

# When Does a Safety Violation Become a Crime Under C-45?



The record 3 ½ year jail sentence handed down to the manager of the Metron Construction project raises an important question: What would it take for a manager, supervisor or other individual at *your* organization to be guilty of a safety crime under C-45?

## The 4 Elements of a C-45 Crime

C-45 gives the Crown the power to prosecute individuals for criminal negligence if they don't do enough to protect workers and others affected by dangerous work. To secure a conviction, the prosecution must prove 4 things beyond a reasonable doubt:

### 1. The Individual Defendant Directed or Had Authority to Direct Work

C-45 doesn't apply to all individuals: just the ones who direct or have authority to direct how work is done, including those who:

- Have control over who can do a job;
- Have control over what methods or tools are used;
- Train people who perform the job; and/or
- Have authority to stop work if they consider it unsafe.

### 2. The Individual Fails to Take 'Reasonable Steps' to Protect

The Crown must show that the person in control failed to take "reasonable steps" to protect workers or others affected by the work, e.g., bystanders, against bodily harm arising out of the work. Although there's no definition of "reasonable steps," at a minimum, individuals are expected to comply with applicable OHS laws and perhaps industry standards.

### 3. The Failure to Take 'Reasonable Steps' Is Wanton or Reckless

A simple OHS violation isn't enough. The prosecutor must also show that the individual acted with "wanton or reckless indifference" in committing the violation.

*Example:* Allowing workers to work on a swing stage without fall protection in violation of OHS laws became a criminal offence in the *Metron* case because the manager *knew* the operation was unsafe and illegal but was willing to gamble with the lives of the crew. In other words, he acted with reckless and wanton indifference to

safety.

#### **4. The Offence Results in Bodily Harm**

An individual can only be guilty of a crime under C-45 if the wanton or reckless failure to take reasonable steps results in bodily harm to the worker or some other person, like a visitor to the site. In the *Metron* case, the offence resulted in the deaths of 4 workers.