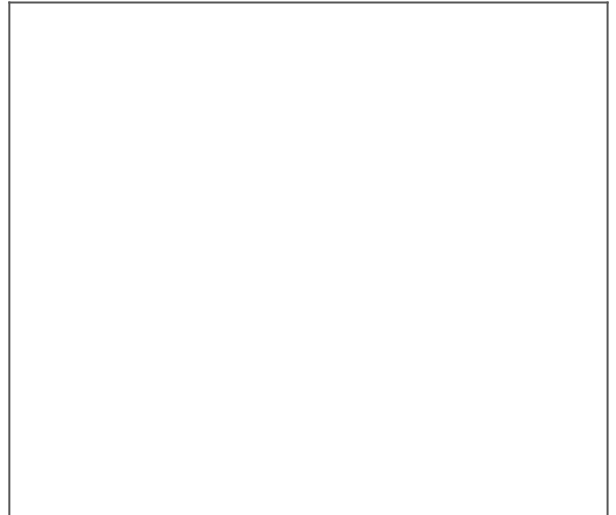


Criminal Liability In Workplace Accidents

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In a wake-up call to employers across Canada, this past year has seen an increase in criminal charges against corporate employers and individual supervisors following a spate of fatal workplace accidents.

Prior to the criminal charges in 2010 highlighted above, there had been only two criminal prosecutions arising from workplace accidents in Canada after Bill C-45. Neither of these prosecutions proceeded to trial. While the risk of criminal prosecution remains small, the Millennium Crane, Weyerhaeuser and Merton Construction charges in 2010 signal a more aggressive approach by police and Crown officials and it remains to be seen how the pending cases will be resolved.



Criminal negligence causing death is an indictable offence for which the maximum sentence is life imprisonment and there is no maximum limit to the fines which also could be imposed. It should be noted that in addition to the criminal charges, these kinds of workplace accidents attract significant regulatory charges under the respective provincial occupational health and safety legislation. While the precise details of these regulatory regimes vary from province to province, all stakeholders have a responsibility to keep the workplace safe.

In addition to working to prevent workplace accidents, there are a number of ways in which employers can take steps to minimize the risks of criminal prosecution or mitigate the consequences of any criminal charges in the event of a workplace accident.

Generally, employers need to ensure that their officers, directors, supervisors and managers all understand and receive training on their occupational health and safety and

Employers can also ensure that the appropriate due diligence has been taken throughout the corporation. This can include hazard inspections and assessments, written health and safety policies and procedures, employee training and demonstrations of safe work practices, enforcement of safe work practices and policies through discipline, and continuous training and reminders.

An appropriate response plan is also a necessity in the event of a workplace accident. Employers will need to balance the human consequences of an accident with the legal

consequences. Having a comprehensive plan can help to address the immediate health and safety concerns of an accident while ensuring that the interests of the employer, its supervisors, officers and directors are protected should there be a regulatory or police investigation.

Workplace accidents happen. But a prudent employer will ensure that it has the necessary controls in place and tools at its disposal to minimize risks and mitigate consequences.

Criminal Code obligations so that they can meet their legal duty of reasonable care. This is not a one-time fix. Employers should also be working to ensure their institutional knowledge remains current and that they have a system for communicating developments in occupational health and safety law. In particular, employers should have a system in place for receiving information on their own corporation's compliance and a plan of action when issues of non-compliance arise. This can include appropriate and documented monitoring, reporting and follow-up systems.

In February 2010, Millennium Crane Rentals Ltd., along with its owner and a crane operator were charged with criminal negligence causing death after an April 2009 accident where a mobile crane contracted by Sault Ste. Marie toppled into an excavation in which city workers were doing sewage work, crushing one of the workers to death.

In March 2010, Weyerhaeuser Company Ltd. found itself at the centre of a private prosecution launched by the United Steel Workers on charges of criminal negligence causing death following the 2004 death of a sawmill worker who was smothered by wood debris in a hopper.

Most recently, in October 2010, Metron Construction Corp., along with its individual officers and managers, were charged with criminal negligence causing bodily harm and four counts of criminal negligence causing death following a tragic 2009 Christmas Eve workplace accident. Four migrant workers were killed and a fifth critically injured when the swing stage scaffolding they were working from collapsed.

Prior to 2004, corporations could be charged with criminal negligence; however no charges had ever led to a conviction because the Crown had to prove that the "directing mind" of the corporation had behaved in a criminally negligent manner, and in so doing, intended to benefit the corporation. Officers and directors could only be held criminally responsible if they themselves directed the corporation to commit the crime or were participating in the criminal activities.

The Bill C-45 amendments made the prosecution of employers, supervisors and those directing work for the crimes of criminal negligence causing death or bodily harm easier. The amendments also created a new duty where anyone, including a corporation, who directs how a person works or performs a task, must take reasonable steps to prevent bodily harm to

that person or any other person, arising from that work or task.

In order to be prosecuted for criminal negligence causing death or bodily harm, there must be a failure to discharge the legal duty to prevent bodily harm to a person and the failure must happen in a way that shows "wanton or reckless disregard" for the safety of others. This means that the Crown would have to prove beyond a reasonable doubt that one or more representatives of the employer corporation behaved in a criminally negligent manner where the result was death or serious injury. It would also have to be proved that "senior officers" or managers with important operational or executive authority, departed markedly from the standard of care reasonably expected in the circumstances.

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