



## **Criminal liability for workplace deaths and injuries**

### **Sentencing of individuals and organizations**

#### **Can a corporation be charged and convicted of a criminal offence, including one involving a workplace injury or death?**

Yes, corporations and other types of organizations can be held criminally responsible for their actions, just as individuals can be held criminally responsible.

#### **How is the sentencing process different for corporations than it is for individuals?**

The general principles of sentencing are set out in sections 718 to 718.2 of the *Criminal Code* and apply to individuals and organizations. The fundamental principle of sentencing is to impose sanctions that are proportionate to the degree of responsibility of the offender and the gravity of the crime. In imposing a proportionate sentence, a court must take into account the following objectives:

- denunciation
- deterrence
- separation of offenders from society (where necessary)
- providing reparations for harm to victims
- promoting a sense of responsibility in offenders and an acknowledgement of the harm done

With respect to organizations, section 718.21 of the *Criminal Code* lists additional factors that a court must consider when imposing a sentence on an organization. These include factors such as:

- any advantage realized by the organization as a result of the offence
- the degree of planning in carrying out the offence
- the impact that the offence would have on the economic viability of the organization and the continued employment of its employees
- any regulatory penalty imposed on the organization or its representatives with respect to the underlying offence
- any measures taken by the organization to reduce the likelihood of committing a subsequent offence

Corporations can also have probation imposed on them and a court may prescribe specific conditions designed for corporations, including but not limited to:

- making restitution to a person for any loss or damage that the person suffered as a result of the offence
- establishing policies, standards and procedures to prevent the likelihood that the organization will commit another offence

- notifying the public that the organization was convicted of an offence, the sentence imposed and any measures being taken to rectify the situation

**In the occupational health and safety context, what are some known sentencing outcomes for corporations convicted of criminal negligence causing death?**

A corporation cannot be sentenced to imprisonment but where a corporation is found guilty of this crime, there is no upper limit on the amount of the fine that can be imposed (paragraph 735(1)(a)).

The following are examples of cases that have been prosecuted since Bill C-45, *An Act to amend the Criminal Code* (criminal liability of organizations), was enacted in 2004:

- In *R v Transpavé*<sup>1</sup>, the court accepted a joint sentencing submission by the parties and fined the company \$100,000 and imposed a victim surcharge of \$10,000. In its sentencing decision, the court noted that the offender was a family owned business with no previous occupational health and safety convictions, had demonstrated significant remorse and attention to the needs of the family and other employees after the incident, and spent more than \$750,000 on improving safety measures. Such improvements in safety would prevent another similar incident from occurring. The \$100,000 fine ensured the survival of the corporation and the continuation of the 100 jobs.
- In *R v Metron Construction*<sup>2</sup>, the sentencing judge fined the company \$200,000 in addition to a victim surcharge of \$30,000. The Ontario Court of Appeal (ONCA) found this sentence manifestly unfit and increased the fine to \$750,000 because the fine was not proportionate to the gravity of the offence. The ONCA noted several facts that justified increasing the fine, including:
  - the corporation was found guilty of criminal negligence causing death rather than of a regulatory offence
  - this offence is amongst the most serious offences in the *Criminal Code*
  - the offence carries a maximum penalty of life imprisonment for individuals (i.e., it is a very serious offence)
  - four workers died and one worker was severely injured
  - the victims were young and had families, some with young children
  - the respondent had been operating with faulty equipment for more than two months
  - the sentence imposed did not adequately reflect the importance of worker safety. The ONCA noted that the sentence imposed could have encouraged some to treat the quantum of the fine as a cost of doing business. Denunciation and deterrence should have received greater emphasis
- In *R v Stave Lake Quarries Inc.*<sup>3</sup> (SLQ), the sentencing judge fined the company \$100,000 plus a victim surcharge of \$15,000. The court noted:

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<sup>1</sup> *R v Transpavé*, 2008 QCCQ 1598.

<sup>2</sup> *R v Metron Construction Corporation*, 2013 ONCA 541.

<sup>3</sup> *R v Stave Lake Quarries Inc.*, [2016] BCJ No. 2583.

- there was no evidence that SLQ realized an advantage in the circumstances leading to the death
- the offence was the result of an omission
- there was no degree of planning
- a regulatory penalty was imposed as a result of the offence-related conduct
- SLQ took steps to improve workplace safety
- SLQ had no record of safety or disciplinary infractions for an unsafe worksite and had no prior criminal record
- it was an aggravating factor at the sentencing that the victim was not given a safety manual to read, that the instructor teaching her how to operate the rock hauler did not train her on the importance of engaging the parking brake; that the rock hauler had no tire shocks making it more likely it would tip over; and, the victim did not have experience driving large trucks. The Court also noted that SLQ's conduct was more akin to *Transpavé* and that the conduct in *Metron construction* was more egregious than in this case. The court found the joint submission fair and reasonable.

### **In the occupational health and safety context, what are the known sentencing outcomes for individuals convicted of criminal negligence causing death?**

Where an individual is convicted and sentenced for criminal negligence causing death, it is not uncommon for a court to impose a period of imprisonment.

- In *R v Kazenelson*<sup>4</sup>, the project manager of Metron Construction was sentenced to 3.5 years of imprisonment for each of the four counts of criminal negligence causing death and for one count of criminal negligence causing bodily harm. The sentences were ordered to be served concurrently (i.e., at the same time).
- In *R v Scrocca*<sup>5</sup>, the owner of the backhoe that killed an employee who was convicted of criminal negligence in maintaining the breaks received a two year conditional sentence of imprisonment.

### **In the occupational health and safety context, what are the known sentencing outcomes for individuals convicted of unlawful act manslaughter?**

Where an individual is convicted and sentenced for unlawful act manslaughter, it is not uncommon for a court to impose a period of imprisonment.

- In *R v Fournier*<sup>6</sup>, the employer was sentenced to 18 months imprisonment followed by two years' probation. The court noted that employers have an obligation to ensure a safe work environment and Mr. Fournier clearly placed the victim in a dangerous position costing him his life.

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<sup>4</sup> *R v Kazenelson*, 2015 ONSC 3639; 2018 ONCA 77.

<sup>5</sup> *R v Scrocca*, 2010 QCCQ 8218.

<sup>6</sup> *R v Fournier*, [2016] QCCS 5456.

**Additional information**

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