

# Amendments to Criminal Code expand corporate criminal liability

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Bill C-45 received Royal Assent on November 7, 2003 and will be proclaimed into law in early 2004. The Bill amends the *Criminal Code* to expand the liability of organizations, including corporations. The proposed legislation reflects the Federal Government's response, issued in November 2002, to the 15<sup>th</sup> report of the Standing Committee on Justice and Human Rights, dealing with workplace safety and corporate liability. The Standing Committee's report in turn followed on the report of the Westray Mine Public Inquiry, which called on the Government to toughen the legislation so as to increase corporate accountability for workplace accidents. In cases of serious workplace accidents, companies could face extremely substantial fines, while senior officers could be liable to a maximum prison terms of life, where death results, and 10 years where the accident results in bodily harm. Corporations could also face conviction due to the conduct of contractors they engage to perform work on their behalf.

## "ORGANIZATIONS"

As noted above, the new liability provisions apply in respect of "organizations", a defined term in the Bill meaning:

- A public body, body corporate, society, company, firm, partnership, trade union or municipality, or
- An association of persons that is created for a common purpose, has an operational structure, and holds itself out to the public as an association of persons.

Thus, although the potential liability of corporations has received the most attention, the new provisions apply to a much broader range of entities.

## BEYOND THE "DIRECTING MINDS"

Currently, for a corporation to be held criminally liable, the crime must be committed by senior officials with decision-making authority on matters of corporate policy, the so-called "directing minds" of the company, usually directors. The Government intends to expand the range of individuals whose actions can engage the liability of the corporation to individuals referred to as "senior officers", defined to mean those in an organization who play "an important role in the establishment of the organization's policies *or* [are] responsible for managing an important aspect of the organization's activities" [emphasis added]. This term is broad enough to catch employees who exercise delegated operational (as opposed to policy-making) authority.

## **SUBJECTIVE INTENT OFFENCES**

For those offences requiring a higher level of criminal intent than negligence, the Government believes that corporations should be liable in a range of circumstances where a senior officer acts with at least some intent to benefit the corporation. Accordingly, in respect of subjective intent offences, organizations will be held liable where a senior officer, acting with at least the partial intent of benefiting the organization:

- commits the offence;
- with sufficient intent for the offence, directs others in the organization to commit the offence; or
- fails to take action to stop others in the organization whom the senior officer knows are committing or are about to commit the offence.

## **NEGLIGENCE OFFENCES**

Where the offence in question requires only that the negligence of the accused be proved, the Government states that the corporation should be liable for the cumulative fault of several employees and officers, each of whom may have contributed to the end result. In order to achieve this policy objective, the Bill provides that for negligence offences, an organization will be held liable where:

- One or more senior officers should have known that the offence was being committed, or failed to take reasonable measures to prevent the offence from being committed, *and*
- someone in the organization commits the offence, *or*
- more than one person in the organization engages in conduct such that, had it been the conduct of one person, that person would have committed the offence.

The Government states that these provisions will result in corporate criminal responsibility where, taken as a whole, the acts of senior officers and other employees demonstrate a lack of care amounting to criminal negligence.

## **LEGAL DUTY TO PREVENT HARM TO EMPLOYEES AND THE PUBLIC**

The Government proposes to create a positive duty on employers and those with the power to direct how others work to take reasonable steps to ensure the safety of the persons performing the work and of the public. This reflects the Government's view that, rather than creating new criminal offences specific to corporations, the way to address public concerns about regulating workplace safety is to build on the existing *Criminal Code* provisions regarding criminal negligence.

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