

TRAVEL RISK MANAGEMENT

Legal Framework

Article 217.1 of the Canadian Criminal Code stipulates that anyone 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 others¹. Sections 22.1 and 22.2 impose potential criminal responsibility on organizations and their agents for negligence and other offences. 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. 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.

Due Diligence Defence

The organization prosecuted for criminal negligence may invoke a due diligence defence. There are three (3) essential duty of care elements that have been identified in the case law regarding violations of health and safety legislation: prevention, efficiency, and authority.

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

When applied in the context of travel health, safety and security, due diligence means that the organization must take reasonable precautions, taking into account the particular circumstance of the country of destination, to prevent any incident involving the health or safety and security of individuals and provide adequate care in the event of accident, injury or illness.

As a result, all persons who have a role or responsibilities in overseeing a travel undertaken by the organization have an obligation to exercise due diligence in all aspects of its planning, of its related activities, the working environment and the training of staff and travellers.

¹Section 217.1 uses the term "others", which is intended to protect the public, contrary to the Labor Laws present in many Canadian provinces, which apply only to workers.