

## The First Bill C-45 Conviction: Quebec Employer Pleads Guilty to OH&S Criminal Charges

### Ryan J. Conlin

It has been almost four years since the *Criminal Code* was amended by Bill C-45 to make it easier for employers and supervisors to be convicted of criminal negligence for serious breaches of workplace safety standards. The Bill C-45 amendments justifiably received widespread attention in the employer community at the time of their enactment. However, Crown Prosecutors across the country have continued their historic practice of not laying criminal negligence charges for OH&S violations. This has led some to conclude that the OH&S related criminal charges were little more than a theoretical risk. This case shows that the sceptics have been proven wrong.

### First Corporate Criminal Conviction

The landscape may have finally changed as a result of a December 7, 2007 guilty plea by Transpave Inc. to criminal negligence charges arising out of a fatality to a young worker. The accident took place on October 11, 2005, at a workplace that manufactures concrete blocks for patios. The worker was crushed after entering a moving area of a machine that stacks blocks, while attempting to clear a jam in

the machine. The worker was not performing his regular job and was acting as a replacement for an employee who was on a break.

The machine was equipped with a light curtain guarding system. This should have interrupted power to the equipment as the worker approached it. Investigators from the province's workplace safety enforcement body (*La Commission de la Santé et de la Sécurité du Travail*) conducted a wide reaching investigation and concluded that the following caused the accident:

- The light curtain system was disabled at the time of the accident. Investigators determined that the light curtain system was disabled for the majority of the time in 2004 and 2005. An expert who examined the machine concluded that it was very easy to bypass the light curtain system;
- The company did not provide adequate machine safety and hazard awareness training. This lack of training on critical safety issues resulted in the worker not knowing the dangers

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associated with entering the area and moving the patio stones.

- The company did not implement any specific work procedure that adequately addressed the hazards associated with moving the patio stones.
- The company did not have an inspection program to confirm whether the guarding system was operational.
- Investigators concluded that a member of management had noted in the past that the light curtain guarding system was disabled but did not take any action to address the situation.
- The training system for new operators was not evaluated or reviewed by management.

## Implications of the First Corporate OH&S Criminal Conviction

The company will be sentenced in a Quebec Court on February 27, 2008. There is no limit on the amount of the fine that the Court can impose. It remains to be seen whether this case will pave the way for an increased number of OH&S related criminal prosecutions. Crown Prosecutors continue to be pressured by safety advocates and representatives of organized labour across the country to pursue criminal prosecutions.

It appears likely that this pressure will increase now that an employer has been convicted. It is my view that the risk of criminal prosecution is particularly high in the context of accidents which receive a great deal of public attention or cases involving fatalities to young workers. Employers must be vigilant to ensure that their organization meets court developed due diligence standards to avoid criminal and/or regulatory prosecution. Given that the *Criminal Code* focuses on the role of senior management, particular attention must be paid to the issue of OH&S due diligence at the most senior levels of the organization.

It is important to appreciate that since this case was a guilty plea, the Court did not make any comment about how it would assess whether an organization is guilty of criminal negligence in the OH&S context. However, the sentencing decision in the case may shed some light on the important issue of how an organization will be sentenced under the *Criminal Code*. We will review the details of the sentencing decision in a future *Due Diligence Update*.

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