



Management Labour and
Employment Lawyers

THE EMPLOYERS'Edge

BULLETIN

Workplace Death Leads To Landmark Criminal Conviction For Quebec Company – A Sign Of Things To Come?

Bill C-45, which came into effect nearly four years ago, amended the *Criminal Code* to make it easier for the Crown to charge a corporation, its supervisors or other representatives with criminal negligence as well as occupational health and safety ("OHS") violations. Just when it appeared that these legislative changes may have no teeth, a Quebec company, Transpavé, pled guilty to criminal negligence charges arising from a 2005 workplace death in Saint-Eustache, Quebec.

The accident took place on October 11, 2005, at a workplace that manufactures concrete blocks for patios. A 23-year old worker was crushed after entering a moving area of a machine that stacks blocks, while attempting to clear a jam in the machine. An investigation by provincial inspectors and the police revealed that the motion detector safety mechanism, which would have prevented the accident, had been disabled. One of Transpavé's managers knew that the safety device had been disabled but did not address the issue prior to the accident. As well, the Company was found to have inadequate safety and hazard awareness training and appropriate safety procedures to address the specific hazard of moving the patio stones.

Representatives for Transpavé appeared in a Quebec Court on February 26, 2008 for sentencing. Defence counsel and the Crown made a joint submission to the Court that a fine

of \$100,000.00 was appropriate in the circumstances given Transpavé's acceptance of responsibility through its guilty plea, its small size and the fact that steps had been taken to review its safety procedures at the plant. The Court will hand down its sentence on March 17, 2008. It remains to be seen whether the Court will accept the joint plea or impose a higher fine in this precedent-setting decision. It is to be noted that the *Criminal Code* provides for an "unlimited" fine for an organization convicted of an indictable offence.

Transpavé's plea of guilty and pending sentence is an important reminder to employers to remain vigilant to ensure that their organization is able to meet due diligence standards to avoid criminal and/or regulatory prosecutions. Moreover, given that the *Criminal Code* provisions specifically focus on senior management, particular attention must be paid to the issue of OHS due diligence at the higher echelons of the organization. To reduce the risk of accidents and potential criminal charges, organizations should ensure that company policies are in compliance with Occupational Health and Safety statutes and regulations by means of an effective OHS management system.

Crawford Chondon & Partners LLP will continue to keep you updated on this and other ground-breaking decisions in the area of labour and employment law.

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