implantation of Sites
Guidance & Supervision at work	Safety Training (Supervision)  In-house Safety Rules  Safety Inspection (Monitoring)
Safety Inspection  Prior-to-work Inspection equipment and electrical installation, etc	Safety Inspection (Supervision)  Subcontractor Control
Process Safety Discussion	Safety Organization (Communication & Cooperation)  Process Control
Final Check after Work  Inspection by Project Manager/site agent	Safety Inspection (monitoring)

### **Morning Safety Meeting**

Morning Safety Meeting includes a briefing on important issues (Such as 1a. the progress of the project, special activities-testing activities or visit, etc.) as well as introducing new staff and announcing the safety records of the previous day. Firstly Alerts the workers the hazards and accident-prone activities as well as their precaution and preventive measures. Secondly, Conduct an inspection on all workers' personal protective equipment and dressing.

### **Hazard Identification Activity**

Hazard Identification Activity, usually using forms format for hazard identification Activity and supervisor focus. It can clearly and briefly explain the process of the day's work. Secondly, ask different group members to point out the potential hazards in their work, and come up with appropriate preventive measures against two or three major hazards. It can make sure each member of the group understands the safety measures to be taken.

### **Guidance & Supervision at work**

Guidance & Supervision at work usually keep track of implementation of the safety measures from the hazard identification activity and Check the compliance and addressing problems that may occur during its implementation. Understanding the

project progress and its facilitate gang leader's communication with and acceptance by the workers. As a matter of fact, Group leaders can solve problems directly.

### **Prior-to-work Inspection**

Prior-to-work Inspection is before the start of work and the usage of equipment, all the places, tools, equipments, machineries and materials must be in safe and proper condition.

### **Process Safety Discussion**

Process Safety Discussion is to confirm the progress of the say's work and decide on the procedures of next process, including coordination of different actives, with an aim to solving problems quickly and enhancing efficiency. It also helps us to assign next day's work, with safety directions and promote the communication between people at various levels, summarizing the safety performances in last week and planning for construction work.

### **Safety Training**

Safety Training, is a legislative requirement, can reinforce the all workers' concept and awareness of safety, sharpen necessary skills, gain relevant knowledge and foster a

correct attitude, by studying the cause of accidents, the same or similar accidents can be avoided.

### **Safety Committee Meeting**

Safety Committee Meeting is a strengthening communication among concerned persons on site, eliminating any misunderstandings or lack of coordination at work, reviewing the past safety records and planning for the coming month. As a result, the workers' safety awareness can be improved and accident reduction can be achieved.

(Safety Management Cycle, 2002, Occupational Safety & Health Council)

### **Conclusion & Recommendation**

Everyone has his duty to care their own health and safety and that of other people including fellow workers and the public. The extent of responsibility depends upon the amount of control we have over activities at the workplace. This would be the same as their extent of control in relation to any other managerial, supervisory or day-to-day work responsibility. Being an employer ought to ensure our staffs are aware of their responsibilities by ensuring that occupational health and safety duties are included in every job description.

Occupier's liability affects you and me. Communication is of fundamental importance in the regulation of risks. Set up an effective communication is fundamental to reach good security management. It is essential for building relationships across cultures, within the team and in the wider environment, and in helping to de-escalate tensions.

Employers are required to provide information to employees, to alert them to areas where hazards may exist and to improve their understanding of safe work practices. For example, visual warning signs, posters, booklets, brochures and other written materials could be provided under this duty.

“Communication is the process of exchanging risk information, usually via a common protocol. It is included speech, interpersonal and organizational communication.” (<http://en.wikipedia.org/wiki/Communication>)

On the other hand, Occupational Safety & Health Council and Education Manpower Department also analysis the accident for promoting and educating how to prepare, prevent, reduce and recover these risks. ([www.oshc.com.hk](http://www.oshc.com.hk))

To Conclude, Communication is the main point of management, if you speak clear to other person what you need. It would increase your organization's effectiveness.

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