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First Criminal Conviction Registered Under Bill C-45 Amendments

Cheryl Wiles Pooran*



On March 17, 2008, Transpave Inc., a Quebec manufacturer of paving stones, was convicted of criminal negligence under the *Criminal Code*. The conviction arose from a fatal accident involving one of its employees. The company was ordered to pay a fine of \$110,000.

Transpave's criminal conviction is the first registered under the Bill C-45 amendments to the *Criminal Code*. The amendments, introduced in 2004, created criminal liability for health and safety violations. The amendments received a great deal of attention upon their introduction, as they significantly expanded the role of the *Criminal Code* in regulating workplace safety.

A Brief History

Bill C-45 emerged largely in response to the 1992 Westray coal mine disaster in which 26 miners lost their lives in a mine collapse. It was widely concluded that the deaths resulted from the mining company's negligence, although no criminal charges were laid. Through Bill C-45, the government acted on its stated view that "*the criminal law can provide an important additional level of deterrence if effectively targeted at and enforced against companies and individuals that show a reckless disregard for the safety of workers and the public*".

Bill C-45 established new types of offences for health and safety breaches (contemplating both negligence and non-negligence offences) and provided serious penalties for violations that result in injury or death.

The Bill C-45 amendments to the *Code* create liability for individuals as well as organizations, which include public bodies, corporations, trade unions and any other organization that was created for a common purpose, has an operational structure and holds itself out to the public as an association of persons. For instance, organizations can be held criminally liable where a representative of the organization demonstrates a lack of care which constitutes negligence, and a Senior Officer (as defined) either deliberately turns a blind eye to health and safety risks or makes a conscious choice to prefer profit over safety.

Bill C-45 also expanded the class to whom organizations owe a duty of care when it comes to health and safety matters from just 'employees' or 'workers' to all 'persons'. *Criminal Code* charges may run parallel to charges under provincial health and safety legislation.

Corporate defendants face a maximum fine of \$100,000 for a summary offence and there is no maximum for an indictable offence. Moreover, corporate representatives and Senior Officers face fines and imprisonment for up to 25 years. This is in addition to any fine or imprisonment which may be levied under the applicable provincial health and safety legislation.

The Transpave Decision

Twenty-three year old Steve L'Écuyer was fatally crushed on October 11, 2005 when he attempted to clear a jam in one of the company's machines. An investigation led by Quebec's Health and Safety Commission and the provincial police resulted in criminal charges being laid. The company was charged with criminal negligence for having allowed L'Écuyer to operate the machine with its motion detector safety mechanism deactivated. Transpave plead guilty to the charge on December 7, 2007. Counsel for both the Crown and defence made a joint submission as to the appropriate penalty, that being \$100,000. Ultimately, the court levied the \$110,000 fine.

Although not an insignificant sum, the fine in *Transpave* could have been much larger. The figure, in part, reflects the fact that following the accident Transpave spent in excess of \$500,000 on safety improvements. As well, Transpave was a relatively small company (employing approximately 100 workers) and the amount of the fine was sufficient to have a meaningful economic impact.

These factors are among those set out in Bill C-45 as criteria to be considered by the court in sentencing. Others include:

- any advantage realized as a result of an offence
- degree of planning, duration, complexity
- whether the organization has attempted to conceal or convert assets to show an inability to pay fine/make restitution
- impact on economic viability of organization and employment of employees
- cost to public authorities of investigation and prosecution
- regulatory (*i.e.*, OHS) penalty already imposed
- whether organization or representatives were already convicted of a similar OHS offence
- restitution ordered or made
- any measures taken to reduce likelihood of a subsequent offence

What This Means for Organizations

Every responsible organization is conscious of its obligation to ensure a safe workplace. However, the *Criminal Code* provisions added through Bill C-45 up the ante considerably. Increased fines, lengthy jail sentences and the stigma of criminal prosecution are all on the table. The decision in *Transpave* delivers a message to organizations, including employers and trade unions: fail to provide a safe workplace and you may face severe sanctions through the criminal law. Many consider the 'floodgates' to now be open and the likelihood of further criminal prosecutions high.

* Cheryl Wiles Pooran, Sherrard Kuzz LLP, (416) 603-6950.