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Bill C-45: Criminal Code Amendments

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June 10, 2004

VOLUME 5, issue 29

Bill C-45: Criminal Code Amendments Affecting the Liability of Corporations

By John Beckett

Re-printed from the Safety Network - The Link - April 2004

Background

The Westray mine disaster and other governance issues in North America caused the federal government to bring forward a number of changes to the laws of Canada dealing with employee and public safety.

The scope and intent of the changes is in part to:

1. establish rules for attributing to organizations, including corporations, criminal liability for acts of their representatives;
2. establish the legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public.

The Government of Canada has promulgated changes to the Criminal Code affecting the liability of corporations. Bill C-45 is intended to address a perceived need for modernization of Canadian criminal law in order to deal with serious employee and public safety concerns, such as those that arose from the facts in Westray. There are currently no Criminal Code provisions requiring those directing work to ensure safety for workers or the public. Although Bill C-45 creates new offences for organizations, it does not create any new offences for directors and officers, who can already be found liable for their personal action or as parties to an offence committed by a corporation. Bill C-45 does not supplant provincial health and safety regulations.

Bill C-45

Under the previous Criminal Code, a "person" includes a corporation, so it can be found criminally liable. However, Bill C-45 now includes "organizations" or groups that may not be a legal entity.

Corporations have always been problematic for the criminal law because of the requirement of proof of not just a criminal act, but also proof of the mental element necessary to prove intent. In order to convict a corporation, a "directing mind" of the corporation must be shown to have had the necessary intent. The existing law on "directing mind" is limited to persons with the capacity to exercise decision-making authority on matters of corporate policy, but not persons who carry out such policy on an operational basis. Bill C-45 expands the class of persons capable of making an organiza-

tion liable to those who exercise delegated operational authority. This is in direct response to the Westray facts, where those who controlled the operation of the mine were criminally negligent, not the directors or officers.

Bill C-45 will hold a corporation liable for crimes that are committed on behalf of or for the benefit of the corporation by a senior person with policy or operational authority who:

1. committed the offence personally;
2. had the necessary intent and directed the lower-level employees who carried out the prohibited conduct;
3. was aware of or willfully blind to criminal activity carried out by lower-level employees and failed to take remedial action.

A corporation can also be held liable for crimes of negligence where the acts and omissions of its representatives taken as a whole exhibit a 'marked departure from the norm' expected in the circumstances. Representatives include a director, partner, employee, member, agent, or contractor of the organization.

Bill C-45 will be measured on its effectiveness in hindsight. The test for prosecution is still very high, gross negligence or the wanton and reckless disregard for the lives and safety of others and the defense of due diligence is still applicable.

Bill C-45 has imposed a clear legal duty on every person who employs or directs another person to perform work to take reasonable care to avoid foreseeable harm to the person or the public. Fines for less serious offences are proposed to be up to \$100,000, with no limit on fines for serious offences. Probation orders can also be imposed.

EXTRA! EXTRA! READ ALL ABOUT IT!



2004

MHCA Directories are in!!!

We are in the process of mailing out the 2004 Directories.

If you have any questions please call Tonia Berger, Communications Coordinator at 947-1379.



You Need to Be COR Certified

SHEP Can Get You Started

Did you know that there are tender bidding requirements for working with MB Transportation & Government Services, Department of Industry Trade and Mines and the City of Winnipeg come January 1, 2005?

Due to a busy summer season for our industry members, COR Training will resume in August/September 2004. If your company would like to start on their progress towards achieving COR here is a list of things that you can do over the summer months:

1. Phone SHEP for an information package on COR. The package will outline the requirements to obtain certification.
2. Call SHEP to arrange WHMIS Training, Transportation of Dangerous Goods Training or for contact information in order to arrange First Aider 1 training.
3. Conduct inspections of your facilities (or invite SHEP for a site visit) to identify what potential hazards or items that may need to be brought into compliance with legislation (i.e. Workplace Safety and Health Act, Manitoba Environment Act, etc.)
4. Take an inventory of your petroleum and other controlled products, ensure they have proper labelling, current material safety data sheets are available and that products are handled and stored properly.
5. If you have previously taken some of the COR required training call SHEP to arrange for a review or trial audit of your program and to develop an action plan to obtain certification.

CALL SHEP FOR MORE INFORMATION

(204) 947-1379

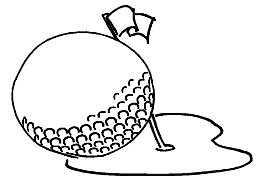




The 4th Annual MHCA Rural Golf Tournament

Thursday, June 24, 2004

Portage Golf Club
Portage la Prairie, MB



10:30 am Registration
12:00 noon Shot Gun start

Registration Fees: \$85/person plus GST

Includes: Green Fees, Motorized Cart and Buffet Dinner

Registration closes June 15, 2004

Member Company to be invoiced for tournament fees _____

Team Captain's Name: _____

Team Captain's: Phone: _____ Fax: _____ Total # on team _____

Other Golfers on team

2. _____

3. _____

4. _____



Sponsorship Opportunity

I would like sponsor a golf hole for \$85.00+gst

REMINDER!

Use this form to enter as many players as you wish. If you are not registering a full team, the extra spaces will be filled by the tournament organizers. As per MHCA Board Policy only registrations cancelled 48 hours prior to the commencement of this event will be refunded.

Fax your registration form to

Loreen Hamilton, MHCA Events Coordinator @

943-2279

Opportunity for Contractors

The Occupational Rehabilitation Group of Canada (ORGC)

The ORGC works diligently to return individuals with disabilities back to a productive role within society through provision of career opportunities that will best suit their skills and abilities. ORGC is committed to the philosophy that individuals experience a higher level of quality of life when provided with an opportunity to contribute to society, as a whole, through productive and valuable Job Shadow Program (JSP).

Through participating in a productive JSP these individuals have the opportunity to explore, investigate and experience new and exciting career opportunities. At the same time, they will benefit from the development of new skills and a boost to their self-esteem that comes from making a valuable contribution to an organization and the obtainment of its objectives.

Terms of Reference – Job Shadow Programs

Job Experience Programs are entered into with the expectation of a term of one to five days. Within these five days, hours per day worked and days of the week attended can vary depending on the availability of the job shadow placement provider and the physical capability of the participant. The job shadow placement participant will not receive any salary, wage or benefits from the participating organization throughout the program.

It is important to note that the JSP provider maintains the right to cancel any program, at any time during the Program, should they determine that the placement has been unsuccessful.

The ORGC provides the participating organization with a Save-Harmless Agreement covering the entire time span that our client is present at the participating organization's facilities.

If you would like to participate in this program, please contact below.

Deane Thibodeau-Land
(204) 779-1887 extension 225



MHCA... **ON THE SCENE**

Welcome to New MHCA Member

The Board of Directors and Staff of the Manitoba Heavy Construction Association are pleased to welcome the following new member:

Wurtz Bros. Ltd.

This supplier is located in Sidney, Manitoba. Wurtz Bros. Ltd. specializes in redi-mix concrete, concrete pumping, complete demolition services, rebar and sandblasting supplies as well as excavation, general loader and CAT work. Andrew Oliver is the contact person. He may be reached by phone at (204) 466-2825 or by email at andrew@wurtzbros.com





MANITOBA HEAVY CONSTRUCTION ASSOCIATION (MHCA)

West Nile Virus - Look out!

By Dara Klym

Excerpts taken from OSHA Bulletin "Workplace Precautions Against West Nile Virus".



With all the rain we've had in the last little while guess what's coming... mosquitoes. And some of those mosquitoes may carry the West Nile Virus. This means you will want to take precautions to prevent mosquito bites.

In most cases, persons infected with West Nile Virus either show no symptoms or have very mild flu-like symptoms, called West Nile fever. These mild cases of West Nile fever normally last only a few days and are not believed to cause any long-term effects. According to the Centre for Disease Control (CDC), severe cases have resulted in "West Nile encephalitis," an inflammation of the brain, "West Nile meningitis," inflammation of the membrane around the brain, or "West Nile meningoencephalitis," an inflammation of the brain and the membrane around it. The signs and symptoms of severe disease may last several weeks and may have permanent neurological effects.

The typical time from infection to the onset of signs and symptoms is 3 to 14 days. Signs and symptoms of the milder illness, West Nile fever, include:

- Headache
- Fever
- Body aches
- Sometimes, swollen lymph nodes
- Sometimes, a skin rash on the body

The more severe infection (West Nile encephalitis or meningitis), the signs and symptoms include:

- Headache
- High fever
- Stiffness in the neck
- Disorientation (in very severe cases, coma)
- Tremors and convulsions
- Muscle weakness (in very severe cases, paralysis)

The risk of getting infected with West Nile Virus can often be reduced or eliminated with use of preventive measures that minimize or eliminate mosquito bites. To lessen the chances of mosquito bites:

- **Reduce or eliminate mosquito populations by disrupting mosquito breeding grounds (i.e., get rid of sources of stagnant or standing water weekly, for mosquitoes can breed in any stagnant puddle that lasts more than 4 days).**
- **Cover as much of the skin as possible by wearing shirts with long sleeves, long pants and socks whenever possible.**
- **Use insect repellents containing DEET. According to the CDC, the most effective repellents contain DEET.**

As with all workplace hazards, employers should use the following hierarchy of control- measures to minimize or eliminate West Nile Virus (WNV) infections among their employees:

Employers with employees working outdoors:

- Be aware of outside working conditions, i.e., the presence of equipment or areas where water may accumulate.
- Inspect work areas and, where possible, get rid of sources of stagnant or standing water to remove a potential breeding ground of mosquitoes.
- Encourage workers to take extra precautions whenever mosquitoes are present and biting (for example, mosqui

to swarms are often present at dusk or at dawn).

- Encourage workers to report dead birds and forward the report to local authorities.

Employers should provide training to employees who may be at risk. Training should cover the potential hazards and the risks of WNV exposure and infection. Knowing key steps that employees themselves can take to minimize the risk of getting bitten by mosquitoes can help to reduce the risk of WNV infection.

Employers should keep in mind that elimination of mosquito breeding grounds is a highly effective way of reducing mosquito populations and reducing the number of mosquito bites. Mosquitoes lay eggs in standing water. The following steps are among the possible means of ridding the workplace of standing water:

- Avoid leaving containers that can accumulate water in an uncovered or upright position, such as, wheelbarrows, drums, buckets, cans, tarps and other containers.
- Drain or pump out collected water from, rain gutters and ditches.
- Properly store any open containers in the work area that are not being used such as buckets and cans.
- Create holes to drain water from containers that cannot be thrown out.
- Fill in any potholes, patches and other areas where water is likely to accumulate.

It may not always be possible to eliminate all potential mosquito breeding grounds. Knowledge of some key steps that employees can take to minimize the risk of mosquito bites is, therefore, important in reducing the risk of WNV infection. Employees who work outdoors should be aware that the use of personal protective equipment and techniques is essential to preventing mosquito bites. Especially when working at sites where mosquitoes may be active and biting, employees should use the following steps to minimize the likelihood of getting bitten:

- Cover as much of your skin as possible by wearing shirts with long-sleeves, long pants, and socks whenever possible (use light weight clothing to minimize the potential for heat-induced illnesses).
- Avoid use of perfumes and colognes when working outdoors during peak times when mosquitoes may be active; mosquitoes may be more attracted to individuals wearing perfumes and colognes.
- Use an insect repellent on skin that is not covered by clothing. The most widely studied and according to CDC, the most effective repellents contain DEET
- **Choose a repellent that provides protection for the amount of time that you will be outdoors. The more DEET a repellent contains, the longer time it can protect you from mosquito bites, with protection times ranging from 1 hour (4.75% DEET) to 5 hours (23.8% DEET).**
- Spray insect repellent on the outside of your clothing, as it is possible for mosquitoes to bite through thin clothing.
- Do NOT spray insect repellent on skin that is under clothing.
- Do NOT spray aerosol or pump products in enclosed areas. Do NOT spray a pump or aerosol product directly on your face. First spray on hands and carefully rub on face (do not allow insect repellent to contact your eyes and mouth).
- After returning indoors, use soap and water to wash skin that has been treated with insect repellent.
- Employees should protect themselves from skin contact with dead birds. Use gloves or an inverted plastic bag when handling dead birds.

Note: In order to avoid reaction to DEET or other ingredients of insect repellents, it is important that employees read and follow the directions on all insect repellent before use. Repellents should not be applied to skin that is already irritated, or to cuts/lacerations.

Call your SHEP Team at (204) 947-1379 with any questions or concerns regarding this or any other Safety, Health or Environment concern.

RETIREMENT LUNCHEON

IN HONOR OF

GERALD TENCHA



CANAD INN (Windsor Park)

1034 Elizabeth Road

St. Boniface

FRIDAY JUNE 25, 2004

11:30 AM (lunch at 12:00)

Tickets \$ 25.00 (includes gift)

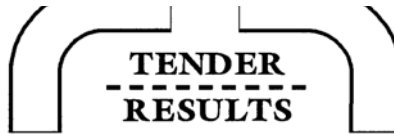
Tickets Available at 16th Floor 215 Gary Street in Winnipeg from :

Lurdes Cabral 945-3776

Rene Nolte 945-3633

Les Whick 945-3634

Ron Weatherburn 945-7035



*Indicates MHCA Members

MANITOBA HEAVY CONSTRUCTION ASSOCIATION

1236 Ellice Avenue, Winnipeg MB R3G OE7

Tel: (204) 947-1379 **Fax:** (204) 943-2279

Email: beverly@manitobaheavy.com

June 10, 2004

Department of Transportation and Government Services

TENDER NO.: 5432 – \$656,730

BITUMINOUS PAVEMENT – PTH No. 1 – E. of PTH No. 10 – E. of PR No. 340 (E.B. Lanes), W of PR No. 464 – Westerly (W.B. Lanes). **Tender Availability:** May 27/04 **Tender Due: 12:00 Noon June 8/04. Owner:** Department of Transportation and Government Services. **Ph:** 945-3637. **Project:** The length of the project is 14.8 km. The work involves 9700 t of granular base course & 29,400 t of bituminous pavement.

Results: *Pending evaluation*

*Borland Construction Ltd.	\$656,730
*Nelson River Construction Ltd.	\$698,365
*Mulder Construction Ltd.	\$730,125
C & B Sterling Ent.	\$884,595

City of Winnipeg

TENDER NO.: 183-2004: \$916,564

PROVINCE OF MANITOBA/CITY OF WINNIPEG 2004 RESIDENTIAL STREET RENEWALS – PART 1 – SCOTLAND AVE. AND VARIOUS OTHER LOCATIONS – PART 2 – CENTENNIAL AVE. AND VARIOUS OTHER LOCATIONS – PART 3 – COMBINED SEWER RENEWALS (LORETTE AVE. & SCOTLAND AVE.). **Tender Availability:** Currently available. **Tender Due: 12:00 pm June 9/04. Owner:** City of Winnipeg. **Ph:** 986-2491.

Results: *Pending evaluation*

Kodiak Construction Ltd.	\$916,564
*Borland Construction Ltd.	\$919,726
J.C. Paving Ltd.	\$930,000
*Maple Leaf Construction Ltd.	\$991,306
*Darco Enterprises Ltd.	\$991,442
*Bituminex Ltd.	\$998,416

Other

TENDER.: L – 06/04 – \$1,301,789

WATER TREATMENT PLANT UPGRADE - Brandon. **Tender Availability:** currently available. **Tender Due: 2:00 p.m. May 26/04. Owner:** City of Brandon. **Ph:** 204-729-2251.

Project: For Water Treatment Plant, High lift pump replacement & UV dis-infection as per specifications. 1 – The Ultraviolet dis-infection (UV) System supplier shall furnish a complete closed vessel, medium pressure, high intensity ultraviolet (UV) light system for dis-infection of potable water. 2 – The unit(s) shall be furnished and installed with all necessary equipment including the UV sensors, the UV lamp assemblies, power distribution centers system instrumentation and controls, automatic cleaning, lamp ballast cooling system and any other auxiliaries necessary for equipment including the UV sensors, the UV lamp assemblies, power distribution centers system instrumentation and controls, automatic cleaning, lamp ballast cooling system and any other auxiliaries necessary for operation. 3 – The UV dis-infection system shall be capable of disinfecting filter effluent to meet the water quality standards listed in the section.

Results:

Comstock Canada	\$1,301,789
Wescan Electrical & Mechanical	\$1,335,498
ABCO Supply & Service Ltd.	\$1,393,452
Neepawa Plumbing & Heating (1979) Ltd.	\$1,515,827