

Policing Services Division

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de la police

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MEMORANDUM TO: All Chiefs of Police and
Commissioner G. M. Boniface

FROM: Ron G. Bain
Assistant Deputy Minister
Policing Services Division

SUBJECT: **Proclamation of Bill C-45, *An Act to Amend the
Criminal Code (Criminal Liability of Organizations)***

DATE OF ISSUE:	March 30, 2004
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The purpose of this memorandum is to advise you that Bill C-45, *An Act to Amend the Criminal Code (Criminal Liability of Organizations)*, tabled by the Honourable Martin Cauchon, Minister of Justice and Attorney General of Canada, received Royal Assent on November 7, 2003 and will be proclaimed and in force on March 31, 2004.

Essentially, this Bill amends the *Criminal Code* to:

- establish rules for attributing to organizations, including corporations, criminal liability for the acts of their representatives;
- establish a legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public;
- set out factors for courts to consider when sentencing an organization; and
- provide optional conditions of probation that a court may impose on an organization.

The Bill modernizes the law on the criminal liability of organizations to reflect the increasing complexity of today's corporate structures. In addition, the Bill will help ensure organizations are held accountable when they commit criminal offences.

The legislation would make organizations criminally liable:

- as a result of the actions of senior officers who oversee day-to-day operations but who may not be directors or executives;
- when officers with executive or operational authority intentionally commit, or direct employees to commit, crimes to benefit the organization;
- when officers with executive or operational authority become aware of offences being committed by other employees but do not take action to stop them; and
- when the actions of those with authority and other employees, taken as a whole, demonstrate a lack of care that constitutes criminal negligence.

The legislation also imposes a legal duty on all those who direct work, including employers, to take reasonable measures to protect employee and public safety. Wanton or reckless disregard of this duty causing death or bodily harm could result in a charge of criminal negligence.

Investigations Regarding Workplace Health and Safety

The Ministry of Labour currently has the lead responsibility for investigations respecting workplace health and safety in Ontario. Ministry of Labour inspectors investigate workplace fatalities and critical injuries to ensure compliance with the *Occupational Health and Safety Act* and to determine whether provincial charges are warranted.

It is important to note that fact scenarios, which previously resulted in only *Occupational Health and Safety Act* charges being laid, may now also attract criminal liability as a result of the amendments made under Bill C-45. Where an assessment of the incident indicates that there is also the need for a criminal investigation, the police would retain the authority to conduct the criminal investigation and should be considered the lead agency for the purposes of the investigation. Police services are encouraged to work closely and cooperatively with Ministry of Labour inspectors to ensure that an investigation is properly conducted. Also, please be aware that charges under the *Occupational Health and Safety Act* have a statutory limitation period of one year.

In certain workplaces, personal protective equipment is required to protect the health and safety of workers. Police services should consider appropriate personal protective equipment for use by its members while investigating workplace accidents.

In an effort to improve coordination between police and Ministry of Labour inspectors when conducting their respective investigations, police services should contact the following Ministry of Labour regional contacts if they have further inquires:

Name of Director	Address	Telephone
David Walker (GTA)	1201 Wilson Ave 2 nd Floor Downsview, Ontario	(416) 235-5217
Vic Pakalnis (Eastern)	1111 Prince of Wales Dr Suite 200 Ottawa, Ontario	(613) 727-2817
Candys Ballanger-Michaud (Northern)	159 Cedar Street Suite 301 Sudbury, Ontario	(705) 564-7433
Sophie Dennis (Western)	1 Jarvis Street Hamilton, Ontario	(905) 577-1238

Other Areas of Criminal Investigation

Please note that the amendments to the *Criminal Code* under Bill C-45 are not limited to any particular kind of offence or context. There are many other areas of criminal investigation in which these new provisions will apply.

As the application of these new provisions to specific fact situations will give rise to legal issues, it is recommended that police services consult with local Crown counsel if they have questions or concerns regarding the application of the new provisions in the context of individual cases.

Included for your reference is a copy of Bill C-45 as well as a Plain Language Guide produced by the Federal Department of Justice that provides additional information on the most common questions about this new legislation. The Guide outlines how the law will apply in the most common situations by describing who it applies to, which activities it pertains to, and what sentencing options exist.

I would ask that you make this information available to the members of your police service.

Original Signed by

Ron G. Bain
Assistant Deputy Minister
Policing Services Division

Attachment