



*Early and safe return to work at Canadian Pacific Railway
Company:*

A case from a best practice employer

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Introduction to the Case

Using examples from the award winning program at Canadian Pacific Railway Company (CP), this case is an attempt to introduce the process and best practices of early and safe return to work(ESRTW)– the occupational rehabilitation and reintroduction of an employee into the workplace subsequent to a workplace accident. From an ethical, legal and a hard and soft cost perspective, effective ESRTW practice is an essential component of managing occupational health in the post-accident phase.

PART A provides the basic concepts of return to work, the legal rights and obligations of the employer, and costs. PART B deals with the corporate context of early and safe return to work (ESRTW) at CP that includes corporate social responsibility and health and safety. PART C highlights best practices in ESRTW, and the award-winning program at CP. Finally, PART D deals with a workplace accident at CP, and recommendations by a joint committee for early and safe return to work of the employee. Based on the information in this case study, and references to secondary material, readers are then asked to assess a variety of managerial issues that arise from this account.

Part A: An Introduction to Early and Safe Return to Work (ESRTW)

i) ESRTW – the basic concept

When referring to early and safe return to work (ESRTW) from a workplace accident, what is at stake is the process of assisting employees who have a physical or mental impairment subsequent to workplace accident to attain their optimal functional level, and to return to meaningful and safe work in a timely fashion. The goal is to accommodate employees with a disability in jobs they are able to perform, and within their medical restrictions, providing such accommodation does not create undue hardship¹ to the company, union, or co-workers.

What is at stake with an ESRTW program is to ensure that the individual is occupationally fit, meaning the physical and cognitive demands of a particular job are within his/or her work capacity.² It is an attempt to match the physical and mental demands of a particular job with the functional abilities of the individual worker.

As is correctly noted in CP's *Return to Work Program*, strategic human management decisions are needed in order for the RTW program to be effective and to achieve the following objectives:

- keep experienced employees on the job
- maintain productivity
- improve employee morale
- result in cost savings

One can also add that an effective return to work program will also ensure the objectives of compliance with a variety of employer legal obligations, and helping to maintain good labour relations.

¹ Undue hardship is a legal notion and is discussed in more detail below. It principally involves financial and safety considerations.

² For an excellent review of this process, see Lacerte, M.:Wright, G.R. "Return to work determination". *Physical Medicine and Rehabilitation: State of the Art Reviews*. Vol.6, no.2. June 1992. p. 283-302.

ii) The employer's legal obligation and employee protection

With regard to disability, and accommodation in general, there are a variety of employer legal obligations, and employee protections, that are enshrined in statute, collective agreements, and case law. A highlight of such legislation is as follows:

Human rights legislation and the duty to accommodate

The *Canadian Human Rights Act*, 1998, and similar human rights legislation in other Canadian jurisdictions, prohibits employers from basing employment practices on prohibited grounds such as disability.

As the Supreme Court of Canada discusses in *Central Alberta Dairy Pool v Alberta*³, in order to comply with this obligation employers must meet a very high standard and accommodate people protected by the legislation to the point of undue hardship. It is an outright rejection of the *de minimus* inconvenience standard. Even complex physical and/or organizational changes in the work must be considered in order to facilitate the full integration and functioning of such employees in the workplace.

What constitutes undue hardship will vary somewhat from case to case. However, generally the employer must incur accommodation costs short of financial insolvency. Undue hardship could also include putting the health and safety of the individual worker, or co-workers, at substantial risk.

³ *Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489

The Canada Labour Code and workers' compensation legislation

The Canada Labour Code governs workplaces under federal jurisdiction as originally outlined in the *British North America Act, 1867*. Such workplaces include inter-provincial transportation and trade and commerce. For instance, industries such as CP and other railways, airlines, and communications find themselves under federal jurisdiction. Nonetheless, the *Government Employees Compensation Act, 1985* deems that the rights and obligations of the federal workplace parties with regard to workplace injury are in accordance with the legislation of the province in which the injury occurs.

In many provinces workers' compensation legislation provides specific protection for employees against discrimination because of a workplace injury, and obligates the employer to re-employ an injured worker who experiences lost time because of his workplace injury. Failure to do so could result in fines, and the employer paying the full cost of alternate occupational rehabilitation.

Ontario goes even further with legislation obliging both the employer and the employee to communicate with one another and to co-operate in a return to work program as soon as possible after the workplace injury.

Employment Equity

In the federal sector, the *Employment Equity Act, 1995* provides specific protection for people with disabilities—workplace related or not. Sec 2 Purpose of the Act reads:

The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, **persons with disabilities** and members of visible minorities by giving effect to the principle that employment

equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

Pursuant to this legislation, the employer must eliminate employment barriers to those in the above-designated groups. Furthermore, the employer is obligated to create pro-active policies and practices to accommodate people in designated groups.

The Collective Agreement and Union Participation

A collective agreement constitutes the terms of employment negotiated by the employer and the legally established bargaining agents of employees for a particular workplace. The provisions of such agreements ultimately have the force of law.

The Ham Commission report⁴ led the way to comprehensive occupational health and safety legislation in Canada. Among Ham's key recommendations was the establishment of the internal responsibility system and joint management-worker health and safety committees (JHSC). Unions have tended to play an active role in JHSCs, and the terms and conditions of such participation are often found in the collective agreement.

In a similar fashion, joint labour-management committees have emerged in disability management, and have been deemed to be a best practice by the International Labour Office.⁵ Given that successful return to work and accommodation may require changes in employment relations such as seniority, or physical changes to the workplace, a good relationship between management

⁴ Report of the Royal Commission on the Health and Safety of Workers in Mines [James Ham Commissioner] Ottawa, Ont.: Government of Ontario, Ministry of the Attorney General, 1976.

⁵ ILO. *Managing disability in the workplace: ILO Code of Practice*. Geneva: International Labour Office, 2002.

and the union is central to any successful disability management program.⁶ Likewise, the terms and conditions of such committees often find their way in collective agreements. Such committees may carry out some or all of the following functions:⁷

- set the budget
- create the program's mission and objectives
- conduct an assessment of the disability management needs of the workplace, including a review of benefit and employee assistance programs and the collective agreement, identification of the attitudes of key stakeholders and the current labour relations climate, and the identification of trends in occupational and non-occupational injuries and illnesses
- design the program
- review and revise the program for consistency with the collective agreement
- create policies and procedures for the program, including return to work protocols, job banks and transitional work options, and job accommodations
- hire the disability management coordinator,
- provide direction and advice to the disability management coordinator
- identify suitable transitional work options,
- set up a dispute resolution process, possibly functioning as the final stage in disputes over return to work plans
- oversee implementation of the program
- evaluate the program's outcomes according to an agreed upon set of success indicators
- make recommendations to senior management for required resources and support
- communicate and promote the program's processes, objectives, and results to supervisors, union officials, senior management, and employees, and
- make recommendations to senior management for required resources and support.

⁶ See, Shrey, D.; Hursh, N.; Gallina, P.; Slinn, S.; White, A. "Disability management best practices and joint labour-management collaboration". *International Journal of Disability Management Research*. Vol. 1, no.1 (2006) p. 52-63.

⁷ Jodoin, S.; Harder, H. "Strategies to enhance labour management co-operation in the development of disability management programs. *International Journal of Disability, Community and Rehabilitation*. Vol. 3, no. 4(2004). p.1-11.

As a final note here on labour relations, whereas the collective agreement may define the terms and conditions of employment, and the union's participation in disability management, in *Central Okanagan School District No. 23 v. Renaud*⁸ the decision of the Supreme Court of Canada makes it clear that the terms of the collective agreement cannot be used as a justification to preclude a modification of work schedules required for a successful accommodation. Moreover, the workplace parties are obligated to co-operate in the accommodation process.

iii) Costs

The best way for management to contain workplace accident costs is to prevent an accident in the first place from incurring. However, should an accident happen, potential costs are both direct and indirect.

Potential direct costs for an employer in the case of an employee accident include the following:

- fines in the case of failure to comply with due diligence or other legal obligations
- increased workers' compensation premiums or actually incurred costs with an administrative charge
- medical treatments and assessments
- possible increased insurance premiums should damage be done to workplace property

Potential indirect costs to an employer include the following:

- loss of production
- continuing overhead costs while work is disrupted
- loss of efficiency because of the break-up of a crew

⁸ *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970

- poor publicity due to a workplace accident
- lower employee morale and poor labour relations
- loss of contracts due to a poor health and safety record
- hiring and training a new employee

The relationship of direct costs to indirect costs has been likened to an iceberg. Direct costs represent only the tip of the iceberg, with a 1:5 to a 1:10 ratio to indirect costs.⁹

With an effective return to work program there are possibilities for substantial direct and indirect cost savings for the employer. Such savings include the following: reduced workers' compensation premiums; better productivity; and, not having to hire and to train new employees.

Of at least equal importance, for the employee there is the opportunity to readily restore his or her full income, job security is ensured, and well-being enhanced – work is also social event that can have therapeutic value.

PART B: The Overall Corporate Context of ESRTW at CP

i) Company Profile

Based in Calgary, Alberta, the primary focus of the Canadian Pacific Railway Company (CP) is a trans-continental railway providing freight transportation services over a 22,000-kilometer network. It is the second largest railway in Canada, and the sixth largest in North America. This high density network serves virtually every major sector and ships commodities like grain, coal,

⁹ Kelloway, K., et al. *Management of occupational health and safety*. 3rd edition. Toronto: Nelson, 2006. p. 166.

lumber and potash as well as cars, agricultural equipment, home electronics, food and furniture.

Originally founded as a factor for British Columbia joining the Confederation, for over 125 years CP and predecessor companies have played a unique role in uniting Canadians, and providing goods and services to communities.

In October 2001 the parent company Canadian Pacific engaged in a major restructuring. Each of its five major businesses in rail, shipping, oil, mining and hotels were spun off as separate corporate entities. As a result, CP again became a publicly traded company with rail freight transportation as its major function.

In 2005 CP had some 15,000 employees with net freight revenue of 4,266 million dollars.

ii) Corporate Social Responsibility and CP

Corporate social responsibility (CSR) has no universally acceptable definition. However, at the very least, it refers to the ethical behavior of a corporation. A broader definition suggests the interaction of the corporation with the legal and social obligations of the societies within which it operates, and how it deals with those obligations. Finally a more formal definition has emerged out an international meeting of the World Business Council for Sustainable Development held in the Netherlands in 1998:

Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.¹⁰

¹⁰ WBCSD. *Corporate Social Responsibility: Meeting Changing Expectations*. Geneva: World Business Council for Sustainable Development, 1999. p. 3.

One could argue that CP has had a broader vision of its business commitment since its beginnings—whether that is attempting to unify the country, settling new immigrants particularly in the West, or helping Canada during two world wars. Nonetheless CP’s current focus on CSR is to be recognized by employees, customers, regulators, and suppliers, and communities as the safest and most environmentally responsible railway.¹¹

As a case study on best practices has noted, for CP going beyond minimum regulations is not just the right thing to do for all its stakeholders including employees and communities, it is also considered good for business.¹² This CSR perspective is also at the core of its health and safety program.

iii) Health and Safety at CP

The company’s stated commitment is to be a leader in public and industry safety and recognized as the safest railway by employees, customers, regulators and neighbours. This is an absolute and unconditional commitment to safety by everyone meaning:

- every employee has to take personal accountability for his or her own health and safety
- every job can be done safely – no exceptions
- the well-being of our employees, the public and the environment in which we operate comes first - always

¹¹ Canadian Pacific Railway. *Corporate Responsibility Report 2005*. p. 7 <<http://www8.CP.ca/cms/English/General+Public/default.htm>>

¹² Government of Canada. *Re-engaging with Communities*. CSR Case Study: Canadian Pacific Railway. Final Draft. Interdepartmental Working Group on Corporate Social Responsibility. p.8 <http://www.nrcan-rncan.gc.ca/sd-dd/pubs/csr-rse/pdf/cas/CP_e.pdf>

- effective teamwork among employees, unions, customers and management is essential
- safety is good business

Local management and Health and Safety Committees develop tactics and action plans to support the following ten strategies that form the backbone of CP's program :

- demonstrating a commitment to health and safety
- communicating safety expectations and results
- ensuring proper training and orientation
- involving employees and union representatives
- complying with safety policies, rules, regulations, and standards
- understanding and mitigating risks
- correcting safety failures
- ensuring employees are medically fit to work
- recognizing safety successes
- responding to community and customer concerns

In order to achieve its objectives, CP's management is committed to health and safety leadership, providing resources to support the safety action plans, conducting audits, and implementing risk assessment and safety action plans.

Both Reportable Train Accidents and Employee Reportable Injuries are corporate performance metrics. Until very recently CP was the North American leader in least frequency of reportable train accidents, and currently is second with 2.1 per million train miles. Reportable injuries have been reduced from 3.14 in 2003 to 2.31 in 2005 per 200,000 hours worked.

Part C: Best Practices and the ESRTW Program at CP

i) Best practices, ESRTW and the ILO

The International Labour Office has provided a set of well-recognized best practices in ESRTW, and they are as follows:

- guidelines for early contact and intervention
- written policies and procedures that cover areas such as return to work planning, gradual return to work, how accommodations are requested and implemented, etc
- a multidisciplinary approach to return to work that ensures the worker's needs are considered in a holistic way, encompassing physical, psychological, and social aspects
- a communication plan and processes for informing workers, service providers and others about the DM program
- guidelines for documentation and records management including issues of confidentiality
- worker/management involvement and consensus-building in the disability process
- workers who have incurred occupational and non-occupational illnesses are being treated the same way
- follow-up on the return to work plan after the implementation period
- program evaluation procedure

ii) The ESRTW program at Canadian Pacific Railway

Each of these best practices has been incorporated to some degree into the ESRTW program at CP. In 2000 the National Institute of Disability Management

and Research acknowledged with an award the effectiveness of the CP program to both employees and to the organization. This leading edge program has been lauded for three features: broad stakeholder consultation; effective accommodation; and, accountability. These features will now be dealt with in turn.

Key stakeholder consultation and participation

The management structure for disability at CP involves the work of two committees. The **Core Return to Work Committee (CRTWC)** is national in scope, and chiefly deals with corporate policy development and promotion. The CRTWC is comprised of six senior union officers from the six different unions at CP and five senior company officers. Decisions by this committee are by consensus. Full cooperation from all members is required at all times to ensure positive outcomes for the program.

Comprising one management and one union representative, a **Local Return to Work Committee (LRTWC)** can be found throughout the organization and manages the ESRTW at the local level. This Committee has the following key responsibilities: coordination of the employee's return to work; developing a return to work plan; monitoring employee progress; acting as a support and resource for the employee; acting as a liaison between employee and major stakeholders; and, assisting with program evaluation.

The **employee** is responsible for reporting any incidents, and for informing the supervisor, union, and LRTWC member about an absence from work. He/she must also collaborate with treating physicians, provides input into the accommodation, cooperates with return to work efforts, and must participate in vocational and other rehabilitation programs as designed.

The **manager/supervisor** is responsible for promoting ESRTW in the particular area of responsibility. It is the responsibility of the manager/supervisor to provide support and information about the ESRTW program. He/she works with the LRTWC and the employee in finding suitable accommodation, monitors and evaluates the performance of the employee with disability, and advises other stakeholders about the employee's progress when required.

The **treating physician** provides treatment and completes the necessary forms and medical reports as required. In addition the treating physician keeps CP informed about the employee's progress and specific information the employer needs to successfully manage the ESRTW. A final yet key responsibility is to provide pertinent work restrictions to the LRTWC and Occupational Health Services in a timely manner.

Occupational Health Services is responsible for the following; under the guidance of the CRTWC is responsible for the overall effectiveness of the program; the co-ordination and confidential maintenance of all medical information; and, is the liaison between CP and the medical community as a whole.

The **union** participates in the CRTWC and the LWTWCs. In addition the union acts as a resource for the employee, an advocate when necessary, and ensures the employee receives the appropriate benefits. The union also may participate in the job demand analysis, developing an accommodation plan, and finding suitable accommodation for the employee.

Effective accommodation

Accommodation is the process of facilitating the return to productive work of an employee with medical limitations that may be physical or psychological in

nature, through various means that might include reassignment, rescheduling work, or changing the actual physical process as to how the work gets done.

At CP the following principles govern the accommodation process:

- the dignity of employees with a disability must be respected and maintained at all times
- early intervention results in timely, safe return to work and minimum economic loss
- respect for and maintenance of confidential information
- effective communication among all the major stakeholders
- effective coordination of all resources and support systems to ensure employees receive the right help at the right time
- preventive measures to avoid accidents and recurrences
- ongoing evaluation and revision of accommodation plan as necessary
- balance between employee's right to be accommodated and employer's right to carry out the business in a safe, efficient and profitable manner, (This balance is achieved through the concept of "undue hardship")
- the employer is not required to redesign the work place to create a new position, but if a number of existing tasks can be bundled into a job, then that may be required
- the job must entail productive work
- displacement of an incumbent should only be considered after all other options have been examined and rejected and should only be implemented in cases where the incumbent would not be prejudiced (e.g. laid off or placed in a much less desirable position)
- there is no requirement to continue to pay the employee his or her former salary in carrying out the accommodated work
- the employer is not required to accept sub-standard work
- the more inter-changeable the workforce, the easier it is to assign duties which the employee with disability cannot perform to others
- the number of employees in the organization. The more employees an organization has, especially if several can perform the same duties, the higher the expectation for accommodation

Possible techniques in order to achieve a successful accommodation include the following:

- time off work for the employee to participate in rehabilitation and other supportive programs
- modified duties to eliminate tasks that the employee is unable to perform
- modified hours, including part time work and change in shift patterns
- graduated work hours, or a work hardening plan to slowly ease the employee back into the operations
- alternate jobs when pre-injury/illness position is no longer available
- work trial/assessment to give the employee the opportunity to try working and for supervisor/LRTWC to assess whether he/she can do it
- tolerance of some degree of absenteeism for medical treatment
- workstation redesign
- equipment modification
- use of special tools, assistive devices and equipment to facilitate adaptation
- job bundling—creation of a position from a combination of existing essential tasks and duties that the employee can perform. However this position must be productive.

Finally it is worth noting the priorities in terms of job classification when returning an ESRTW employee to the workplace-- the most preferred to the least preferred options are as follows:

- determine whether the employee's regular job can be modified.
- determine whether other positions within the same classification as the employee's bargaining unit are available to accommodate the employee.
- determine whether other positions within the employee's bargaining unit are available to accommodate the employee.
- determine whether the employee is capable of performing any of the available positions, including jobs outside the bargaining unit.

Accountability

The final component noted in CP's award winning ESRTW program is corporate accountability. Some key features of CP's corporate commitment to ESRTW and the system of accountability in place are as follows:

- the ESRTW program and employee wellness are included in the corporate health and safety plan.
- senior management personnel and senior union officers serve on the Core Return to Work Committee that also oversees employee wellness.
- the return to work of employees is included in the performance management plans of managers.
- roles and responsibilities of all major stakeholders are established jointly with them and documented as part of the RTW process.
- management participates in an ongoing corporate and divisional ESRTW program evaluation.
- RTW Awareness education (4 hours) is provided for all managers and key stakeholders.
- RTW training (1 day) is provided for all members of the Local Return To Work Committees.

Part D: A Case of ESRTW at CP

Most accommodations in the ESRTW process are relatively simple and require relatively minor adjustments to work scheduling or to the physical demands of a particular job.

The following case is complex, and an exception. It has been chosen to illustrate among other things a variety of accommodation techniques and employer best practices. Identifiable characteristics of the individual and some facts pertaining to this case have been changed to maintain confidentiality.

i)The facts of the case

Position: Machine Operator

Age at time of accident: 45

Date of accident: 1980

Type: Occupational accident

Benefits: WCB (Workers Compensation Board)¹³

¹³ Here we are using the term Workers' Compensation Board as a generic term that might apply to any such agency in Canada regardless of jurisdiction. Workers' compensation is an employee funded publicly administered insurance scheme that provides remuneration to workers for the costs of workplace accidents

Historical Summary of Activities

Employee was struck by the overhead bar of the machine that she was operating and suffered neck and back injuries. Secondary issues developed include chronic pain and psychological issues. After a two year absence she was approved to return to work in 1982 with the following restrictions:

- no overhead work
- no work requiring flexion and extension of neck
- cannot work in a position where safety is a concern

Employee could not return to her regular position and so she was accommodated in an alternate position as an Office Clerk on a trial basis. A worksite assessment was performed prior to the work trial. However, the work trial only lasted for one week due to ongoing pain.

02/04/82 - 06/05/83

The WCB Case Worker conducted a site visit to review another proposed alternate position - Inventory Clerk, responsible for ordering and maintaining pre-established inventory levels of supplies. The employee was given a work trial in the position, but the trial was unsuccessful.

Employee's file was referred for a comprehensive rehabilitation program, including physical therapy, psychological counseling and pain management. The goal was to achieve her optimal functional level.

After the multi-disciplinary team at the Rehabilitation Centre agreed that employee had attained the maximum functional recovery, employee was approved to return to work with the following restrictions:

- avoid any repetitive neck movements, above shoulder or overhead activities, or any activities that place excessive requirements on the neck area
- avoid heavy lifting, repetitive strenuous use of shoulder areas
- avoid prolonged weight bearing, rough ground walking, low-level activity, climbing stairs and ladders, or repetitive movement involving lower back area
- take regular brief rest periods from work
- unable to work in a position where safety is a concern

and provides employers with liability insurance for such claims. As such they have a stake in the outcome of ESRTW and often actively participate in the process.

Employee did not return to work at this time because of ongoing complaints of pain.

10/05/83 - 03/11/83

Family Physician requested a FCE.

The FCE was completed. Recommendations were:

- no sustained sitting
- limited tolerance for standing and walking
- maximum pushing of 100 pounds
- maximum pulling of 50 pounds
- avoid undue strain to neck and back
- limit lifting to less than 20 pounds
- return to work on a trial basis

Employee was approved to return to work on a gradual/work trial basis with the above restrictions over 16 weeks. Employee would continue to receive WCB benefits during the trial period. Employee returned to work in the Inventory Clerk position and worked 3-5 hours per day. She continued to experience pain and had performance issues such as no show for work.

29/11/1983 - 15/08/1984

Following meeting with all the major stakeholders including the WCB, the Treating Specialist recommended an ergonomic assessment.

Ergonomic assessments of workstation and job task analysis were performed for the Inventory Clerk position. Recommendations for workstation changes were:

- install easily adjustable workstation, automate if possible
- chair must have padded contours to maintain contact with spine and curvature at all times. Install cervical pillow on chair
- install closed circuit camera to avoid awkward and repetitive neck movement while conducting physical inventory of supplies
- install anti-glare screen on computer

The recommendations were implemented. Employee was approved to return to work and returned to Inventory Clerk position. Once employee was working full time, WCB terminated her benefits and employee was placed on full wages.

23/08/1984 - 02/03/87

Employee continued to complain of pain and was on and off the job periodically. During this period, the following initiatives were undertaken:

- a workplace assessment
- further modification to the workstation
- additional treatment at the pain management clinic
- mediation sessions with the WCB, the company and the employee
- a Functional Capacity Evaluation (FCE)

Despite all the above interventions the employee kept complaining of pain, experienced frequent absences and continued to indicate preference for other jobs.

9/01/1988 - 19/04/1988

After case review by all the stakeholders, a job site evaluation was conducted on the Stock Clerk and Fork Lift Operator positions which were positions that the employee thought would be better match for her capabilities. Employee was declared fit for both positions with the following restrictions:

- cannot walk on uneven ground
- needs obusforme chair pad for low back support
- must take 10 minutes break to reposition
- must stand and stretch every hour
- requires a job coach

The Local Return to Work Committee recommended to you the Local Area Manager that the employee be offered the combined job tasks of the Inventory Stock Clerk and Fork Lift operator positions, given the restrictions noted. Both positions were classified at a higher level with higher salaries than the employee's pre-accident position.

ii) Case questions

1. As a manager you are asked to accept or to reject this decision. In making this decision you should consider the following:

i) What are the cost implications of this decision?

ii) What are the legal implications of this decision?

iii) What are the ethical implications of this decision?

2. To what extent does the ESRTW effort in this case reflect best practices?