



# MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade-Mark Agents

## ENVIRONOTES!

*April 2004*

*Environmental Solutions  
for Business*

### **NEW CRIMINAL CODE LEGISLATION POTENTIALLY COMPOUNDS ENVIRONMENTAL LIABILITY**



*Bruce McMeekin  
Markham  
905.415.6791  
bmcmeekin@millerthomson.ca*

#### **Inside**

*New Criminal Code  
Legislation Potentially  
Compounds Environmental  
Liability*

*White Paper on Watershed  
Based Source Protection  
Planning: An Analysis*

*The Supreme Court of  
Canada Renders its Decision  
on the Tort of Abuse of Public  
Office*

*MOE Orders*

On March 31, 2004, Bill C-45 was proclaimed into force amending the *Criminal Code*.

The centerpiece of Bill C-45 is the creation of a new legal duty operating in the Canadian workplace:

*Every one 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 that person or any other person, arising from that work or task.*

The new legislation redefines the word "everyone" to include not only individual and corporate entities, but also unincorporated associations, such as, partnerships.

The amendment relies on the existing definition of "bodily harm" within the *Criminal Code*; namely, any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.

A breach of the workplace duty constitutes criminal negligence which, in the event it causes death or bodily harm, can be prosecuted as breaches of sections 220 and 221 of the *Criminal Code*.

There is nothing in the new legislation to suggest that the new duty applies to only "conventional" workplace accidents. Employers who expose their employees to health risks arising from, for example, pollution could find themselves being prosecuted where there is a direct link between the polluted work environment and bodily harm suffered by one or more employees.

Nor is the duty limited to preventing bodily harm to employees. The duty speaks to bodily harm to any person, which would appear to include non-employees who have suffered bodily harm, a result of, for example, pollution caused by the employer.

#### **Note:**

EnviroNotes is provided as an information service to our clients and is a summary of current legal issues. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this newsletter without seeking specific legal advice with respect to their unique circumstances. Miller Thomson LLP uses your contact information to send you information on legal topics that may be of interest to you. It does not share your personal information outside the firm, except with subcontractors who have agreed to abide by our privacy policy and other rules.

The new duty requires the employer to take reasonable steps to prevent bodily harm. At a minimum, this reinforces the existing law that employers should take all reasonable care to ensure that their workplaces comply with provincial and/or federal environmental legislation governing the employer's operations.

The responsibility for ensuring compliance falls squarely on the shoulders of the one or more senior officers who are responsible for that aspect of the employer's activities in which a risk of non-compliance leading to bodily harm may exist. If the senior officers depart markedly from the standard of care that, in the circumstances, could reasonably be expected of them, then the senior officers and the employer can be liable if shoddy environmental practices cause bodily harm or, worse, death to an employee or any other person.

The offences of criminal negligence causing bodily harm and criminal negligence causing death are "indictable" according to the *Criminal Code*. In the case of a corporation, this means that if it is successfully prosecuted for either of these offences, there is a potential for unlimited fines. The *Criminal Code* also makes provision for corporate offenders being placed on probation and being subject to restitution orders.

Individual offenders face the possibility of not only fines and probation, but also very lengthy prison sentences: in the case of criminal negligence causing bodily harm, ten years; and, in the case of criminal negligence causing death, life.