



CANADA'S FIRST CORPORATE CRIMINAL CONVICTION FOLLOWING BILL C-45: CORPORATE OH&S DUE DILIGENCE BECOMES EVEN MORE IMPORTANT

Enforcement of OH&S regulatory laws continues to become more stringent, and penalties for breaches continue to be more severe, with each passing year in Canada. Along with this regulatory environment, the amendments to the *Criminal Code of Canada* passed under Bill C-45, and which came into effect in March 2004, must not be forgotten. Bill C-45 introduced new duties for organizations, including all Canadian corporations, to take all reasonable steps to prevent bodily harm to persons, including workers, contractors, and the general public. Bill C-45 created the possibility that government enforcers could arrive at the scene of a workplace accident and charge a corporation, its supervisors, or other representatives, with criminal negligence as well as regulatory OH&S contraventions.

A significant recent development is Canada's first corporate conviction arising from a workplace accident, on charges of "criminal negligence causing death", as now permitted under the Bill C-45 amendments to the *Criminal Code*. On December 7, 2007, a corporation, Transpavé Inc., entered a guilty plea to criminal negligence charges arising from a workplace death in Saint-Eustache Quebec in 2005.

We have seen regulatory OH&S investigators repeatedly encourage the police and criminal Crown Attorneys to prosecute organizations for "criminal negligence" following tragic workplace accidents, without success. This conviction may signal an opening of the gates to more criminal charges, along with regulatory OH&S charges.

Transpavé Inc. is a manufacturer of concrete blocks. In October 2005 a 23-year-old worker was fatally crushed after entering a moving area of a machine that stacks blocks, while attempting to clear a jam. The machine was equipped with a light curtain guarding system which should have interrupted power to the equipment as the worker approached it. Investigators from the Quebec workplace safety enforcement body (La Commission de la Santé et de la Sécurité du Travail) concluded that the light curtain system was disabled at the time of the accident, and further, apparently had been disabled for the majority of 2004 and 2005. Investigators reportedly concluded that the worker was not informed of the dangers associated with entering the area and moving or attempting to unjam the blocks. Investigators also concluded that

a member of management had noted in the past that the light curtain guarding system was disabled but did not take any action to address the situation.

The corporation pled guilty in Saint Jérôme, Quebec, to the charges of “criminal negligence causing death” under the *Criminal Code of Canada*. At the time of writing the corporation Transpavé was awaiting sentencing on February 26, 2008. Limitless fines are available for an organization convicted when the Crown proceeds by way of an indictment.

This development highlights the importance of due diligence steps in relation to workplace activities for all corporations and their representatives. We suggest a due diligence checkup in key areas to assess whether your organization is taking the care expected, or whether your organization, its supervisors, managers and other representatives are at unnecessary risk of “criminal” or OH&S regulatory conviction. Are OH&S legal requirements and standards relating to workplace hazards and activities known? Are hazard audits conducted and acted upon promptly with recorded directions for corrective action? Do written policies and procedures for hazardous activities exist? Is there comprehensive recorded worker and supervisory training in safety procedures? Do supervisors monitor and enforce safety standards and procedures and record these steps?

Please feel free to contact any member of our labour and employment group for further details on this development, or necessary due diligence standards.

Heenan Blaikie’s labour and employment group has recently seen the addition of one of Canada’s leading specialists in the OH&S area. Cheryl A. Edwards joined us effective January 1, 2008 to lead the OHS and WSIB practice group. Readers seeking a more comprehensive treatment of the topic of Bill C-45 and this case should watch for our article by Julie Thibault and Cheryl Edwards in Heenan Blaikie’s upcoming new electronic OHS & WSIB Management Update.

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