

# **BILL C-45: CRIMINAL LIABILITY OF ORGANIZATIONS**

## **CRIMINAL CODE AMENDMENTS AFFECT MANAGERS / DECISION MAKERS**

**WARNING!** The following information is provided for general understanding **ONLY** and is made **WITHOUT** claims of technical or legal validity. For complete information, always consult the Act. A plain language guide to the Act can be downloaded in PDF format from the Government of Canada Website: [http://www.justice.gc.ca/en/dept/pub/c45/CCL\\_english.pdf](http://www.justice.gc.ca/en/dept/pub/c45/CCL_english.pdf)

In March of 2004, criminal code amendments were made to Bill C-45. These changes established a new definition for the responsibilities of ALL decision-makers. These changes are expressed in the duty of decision-makers “to take reasonable steps to prevent bodily harm to...any person, arising from work.”

### Summary of salient points in C-45 amendments:

The following apply to both individuals and organizations.

1. Criminal liability for acts of representatives is defined:
  - a. Rules for attributing to organizations, including corporations, **CRIMINAL LIABILITY** have been established.
2. A duty has been established which requires:
  - a. All **PERSONS DIRECTING WORK** to ensure reasonable steps have been taken to safeguard **BOTH WORKERS** and **PUBLIC**.

3. When sentencing an organization, the courts now have a defined set of factors to consider.
4. Probation is now an optional condition that a court may consider imposing on an organization.

Definitions:

Organization: public body, body corporate, society, company, firm, partnership, trade union, municipality and associations, with a common purpose, with an operational structure that holds itself out as an association.

Representative: a director, partner, employee, member, agent, or contractor of the organization.

Critical Sections of the Act:

s.217.1: **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.

Bodily harm means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.

**NOTE:** This can be applied to directing volunteers and sub-contractors.

s.219.1: Every one is criminally negligent who:  
a. In doing anything; or  
b. In omitting to do anything that is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

Penalties:

**INDIVIDUALS:** Maximum penalty for conviction of criminal negligence:

- a. Injury: 10 years in prison
- b. Death: Life imprisonment

**ORGANIZATION:** Maximum penalty for conviction of criminal negligence:

- a. NO FINANCIAL LIMIT
- b. Non tax deductible

Recommendations:

It is critical that you **demonstrate due diligence**. Ask yourself the following questions (among others):

- a. Do you have an occupational health and safety program (OHS)?
- b. Have you ensured it is fully operational?
- c. Have you ensured your OHS program meets regulation?
- d. Are you in compliance with Workers Compensation Board (WCB), regulation?
- e. Have you verified the training qualifications of your technicians?
- f. Have you established a paper trail to demonstrate you can show records of training verification?

If you have answered 'no' to any of the preceding questions, you need to act now to remedy the situation. Take decisive action to limit liability exposure to yourself and your organization (union, company, etc).

FOR MORE DETAILED INFORMATION, CONSULT THE FOLLOWING DOCUMENT:

***A PLAIN LANGUAGE GUIDE TO BILL C-45***

It is available on-line in PDF format at:

<http://www.justice.gc.ca/en/dept/pub/c45/index/html>