
\$100,000 fine imposed on first corporation convicted of criminal negligence in a workplace fatality

A Quebec Court has imposed a fine of \$100,000 on paving stone manufacturer Transpave Inc.. Transpave is the first company to be convicted of criminal negligence in a workplace death under the Bill C-45 amendments to the *Criminal Code*. The fine handed down by the Court in *R. c. Transpave Inc.* (March 17, 2008) represents the first of its kind in Canada and ends the proceedings against the Quebec company.

THE BILL C-45 AMENDMENTS

Readers of Focus may recall the 2004 Bill C-45 *Criminal Code* changes which made workplace safety enforceable by the criminal law, in addition to the traditional occupational health and safety (OHS) regulatory regime. The *Criminal Code* amendments put a new obligation on individuals and organizations to take reasonable steps to prevent bodily harm to people in the workplace.

If individuals or organizations fail in that obligation by neglecting the safety of workers or customers, they may face charges, and ultimately convictions, under the *Criminal Code* for criminal negligence causing bodily harm or death, depending on the circumstances.

Generally to establish criminal negligence the accused must be under a legal duty or obligation to act in a particular way and must fail or omit to do so. The failure or omission must demonstrate a "wanton or reckless disregard" for the lives or the safety of others.

Under the Bill C-45 reforms, where there is a workplace injury or fatality a corporation may be convicted of criminal negligence causing bodily harm or death if there is proof that a representative of the corporation behaved in a criminally negligent manner (as described above), and that the senior officers, or management, of the corporation failed to correct the resulting situation. (For a more detailed discussion of Bill C-45 see "Amendments to *Criminal Code* expand corporate criminal liability" on our Publications page).

THE CHARGES AND THE TRIAL

The accident that prompted the corporate criminal charges against Transpave occurred in October 2005 when a young employee was crushed by heavy machinery when he tried to remove a blockage in a jammed stacking machine. Quebec's workplace safety enforcement body, La Commission de la Sante et de la Securite du Travail (the CSST), along with the police, conducted a broad investigation of the accident. The CSST identified the following as some of the contributing factors:

- Though the machinery was equipped with a safety device or guarding system, the safety device was disabled at the time of the accident and for most of the two years prior to the death;
- The company did not have an adequate program to ensure that the safety device was operational;
- The company had not provided adequate safety and hazard awareness training, nor had it implemented procedures to address the hazards. As a result, the employee was unaware of the dangers his actions posed.

Although Transpave initially indicated that it would defend against the charges, the company ultimately pleaded guilty in December 2007. At the sentencing hearing in February 2008, counsel for both the prosecution and the convicted company suggested to the Court that an appropriate fine for the offence would be \$100,000. Such joint submissions are fairly common in the sentencing phase of a trial and usually reflect an amount negotiated by the parties in exchange for the guilty plea of the accused.

The recommended amount of \$100,000 was based on several factors, including the relatively small size of the company (approximately 100 employees) and the significant investments by the company to make safety improvements since the fatality (in excess of \$500,000). The Court also considered the guilty plea of Transpave which spared the victim's family and coworkers a prolonged hearing and drawn-out trial.

Although the Court was not obliged to accept the joint submission on sentence, particularly if it deemed the recommendation to be contrary to the public interest, the Court imposed the recommended fine of \$100,000.

In addition, Transpave must pay a "victim surcharge" of \$10,000 under section 737 of the *Criminal Code*. Victim surcharges are monetary penalties added on to a jail sentence or fine. The money is used by the provinces to fund programs that provide assistance and services to the victims of crime.

In our view

Although this is the first sentence of its kind, the fine imposed against Transpave indicates the expanded legal risk that individuals and organizations now face under the Criminal Code for contraventions of occupational health and safety. While a \$110,000 penalty would not be high for a fatality conviction under the Ontario *Occupational Health and Safety Act*, the amount of the fine was considerable in Quebec and was influenced by the small size of the company. Larger organizations could expect significantly greater fines in similar situations. In order to reduce the risk, organizations must ensure that there is proper oversight of compliance with OHS statutes. Organizations should implement inspection programs to ensure that safety mechanisms are operational, and ensure that there are work procedures that adequately address hazards presents in the workplace. Organizations must provide adequate safety and hazard awareness training, both of which should be reviewed and evaluated by management.

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