

INFORMATION SHEET

Legal Framework: organizations' duty of care

Criminal Code of Canada, section 219: "Is criminally negligent who, in doing anything, or in omitting to do anything that is his/her duty to do, shows wanton or reckless disregard for the lives or others".

In 2004, the Government of Canada passed Bill C-45, which amended the Criminal Code (addition of section 217.1) to broaden the employer's obligation to ensure the safety of its employees or any person they supervise to prosecute an organization and its agents and senior managers.

Furthermore, sections 22.1 and 22.2 impose potential criminal responsibility on organizations¹ and their agents for negligence and other offences. According to section 217.1, "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". Bodily harm includes post-traumatic stress and other psychological injuries.

Anyone working for an organization could be charged with a criminal offence in the event of a breach of the responsibilities described in the law. A person² supervising a task (manager, member of the board of directors, project manager, country coordinator, etc.) who does not take reasonable steps to ensure the safety of the people he supervises or the public would fail in his duty.

Therefore, any person responsible for directing work has the obligation to exercise due diligence and must take reasonable steps to ensure the safety of workers and the public.

Finally, the Criminal Code provides a presumption of the organization's participation in the offence under section 22.1 when one of its employees has participated in the offence, by his act or omission, and the senior manager strayed markedly from the standard of due diligence to prevent participation in the offence. The law assumes that the senior manager knew or had to know what was going on.

The Defence of Due Diligence

The organization prosecuted for criminal negligence may raise a defence of due diligence. The case law on health-related offences reveals three essential elements: authority, prevention and efficiency.

Due diligence is the degree of judgment, care, caution, firmness and action that can reasonably be expected of a person in certain circumstances.

Therefore, all persons involved in the supervision of an organization's international activity have the obligation to exercise due diligence in all aspects of the planning of the work environment and the training of personnel and travellers.

¹ This applies to all organizations: enterprises, unions, municipalities, companies, associations with an organizational structure, etc.

² We are referring to a person who has some control over the supervised person (employee, traveller) and it does not matter whether this person does the "work" for free or for a fee.

When applied in the context of international health and safety, due diligence means that all organizations must take reasonable precautions, taking into account the particular circumstances of the destination country, to prevent any incident involving the health and safety of individuals during activities abroad and provide adequate care in the event of an accident, injury or illness.

Additional Information: Sentences

For the accountable legal person:

- Limitless fine when an organization is found guilty of criminal negligence by a criminal act.
- The court can also impose probation during which it can supervise the organization's management so that it complies with safety standards.
 - Compensating victims
 - Developing safety standards
 - Requiring that the organization inform the public of the offence for which it was convicted.

For the accountable individual:

- A fine, but also the possibility of life imprisonment for negligence causing death or up to 10 years in the case of negligence causing injury.

Provincial Occupational Health and Safety Laws

In Canada, labour legislation is primarily the responsibility of the provinces and territories. Each province and territory legislate on occupational health and safety³. It is the duty of each organization to be aware of and comply with the law.

To view the employment standards for your organization's province or territory:

- [Alberta](#)
- [British Columbia](#)
- [Prince Edward Island](#)
- [Manitoba](#)
- [New-Brunswick](#)
- [Nova Scotia](#)
- [Nunavut](#)
- [Ontario](#)
- [Quebec](#)
- [Saskatchewan](#)
- [Newfoundland and Labrador](#)
- [Northwest Territories](#)
- [Yukon](#)

³ Unless the designated workplace falls under federal jurisdiction (ex: mining and energy, air and rail transportation, etc.).