



Legal Responsibilities- Directing work

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Legal Responsibilities of Those Who Direct the Activities of Others

Bill C-45 is federal legislation that amended the Canadian Criminal Code and became law on March 31, 2004. The Bill established new legal duties for workplace health and safety, and imposed serious penalties for violations that result in injuries or death. The Bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives and those who direct the work of others.

Bill C-45 added Section 217.1 to the Criminal Code which reads:

"217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Bill C-45 also added Sections 22.1 and 22.2 to the Criminal Code imposing criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2).

Why was Bill C-45 (Section 217.1 in the Criminal Code) created?

Bill C-45, also known as the "Westray Bill", was created as a result of the 1992 Westray coal mining disaster in Nova Scotia where 26 miners were killed after methane gas ignited causing an explosion. Despite serious safety concerns raised by employees, union officials and government inspectors at the time, the company instituted few changes. Eventually, the disaster occurred.

After the accident the police and provincial government failed to secure a conviction against the company or three of its managers. A Royal Commission of Inquiry was established to investigate the disaster. In 1998, the Royal Commission made 74 recommendations. The findings of this commission (in particular recommendation 73) were the movement that led to Bill C-45.

What are the main provisions of Bill C-45 (Section 217.1 in the Criminal Code)?

Bill C-45 (Section 217.1 in the Criminal Code):

- Created rules for establishing criminal liability to organizations for the acts of their representatives.
- Establishes a legal duty for all persons "directing the work of others" to take reasonable steps to ensure the safety of workers and the public.
- Sets out the factors that courts must consider when sentencing an organization.
- Provides optional conditions of probation that a court may impose on an organization.

Who do these provisions of the Criminal Code affect?

These provisions of the Criminal Code affect all organizations and individuals who direct the work of others, anywhere in Canada. These organizations include federal, provincial and municipal governments, corporations, private companies, charities and non-governmental organizations.

Bill C-45 refers to an "organization" and then defines it to mean:

- "a public body, a body corporate, a society, a company" [This comes from the existing definition of "every one"]; and
- "a firm, a partnership, a trade union or an association of persons created for a common purpose." [This is new].

These new provisions that define an "organization" will also apply to other groups that have an operational structure and make themselves known to the public .

Who is responsible for enforcing this Criminal Code?



☐ Police and crown attorneys enforce Bill C-45. The police and crown are responsible for investigating serious accidents and will determine whether any charges should be laid under the Canadian Criminal Code. The criminal code is a very different set of rules, and should not be confused with "regular" occupational health and safety laws (OH&S) and how they are enforced.

Who is responsible for enforcing occupational health and safety laws?

☐ Depending on your jurisdiction, the Ministry (or Department) of Labour or Workers' Compensation Board (WCB) enforces OH&S laws. Across Canada each province, territory and the federal government are responsible for enforcing their own individual set of occupational health and safety laws. Each jurisdiction employs inspectors who visit workplaces to ensure companies are complying with their OH&S rules. In the unfortunate event of a serious accident, these inspectors conduct an investigation and determine if a charge should be laid under the appropriate section(s) of the OH&S act or regulation. An accused individual or company may then need to appear in court where a fine or other penalty could be imposed if they are convicted. The police are not normally involved in this process.

Can a company be charged under a provincial OH&S act and the Criminal Code at the same time?

☐ Yes, it is possible. It is common practice for both police and health and safety inspectors to both investigate a serious workplace accident. In most cases, the police and provincial authorities would work together to decide which charges should be made. While it is unlikely that two sets of charges would be made, technically speaking, charges can be laid under both the criminal code by the police and the Occupational Health and Safety Act or regulations by provincial authorities. This situation has occurred in the Millennium Crane Rentals case from Sault Ste Marie, ON.

What types of offences will be targeted?

☐ To date there are eight cases where individuals were charged under the new provisions in the Criminal Code. See below for a brief summary of the charges.

☐ **Note:** At the time the law was being discussed in parliament, the government commented on its intentions for the Bill stating that:

☐ **"the criminal law must be reserved for the most serious offences, those that involve grave moral faults...** the Government does not intend to use the federal criminal law power to supplant or interfere with the provincial regulatory role in workplace health and safety"

How can I ensure a safe workplace and limit my liability?

Employers can limit their liability and reduce the chances of being charged under the provisions of the Criminal Code by implementing an effective workplace health and safety program.

You will want to know:

☐ What your legal obligations are under occupational health and safety laws and standards.

☐ What hazards exist in your workplace.

☐ How to effectively reduce or eliminate them.

You will also want to ensure employees are aware of the company's health and safety program, are informed of any risks, and receive appropriate training and protective equipment.

Responsibilities

☐ Basic Responsibilities of management and workers

☐ Internal Responsibility System

☐ Due Diligence

Elements of a Health and Safety Program



- Basic OH&S Program Elements
- Job Hazard Analysis
- Risk Assessment
- Inspection Checklists - General Information
- Guide to Writing an OSH Policy Statement



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Page 5 of 5