

Westray Bill (Bill C-45) – Overview (1)

Fact Sheet



WHAT WAS THE WESTRAY BILL (BILL C-45)?

The Westray bill or Bill C-45 was federal legislation that amended the Canadian Criminal Code and became law on March 31, 2004. The Bill (introduced in 2003) established new legal duties for workplace health and safety, and imposed serious penalties for violations that result in injuries or death. The Bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives and those who direct the work of others.

NOTE: The Canadian federal government reuses bill numbers. Currently Bill C-45 is being used to announce Act(s) respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts.

Sections of the Criminal Code

The amendment added Section 217.1 to the Criminal Code which reads:

“217.1 Every one 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.”

The amendment also redefined the term organization to include a broader definition of those potentially liable and added Sections 22.1 and 22.2 to the Criminal Code imposing criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2).

Why was Section 217.1 in the Criminal Code created?

The amendments announced in Bill C-45 (2003), also known as the “Westray Bill”, was created as a result of the 1992 Westray coal mining disaster in Nova Scotia where 26 miners were killed after methane gas ignited causing an explosion. Despite serious safety concerns raised by employees, union officials and government inspectors at the time, the company instituted few changes. As a result of the minimal changes, the disaster occurred.

After the accident the police and provincial government failed to secure a conviction against the company or three of its managers. A Royal Commission of Inquiry was established to investigate the disaster. In 1998, the Royal Commission made 74

recommendations. The findings of this commission (in particular recommendation 73) were the movement that led to amendments of the Criminal Code.

What are the main provisions of Section 217.1 in the Criminal Code?

Section 217.1 in the Criminal Code:

- Created rules for establishing criminal liability to organizations for the acts of their representatives.
- Establishes a legal duty for all persons “directing the work of others” to take all reasonable steps to ensure the safety of workers and the public.
- Sets out the factors that courts must consider when sentencing an organization.
- Provides optional conditions of probation that a court may impose on an organization.

Who do these provisions of the Criminal Code affect?

These provisions of the Criminal Code affect all organizations and individuals who direct the work of others, anywhere in Canada. These organizations include federal, provincial and municipal governments, corporations, private companies, charities and non-governmental organizations.

Who is responsible for enforcing this Criminal Code?

Police and crown attorneys enforce the Criminal Code. The police and crown are responsible for investigating serious accidents and will determine whether any charges should be laid under the Canadian Criminal Code. The Criminal Code is a very different set of rules, and should not be confused with “regular” occupational health and safety laws (OH&S) and how they are enforced

Who is responsible for enforcing occupational health and safety laws?

Depending on your jurisdiction, the Ministry (or Department) of Labour or Workers’ Compensation Board (WCB) enforces OH&S laws. Across Canada each province, territory and the federal government are responsible for enforcing their own individual set of occupational health and safety laws. Each jurisdiction employs inspectors who visit workplaces to ensure companies are complying with their OH&S legislation. In the unfortunate event of a serious incident, these inspectors conduct an investigation and determine if a charge should be laid under the appropriate section(s) of the OH&S Act or regulation. An accused individual or company may then need to appear in court where a fine or other penalty could be imposed if they are convicted. The police are not normally involved in this process.

Does Section 217.1 in the Criminal Code impact on other legislation?

No. Bill C-45 (2003) was a separate piece of legislation that applied to the Canadian Criminal Code only. It does not intrude upon, or override, other existing federal, provincial or territorial occupational health and safety statutes and regulations. In the event of a conviction; however, it does require the courts to look at any penalties imposed by other jurisdictions in determining a sentence.

Can a company be charged under a provincial OH&S act and the Criminal Code at the same time?

Yes, it is possible. It is common practice for both police and health and safety inspectors to both investigate a serious workplace accident. In most cases, the police and provincial authorities would work together to decide which charges should be made. While it is unlikely that two sets of charges would be made, technically

speaking, charges can be laid under both the criminal code by the police and the Occupational Health and Safety Act or regulations by provincial authorities. This situation has occurred in the Millennium Crane Rentals case from Sault Ste Marie, ON.

How is a fine set?

Corporations cannot be imprisoned if convicted under the Criminal Code. Changes due to the Westray bill have increased the maximum fine on an organization for a summary conviction offence (less serious offences where individuals could face up to six months in jail and or a \$2000 fine) from \$25,000 to \$100,000. The more serious offences have no limit.

The court may use the following factors when determining the fine the corporation should face:

“Moral blameworthiness”:

- The economic advantage gained by committing the crime
- The degree of planning involved

Public interest:

- The need to keep the organization running and preserve employment
- The cost of investigation and prosecution
- Any regulatory penalties, which are distinct from those under the Criminal Code, imposed on the organization for the offence

Prospects of rehabilitation:

- Penalties imposed on managers and employees for their role in the crime
- Previous convictions or regulatory offences

Restitution:

- Compensating victims shows that the organization is trying to make up for the harm it caused.
- Attempts to hide assets to avoid paying a fine
- Measures taken to reduce the likelihood of further criminal activity

Has anyone been charged?

Yes, there have been several cases where charges have gone to court. Most of these cases did see other charges and fines issued using the occupational health and safety legislation of the jurisdiction where the incident took place. Below is a summary of some of these cases where individuals were charged under the Criminal Code.

On February 15, 2017, a worker at Rainbow Concrete in Sudbury, Ontario was driving a dump truck and was killed when an archway collapsed on top of the cab of the truck. The company was charged with twelve charges under the Ontario Occupational Health and Safety Act.

On June 3, 2015, an employee of Detour Gold, an open pit mine near the Ontario-Quebec border was exposed to sodium cyanide that leaked out of a reactor as a result of ongoing repairs. The employee became ill and died from sodium cyanide poisoning. The company was charged with criminal negligence causing death under the Criminal Code and 15 charges under the Ontario Occupational Health and Safety Act (OHSA). In addition, charges against three Detour Gold supervisors were placed. The company pleaded guilty to the criminal negligence charge in exchange for the charges under

the OHSA being withdrawn. The company faced a penalty of \$1.4 million, a victim fine surcharge and provide compensation to the deceased employee's family. The charges against the supervisors are still pending.

On September 20, 2013 a mechanic was killed while removing a gas tank from a van with an acetylene torch at Your Mechanic Auto Corner located in Cole Harbour, Nova Scotia. Mr. Hoyeck, owner and supervisor of the mechanic garage faced 12 charges under the Nova Scotia Occupational Health and Safety Act and was charged under the Criminal Code with criminal negligence causing death. In January 2019, the Nova Scotia Supreme Court ruled that Mr. Hoyeck was not guilty of criminal negligence causing the death of a worker. The judge concluded the condition of the workplace environment demonstrated the employer's reckless disregard for the lives and safety of others, but this fact did not cause the worker's death. The worker died as the result of his decision to use the acetylene torch to remove the gas tank. The court noted, as a trained mechanic, the decision to use the acetylene torch should have not been made.

On August 24, 2012 Keith Dunford, a professional truck driver who while speeding and distracted in a construction zone struck and killed an 18-year-old flag person in Saskatchewan. Dunford was charged with criminal negligence causing death and dangerous operation of a motor vehicle causing death. At trial, the Crown dismissed the negligence charge because there was no proof of disregard for lives and safety of others. The conviction of dangerous operation of motor vehicle charge prevailed under the Criminal Code and Dunford was sentenced to two years, less a day in jail, plus a three-year driving suspension. On January 9th, 2017 his case went into appeal and his sentence was upheld, ordering him back into custody.

On February 11, 2010 Sault Ste Marie Police charged the owner of Millennium Crane Rentals and the crane operator with criminal negligence causing death after a municipal worker was killed while working in an excavation hole. The accident occurred on April 16, 2009 at an excavation site where sewage work was being performed. The crane toppled and fell into the hole killing the worker. In March 2011, the Crown announced that it had dropped the charges of criminal negligence causing death because there was no reasonable prospect of conviction based on the evidence. In July 2013, Millennium Crane Rental was, however, "found guilty of failing to ensure that the crane was maintained in a condition that would not endanger a worker", and fined \$70,000 for a violation of the Ontario Occupational Health and Safety Act.

On December 24, 2009 four workers were killed and one was seriously injured at a Toronto construction site when the swing stage scaffolding they were on collapsed. Metron Construction and three corporate officers were charged with criminal negligence and fined \$200,000 plus a victim surcharge of \$30,000. Metron's owner was personally fined \$90,000, plus a victim surcharge of \$22,500 under the Ontario Occupational Health and Safety Act. A total of 61 charges were laid by the Ministry of Labour. The fine against the company was appealed and in September 2013, the Appeal court tripled the fine against Metron, raising it to \$750,000 for Criminal Negligence. An additional victim surcharge of \$112,500 was levied against the company. The appeals court judge found that the original fine of \$200,000 was "manifestly unfit". In 2016, a supervisor was charged and convicted under the Criminal Code, and was sentenced to 3.5 years in prison.

On March 17, 2008 a paving company (Transpave) was charged and convicted of criminal negligence and fined \$100,000 in the death of an employee, plus a \$10,000 victim surcharge.

On May 17, 2007, Mark Hritchuk, a Service Manager at a LaSalle, Quebec auto dealership was charged with criminal negligence after one of his employees caught on

fire while using a makeshift fuel pump that had gone unrepaired and broken for several years. Mr. Daoust, a 22 year employee with the company, was engulfed in flames after a spark ignited fuel which had spilled on him, while he attempted to fill the gas tank of a vehicle whose fuel gage had broken and needed repairing. The employee survived but received third degree burns to 35% of his body. The case was brought before a court of inquiry on March 10, 2009. The case went to court in March 2012. Mr Hritchuk pleaded guilty of unlawfully causing bodily harm and negligence charges were withdrawn as the Crown deemed that Hritchuk had no intention to injure workers.

On October 13, 2006 a train struck a maintenance vehicle, killing one worker and injuring three others. Two employees of Québec-Cartier were charged with criminal negligence causing death and three counts of criminal negligence causing bodily harm. The corporation was not charged. On November 29th, 2010 a Quebec Court acquitted both men on all counts, finding that the incident was an error due to a company culture of tolerance of unsafe practices and deficient training rather than a wanton act of criminal negligence.

On June 12, 2006 a landscape contractor was crushed to death when the backhoe his employer was driving failed to stop, pinning the employee to a wall. The investigation of the incident found that the 30 year old backhoe had not received any regular maintenance since the vehicle was purchased and that no formal inspection had been done in the previous five years. Upon further investigation it was discovered that the vehicle had no braking capacity. In September 2010, the employer was convicted of criminal negligence causing death and was given a two year conditional sentence to be served in the community.

On March 22, 2006 BC Ferries vessel Queen of the North sank after going off course and running aground killing two passengers. The ferry navigation officer was charged with two counts of criminal negligence causing death. The officer was reported to have been distracted by a personal interaction he was having with another person and did not realize the vessel was off course. On June 24th, 2013, he was sentenced to 4 years in prison and banned from operating a vessel for 10 years. An appeal has been filed.

On April 19, 2004 near the city of Newmarket, Ontario a worker was killed after the ground around him collapsed while digging a ditch at a residential construction site. The construction site supervisor was charge under section 217.1 of the Criminal Code with one count of criminal negligence causing death. In March 2005, the charges of criminal negligence against the site supervisor were dropped in an apparent plea bargain which saw the supervisor agree to three of eight charges under the Ontario Occupational Health and Safety Act and a fine of \$50,000 with a 25% victim surcharge.

How can I ensure a safe workplace and limit my liability?

Employers can limit their liability and reduce the chances of being charged under the provisions of the Criminal Code by implementing an effective workplace health and safety program.

You will want to know:

- What your legal obligations are under occupational health and safety laws and standards.
- What hazards exist in your workplace.
- How to effectively reduce or eliminate them.

You will also want to ensure employees are aware of the company's health and safety

program, are informed of any risks, and receive appropriate training and protective equipment.

Where can I find a copy of the Criminal Code?

- Criminal Code of Canada
- Plain Language Guide: Bill C-45 – Amendments To The Criminal Code Affecting The Criminal Liability Of Organizations

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