

BILL C-45

In order to assist in Giffin Koerth's ongoing promotion of the health & safety of our own staff and our clients, the following summary points (as supplied by the Canadian Centre for Occupational Health & Safety website) regarding this important piece of Health & Safety legislation are provided for your consideration and review:

What is Bill C-45?

Bill C-45 is federal legislation that amends the Canadian Criminal Code. Bill C-45 became law on March 31, 2004 and is now the new Section 217.1 in the Criminal Code which reads:

"2.17.1 Every one 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."

The bill established new legal duties for workplace health and safety, and imposes serious penalties for violations that result in injuries or death. It also establishes rules for attributing criminal liability to organizations, including corporations, for the acts of their representatives and also creates a legal duty for all persons directing work to take "reasonable steps" to ensure the safety of workers and the public.

Why was Bill C-45 (Section 217.1 in the Criminal Code) created?

Bill C-45, also known as the "Westray Bill", was created as a result of the 1992 Westray coal mining disaster in Nova Scotia where 26 miners were killed after methane gas ignited causing an explosion. Despite serious safety concerns raised by employees, union officials and government inspectors at the time, the company instituted few changes. Eventually, the disaster occurred.

After the accident the police and provincial government failed to secure a conviction against the company or three of its managers. A Royal Commission of Inquiry was established to investigate the disaster. In 1998, the Royal Commission made 74 recommendations. The findings of this commission (in particular recommendation 73) were the movement that led to Bill C-45.

What are the main provisions of Bill C-45 (Section 217.1 in the Criminal Code)?

Bill C-45 (Section 217.1 in the Criminal Code):

- Created rules for establishing criminal liability to organizations for the acts of their representatives.
- Establishes a legal duty for all persons "directing the work of others" to take reasonable steps to ensure the safety of workers and the public.
- Sets out the factors that courts must consider when sentencing an organization.
- Provides optional conditions of probation that a court may impose on an organization.

Who does this Criminal Code affect?

This Criminal Code affects all organizations and individuals who direct the work of others, anywhere in Canada. These organizations include federal, provincial and municipal governments, corporations, private companies, charities and non-governmental organizations.

Note: This information is provided for information purposes only and is not intended to provide or substitute professional and/or legal advice. Readers are to refer to the related regulatory references for current and complete details.

Who is responsible for enforcing this Criminal Code?

Police and crown attorneys enforce Bill C-45. The police and crown are responsible for investigating serious accidents and will determine whether any charges should be laid under the Canadian Criminal Code. The criminal code is a very different set of rules, and should not be confused with "regular" occupational health and safety laws (OH&S) and how they are enforced.

Who is responsible for enforcing occupational health and safety laws?

Depending on your jurisdiction, the Ministry (or Department) of Labour or Workers' Compensation Board (WCB) enforces OH&S laws. Across Canada each province, territory and the federal government are responsible for enforcing their own individual set of occupational health and safety laws. Each jurisdiction employs inspectors who visit workplaces to ensure companies are complying with their OH&S rules. In the unfortunate event of a serious accident, these inspectors conduct an investigation and determine if a charge should be laid under the appropriate section(s) of the OH&S act or regulation. An accused individual or company may then need to appear in court where a fine or other penalty could be imposed if they are convicted. The police are not normally involved in this process.

How can I ensure a safe workplace and limit my liability?

Employers can limit their liability and reduce the chances of being charged under the provisions of the Criminal Code by implementing an effective workplace health and safety program.

You will want to know:

- what your legal obligations are under occupational health and safety laws and standards,
- what hazards exist in your workplace, and
- how to effectively reduce or eliminate them.

You will also want to ensure employees are aware of the company's health and safety program, are informed of any risks, and receive appropriate training and protective equipment.