



Canadian Healthcare
Engineering Society

Ευρωπαϊκή Σοσιετλ

Société canadienne d'ingénierie
des services de santé

αες 2611C62 δε 2αυτε

2012 Webinar Series

Bill C-45: Perils and Opportunities

Our webinar will begin promptly at 12:00
noon, Eastern Time



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2011 Webinar Series

Bill C-45: Perils and Opportunities

Please connect to the audio portion by
dialing (866) 740-1260 in U.S. & Canada

Provide the access code: 7356888#



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**Plan to join us in Montréal
for our National Conference**

September 23-25, 2012

Le palais du congrès

Montréal, QC



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2012 Webinar Series

Conference Highlights

Theme: “Towards World Class Healthcare”

2 days of Education

Keynote speaker: Larry Smith

Huge trade show and exhibit

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**Watch our website for information
on future installments of the 2012
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Σχολή Σελιανών

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Bill C-45: Perils and Opportunities

Darcy L. MacPherson

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Eastern Time



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Bill C-45: Perils and Opportunities

Darcy L. MacPherson

The Basics

- Questions to be Answered Today
 - Why Did the Government Change the Law?
 - What Are the Statutory Provisions?
 - Why Does This Apply to You and Your Organization?
 - What Types of Liability Can Result?
 - How Can You Use This to Your Advantage?

The Basics (cont'd)

- Bill C-45 -- Amendment to the *Criminal Code*
- “*Clarify and Expand*” the Law
- Difference between the Common Law and the Statute
- Different Types of Offences
 - Negligence-Based
 - *Mens Rea*

The Basics (cont'd)

- Two Types of Liability
 - Organizational
 - Personal
- The basis of each is different
- We will cover both
- Liability for criminal negligence will be of the most immediate relevance

The Basics (cont'd)

- What is criminal negligence?
- Not every mistake made is negligence.
- Not every negligent act will be criminally negligent
- Not every criminally negligent act will attract criminal liability

The Basics (cont'd)

- With *mens rea* crimes, the issues are these:
- What did you know?
- Did you take all reasonable measures to prevent the criminal behaviour of other people in the organization?

History

- The Bill and the Westray Mine Disaster
 - Managers Turned Off Certain Safety Equipment
 - This, combined with a variety of factors, resulted in 26 deaths
 - Could Not Go After the Corporation
 - Could Not Go After the Managers
- This was a major impetus for reform

The Language of Bill C-45

- Why do we have to focus on the language of the statute itself?
- The law is a tool, just like the one that fill toolkits that you and your employees use to fix problems.
- So we start with the law in the form that we have it, that is, the statute.

The Language (cont'd)

- The second reason is just as simple, but even more important. Because the statute is a tool, the question then becomes:
- This is a tool to do what?
- In the case of people who work for organizations who wish to avoid criminal sanctions, it provides directions on how to accomplish this.

The Language (cont'd)

- The other side of this coin is that this can be an asset in an argument.
- Assume that you want to accomplish something, such as, for example, a more regular maintenance review of facilities.
- This is going to cost money and your superiors may not want to spend the money.

The Language (cont'd)

- “*organization*” means
 - (a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or
 - (b) an association of persons that
 - (i) is created for a common purpose,
 - (ii) has an operational structure, and
 - (iii) holds itself out to the public as an association of persons;

The Language (cont'd)

- “*representative*”, in respect of an organization, means a director, partner, employee, member, agent or contractor of the organization;

The Language (cont'd)

- “*senior officer*” means a representative who plays an important role in the establishment of an organization’s policies or is responsible for managing an important aspect of the organization’s activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer;

The Language (cont'd)

- **22.1** In respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence if
 - (a) acting within the scope of their authority
 - (i) one of its representatives is a party to the offence, or

The Language (cont'd)

- (ii) two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; and

The Language (cont'd)

- (b) the senior officer who is responsible for the aspect of the organization's activities that is relevant to the offence departs — or the senior officers, collectively, depart — markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence.

The Language (cont'd)

- **22.2** In respect of an offence that requires the prosecution to prove fault — other than negligence — an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers
 - (a) acting within the scope of their authority, is a party to the offence;

The Language (cont'd)

- (b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or

The Language (cont'd)

- (c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

The Language (cont'd)

- **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 Language (cont'd)

- Many of you will be “senior officers” – Second Branch
- This makes you a potential conduit to the organization for the purposes of liability

Basic Concepts in the Criminal Law

- Actus Reus – Wrongful Act
- Mens Rea – Bad Mind
- The problems with this are:
 - No hands
 - No brain

Basic Concepts in the Criminal Law (cont'd)

- The organization is a person
- The senior officer's brain is the brain of the organization, in the senior officer's area of management.
- If a senior officer learns of wrongdoing of any representative, all reasonable measures must be taken to stop it

Criminal Negligence

- Under s. 22.1, the elements are as follows:
- Either:
 - The senior officer in charge of the area;
 - The senior officers collectively
- Must **markedly depart** from the **standard of care** required to prevent the occurrence of the offence by someone connected to the organization

What Is Criminal Negligence?

- Omissions
 - Generally, not a subject for the criminal law
 - There are exceptions
 - Parents have to provide necessaries for children
 - Other Duties
 - A mistake does not equal negligence
 - Example
 - Negligence = unreasonable mistakes.

What Is Criminal Negligence? (cont'd)

- Criminal negligence is even higher
- Marked departure
- High jumping
- Section 217.1

What Is Criminal Negligence? (cont'd)

- There is no such thing as criminal negligence in the air
- Criminal negligence causing bodily harm
- Criminal negligence causing death
- Section 217.1 is a direct response to Westray

Intentional Wrongdoing

- You learn of fraud being committed by someone else in the organization.
- This person is someone junior, both to you, and within the organization
- Can you sit back and do nothing?
- Inside, outside or both?

Risk Minimization Strategies

- 1. Review your policies
- 2. Are these policies written down?
- 3. Do your people understand their obligations, both generally and under the criminal law?
- 4. What is best practice?

Risk Minimization Strategies (cont'd)

- 5. Are you following best practices?
- 6. If not, why not?
- 7. Are your people cross-trained and supervised?
- 8. What barriers do you face in doing what you think is best for the organization?

Opportunities

- This law presents you with opportunities.
- Assume that you are getting resistance from your superiors about how much money is being spent on safety inspections.
- In your view, these inspections are both necessary and prudent

Opportunities (cont'd)

- This law allows you to say to your superiors that the law requires you to make these inspections
- Also, the law tells you what to do to protect the organization



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