



Amendments to the Criminal Code

On November 7, 2003, amendments to the Criminal Code of Canada were given Royal Assent in parliament and were ultimately proclaimed into law on March 31, 2004. These amendments introduced the new offence of occupational health and safety criminal negligence and established a duty on “everyone who undertakes, or has the authority, to direct how another person does work or perform a task...to take reasonable steps to prevent bodily harm to that person, or any other person, arising from work or task”. This has, in effect, expanded the legal liability of individuals and organizations in Canada.

By way of background, the amendments to the Criminal Code were introduced through a piece of legislation known as Bill C45 of the Westray Bill. In May 1992, 26 miners were killed in an explosion at the Westray mines in Nova Scotia. Westray gained national attention based on the tremendous loss of life and the organization’s disregard for appropriate safety measures. No individual or corporate employer was ever convicted of criminal negligence or of an occupational health and safety offence, as a result of this disaster. This led to a judicial inquiry into Westray and eventually the legislation and amendments.

What is New?

1. The Criminal Code uses the term organizations rather than corporations and will apply to every business in Canada, as well as public bodies, societies, firms, partnerships, trade unions, charitable organizations and unincorporated associations. Presently, provincial occupational health and safety law speaks only to workplaces and corporations.
2. Bill C45 introduces the term representative meaning director, partner, employee, member, agent or contractor of the organization.
3. The changes require organizations to ensure protection of both workplace and public safety.

What does it mean?

1. The changes are intended to ensure employers are held fully accountable for safe work environments. Under the Criminal Code, there is a legal duty placed on “everyone who undertakes, or has the authority, to direct how another person does work or performs a task”.
2. The offence of occupational health and safety criminal negligence has two parts. They are:
 - a. A prohibited act (by committing or omitting those requirements in provincial occupational health and safety legislation); AND
 - b. Reckless disregard or guilty mind.

These two components are very important in establishing that the offence has occurred. In the case of criminal negligence, guilty mind or reckless disregard will be required to be proven.

How does an organization/individual protect themselves from liability under these changes?

1. Due Diligence continues to be the only defense against prosecution under provincial occupational health and safety legislation.
2. With regards to the offence of occupational health and safety criminal negligence, both due diligence and an effective occupational health and safety management system must be demonstrated. An effective occupational health and safety program with demonstrated clear communication throughout the organization will lead to compliance with legal obligations, as well as ensure the health and safety of employees and the public.