

# OCCUPATIONAL HEALTH & SAFETY UPDATE

## BILL C-45 FIRST CONVICTION

For the first time in Canadian legal history, a company has been found guilty of criminal negligence causing the death of a worker pursuant to the Bill C-45 amendments to the Criminal Code, which took effect in March 2004. Borne of the outrage following the Westray Mining disaster and the resultant lack of charges, Parliament passed Bill C-45, amending the Criminal Code of Canada so as to permit charges of criminal negligence to be laid against organizations (such as corporations) and their representatives (including directors and managers) for breaches of Occupational Health & Safety responsibilities amounting to wanton or reckless disregard of the duty to take reasonable steps to ensure the safety of workers and the public. The charge against Transpavé, a manufacturer of concrete blocks northwest of Montreal, stems from the October 11, 2005 death of its 23-year-old employee Steve L'Ecuyer, who was crushed to death by a concrete press used to arrange the stones on pallets. Mr. L'Ecuyer had just relieved a co-worker who was going on break and was trying to manually free stones that were blocking the machine when it crushed him. Quebec Workplace Health and Safety (Commission de la sante et de securite du travail (CSST)) found that a safety barrier meant to prevent the machine from operating when someone was underneath it had been disabled. Workers said it had been disconnected some two years earlier as it was causing production slowdowns. There was also evidence that Mr. L'Ecuyer did not have the training to appreciate the dangers of the situation. Most importantly perhaps, there was evidence that members of management were aware of the dangerous situation but did nothing to correct it. Despite this, however, the police investigation into the accident turned up "no evidence beyond a reasonable doubt" that would lead to an individual being charged.

Accepting a sentence jointly suggested by Crown and Defence counsel, Quebec Court Judge Paul Chevalier meted out a fine of \$100,000 and also ordered a \$10,000 compensatory fine to cover court costs. In accepting the joint submission, Judge Chevalier noted not only the company's guilty plea (which was demonstrative of its remorse and spared the victim's family and co-workers from having to testify at trial), but also noted the efforts taken by Transpavé to address safety concerns at its two factories. The court had heard at the sentencing hearing in February 2008 that the company had spent in excess of \$750,000 to this end. The company has also followed every recommendation made by the provincial workplace health and safety board after its investigation of the death.

This is only the second instance where charges have been laid under the Bill C-45 amendments to the Criminal Code, the other being against one Dominic Fantini, who was charged under this Criminal Code section and Ontario's OHS legislation. (Fantini, 68, had been supervising two workers repairing the foundation of a house when the trench they were working in collapsed; one worker died. Fantini had left the work site moments earlier. Mr. Fantini pleaded guilty to three offences under Ontario's OHS legislation, whereupon the Crown dropped the Criminal Code charge.) With the Transpavé sentencing, it would appear that in the right circumstances, Crown prosecutors will lay Criminal Code charges for breaches of workplace safety obligations, with or without provincial charges.

Although the Transpavé sentence reflects the same elements an Alberta court would consider for a fatality under Alberta's Occupational Health and Safety Act—including post-accident conduct, size of the organization, existence of past convictions—recent Alberta OHS decisions involving fatalities have resulted in fines in the neighbourhood of \$350,000. Of course, those decisions involved provincial OHS legislation, not the Criminal Code, thus not resulting in a criminal record, as Transpavé will now have.

This case should serve as a reminder to management of all types of organizations (corporations, partnerships, sole proprietorships and even associations and societies) of the need to be involved in OHS efforts, to ensure that the duty to take reasonable steps to ensure the safety of workers and the public is not being wantonly or recklessly disregarded. As the Transpavé case shows, Bill C-45 has successfully established a new legal duty on the part of those responsible for directing the work of others. That duty extends to organizations—meaning companies, societies, trade unions, partnerships, etc.—which can be found guilty of its breach by the actions of their representatives— directors, partners, employees, members, or even agents or contractors.

The good news, however, is that the traditional steps taken to protect oneself from OHS-related charges—whether they be under Alberta’s Occupational Health and Safety Act or the Criminal Code—are still the best: establish good, safe work practices and procedures which can be monitored, demonstrated and taught so as to illustrate due diligence.

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