

Debunking 5 Common Myths about C-45



C-45, the law that makes egregious OHS offences potential criminal violations, has been around for over a decade but is still widely misunderstood. Now that the *Metron Construction* case has shed new interest in the law, it's a good time to debunk 6 of the myths making the rounds.

Myth 1: C-45 Changes Workplace Safety

The Myth: C-45 imposes tougher workplace health and safety standards not contained in OHS laws.

The Truth: C-45 doesn't change the *substance* of OHS laws. It doesn't say a single word about hazardous chemicals, incident reporting, inspections or any of the other specific items covered in OHS laws. So you still have to follow those laws. What *has* changed are the potential consequences for not meeting these standards. Now a failure to meet OHS duties carries the risk of criminal liability.

Myth 2: C-45 Makes Every OHS Violation a Crime

The Myth: Any violation of an OHS duty is criminal negligence under C-45.

The Truth: All OHS violations aren't necessarily crimes under C-45, only egregious ones. Not meeting an OHS requirement isn't enough; to convict you of criminal negligence under C-45, the Crown must also show beyond reasonable doubt that you were "wanton or reckless". This is more than simple carelessness or honest mistakes. It means you must have acted with complete disregard or indifference to safety.

Myth 3: C-45 Doesn't Apply to My Company Because We're Not Federally Regulated

The Myth: C-45 applies only to federally regulated companies and not companies subject to provincial OHS laws.

The Truth: C-45 is, in fact, a federal law. And while federally regulated companies are subject to the OHS requirements of the *Canada Labour Code*, non-federally regulated employers are subject to the OHS laws of their province or territory. But C-45 is *not* an OHS law; it's part of the Canadian *Criminal Code*—and, as such, is binding on all companies and individuals regardless of whether they're subject to federal OHS regulation.

Myth 4: C-45 Is a Paper Tiger

The Myth: C-45 has no real effect on workplace health and safety.

The Truth: Although C-45 prosecutions have been few and far between, they do occur in egregious cases like the recent Metron Construction case in Toronto in which 4 migrant workers lost their lives in an 18-storey scaffold fall because they weren't given proper fall protection equipment. So while most safety violations are prosecuted under the OHS laws, companies and individuals at hazardous work sites who play fast and loose with their workers safety risk criminal prosecution and jail.

Myth 5: C-45 Puts Safety Managers in an Impossible Position

The Myth: C-45 makes it harder for safety managers and supervisors to protect safety.

The Truth: C-45 actually puts safety managers and supervisors in a much stronger position to command that upper management take safety seriously and dedicate the resources necessary to protect workers against hazards. Remember that the risk of criminal liability extends not just to the corporation and its managers and supervisors but also to corporate officers and directors.