

Supervisors and The Risk Of Liability

Part 1: What the OHS Laws Require ‘Supervisors’ to Do

Canadian OHS laws are based on a theory called the “Internal Responsibility System” (IRS). Under the IRS, all workplace stakeholders—from upper management to floor workers—are required to play a role in ensuring a healthy and safe workplace. It’s no surprise that supervisors are included in this group. Like other stakeholders, supervisors who fail to meet their health and safety responsibilities face the risk of prosecution and fines. Supervisor liability isn’t just a theory. Supervisors are being prosecuted and fined with increasing regularity not only in Ontario and Alberta (the traditional hotbeds of supervisor liability) but also across Canada. So it’s important to understand the duties of supervisors under the various OHS laws, as well as under Bill C-45. We’ll tell you what those duties are and give you a chart that spells out the specific duties of a supervisor under each province’s and territory’s OHS laws. In Part 2 we discuss how the concept of due diligence relates to supervisors charged with violating their OHS and C-45 duties.

WHAT ARE A SUPERVISOR’S DUTIES?

A supervisor’s primary health and safety duties stem from two sets of laws: OHS laws and C-45.

OHS Laws

The first place you need to look to determine a supervisor’s duties is the OHS laws of the province or territory. Generally speaking, Canadian OHS statutes and regulations impose liability on supervisors in one of two ways:

The 7 specific duty jurisdictions. Seven provinces and territories—BC, MB, NT, NU, ON, SK and YT—list a supervisor’s health and safety duties in their OHS laws. The specifics vary from province to province, and some supervisor requirements are more detailed than others. (See the chart on page 4 to see what the duties are in each province and territory.) But, in general, the specific duty jurisdictions require supervisors to:

- Ensure the health and safety of the workers under their supervision;
- Comply with all applicable OHS laws and make sure that their workers do the same;
- Ensure that workers wear appropriate PPE and clothing;
- Inform workers of any known or reasonably foreseeable health or safety hazards in the area where they’re working; and □
- When required, give workers written instructions on the measures to be taken for their safety.

But it’s not enough to know what the duties are; you also have to understand who’s responsible for carrying out these duties. In other words, you must be able to determine

who counts as a supervisor in these jurisdictions. How? Look at the definition of “supervisor” in the OHS statute. Definitions vary: □

- A person who instructs, directs and controls workers in the performance of their duties (BC);
- A person—YT says “competent person”—who has charge of a workplace or authority over a worker (MB, ON, YT);
- A worker who has one or more workers under his or her control or supervision (NT, NU); and
- A person who is authorized by an employer to oversee or direct the work of workers (SK).

Notice that these definitions have one thing in common: They’re based on the functions the person performs at the workplace rather than on the person’s title. Consequently, workers who exercise supervisory functions have been charged as “supervisors” under OHS laws even if they didn’t have a “supervisory” title.

Courts also emphasize function over title when they interpret and enforce the laws in OHS prosecutions. Thus, if individuals who are prosecuted as “supervisors” deny that they actually are supervisors, courts look at not what the person was called or whether he thought of himself as a supervisor but whether he had hands-on authority and control over the work. Evidence of supervisory status includes the authority to:

- Hire and fire;
- Promote and discipline;
- Give awards or bonuses;
- Schedule work;
- Decide the makeup of a work crew;
- Decide which equipment to use;
- Discuss safety issues with workers;
- Discuss details of the job with workers;
- Deal with worker complaints;
- Stop work if hazards arise
- Grant workers’ vacation and leave of absence requests; and
- Determine how workers are paid.

Example: A lead hand in Ontario disabled a safety device on a mower. A worker got his foot caught in the mower while trying to free it from a corner. The blades shred his boot and seriously injured his foot. The lead hand was prosecuted and convicted as a supervisor for failing to take every reasonable precaution under the circumstances for the protection of a worker. The lead hand appealed, arguing that he wasn’t a supervisor under Section 27(2)(c) of the Ontario *OHS Act*.

The court upheld the lead hand’s conviction as a supervisor. It explained that the test to determine if someone has hands-on authority is based on the individual’s actual powers and responsibilities. Here, there was “ample evidence” of the lead hand’s authority: He

was in charge of the crew, assigned work, answered questions and had influence over who was assigned to him.

Also, his crew did what he told them to do. So, the lead hand was a supervisor under the law, the court reasoned [*Ontario (Ministry of Labour) v. Walters*].

This kind of broad interpretation of the definition of “supervisor” has also been used to hold individuals of higher rank within a company, including senior managers and corporate officers, responsible as “supervisors.”

Example: A new worker was killed after he got caught in an oven conveyor in a small plastics factory in Ontario. The company’s president was prosecuted and convicted as a supervisor. The court ruled that the president was, in fact, a supervisor because he assigned work; was in control of hours, wages, bonuses, hiring and firing; conducted worker safety training; controlled production; determined what equipment would be used in the factory; and disciplined workers [*R. v. Adomako*].

The converse of the rule that actual authority over work rather than title is what counts is that a person without authority may not be a supervisor even if he has a supervisory title. For example, Ontario courts have ruled that the following people weren’t supervisors despite having titles that suggested they were: a plant supervisor [*R. v. Adomako*]; a foreman [*R. v. Jettors Roofing and Wall Cladding Inc.*]; and a team leader [*R. v. Inco Ltd.*].

The 7 implied duty jurisdictions. The OHS statutes of the other six provinces—AB, NB, NL, NS, PEI, QC—don’t assign general health and safety duties to supervisors. Nor does the *Canada Labour Code*. These jurisdictions don’t even define the term “supervisor.” (*Exception:* NL defines “supervisor” as a superintendent, foreman or other worker authorized or delegated to exercise direction and control over workers of an employer.)

Of course, supervisors in these jurisdictions do have health and safety duties. But since they’re implied duties that aren’t specifically listed in the OHS statute, you need to dig them out. How?

Look at the definitions of the other workplace stakeholders in the OHS statutes and see which, if any, can be applied to supervisors. The first place to check is under the definition of “employer.” All provinces and territories set out express health and safety duties of employers. And in some provinces, the definition of “employer” is broad enough to encompass a supervisor. For example, under the *Canada Labour Code*, an employer includes “any person who acts on behalf of an employer.” In NB, an employer includes “a manager, superintendent, supervisor, overseer or any person having authority over a supervisor.” Thus, supervisors in these provinces have the same health and safety duties as employers.

All of the implied duty jurisdictions also impose specific duties on workers. And supervisors are considered “workers” (or “employees”) under the OHS statute. So they can be charged for OHS violations as “workers.” Because workers have very broad health and safety duties, the risk of being charged as a worker puts supervisors in a vulnerable position. For example, every OHS statute requires workers to take reasonable care to protect the health and safety of themselves *and of other workers*. Prosecutors could rely on that language to charge a supervisor for almost any safety misstep—from failing to make a worker use PPE to not reporting a piece of defective machinery to management or the JHSC.

Insider Says: In addition to the general work and safety duties set out (expressly or by implication) in their OHS statutes, all provinces’ and territories’ OHS regulations include supervisor duties related to specific activities or hazards. For example, under NL hoisting regulations, supervisors must take appropriate action when notified of an unsafe condition and determine the appropriate action to be taken if something is wrong or appears wrong with hoisting equipment or if there’s doubt that a load can be safely hoisted. So prosecutors could lay charges against a supervisor for failing to carry out these hazard-specific duties.

C-45

So far, we’ve considered supervisor liability only under the OHS laws. But supervisors can also be held liable for safety offences under the criminal law. The criminal liability of supervisors for safety violations comes principally from C-45.

C-45, which took effect in March 2004, requires any person who directs or has the authority to direct how another person does work or performs a task to take “reasonable steps” to protect those doing or affected by the work. Most supervisors clearly have such authority. So if they fail to take reasonable steps to protect the workers they supervise, they could be liable for criminal negligence if such failure was the result of wanton or reckless indifference to life and safety and resulted in death or serious injury. In fact, the first person charged with criminal negligence under C-45 was a construction supervisor in Ontario.

A supervisor would have to commit a pretty egregious safety violation to be charged under C-45. But, although the risk is fairly remote, the prospect of facing criminal liability under C-45 can have a powerful and destructive effect on the psychology of supervisors. So it’s incumbent upon safety coordinators to reassure their supervisors that if they follow OHS rules and make earnest efforts to look after the safety of their workers, they have little to fear from C- 45.

Conclusion

Because supervisors are such an important part of a company’s safety program, you need to understand exactly what their health and safety duties are. As we’ve seen, determining a supervisor’s OHS duties is easier in some provinces and territories than in others. This story should enable safety coordinators in all jurisdictions to perform this crucial function. But knowing what the law says about supervisors is only the start. It’s

equally important to understand how the law is applied in actual situations. Like other workplace stakeholders, supervisors charged with OHS violations can rely on the defence of due diligence. In other words, to avoid liability, supervisors must prove that they took all reasonable steps to comply with the law. As in prosecutions against employers, it's up to the courts to weigh all the facts and determine if a supervisor exercised due diligence. Reviewing how courts made these determinations enables you to judge what's required of your own supervisors. So next month, we'll look at actual cases where supervisors were charged with OHS violations and raised a due diligence defence—some successfully and some not. And we'll tell you what lessons can be learned from those cases.

SHOW YOUR LAWYER

Ontario (Ministry of Labour) v. Walters, [2004] CanLII 55057 (ON S.C.), Dec. 6, 2004
R. v. Adomako, [2002] O.J. No. 3050, June 21, 2002
R. v. Inco Ltd., [2006] O.J. No. 4218, Feb. 28, 2006
R. v. Jettors Roofing and Wall Cladding Inc., [2000] O.J. No. 5734, Nov. 1, 2000

C-45: Answers to Your Frequently Asked Questions

The last two years have seen a sudden spate of criminal negligence prosecutions brought against companies and individuals under the law still unofficially referred to by its original bill number, C-45. So C-45 is now back in the front of the minds of many safety coordinators, who are once again filled with questions about C-45. So here's an overview of the changes made by C-45, answers to 10 of the most frequently asked questions (FAQs) about them and a timeline of significant C-45 enforcement developments that have occurred since the law took effect in March 2004.

C-45 OVERVIEW

C-45 is the name of the bill that made changes to the *Criminal Code* (Code). One of the key changes was the addition of Sec. 217.1, which says that every person “who undertakes, or has the authority, to direct how another person does work or performs a task” must “take reasonable steps” to protect that other person from bodily harm arising out of the work.

“Criminal negligence”—that is, the act of doing something forbidden by the law or omitting to do something one has a legal duty to do when the act or omission shows “wanton or reckless disregard for the lives or safety” of others—was already a crime under the Code when C-45 was enacted. By adding the new Section 217.1 duty, C-45 made it possible to hold a company or individual guilty of criminal negligence for failing to meet the duty to protect a person doing work if the failure to protect was the result of wanton or reckless disregard for life or safety and caused death or bodily harm to the worker or a person affected by the work.

C-45 isn't just about liability. It also deals with the consequences of violations. It added sec. 718.21 to the Code, which sets out 10 factors that a court *must* consider when sentencing an “organization,” such as a company, that was convicted of criminal negligence. (See the end of the article for a complete list of these factors.)

C-45 FAQs

Here are answers to FAQs about C-45.

What are the manager or supervisor's responsibilities?

As a manager or supervisor, he or she:

- must ensure that workers use prescribed protective equipment devices
- must advise workers of potential and actual hazards
- must take every reasonable precaution in the circumstances for the protection of workers.

Managers and supervisors act on behalf of the employer, and hence have the responsibility to meet the duties of the employer as specified in the Act.

What are the employer's responsibilities?

An employer must:

- establish and maintain a joint health and safety committee, or cause workers to select at least one health and safety representative
- take every reasonable precaution to ensure the workplace is safe
- train employees about any potential hazards and in how to safely use, handle, store and dispose of hazardous substances and how to handle emergencies
- supply personal protective equipment and ensure workers know how to use the equipment safely and properly
- immediately report all critical injuries to the government department responsible for OH&S
- appoint a competent supervisor who sets the standards for performance, and who ensures safe working conditions are always observed.

What does legislation say about forming health and safety committees?

Generally, legislation in different jurisdictions across Canada state that health and safety committees or joint health and safety committees:

- must be composed of one-half management and at least one-half labour representatives
- must meet regularly - some jurisdictions require committee meetings at least once every three months while others require monthly meetings
- must be co-chaired by one management chairperson and worker chairperson
- employee representatives are elected or selected by the workers or their union.

More details about these committees are in the [Health & Safety Committees](#) Section on this site.

What is the role of health and safety committee?

The role of health and safety committees or joint health and safety committees include:

- act as an advisory body
- identify hazards and obtain information about them
- recommend corrective actions
- assist in resolving work refusal cases

- participate in accident investigations and workplace inspections
- make recommendations to the management regarding actions required to resolve health and safety concerns.

What happens when there is a refusal for unsafe work?

An employee can refuse work if he/she believes that the situation is unsafe to either himself/herself or his/her co-workers. When a worker believes that a work refusal should be initiated, then

- the employee must report to his/her supervisor that he/she is refusing to work and state why he/she believes the situation is unsafe
- the employee, supervisor, and a JHSC member or employee representative will investigate
- the employee returns to work if the problem is resolved with mutual agreement
- if the problem is not resolved, a government health and safety inspector is called
- inspector investigates and gives decision in writing.

How is legislation enforced?

The legislation holds employers responsible to protect employee health and safety. Enforcement is carried out by inspectors from the government department responsible for health and safety in each jurisdiction. In some serious cases, charges may also be laid by police or crown attorneys under Section 217.1 of the Canada Criminal Code (also known as "Bill C-45"). This section imposes a legal duty on employers and those who direct work to take reasonable measures to protect employees and public safety. If this duty is "wantonly" or recklessly disregarded and bodily harm or death results, an organization or individual could be charged with criminal negligence.

Where can I get more information about responsibilities?

If you have specific concerns about what regulations require employers and workers to do, you should consult local authorities in your jurisdiction. This is especially true if your questions deal with the content, interpretation, compliance and enforcement of the legislation, and how it applies in your own workplace situation.

We have provided referrals in the section on OH&S [agencies](#) responsible for occupational health and safety. Local offices are usually listed in telephone directory "Blue Pages" or under separate federal and provincial government headings in other telephone directories.

What is meant by due diligence?

Due diligence is the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances.

Applied to occupational health and safety, due diligence means that employers shall take all reasonable precautions, under the particular circumstances, to prevent injuries or accidents in the workplace. This duty also applies to situations that are not addressed elsewhere in the occupational health and safety legislation.

To exercise due diligence, an employer must implement a plan to identify possible workplace hazards and carry out the appropriate corrective action to prevent accidents or injuries arising from these hazards.

Why does due diligence have special significance?

"Due diligence" is important as a legal defense for a person charged under occupational health and safety legislation. If charged, a defendant may be found not guilty if he or she can prove that due diligence was exercised. In other words, the defendant must be able to prove that all precautions, reasonable under the circumstances, were taken to protect the health and safety of workers.

How does an employer establish a due diligence program?

The conditions for establishing due diligence include several criteria:

- The employer must have in place written OH&S policies, practices, and procedures. These policies, etc. would demonstrate and document that the employer carried out workplace safety audits, identified hazardous practices and hazardous conditions and made necessary changes to correct these conditions, and provided employees with information to enable them to work safely.
- The employer must provide the appropriate training and education to the employees so that they understand and carry out their work according to the established policies, practices, and procedures.
- The employer must train the supervisors to ensure they are competent persons, as defined in legislation.
- The employer must monitor the workplace and ensure that employees are following the policies, practices and procedures. Written documentation of progressive disciplining for breaches of safety rules is considered due diligence.
- There are obviously many requirements for the employer but workers also have responsibilities. They have a duty to take reasonable care to ensure the safety of

themselves and their coworkers - this includes following safe work practices and complying with regulations.

- The employer should have an accident investigation and reporting system in place. Employees should be encouraged to report "near misses" and these should be investigated also. Incorporating information from these investigations into revised, improved policies, practices and procedures will also establish the employer is practicing due diligence.
- The employer should document, in writing, all of the above steps: this will give the employer a history of how the company's occupational health and safety program has progressed over time. Second, it will provide up-to-date documentation that can be used as a defense to charges in case an accident occurs despite an employer's due diligence efforts.

All of the elements of a "due diligence program" must be in effect before any accident or injury occurs. If employers have questions about due diligence, they should seek legal advice for their jurisdiction to ensure that all appropriate due diligence requirements are in place.

Due diligence is demonstrated by your actions before an event occurs, not after.

More information on how to establish these programs is available through OSH Answers, including:

- [Establishing an OSH Program](#)
- [Emergency Planning](#)
- [Hazard Control](#)
- [Guide to Writing an OHS Policy Statement](#)
- [Inspection Checklists](#)
- [Job Hazard Analysis](#)

What are areas to consider when reviewing due diligence?

When reviewing your due diligence program, it may help to ask yourself the following questions:

1. Can a reasonable person predict or foresee something going wrong?
2. Is there an opportunity to prevent the injury or incident?
3. Who is the responsible for preventing the accident or incident?

What is an example of a due diligence checklist?

Yes	No	
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		Do you know and understand your safety and health responsibilities?
		Do you have definite procedures in place to identify and control hazards?
		Have you integrated safety into all aspects of your work?
		Do you set objectives for safety and health just as you do for quality, production, and sales?
		Have you committed appropriate resources to safety and health?
		Have you explained safety and health responsibilities to all employees and made sure that they understand it?
		Have employees been trained to work safely and use proper protective equipment?
		Is there a hazard reporting procedure in place that encourages employees to report all unsafe conditions and unsafe practices to their supervisors?
		Are managers, supervisors, and workers held accountable for safety and health just as they are held accountable for quality?
		Is safety a factor when acquiring new equipment or changing a process?
		Do you keep records of your program activities and improvements?
		Do you keep records of the training each employee has received?
		Do your records show that you take disciplinary action when an employee violates safety procedures?
		Do you review your OSH program at least once a year and make improvements as needed?

What is the Internal Responsibility System?

The internal responsibility system puts in place an employee-employer partnership in ensuring a safe and disease free workplace. A health and safety committee is a joint forum for employers and employees working together to improve workplace health and safety.

How does the Internal Responsibility System work?

The internal responsibility system is the underlying philosophy of the occupational health and safety legislation in all Canadian jurisdictions. Its foundation is that everyone in the workplace - both employees and employers - is responsible for his or her own safety and for the safety of co-workers. Acts and regulations do not always impose or prescribe the specific steps to take for

compliance. Instead, it holds employers responsible for determining such steps to ensure health and safety of all employees.

Internal responsibility system does the following:

- Establishes responsibility sharing systems
- Promotes safety culture
- Promotes best practice
- Helps develop self reliance
- Ensures compliance

Please see the OSH Answers document [OH&S Legislation in Canada - Basic Responsibilities](#) for more information.

These general provisions give employers the "freedom" to carry out measures and control procedures that are appropriate for their individual workplaces. On the other hand, the challenge for the employers is to know when they have fulfilled all appropriate regulatory requirements. More information about this "challenge" is in the [Due Diligence](#) OSH Answers document.

Q Can You Be Prosecuted for Both Criminal Negligence & an OHS Offence for the Same Incident?

A Yes. The concept of “double jeopardy” protects people from being prosecuted twice for the same crime based on the same facts. But it doesn’t prevent the government from going after companies or individuals for violations of *different laws* for the same event. A wanton or reckless disregard for safety that results in death or bodily injury may be *both* an act of criminal negligence under C-45 *and* a violation of OHS law. So a defendant could be prosecuted and penalized under either or both laws.

For example, several defendants were charged with criminal negligence in Ontario for the collapse of a scaffolding platform in which four workers died and one was seriously injured. They were also charged with OHS violations based on this incident.

Q Is There a Time Limit for Bringing Criminal Negligence Charges?

A There’s no “statute of limitations,” or time limit, on criminal negligence charges. So if a serious safety incident happened on April 1, 2004—the day after C-45 took effect—the Crown could still bring criminal negligence charges based on it now.

But C-45 isn’t retroactive. That is, C-45 took effect March 31, 2004. So the Crown may file criminal negligence charges only for serious safety incidents that occurred *after* that date.

Q Which Workplaces Does C-45 Cover?

A C-45 works differently than OHS law. Most workplaces are subject to the OHS laws in their particular province or territory. (Federal OHS law applies to workplaces in designated industries

with national scope, such as railways, regardless of where they're located.) In contrast, the *Criminal Code* is a national law that applies across Canada. Thus, C-45 charges can be brought against any kind of workplace located anywhere in the country.

Q Does Criminal Negligence Apply Just to Fatalities?

A No. There are two kinds of criminal negligence charges that can now be brought in a serious safety incident:

- Sec. 220 applies to anyone who by criminal negligence causes a death; and
- Sec. 221 applies to anyone who by criminal negligence causes bodily harm to another person.

For example, in the Ontario scaffolding case mentioned above, the defendants were charged with four counts of criminal negligence causing death for the fatalities and one count of criminal negligence causing bodily harm for the injured worker who survived.

Q: Does C-45 Apply Only to Death or Injuries Suffered by Workers?

A: No. Criminal negligence charges simply require the defendant to cause death or bodily harm to *another person*. So such charges could be brought if, say, a crane collapses at a construction site and kills a passer-by. In fact, in a pending BC case, the navigating officer of a ferry faces criminal negligence charges in the deaths of two passengers.

Q Is Due Diligence a Defence to Criminal Negligence?

A Technically, due diligence isn't a defence to criminal negligence charges in the same way that it's a defence to OHS violations. But as a practical matter, proving that you exercised due diligence makes it impossible to be convicted of criminal negligence.

Explanation: To prove criminal negligence, the Crown must show that the company or an individual: 1) violated the duty to take "reasonable steps" to prevent bodily harm; and 2) showed wanton or reckless disregard for the safety of others. If a defendant can prove that it exercised due diligence—that is, *took* all reasonable steps to prevent the incident and the injury or fatality—then it can create reasonable doubt as to either or both of these elements of the crime. For example, if a company implemented measures to keep the incident from happening, it'll be hard for the Crown to prove that it acted wantonly or recklessly. Thus, due diligence is, in effect, a defence to C-45 charges.

Q Are Criminal Negligence Charges the Same for Companies & Individuals?

A No. The elements the Crown must prove for a criminal negligence charge differ depending on whether the defendant is an individual or an "organization," such as a company. For an *individual*, the government must show that the individual, in directing how another person does work:

- Violated his duty to take “reasonable steps” to prevent bodily harm; and
- Showed wanton or reckless disregard for the lives or safety of others.

For *organizations*, the Crown must prove that:

- One or more “representatives,” while acting within the scope of their authority, committed criminal negligence as described above; and
- A “senior officer” departed markedly from the standard or care that could reasonably be expected to prevent a representative from committing that offence.

Q Who’s a “Representative” under C-45?

A The Code defines a “representative” of an organization as a director, partner, employee, member, agent or contractor of the organization. Thus, nearly *anyone* associated with a company could arguably be considered its representative—from the lowest worker all the way to the CEO.

It’s important to stress that the word “contractor” is specifically included in the definition of “representative.” As a result, you can’t assign or contract out of liability for criminal negligence to a prime contractor or constructor like you can for some OHS liability in certain jurisdictions. In other words, if your contractor engages in conduct that constitutes criminal negligence, your company could also be on the hook.

Insider Says: For more information on contractors and OHS liability, see “12 Dos & Don’ts for Dealing with Contractors,” *Insider*, Sept. 2009, p. 1.”

Q Who’s as a “Senior Officer” for C-45 Purposes?

A As noted above, for a company to be held liable for criminal negligence, a “senior officer” must depart markedly from the standard or care that could reasonably be expected to prevent a representative from committing the offence. “Senior officers” are a subset of “representatives.” The Code defines “senior officer” as 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.

In the case of a corporation, this definition would include a director, its CEO and its CFO. Thus, members of upper management are considered senior officers for C-45 purposes. But because the definition is so broad, in some cases, a person lower down in the corporate hierarchy, such as a plant manager or project manager could also be considered a senior officer.

Q Does Insurance Cover Liability under C-45?

A Many companies have directors and officers (D & O) insurance to protect their senior management from liability when they act on the company’s behalf. But if a company officer or director is convicted of criminal negligence for acts or omissions performed while carrying out

his duties for the company, D & O insurance (or any other insurance for that matter) probably won't cover the fine, although it might cover the legal costs.

BOTTOM LINE

The passage of C-45 opened up a new world of potential liability for companies and individuals for serious lapses in safety. Although prosecutors have been slow to use this new tool, the spate of recent criminal negligence cases indicates that they're getting more comfortable going after the people responsible for workplace safety failures in criminal court as opposed to a regulatory OHS proceeding. So it's important that safety coordinators understand how C-45 works so they can help their companies avoid liability for criminal negligence.

Listen to a Webinar to Learn How to Manage C-45 Liability Risk

At OHSInsider.com, you can listen to a [webinar](#) by Norm Keith, one of Canada's leading OHS lawyers, on what every employer and safety coordinator needs to know to minimize the growing risk of C-45 prosecution for serious safety incidents. You'll get the practical "how-to" advice you need to greatly minimize the risk of C-45 liability for yourself, your employer and other directors, managers and supervisors.

C-45 Sentencing Factors

C-45 amended the *Criminal Code* to add Sec. 718.21, which says that a court that imposes sentence on an organization must also take into consideration the following factors:

- a. Any advantage realized by the organization as a result of the offence;
- b. The degree of planning involved in carrying out the offence and the duration and complexity of the offence;
- c. Whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;
- d. The impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;
- e. The cost to public authorities of the investigation and prosecution of the offence;
- f. Any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;
- g. Whether the organization was—or any of its representatives who were involved in the commission of the offence were—convicted of a similar offence or sanctioned by a regulatory body for similar conduct;

h. Any penalty imposed by the organization on a representative for his role in the commission of the offence;

i. Any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and

j. Any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.