

# THE TURNING POINT

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## **The Vision of the Turning Point**

This newsletter is to inform you of recent changes and trends regarding health and safety. The Turning Point is a monthly newsletter covering topics from various industries and sectors. The Turning Point will respond to your inquiries and inform you of current services and updates regarding Raising the Standard Consulting Inc. (RTSC).

### **BILL C-45 QUESTIONS GET ANSWERED Answers to Common Queries on Criminal Code Amendments**

**Written by Cheryl Edwards**

**Canadian Occupational Safety – Wed. May 28, 2008**

By way of reminder, Bill C-45 amended the Criminal Code to create new duties and [possible criminal liability](#) for individuals and organizations, which include corporations. Because of the complexity of these Criminal Code requirements, and the amount of time that has been passed since they became law in March 2004, answers to key questions about [Bill C-45 amendments](#) are set out below, as follows:

#### **Is the new Criminal Code duty different from OH&S duties to take all reasonable precautions or all reasonable care? How?**

The new duty found in section 217.1 of the Criminal Code requires that “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

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## **MINISTRY OF LABOUR UPDATES**

NEWMARKET, ON, June 13 /CNW/ - A Concord, Ontario, company has been fined \$120,000 in connection with an injury to a dump truck driver.

Justice of the Peace F. M. Camposano sentenced Con-Strada Construction Inc., on June 4, 2008, on three violations of the Occupational Health and Safety Act.

Court heard that on February 5, 2003, a dump truck driver employed by Con-Strada lost an arm and suffered abdominal burns when the worker's arm became caught in the rotating auger of a salt spreader on the back of a dump truck. The worker had returned to the workplace yard to dump a large quantity of salt from the dump truck at shift's end. The worker shovelled the salt while the auger was running. The worker became caught in the machinery.

Con-Strada Construction Inc was found guilty, as an employer, of:

- failing to ensure the auger was cleaned only when motion that endangered the worker was stopped, as prescribed by section 75 of Ontario Regulation 851. This was contrary to section 25(1)(c) of the Occupational Health and Safety Act;
- failing to provide information, instruction and supervision to protect the health or safety of the worker in the cleaning of the auger, contrary to section 25(2)(a) of the Occupational Health and Safety Act; and
- failing to ensure the auger was guarded by a guard or other devices that prevented access to the moving part, as prescribed by section 24 of Ontario Regulation 851. This was contrary to section 25(1)(c) of the Occupational Health and Safety Act.

## **CAREER OPPORTUNITIES**

We are currently seeking intermediate and senior consultants. We require a formal education in the field of occupational health and safety with a good knowledge of the Occupational Health and Safety Act and Workwell Audit Compliance. We also require skill in program development and conducting public training sessions. We also require 3-5 years' experience working in the occupational health and safety field. If interested, please forward your resume.

**RAISING THE STANDARD CONSULTING INC.**

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harm to that person, or any other person, arising from that work or task". "Everyone" includes individuals, organizations as broadly defined, and corporations.

This duty parallels traditional OH&S standards, but also expands on the matters contained in most OH&S statutes. The duty applies to any individual with authority to direct another person in the performance of work, while OH&S legislation generally imposes duties on employers, supervisors, constructors, owners, directors and officers. The Criminal Code may apply more widely to anyone who "undertakes" to direct work, including lead hands and working forepersons. The Criminal Code duty also requires that reasonable steps be taken to prevent bodily harm to any person, which would include the public or volunteers who may enter the workplace or be affected by workplace activities.

**Does violation of the Criminal Code duty mean we are guilty of criminal negligence?**

Breach of the Criminal Code duty does not necessarily mean that an organization or individual is guilty of criminal negligence. In order for a breach of the duty of care to amount to criminal negligence, the Crown must prove beyond a reasonable doubt in court that the breach of the duty occurred in a "wanton or reckless" manner.

Section 219 of the Criminal Code states that, "Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons." The provisions of Section 219 broadly state that for the purposes of the criminal negligence section, Section 219 of the Criminal Code, "duty" means a duty imposed by law.

Criminal cases have found that for criminal negligence to occur, a breach of a duty must represent a "marked" and significant departure from the standard of a reasonably prudent person in the circumstances. There must be more than mere failure to meet an OH&S or Criminal Code standard through inadvertence. There must be evidence of behaviour which shows complete disregard for, or indifference to the duty. As one court put it, there must be a finding of a "devil-may-care" attitude that shows a criminal standard has been met.

**Wasn't Bill C-45 all about creating criminal liability for directors and officers?**

Not exactly. While the Westray inquiry which concluded in 1997 recommended that Canada "amend or introduce legislation to ensure that corporate executives and directors are held properly accountable for workplace safety and the wrongful and negligent acts of their corporations," ultimately Bill C-45 created a mechanism which allowed corporations to be more readily convicted of criminal negligence. The Criminal Code continues to allow individual charges of criminal negligence, which could include charges against a supervisor, or director or

officer, for breach of a duty in a wanton or reckless manner, but that was not the primary focus of the Bill C-45 amendments when they were passed and came into force in 2004.

**Does Bill C-45 create both corporate and individual criminal liability?**

Yes, it does both. The provisions create new criminal duties and liabilities for both individuals and organizations (which are defined to include corporations). Both individuals and organizations can now be convicted of criminal negligence for failure to perform the duty, when it occurs in a manner that shows wanton or reckless disregard for the lives or safety of others.

**What is necessary for an organization (including a corporation) to be convicted under the Criminal Code of criminal negligence?**

The process for convicting an organization of criminal negligence in the workplace safety context involves two steps. First, the Crown must prove beyond a reasonable doubt that the actions of a single representative (employee, partner, contractor, agent of the organization) breached the Criminal Code duty in a wanton or reckless way. This could involve reckless ignoring of safety rules or physical protective devices where the potential result is serious harm or death.

Second, after the breach of duty is established, the Crown must then show that a senior officer with operational or executive authority, or as drafters put it, someone with "real clout" who is responsible for the part of the organization involved in the breach, either failed to act or insulated themselves from obtaining the knowledge to act. The Crown has to prove a marked departure from what would reasonably be expected of a senior officer with obligations to protect workers and the public.

**What are the potential liabilities under the Criminal Code provisions as amended by Bill C-45?**

For individuals, the maximum penalty for criminal negligence causing death is life imprisonment, and the maximum penalty for criminal negligence causing bodily harm is ten years' imprisonment. However, individuals are subject to a range of Criminal Code sentencing options from absolute discharge, to probation, to life in prison, depending on the specific circumstances of the contravention. Organizations, including corporations, are subject to different penalties depending on how the Crown proceeds. Where the Crown proceeds by summary conviction (the least serious manner of proceeding), the maximum fine is \$100,000 for an organization.

Where the Crown proceeds by indictment (the most serious manner of proceeding), there is no limit on the amount of

the fine for the corporation or organization.

Organizations may also be placed on probation and the terms of a probationary order can include such matters as: requiring the organization to make restitution, financial or otherwise, relating to the offence; requiring the organization to report to the court or the public on implementation of remedial steps; requiring the appointment of a senior officer to be responsible for implementing remedial procedures; requiring the organization to disclose its conviction to the public.

Probation orders including these types of terms are available in addition to monetary penalties.

### **WEB BASED TRAINING**

Raise the safety, health, and productivity of your employees to the top of your agenda and provide training solutions that deliver real results. We provide web-based training programs for the convenience of your organization. Please visit our web-site to register.

#### **Hand Tools and Automotive Lifts**

Identify the Hazards and Controls Regarding: Hand Tools, Hoists, Fixed, Power, Electrical and Pneumatic Tools, Guarding, Powered Lifting Equipment, Automotive Lifts.

#### **Joint Health and Safety Committee**

Participants will be able to: know the legislative requirements for establishing a JHSC, describe the powers, functions and duties of JHSCs and their members, describe the activities of an effective JHSC, etc.

#### **Machine Safety and Lockout / Tagout Procedure**

Learn about Workplace Responsibilities, Machine Guarding and the Law, Understanding Machine Related Hazards Lockout / Tagout, Applicable Legislation, Hazard Identification, Lockout Procedures.

#### **Health, Safety and The Law**

Provide participants with a working knowledge of the Occupational Health and Safety Act and related legislation and more.

#### **Manager and Supervisor Safety Orientation**

Learn about Management Responsibilities, Right to Refuse, JHSC, Hazard Recognition, Workplace Accidents, Emergency Procedures, New Employee Orientation, Transfer and Promotion, etc.

#### **Material Handling**

This course is designed to teach workers about proper material handling techniques. Upon completion of this course, workers should be able to: describe what factors contribute to back injuries, explain proper lifting techniques, etc.

#### **Accident Investigation**

The goal of this module is to ensure you will be able to: recognize the need for an investigation, investigate the scene of the accident, interview victims & witnesses, determine root causes, compile data and prepare reports, make recommendations, etc.

#### **Health Hazards: Recognition, Assessment and Control**

The goal of this module is to ensure you will be able to: understand the law pertaining to health and safety hazards, define occupational injury and illness, understand the four types of workplace health hazards, etc.

#### **Workplace Inspection**

Provide participants with an understanding of their legal rights and responsibilities with regard to workplace inspections and to prepare them for carrying out effective workplace inspections.

#### **Slips, Trips and Falls**

Objective of this training is to: understand the causes and effects of falls in the workplace, to understand legislation relating to slip, trip and fall hazards, to be able to identify potential slip, trip and fall hazards, etc.

#### **WHMIS**

Explain how WHMIS is implemented in law, explain how the law defines a controlled product, explain how the law defines hazardous ingredients, identify the exclusions, etc. Register to access the complete training material.

#### **Worker Safety Orientation**

Worker Responsibilities, Right to Refuse, Joint Health and Safety Committee, Hazard Recognition, First Aid, Workplace Accidents and more.

### **PUBLIC TRAINING COURSES**

The following is an example of a few of the training courses we offer. For a full list, please contact us.

#### **JHSC Certification Part 1 Training (2-day course)**

\$349.00 +GST - 2-day Course

**July 8-9, August 12-13, Sept. 9-10, Oct. 7-8, Nov. 4-5**

#### **JHSC Certification Part 2 Training (length depends on industry)**

**Service Sector (office, hotels/restaurants, retail, etc.)**

\$245.00 +GST – 1 day:

July 22, August 26, Sept. 23, Oct. 21, Nov. 18

#### **Healthcare, Warehouse/Distribution, Manufacturing**

\$350.00 +GST – 2 days:

July 22-23, Aug. 26-27, Sept. 23-24, Oct. 21-22, Nov. 18-19

#### **Construction (including 1 day fall Protection)**

\$475.00 +GST – 3 days:

July 22-24, Aug. 26-28 Sept. 23-25, Oct. 21-23, Nov. 18-20