



## Legal Corner

By  
Michael Sherrard

# *Expanding corporate criminal liability*

The Government of Canada is proposing important changes to the Criminal Code to significantly expand the scope of corporate criminal liability. On June 12, Bill C-45, An Act to Amend the Criminal Code (criminal liability of organizations) was tabled. If the bill becomes law, it will apply to both federal and provincial employers. To date, there is no proposed date for enactment.

Generally, occupational health and safety offences are governed in Ontario by the Occupational Health and Safety Act and at the federal level by the Canada Labour Code. These statutes include a requirement for employers and senior officers to take all reasonable care to prevent harm to employees in the workplace. A corporation will also attract criminal liability if at the relevant time its "directing mind" had the intent to commit a criminal offence.

Under the proposed amendments an "organization" and/or individual may be charged with criminal negligence where a "representative" or "senior officer," with intent to benefit the organization and/or acting within the scope of their authority: Commits an offence; directs a representative to commit an offence; fails to prevent a representative from committing an offence that the individual knew was about to occur; or demonstrates a lack of care.

The legislative proposals will not supercede the Occupational Health and Safety Act or other regulatory statutes, but will impose an additional criminal law obligation on "organizations," their "representatives" and "senior officers" to take reasonable steps to ensure safety of workers and the public.

Not surprisingly, the term "organization" is defined broadly to include a company, firm, partnership and trade union. The term "representative" is particularly broad to include a director, partner, employee, member, agent or contractor of the organization.

Similarly, "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. The terms "important role" and "important aspect" will most certainly be litigated in the courts.

A violation of the proposed provisions 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 is in addition to any fine or imprisonment which may be levied under the applicable health and safety legislation.

The proposed amendments are the government's response to the Report of the Westray Mine Public Inquiry, which called for sweeping changes to the Criminal Code to ensure that corporations, their executives and employees are held accountable for workplace safety. Through Bill C-45 the federal government confirmed its belief 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."

### *What this may mean for organizations*

While every responsible organization takes seriously its obligation to ensure a safe workplace for its employees and the public, the proposed amendments to the Criminal Code up the ante considerably. In addition to increased fines and jail sentences and the stigma of prosecution, the amendments send a clear message to employers that those who fail to provide a safe workplace will be dealt with severely through the criminal law.

# *Advice for employers*

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Employers should begin now to consider the impact these changes will have on their workplaces. For example, there are many steps an organization can take to prepare for this enhanced criminal responsibility. Some are industry specific while others are general in nature. In each case the responsibility to provide a safe workplace is ongoing and should be re-evaluated at regular intervals.

## **Employers should:**

1. Conduct a thorough internal review or audit of internal safety policies, procedures and practices including discipline and other enforcement mechanisms;

2. Educate and re-educate every member of their 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;

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; and

4. Foster a workplace environment in which every person is encouraged and expected to plan safely, work safely and take responsibility for the safety of everyone around them.

*Michael G. Sherrard is a partner with the law firm Sherrard Kuz LLP in Toronto, specializing in advising and representing management on all matters of labour and employment law, including construction labour law.*

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