

# “Criminalizing” Occupational Health & Safety

By Marc Denhez, Lawyer

On October 27th, 2003, Parliament passed Bill C-45, *An Act to amend the Criminal Code (Criminal Liability of Organizations)*. It imposes a duty on “every one who undertakes, or has the authority, to direct how another person does work or performs a task ... to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”

At first glance, this appears merely to reiterate what is already in miscellaneous legislation for occupational health and safety (“OHS”). In many parts of Canada, people can already be jailed for violating OHS laws; so what's new about Bill C-45?

The answer is: four distinctive features.

- **A broader range of people and organizations can be prosecuted;**
- They can be prosecuted for injuring **a broader range of victims;**
- OHS laws in various provinces have different standards; but Bill C-45 establishes its own collection of **standards which are sometimes higher** than those of individual provinces, at least in some key respects; and
- Offenders can face potentially **higher penalties**, plus the (new) stigma of a criminal record.

## Who Can Be Prosecuted?

### A. The Kinds of Organizations:

When referring to employers, OHS laws usually contemplate companies or individuals. Bill C-45, however, goes further: it imposes the same obligations on all “organizations”, including “a public body, body corporate, society, company, firm, partnership, trade union or municipality”, and adds unincorporated associations.

### B. The Kinds of Individuals:

Every OHS law is binding on employers; and some provinces - but not all - itemize the duties of supervisors. Bill C-45, on the other hand, extends to “every one who undertakes, or has the authority, to direct how another person does work or performs a task;” this includes

not only employers and supervisors, but also foremen and “lead hands.”

Additionally, Bill C-45 can apply to a “director, partner, employee, member, agent or contractor” of the organization. This can include the organization's chief executive officer or its chief financial officer.

## Whose Injuries Are Covered?

OHS laws usually address obligations toward *workers*, but Bill C-45 goes further. The obligation is not only “to prevent bodily harm to that person (the worker, but also to) ... any other person, arising from that work or task.” In other words, it extends not only to members of the public at or near the workplace (as in Nova Scotia), but also anyone else affected by something “arising from that work or task.” This extends to bystanders and, arguably, might even apply to trespassers in certain circumstances.

## What Are the Standards?

In the words of Norman Keith and Yvonne O'Reilly writing in *Worksite News*, “If a representative commits the new offence, and they were acting within the scope of their authority, then the organization is guilty of an offence. If two or more representatives engage in conduct that together would amount to an offence, the organization is guilty of an offence. Further, if the senior officers of an organization, individually or collectively, depart markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to

the offence, then the organization is guilty of an offence. In summary, Bill C-45 substantially lowers the threshold for organizations to be charged and convicted of criminal negligence.”

## Penalties

OHS laws usually provide for stiff fines (in some provinces, up to \$1 million), and some laws even specify jail terms of up to two years. Bill C-45 raises the stakes.

As a general rule, almost all of the offences in the Criminal Code are categorized as being either relatively modest (called “summary” offences) or more serious (called “indictable” offences).

- \$ The maximum fines for summary offences are being increased from \$25,000 to \$100,000.
- \$ Fines for indictable offences do not have a specified maximum.
- \$ The jail provisions are relatively flexible; in the case of on-site death, the maximum penalty for an individual convicted of criminal negligence could be life imprisonment.

In addition, convicted offenders (in both the “summary” and “indictable” categories) will now have a criminal record.



*Courtesy of the Canadian Home Builders' Association*

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