

Bill C45: Where Are We Now?

Presentation for SHARP Safety
Conference 2011

By Andy Wood

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Overview

- Bill C-45: Introduction
- The Law Before Bill C-45
- How Bill C-45 Changed The Law
- Prosecutions Under s. 217.1 of CCC
- What To Expect In Future

Bill C-45: Introduction

- Bill C-45 became law on March 31, 2004
- It amended the *Criminal Code* by:
 - Creating a legal duty on anyone who directs the work of others to prevent bodily harm to the workers and others arising from the work
 - Expanding criminal liability of “organizations” for the acts of their representatives
 - Establishing factors for sentencing and probation of “organizations”

Bill C-45: Introduction

- “Organizations” include corporations, public bodies, societies, proprietorships, partnerships, trade unions, municipalities, and organized associations

The Law Before Bill C-45

- Criminal Negligence
 - Longstanding *Criminal Code* offence = criminal negligence causing bodily harm or death
 - Action or omission in fulfilling **legal duty** that shows wanton and reckless disregard for lives or safety of others

The Law Before Bill C-45

- Criminal Negligence
 - The “marked departure” standard
 - For criminal negligence, the accused’s conduct must be a marked departure from the norms of reasonable behaviour
 - Indictable (serious) offence
 - Bodily harm – maximum sentence 10 years
 - Death – maximum life sentence

The Law Before Bill C-45

- Criminal Negligence
 - Corporations can be liable
 - For conduct of a “directing mind” of the corporation
 - With decision making authority on matters of corporate policy
 - Acting within assigned responsibilities
 - Acting for the benefit of the corporation

How Bill C-45 Changed The Law

- Bill C-45 created new legal duty (s. 217.1)
- Applies to everyone who directs or has authority to direct how others do work
- Duty = To take reasonable steps to prevent bodily harm to that person or others, arising out of work
- Failure to comply with duty can be criminal negligence

How Bill C-45 Changed The Law

- Breach of Bill C-45 duty = criminal negligence where:
 - Failure to take reasonable steps to prevent bodily harm
 - Injury or death resulted
 - The accused's conduct was a **marked departure** from workplace safety norms

How Bill C-45 Changed The Law

- “Organizations” can be convicted of criminal negligence where, acting within their authority:
 - One of its representatives commits the offence;
or
 - Two or more representatives engage in conduct which would have been the offence if committed by one person
 - **And** the senior officer responsible for the relevant activities departed markedly from the reasonable standard of care re workplace safety

How Bill C-45 Changed The Law

- Fines for Corporations
 - Summary conviction offences: maximum fine increased from \$25,000 to \$100,000
 - Indictable offences: No maximum on fine Court can impose
 - Criminal negligence causing bodily harm or death = indictable offence

Prosecutions Under s. 217.1 of CCC

“The criminal law must be reserved for the most serious offences, those that involve grave moral fault...the Government does not intend to use the federal criminal law power to supplant or interfere with the provincial regulatory role in workplace health and safety...”

Prosecutions Under s. 217.1 of CCC

- Not surprisingly, since 2004
 - A handful of prosecutions
 - Two convictions

Prosecutions Under s. 217.1 of CCC

■ 2004 Newmarket Ontario Construction Fatality

- Small construction company contracted to dig trench to install drain tiles around a house
- Trench was not shored and was sloped incorrectly
- Trench collapsed, killing worker
- Site supervisor charged under s. 217.1
- Plea bargain dropped charges
- Supervisor plead guilty to regulatory offences
- Fine: \$50,000

Prosecutions Under s. 217.1 of CCC

■ R. v. Transpave Inc.

- 2005 - Quebec paving stone manufacturer charged after employee crushed by cement-block packing machine
- Safety system had been disabled without the knowledge of Transpave or its senior officers
- 2008 - Transpave plead guilty to criminal negligence causing death and regulatory offences
- Company fined \$100,000

Prosecutions Under s. 217.1 of CCC

■ R. v. Hritchuk

- 2005 incident – two mechanics in auto dealership seriously burned after using a hand-crafted fuel pump. Proper equipment had been broken for years
- 2009 - Service Manager charged with criminal negligence causing bodily harm for failing to ensure workers worked in safe manner and for not repairing equipment
- Outcome not reported
- The dealership was fined under Quebec health and safety legislation

Prosecutions Under s. 217.1 of CCC

- **R. v. Millennium Crane Rentals**
 - 2009 – Mobile crane contracted by municipality to lower concrete into hole at city landfill sewer project. While repositioning, crane fell into hole crushing worker
 - Crane found not to be in safe operating condition
 - Company, owner and crane operator charged with criminal negligence. Company also charged with regulatory offences under Ontario health and safety legislation
 - March 2011 – Crown withdraws criminal charges as no reasonable prospect of conviction

Prosecutions Under s. 217.1 of CCC

- R. v. Metron Construction Inc.
 - December 2009 – 5 workers fell 13 stories after swing stage scaffold they were working on to repair balconies broke in two places. 4 workers killed and 1 seriously injured
 - Company, President and two managers charged with criminal negligence
 - Multiple regulatory charges
 - Case still before courts

Prosecutions Under s. 217.1 of CCC

■ **R. v. Scrocca**

- Owner of landscaping company operating backhoe when it rolled down a hill pinning his employee against a wall. Employee died from injuries.
- Backhoe brakes were at less than 30% capacity. Backhoe had not been serviced for 5 years. Brake fluid not checked for at least 1 year.
- Owner charged and convicted for criminal negligence for breach of duty under s. 217.1 of CCC
- Owner given conditional sentence 2 years less a day served in community

Prosecutions Under s. 217.1 of CCC

■ Weyerhaeuser – Private Prosecution

- November 2004 – Worker killed clearing clogged debris from a hog in the Company's sawmill
- WorkSafeBC fined Company \$297,000 stating management ignored safety concerns and condoned culture of complacency towards workplace hazards
- Police recommended charges company but Crown determined there was insufficient evidence to proceed
- USWA launched private prosecution

Prosecutions Under s. 217.1 of CCC

■ Weyerhaeuser – Private Prosecution

- March 2011 Provincial Court rules that there was sufficient evidence to establish prima facie case and to continue proceeding
- August 2011 Crown took conduct of the prosecution and directed a stay of proceedings
- “Evidence does not establish that management knew that entry into the hogs was occurring...evidence does not establish substantial likelihood of conviction against the Company”

Prosecutions Under s. 217.1 of CCC

■ R. v. Lilgert

- March 2010 - Navigating Officer of the Queen of the North charged with criminal negligence causing death in relation to sinking of Ferry
- No other charges filed
- Matter still pending

What To Expect In Future

- Historically: difficult to obtain convictions for criminal charges or even regulatory offences
- Requirements for “marked departure” and “wanton and reckless” conduct sets high standard for criminal conviction
- Enforcement jurisdiction of health and safety tribunals expanded – larger/more penalties
- May see some increase in criminal prosecutions but not a lot

Conclusion

Questions?

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