



## Criminal liability for workplace deaths and injuries

### Background on the *Westray Law*

#### What was the *Westray* mining disaster?

On May 9, 1992, 26 miners lost their lives in the *Westray* Mine located in Pictou County, Nova Scotia, when a buildup of methane gas and coal dust ignited and caused an explosion. Prior to the explosion, several safety concerns had been raised by employees, union officials and government inspectors. This incident resulted in changes to legislation regarding how to establish the criminal liability of corporations for workplace deaths and injuries.

#### What is the *Westray Law* or former Bill C-45?

Commonly referred to as the *Westray Law*, former Bill C-45, *An Act to amend the Criminal Code (criminal liability of organizations)*, came into force on March 31, 2004. It modernized the criminal law's approach for establishing the criminal liability of corporations for workplace deaths and injuries. Specifically, it:

- established rules for attributing criminal liability to organizations, including corporations, for the acts of their representatives
- established a legal duty for all persons directing the work of others to take reasonable steps to ensure the safety of workers and the public
- set out factors that a court must consider when sentencing an organization
- provided conditions of probation that a court may impose on an organization

#### What are the rules for attributing liability to an organization?

Sections 22.1 and 22.2 of the *Criminal Code* provide the rules that govern how an organization can be held criminally responsible as a party to an offence for the negligence of a representative of the organization or a fault-based offence (e.g., fraud) committed by a senior officer of the organization. Given that organizations act through people, these rules establish how the actions and intentions of certain classes of people can be attributed to the organization to which they belong, in order for the organization itself to be held responsible for the crime.

Section 22.1 provides the rules that govern how an organization can be held criminally responsible as a party to an offence where the offence charged is one that requires proof of negligence (e.g., criminal negligence causing death (section 220) or bodily harm (section 221)). An organization can be held criminally liable for this type of offence, where:

1. a representative or representatives of the organization acting within the scope of their authority were a party to the offence; and,
2. a senior officer responsible for the aspect of the organization's activities relevant to the offence, departed markedly from the standard of care that could reasonably be expected to prevent the representative from being a party to the offence.

Section 22.2 provides the rules that govern how an organization can be held criminally responsible as a party to an offence where the offence charged is one that requires proof of fault other than negligence (e.g., fraud, theft and bribery). An organization can be held criminally

liable for this type of offence, where one of the senior officers at least had the intent, in part, to benefit the organization in addition to one of the following elements:

1. a senior officer acting within the scope of authority was a party to the offence; or,
2. the senior officer had the *mens rea* for the offence, was acting within the scope of authority and directed the work of other representatives to perform the act element of the offence; or,
3. the senior officer did not take reasonable measures to stop the commission of the offence by a representative.

### **What is the legal duty created by the *Westray Law*?**

Section 217.1 of the *Criminal Code* creates an occupational health and safety duty for all organizations and individuals who direct the work of others in Canada. It requires all organizations and individuals who undertake or have the authority to direct how others work or perform a task, to take all reasonable steps to prevent bodily harm to the person performing the work or task, and to any other person.

### **What is the purpose of the legal duty created by the *Westray Law*?**

Section 217.1 codifies a legal duty for those who oversee, direct or supervise the work of others in the *Criminal Code*. The legal duty created in this section helps to satisfy one of the essential elements in a criminal negligence-based offence— more specifically, that the person directing the work of others breached a legal duty by not taking all reasonable steps to prevent bodily harm to the person performing the work or to any other person.

For example, in the occupational health and safety context, criminal liability can result if an individual or corporation directing how others work or perform a task breached a legal duty (e.g., the duty at section 217.1) in a manner that is so careless or reckless that such conduct merits criminal punishment.

The breach of a legal duty required as an element of criminal negligence-based offences can also be satisfied by other duties, such as those that exist in occupational health and safety legislation or the common law (i.e., duties created by case law).

### **What amendments were made in the *Westray Law* with respect to sentencing?**

Former Bill C-45 increased the maximum fine on an organization convicted of a summary conviction offence from \$25,000 to \$100,000. There is no limit on the amount of a fine that can be imposed on an organization for an indictable offence (i.e., a more serious category of offences).

Former Bill C-45 also enacted a specific section (718.21 of the *Criminal Code*) that sets out special principles to be taken into account by a court when sentencing an organization convicted of an offence. These special principles complement the fundamental and general principles of sentencing set out in sections 718.1 and 718.2 of the *Criminal Code*.

For instance, a court that imposes a sentence on an organization can take into account, among others, the following factors:

- any advantage realized by the organization as a result of the offence
- the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees
- the cost of the investigation to public authorities and the prosecution of the offence
- any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence

The Bill also added a specific section to the *Criminal Code* dealing with probation orders for organizations (subsection 732.1(3.1)). The list of optional conditions the judge can impose includes:

- making restitution to a person for any loss or damage that they suffered as a result of the offence
- establishing policies, standards and procedures to reduce the likelihood of the organization committing a subsequent offence and reporting to the court on the implementation of those policies, standards and procedures
- complying with any other reasonable conditions that the court considers desirable to prevent the organization from committing a subsequent offence or to remedy the harm caused by the offence.

#### **Additional information**

[Criminal Code Offences and their Application by the Courts](#)

[Sentencing of individuals and organizations](#)

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