

Canada's First Corporate Criminal Conviction: Quebec Company Fined \$110,000 for Bill C-45 Violation

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As most OH&S and human professional are aware, the *Criminal Code* was amended in March 2004 by Bill C-45 to allow prosecutors to bring criminal charges against organizations and their management in cases of serious breaches of workplace safety standards. The changes to the *Criminal Code* emphasized the responsibility of corporate senior management to ensure occupational health and safety compliance.

Transpavé Inc Prosecution

The Bill C-45 amendments received a great deal of attention at the time they were enacted, but regulators have chosen not to pursue OHS criminal prosecutions. However, a landmark case from Quebec suggests that the tide is turning towards OHS criminal prosecutions in the future. In October 2005, a young employee of Transpavé Inc. (a concrete block manufacturer based in suburban Montreal) was fatally injured when he was crushed by heavy machinery while performing repair work.

An investigation report by the Commission de la santé et de la sécurité du travail,

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Quebec's OHS regulator, found that

- the worker was not properly trained to perform the work
- a light guarding mechanism had been disabled for an extended period prior to the incident, and
- there were a number of fundamental problems with the company's OHS program.

Representatives of organized labour in Quebec publicly called for criminal charges to be laid. Transpavé was charged by Quebec prosecutors with criminal negligence causing death. There were no charges laid against any Transpavé managers or employees.

Immediately after the charges were laid, the company publicly announced that it intended to defend itself in Court. However, the company's lawyer negotiated a plea bargain with prosecutors where it agreed to pay a \$100,000 fine, subject to Court approval.

On March 17, 2008, Justice Paul Chevalier approved the fine and imposed an additional \$10,000 surcharge in accordance with the *Criminal Code*. The Court indicated that it was impressed that the company had spent over \$750,000 on safety improvements since the incident, and noted that the company's equipment now exceeds North American safety standards. Transpavé did not have a prior record under Quebec's OHS legislation or the *Criminal Code*. The Court also clearly emphasized that it did not want to impose a penalty that would have the effect of putting the company out of business, and its 100 employees out of work.

Risk Of Criminal Prosecution Should Be Taken Seriously

The prosecution clearly shows that the risk of Bill C-45 prosecution is real, and that organizations will potentially face criminal investigations where there is evidence of serious negligence. It is important to appreciate that, as this case was resolved by a guilty plea, the Court did not make any comment about the level of negligence required to breach the criminal standard. Further, the lack of individual charges means that there is still no precedent for sentencing an individual under the Bill C-45 provisions of the *Criminal Code*.

A Word Of Caution About The Size Of The Fine

Many individuals familiar with Ontario OHS prosecutions viewed the fine imposed by the Quebec Court as relatively low. The president of the Quebec Federation of Labour publicly stated that he felt the fine was too low and failed to take into account what he viewed as an extensive history of safety non-compliance by Transpavé.

There is no question that the fine imposed against Transpavé is in line with what a smaller employer would likely receive if it were convicted under the Ontario *Occupational Health and Safety Act* (OHSA) for a similar offence. However, it is important to appreciate that Quebec OHS legislation imposes considerably smaller penalties for contraventions than the Ontario OHSA. The maximum fine for an employer in Quebec where a worker is harmed is \$20,000 per count (for a first offence), compared to a maximum fine of \$500,000 per count in Ontario.

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In the event of a criminal prosecution in Ontario, employers should expect that prosecutors will urge the Court to impose a fine considerably higher than what would be imposed under the OHSA. This would have the practical effect of exposing a similarly situated Ontario employer to a risk of a considerably higher fine than what was imposed against Transpavé.

The Role Of Public And Union Pressure

As was discussed above, representatives of organized labour in Quebec publicly called for Transpavé to be subject to criminal prosecution. While there is no way to assess what impact these public comments had on Quebec prosecutors, it certainly suggests the possibility that calls in the media from unions, safety advocates or members of the victims family may influence prosecutors to pursue a criminal prosecution if there is a legal basis to do so.

Employers must appreciate that they will have virtually no control over statements made in the media in the immediate aftermath of a workplace accident. It is very possible that comments made in the media could subject the organization to more extensive scrutiny from police

investigators, which potentially increases the risk of criminal prosecution.

Compliance With The OHSA Is Critical

Employers must remember that, to be convicted of an OHS criminal offence, it must be proven that the employer's action was a marked and substantial departure from standards of a reasonably prudent employer. An employer who is able to establish due diligence within the meaning of OH&S legislation will not be found guilty of a criminal offence. The key to preventing criminal prosecution remains ensuring that compliance with the standards set out by provincial OHS legislation.

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