



# Risk Management Considerations Bill C-45 Criminal Liability of Organizations

**B**ill C-45 is federal legislation that amended the Canadian Criminal Code. It became effective March 31st, 2004. The Bill established new legal duties for workplace health and safety and imposed serious penalties for violations that result in injury or death. It redefines the law with respect to the potential criminal liability of organizations, including municipalities. In addition to increasing the risk exposure to organizations, the new law also provides new rules for attributing criminal liability to representatives and those who direct the work of others.

The 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. Employees, union officials and government inspectors had all raised serious safety concerns. The company instituted very few of the recommended changes. Eventually the disaster occurred. Despite this, the police and provincial government failed to secure a conviction against the company and three of its managers. A commission was established to investigate the disaster. One of its recommendations was the creation of Bill C-45.

Bill C-45 added section 217.1 to the Criminal Code. It reads: "217.1 Every one who undertakes, or has the authority, to

direct how another person does work or performs a task is under legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Bill C-45 also added sections 22.1 and 22.2 to the Criminal Code imposing criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2).

The addition of these sections to the Criminal Code does the following:

1. Creates rules for establishing criminal liability to organizations for the acts of their representatives.
2. 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.
3. Sets out factors that courts must consider when sentencing an organization.
4. Provides penalties for offences and optional conditions of probation that a court may impose on an organization.

Bill C-45 is a federal bill, which means that it 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 and charities.

To date there have been four cases where charges have been laid under the new law. One case has resulted in a conviction, two are still before the courts and one was dropped through a plea bargain.

## **Safeguarding Your Organization**

Limit your liability and reduce the chances of being charged under the provisions of the criminal code by implementing an effective workplace health and safety program.

In creating a risk management strategy, consider the following:

1. What are your legal obligations under occupational health and safety standards for your province?
2. How do the provisions created by Bill C-45 affect your organization and whom in your organization do they affect?

3. What hazards exist in your workplace?
4. How can you effectively reduce or eliminate the hazards?
5. Ensure that employees are aware of the organization's health and safety policies.
6. Ensure that employees are aware of any risks involved in their work, and make sure they receive appropriate training and protective equipment.
7. Have a system in place to communicate any updates and changes to governing health and safety legislation.