

## Bill C-45: Due Diligence or Do Time

A new law came into force in Canada on March 31, 2004 that should have ‘senior officers’ of organizations taking note and taking action. Similar legislation has been passed in a number of US states and other countries and senior management should be taking note of the consequences if harassment or workplace safety situation results in injury or death to an employee or contractor of your organization.

In Canada, Bill C-45 strengthens current sections of the *Criminal Code* and adds some new sections and definitions to the *Code* that will have impact on anyone that manages people or the affairs of an organization. For the purposes of this article, we are going to concentrate on the Health & Safety aspects of the *Code* and what it could mean to management in an organization.

Bill C-45 adds a section to the Criminal Code (217.1) that states in part 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 harm to that person, or any other person, arising from that work or task.” Moreover, C-45 also expands the scope of the law past ‘corporate bodies’ to include all organizations and defines more clearly the people that may be prosecuted under this section of the *Code* and expands penalties to include the imprisonment of senior officers.

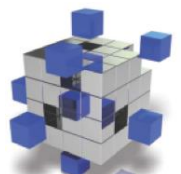
### Definitions

An ‘organization’ is defined as a public body, a body corporate, a society, a company, a firm, a partnership, a trade union, or an association of persons for a common purpose or other groups that have a structure and makes themselves known to the public. A ‘senior officer’ of the organization is one who has an important role in setting policy or managing an important part of the organization’s activities. For the purposes of this law, anyone in what’s commonly known as the “C Suite” of an organization (e.g. CEO, CFO, COO, President, VP-Finance, etc.) is automatically considered a ‘senior officer’. However, managers of operations such as production, warehousing, construction and others who direct work may also be considered in the scope of prosecution should serious bodily harm, or death, result in the workplace due to the willful negligence of those responsible for the health and safety of workers.

And don’t think this only applies to workers in ‘blue collar’ environments! This could also be applied to an office environment where, for instance, computer cables or electrical extension cords are placed in areas that people would normally travel. Someone trips, smacks their head on the corner of a desk, cracks their skull and someone’s going to be held responsible...potentially both through the civil and criminal courts but certainly under the new provisions that C-45 has added to the *Criminal Code*.



Interestingly, the Act also broadens the scope of who can be considered to represent an organization. Beyond officers and employees, the Act allows for directors, partners, contractors, agents and others that work on the organization’s behalf and are working within the scope of their work agreement may also be considered representatives of the organization.



## **Penalties**

For summary (less serious) convictions under the *Occupational Health & Safety Act*, the maximum fine can go up to \$500,000. For indictable offences under the *Criminal Code*, there is no limit on the fine that can be imposed. In fact, the maximum sentence for an individual convicted of “criminal negligence causing death” is life imprisonment and under the provisions of Bill C-45 a ‘senior officer’ of an organization could be charged with this offence if someone were to be killed as a direct result of their failure to take “reasonable steps to prevent bodily harm” of their workers.

Bill C-45 added factors that are additional to the current *Criminal Code* factors that judges can take into consideration when sentencing. Those factors are:

- ✚ *Moral Blameworthiness* – the more money that was made, or the greater the care in planning that the organization took in breaking the law, the higher the sentence;
- ✚ *Public Interest* – the fine should not be so great as to put the organization into bankruptcy and therefore have negative effects on the uninvolved stakeholders of the organization. However the cost of prosecution is also considered into the public interest factor;
- ✚ *Prospects of Rehabilitation* – Is this a repeat offence? Has the organization taken immediate steps to halt the offences from happening again? Has the organization begun restitution to those impacted? Did it try to minimize its impact or did it try to minimize its potential to be found out?



## **Take note and take action**

If the senior officers, and other management, are to ensure that they do not run afoul of the Health & Safety aspects of the *Code*, then the planning and execution of workplace safety methodology must become a priority. Here are a couple of examples of the levels of training and reinforcement may be required.

### *Office Safety*

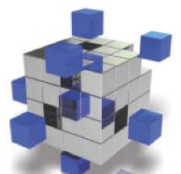
Ensuring that there is a functioning, empowered Health & Safety (H&S) committee (or person in a small office setting) that regularly inspects the workplace for safety issues, meets at least quarterly (preferably monthly) to discuss health and safety issues is a must. The entire office team should be educated on basic office safety (e.g. the aforementioned cables) as part of their initial employment orientation.

### *The Warehouse*

This is likely one of the more complicated situations. There are several types of H&S situations that need to be communicated to workers. For instance, the general H&S overview that all workers would receive is automatic plus: job specific training and instructions; site specific issues (e.g. H&S concerns specific to the actual site of the warehouse); and, potentially seasonal training and instructions (e.g. ensuring water consumption on extremely hot days or proper stacking of outdoor product).

### **Methods & Technology**

The members of the H&S committee should attend seminars or certification programs to become fully aware of H&S issues. When issues are raised, management must take the necessary steps to ensure safety.



Each organization should have policies, procedures and documentation to prove beyond any reasonable doubt that H&S issues are of paramount concern to the senior officers and management of the organization.

There are some technologies that can assist in ensuring that the organization is demonstrating their attempts to ensure a safe workplace:

### *Maintaining a Health & Safety zone on an employee intranet*

Minutes of H&S meetings, concerns and demonstrated actions can be put out in an area that all employees can have access to and, potentially, input into. These areas can be secured, monitored and become quite proactive in preventing issues from escalating and maintaining high employee morale. Health & Safety tips and procedures can also be made available here.

### *Human Resource Information Solutions (HRIS)*

Tracking the education, training and certifications that employees receive is a standard function in most HRIS packages.

### *Business Process Management (BPM) Solutions*

When the potential for H&S issues to arise is complicated or severe enough, the implementation of a BPM solution will ensure that every step of the dictated H&S procedure is followed including education and training prior to starting a specific job at a specific site. Additionally, a BPM solution can also ensure that accident reporting is followed through the proper channels and appropriate actions taken. Emercomm has created an automated business process management application named: **LeanControl HRPM** that has the entire range of processes and risk management methods embedded. For more information on this application, please contact: [services@emercomm.com](mailto:services@emercomm.com)

### **Summary**

The new sections of the Criminal Code put additional liabilities on all management personnel associated with employee health and safety. Take note and take action. To not do so would be criminal.

### **About the Author**

Ken Cowman's career began in 1972 in operations management. In 1983 Ken was recruited as an enterprise solutions and continuous improvement project manager for a software vendor. Since 1983 he has continued consulting and has become a certified adult educator, seminar leader and management coach. He has had over 70 articles published in various magazines and has spoken at numerous professional association events.

A founding executive of the APICS Peel Chapter, Ken was part of the OMERIC team that wrote the Fundamentals of Operations Management courses for APICS. He is also the past Chair of the Business Operations Management Program Advisory Committee at the School of Business at Centennial College.

He can be reached via email [kcowman@emercomm.com](mailto:kcowman@emercomm.com) and can be found on LinkedIn <http://ca.linkedin.com/pub/ken-cowman/4/602/370/>.

