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EMPLOYMENT | LABOUR

MARCH 2010

CRIMINAL LIABILITY OF EMPLOYERS: AN EMERGING THREAT UNDER BILL C-45?

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Two years ago, on March 17, 2008, Transpavé Inc., a Quebec company, was charged and convicted under Bill C-45 of criminal negligence causing death, and fined \$100,000.00 following the death of an employee who was fatally crushed. Although there have been other charges under Bill C-45, Transpavé is currently the only case in which a conviction has been obtained. That may change as Millennium Crane Rentals Ltd. of Sault Ste. Marie, Ontario, is set to appear in an Ontario court on March 22, 2010, on charges of criminal negligence causing death.

Bill C-45 amended the *Criminal Code* and became law on March 31, 2004, establishing new "criminal" legal duties for workplace health and safety and imposing serious penalties for violations that result in injuries or death. Bill C-45 added section 217.1 to the *Criminal Code* which requires 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." Prior to the enactment of Bill C-45, corporations could only be convicted of criminal acts or omissions of the "directing mind" or "alter ego" of the corporation. Bill C-45 broadens the scope of corporate liability to include acts of a corporate representative.

Bill C-45 made it easier for corporations to be charged and convicted of criminal negligence causing death or bodily harm. However, it has rarely been enforced. In the only known case of Bill C-45 charges against an individual person – as opposed to a corporation – the charges were dropped in 2005 when the accused

pleaded guilty to charges under the Ontario *Occupational Health and Safety Act* and paid a fine. The *Millennium Crane* case may signal that criminal prosecutors are paying more attention to Bill C-45.

The charges against Millennium Crane arose from a fatal accident that occurred in the spring of 2009 when a mobile crane fell onto an excavation site, killing a worker. No charges were laid against the corporation until February 2010, immediately after a public outcry regarding a separate incident in which four workers of another company, Metron Construction, fell to their deaths at a Toronto work site on Christmas Eve when scaffolding collapsed. It is uncertain whether charges will be laid against Metron Construction; however, prior to the Christmas Eve deaths, eight orders, including two stop-work orders, were issued by Ontario's Ministry of Labour at that Toronto site.

Charges under Bill C-45 can have serious consequences for companies. Where the Crown proceeds by way of summary conviction, the maximum monetary penalty is \$100,000.00. However, if the Crown proceeds by way of indictment, there is no limit to the amount of the fine. Corporations may also face probation, remediation, and various other penalties if found guilty.

Although the general trend has been to avoid the use of the criminal sanctions granted by Bill C-45, corporations should be aware of its potential consequences and penalties. It remains to be seen what punishment awaits Millennium Crane. This is a trend that corporations should follow closely.

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