
THE 2007 ANNUAL CHURCH & CHARITY LAW™ SEMINAR

Toronto – November 7, 2007

Employee Safety and Ministry-Related Injury

By Bruce W. Long, B.A., LL.B.
and Jeremiah A. Eastman, B.A., LL.B.

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**PART I
INTRODUCTION**

- An increase in inspectors equals an increase in charges
- Inspectors have wide powers of investigation

2

THE LEGAL PROCESS

- The process from investigation through to trial is complex and lengthy

3

OFFENCES

- Provincial regulatory offences are often more punitive than a criminal code offence
- Is a new federal offence which catches supervisors, middle managers – not just directors
- Also “administrative penalties” have increased and are often severe

4

**PART II
DUE DILIGENCE – defining it**

- What is “due diligence”?
- It is a statutory legal defence. Section 66 of the *Occupational Health and Safety Act* provides for a “due diligence” defence
- It is also a legal defence created by the Supreme court of Canada in *R. v. Sault St. Marie*
- Section 25(2)(a) of the *Occupational Health and Safety Act* states that an employer must instruct, inform and supervise workers to protect their health and safety

5

- Due diligence is defined and measured in light of this statutory obligation imposed on employers
- The defence essentially says that the employer exercised all reasonable care by instructing, informing and supervising workers to protect their health and safety

6

DUE DILIGENCE – Issues when employer charged

- **Did the accused employer instruct, inform and supervise workers to protect their health and safety**
- **Did the accused exercise all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of that system**
- **Did the act take place without the accused’s (employer’s) direction or approval, thus negating involvement of the accused**

7

DUE DILIGENCE – pleading the defence

- **To plead the defence of due diligence an employer must provide positive evidence that:**
 - **It had established a safe and effective procedure to protect the safety of workers**
 - **That it had communicated that system to the workers**
 - **That it had reasonable ongoing procedures in place to monitor and ensure the proper operation of that system**

8

- **To have put its mind to the entire course of action and, in an organized way, has set out all the steps necessary to obtain a particular goal**
- **The person in charge is doing what s/he was supposed to be doing**
- **There were no feasible alternatives that might have avoided or minimized injury to others**

9

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