
UPDATE ON BILL C-45: CRIMINAL LIABILITY FOR WORKPLACE NEGLIGENCE NOW IN FORCE

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A. INTRODUCTION

A previous *Charity Law Bulletin* (“Bulletin”) discussed Bill C-45, “*An Act to Amend the Criminal Code (Criminal Liability of Organizations)*” (“Bill C-45”), and its effect on criminal liability and insurance coverage for charities.¹ Since the publication of that Bulletin, Bill C-45 has come into force (March 31, 2004), and is now part of s. 22.1, 22.2, and 217.1 of the *Criminal Code of Canada* (“Criminal Code”). Despite the relatively short period of time since the coming into force of Bill C-45, criminal charges have already been laid under these new provisions. This *Charity Law Bulletin* will summarize the content of Bill C-45 and how the new provisions are being enforced.

B. CONTENT AND APPLICATION OF BILL C-45

Essentially, Bill C-45 creates a *Criminal Code* duty for organizations and their representatives to take every reasonable precaution in order to protect their workers as well as the general public. Bill C-45 imposes criminal liability on organizations for negligence (s. 22.1), even in the case that no single individual has committed a criminal offence, by aggregating the requisite mental and physical elements of

¹ See *Charity Law Bulletin* No. 35 dated Jan. 30, 2004, entitled “Bill C-45 and its Effect on Criminal Liability and Insurance Coverage for Charities”, available at <http://www.carters.ca/pub/bulletin/charity/2004/chylb35.pdf>

the crime from multiple individuals. Organizations are also liable for criminal offences other than negligence through the conduct of their senior officers (s. 22.2).

The Bill also creates a new duty (s. 217.1) which is applicable to both individuals and organizations, and reads as follows:

Everyone 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.

This duty provided the basis for the first charge under Bill C-45, laid after a construction site fatality on April 19, 2004. A worker digging a trench became trapped when the ground surrounding him gave way, and he died of injuries sustained before emergency workers arrived.² The on-site supervisor, Mr. Domenico Fantini, was charged under s. 217.1 with criminal negligence causing death and faced an additional eight charges under the provincial *Occupational Health and Safety Act* (“OHSA”). Fantini pled guilty to three of the provincial charges and, as a result of an apparent plea bargain, the Crown dropped the criminal charges in March 2005.

C. COMMENTARY

The Fantini incident (which marks the only charge laid under Bill C-45 that the authors are aware of as of the date of publication), has generated a level of uncertainty surrounding the extent to which Bill C-45 will be applied and enforced. The fact that the criminal charges were dropped and existing *OHS*A regulations were sufficient to resolve the proceedings indicates that the use of the Bill may be reserved for severe workplace disasters (such as the Westray incident). However, charitable organizations should not become complacent, as a number of issues have been raised which indicate the potential for rigorous application of the Bill in the future.³

² The accident took place at a private residence in King Township, ON. Although the homeowner instructed Fantini to slope the excavation of the trench at a 45 degree angle (in order to prevent a collapse), the trench was “not shore or sloped at all” (see *R. v. Fantini*, [2005] O.J. No. 2361).

³ See *OH&S Due Dilligence Update* “Where are all the Bill C-45 Prosecutions?” by Cheryl A. Edwards (available at <http://www.sbhlawyers.com/media/July-2005-final.pdf>).

One such factor is the pressure that prosecutors may face from unions and workplace safety activists to utilize the Bill more frequently in order to punish behaviour leading to workplace accidents. In fact, the United Steel Workers in Canada, referring to Bill C-45, have made one of their next mandates to “ensure that the law is properly enforced”.⁴ Pressure on prosecutors may also come from Health and Safety investigators wishing to attain convictions for regulatory offences; a Bill C-45 criminal charge could be used to pressure an accused to plead guilty to a regulatory offence in exchange for the charge’s withdrawal. Indeed, the Bill’s vague language provides prosecutors with vast discretion in determining whether to apply *OHS*A or criminal charges (or both), and many more Bill C-45 prosecutions could occur as a result.

D. CONCLUSION

Charities, along with all other organizations, should be careful to not be overly relieved at the outcome of the tragic Fantini incident, lest they run the risk of relaxing their own health and safety standards. It has been made clear that senior officers who permit, tolerate, or even turn a blind eye to non-compliance with health and safety standards will be subject to heavy prosecution under the Bill. As a result, charities should be pro-active in adopting due diligence in their operations to ensure the protection of their workers, as well as the surrounding public, from any unnecessary harm.

⁴ United Steel Workers Canada, “Westray Bill Explained, Celebrated: Those who Sacrificed Their Lives Remembered”, <http://www.uswa.ca/program/content/1661.php>