

Transpave Inc. Bill C-45 Update: Prosecutor And Defence Recommend \$100,000 Fine To The Court

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The first corporation to be convicted under the Bill C-45 provisions of the *Criminal Code* is one step closer towards learning the penalty it will receive after a Quebec Court heard sentencing submissions from counsel at a February 26, 2008 hearing. Transpave Inc. pleaded guilty on December 7, 2007 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.

Joint Submission of \$100,000 on Penalty

At the sentencing hearing, counsel for the Crown and Defence made a "joint submission" to the Court that it should impose a \$100,000 fine. A "joint submission" is a fairly common plea bargaining practice where counsel enter into negotiations and agree in advance to make a joint recommendation to the Court about what the sentence ought to be. The Court is not required to accept the "joint submission" and is free to impose a different sentence.

However, legal precedent dictates that a Court should not depart from the "joint

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submission" unless the recommended penalty is contrary to the public interest and would bring the administration of justice into disrepute. It is relatively rare (although by no means unheard of) for a Court to reject a penalty jointly recommended by Crown and Defence Counsel.

The Court heard that Transpave Inc. (which employs approximately 100 workers) had spent in excess of \$500,000 on safety improvements since the accident. It was also pointed out that the guilty plea by Transpave Inc. spared the victim's family and other workers a potentially lengthy preliminary hearing and trial.

The "joint submission" of counsel did not propose a period of probation for the company. However, counsel for the Crown commented to the Court that a probation order would be an effective mechanism for ensuring that the company maintains high health and safety standards. The Defence did not formally object to the imposition of a probation order.

Sentencing Decision to be made March 17, 2008

The Court adjourned to consider the submissions of Counsel and will make a decision about the company's sentence on March 17, 2008. It is important to appreciate that in both criminal and OH&S cases, Courts place great weight on the corporate Defendant's size and revenues for the policy purpose of ensuring that the fine is set at a level which imposes a

punishment and not at an amount which could be seen as the cost of doing business. Further, Courts also carefully consider evidence of safety improvements made by the corporation to prevent a future accident from occurring.

It is clear that the amount of the proposed fine was greatly influenced by the relatively small size of Transpave Inc. and the extensive post-accident steps that were undertaken to improve worker safety. There is little doubt that a larger organization should expect to receive a considerably higher fine if it were to be convicted of criminal negligence for an OH&S contravention.

We will review the March 17, 2008 sentencing decision in a future edition of the *Due Diligence Update*.

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