



## Legal Corner

By  
Michael Sherrard

### *Supervisor charged over construction fatality*

Merely five months after becoming a part of Canada's criminal law on August 26, 2004, the York Regional Police arrested and charged a Newmarket supervisor with criminal negligence causing death arising out of a construction site fatality. One of the first criminal charges laid since Bill C-45 became law in Canada, if found guilty, this supervisor could face up to life imprisonment.

The charge arose from the alleged failure to properly supervise two people who were using a mini-excavator to dig a 12-foot trench at the front of a garage to repair a drainage problem at the foundation of a residential home. One of the men was inside the excavation when the ground gave way trapping him in heavy dirt. He ultimately succumbed to his injuries. The allegation is that the supervisor had left the scene just moments before the accident occurred. The accused supervisor is scheduled to appear in the Ontario Court of Justice in Newmarket on September 28, 2004.

#### **Criminal charges for health and safety violations**

As of amendments which came into force on March 31, 2004, section 217.1 of the Criminal Code of Canada requires that, "everyone 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."

A violation of this new criminal law could result in a fine of up to \$100,000 against an organization, and a fine and/or imprisonment for up to 25 years against a representative or senior officer.

This could be in addition to any fine or imprisonment which may be levied under the applicable health and safety legislation.

It is important to recognize that the terms "organization," "representative" and "senior officer" are defined broadly in the Criminal Code.

"Organization" includes a company, firm, partnership and trade union.

"Representative" includes a director, partner, employee, member, agent or contractor of the organization. And "senior officer" is not exclusive to what one normally associates with the term—president, vice-president, chief executive officer, chief financial officer, etc.—but includes an individual who plays an "important role" in the establishment of the organization's policies and who is responsible for managing an important aspect of the organization's activities.

Needless to say, the term "important role" is open to interpretation and will likely be hotly contested in the courts as charges continue to be laid under the new law.

#### **What this means for your organization**

There are many steps an organization can take to respond to these new and onerous criminal responsibilities. Some are industry-specific, while others more general in nature. In each case, the responsibility to provide a safe workplace is on-going and should be re-evaluated at regular intervals. Every organization should:

1. Educate and re-educate every member of the organization about the evolving nature of workplace safety, the legal obligations (federal and provincial) and cost of non-compliance both financially and in human terms.

2. Conduct a detailed internal audit of safety practices and protocols.

3. Create formal and informal lines of communication that encourage and applaud the free-flow of safety ideas, information and concerns both actual and potential.

4. Foster a workplace environment in which every

☛ **TAKING, Page 7**

# *Taking responsibility*

From Page 5

person is encouraged and expected to plan safely, work safely and take responsibility for the safety of everyone around them. If in doubt, contact your legal counsel who will assist you to understand and navigate these new and onerous Criminal Code obligations.

*Michael G. Sherrard is a partner with the law firm Sherrard Kuzz LLP in Toronto. The firm specializes in advising and representing management in all matters of labour and employment law, with expertise in construction labour relations and workplace safety. [www.sherrardkuzz.com](http://www.sherrardkuzz.com) 416.603.0700.*

*The information contained in this article is provided for general information purposes only and does not constitute legal or other professional advice. Reading this article does not create a lawyer-client relationship. Readers are advised to seek specific legal advice in relation to any decision or course of action contemplated.*