

# DUTIES AND RESPONSIBILITIES

## EMPLOYER'S GENERAL DUTIES

### General Duty Clause

- Section 25(2)(h) establishes a duty that has been described as “even more sweeping” than s. 25(1)<sup>1</sup>. **It is more sweeping because it does not depend on the existence of a specific regulation prescribing or proscribing particular conduct.**
- Section 25(2)(h) is necessary because the regulations cannot reasonably anticipate and provide for all of the needs and circumstances of the many and varied workplaces across the province.

### The employer must:

- Take all reasonable precautions for the protection of workers. This includes taking appropriate measures to protect susceptible or disabled workers. **Sec. 25, Sub. 2(h)**
- Provide information, instruction, and supervision for the protection of workers. **Sec. 25, Sub. 2(a)**
- Ensure that all supervisors have a working knowledge of the Act and regulations as well as any actual or potential hazards at the workplace. **Sec. 25, Sub. 2(c) (d)**
- Ensure all equipment required by the Act or regulations is provided, maintained in good condition, and used properly by workers. **Sec. 25, Sub. 1(a) (b) (d)**
- Ensure that health and safety committees and representatives are selected as required. **Sec. 8, Sub. 1 and Sec. 9, Sub. 4**
- Cooperate and afford assistance to a joint committee and its members and health and safety representatives in carrying out their duties. **Sec. 25, Sub. 2(e)**

- Give a written response to joint committee recommendations within 21 days. This must include a timetable for implementation or reasons for not agreeing with the recommendations. **Sec. 9, Sub. 20 and 21**
- Provide joint committees and health and safety representatives with any health and safety reports in his/her possession. **Sec. 25, Sub. 2(l)**
- Carry out training programs for workers, supervisors and committee members where required by regulation. **Sec. 26, Sub. 1(l)**
- Prepare written policies to address workplace violence and workplace harassment and review them at least annually. **Sec. 32.0.1, Sub. 1, 2, 3 & Sec. 32.0.6, Sub.2**
- If a worker is killed or critically injured at work, the employer must immediately advise an MOL inspector the health and safety representative or JHSC and the union. And within 48 hours, the employer must send the MOL a written report according to the regulations. **Sec. 51, Sub 1**
- Provide written notice within four days to the joint committee, health and safety representative and the trade union when workers are disabled from regular work (lost time or no lost time) or require medical attention as a result of an accident, fire, explosion or incident of workplace violence. **Sec. 52, Sub. 1**
- Give written notice of any occupational illness of current and former employees to the joint committee, the union and the Ministry of Labour within four days of being advised of such an illness or where a WSIB claim has been filed for such an illness. **Sec. 52, Sub. 2 and 3**

<sup>1</sup>R. v. Wyssen (1992), 10 O.R. (3d) 193 (C.A.), at p. 198.

# DUTIES AND RESPONSIBILITIES

- Post inspectors' orders in the workplace and provide joint committees and health and safety representative with copies of these. **Sec. 57, Sub. 10**

## WHAT ARE THE DUTIES OF SUPERVISORS?

### A supervisor must:

- Ensure that workers comply with the Act and regulations. **Sec. 27, Sub. 1(a)**
- Ensure that workers wear, or use required protective equipment, and follow all required measures and procedures. **Sec. 27, Sub. 1(b)**
- Advise workers of all existing and potential hazards, including workplace violence. **Sec. 27, Sub. 2(a)**
- Provide written instruction to workers on measures and procedures to be taken where required. **Sec. 27, Sub. 2(b)**
- Take all precautions reasonable in the circumstance for the protection of workers. **Sec. 27, Sub. 2(c)**

## WHAT ARE THE DUTIES OF WORKERS?

- Workers must work in compliance with the Act and regulations. **Sec. 28, Sub. 1(a)**
- Workers are not required to participate in medical surveillance programs unless they consent to do so.
- However, under **Section 26, Sub. 1 (j)** an employer cannot permit a worker to work unless the worker has undergone medical examinations or tests required by a regulation and is found fit to work. **Sec. 28, Sub. 3**
- Workers must follow all required procedures and wear or use all required protective equipment. **Sec. 28, Sub. 1(a) (b)**
- Workers must report all safety defects in equipment or any hazard to the supervisor or employer. **Sec. 28, Sub. 1(c) (d)**
- Workers must not remove any required protective devices. **Sec. 28, Sub. 2(a)**

- Workers must report all violations of the Act and regulations and hazards to the supervisor or employer. **Sec. 28, Sub. 1(d)**
- Workers must not work in a manner or use defective equipment that might endanger the worker and others. In this instance a worker has a legal obligation to refuse work. **Sec. 28, Sub. 2(b)**

## CONSTRUCTORS, OWNERS, ARCHITECTS, ENGINEERS & DIRECTORS

### What are the duties of owners and constructors?

- An owner must determine if there is a designated substance on site, prepare a list of the substances and provide this list as part of any tendering information and ensure that constructors receive a copy before entering a contract.
- The constructor must ensure that all contractors or subcontractors receive a copy before entering a contract. **Sec. 30, Sub. 1, 2, 3, 4**
- A constructor must give written notice to the Ministry of Labour, joint committee or health and safety representative and the trade union of any accident or unexpected event that occurs on a project even if no one is injured. **Sec. 53**

### What are the duties of architects and engineers?

- Architects and engineers are liable to prosecution if their advice or certification of a structure endangers workers. **Sec. 31, Sub. 2**

### What are the duties of directors and officers of corporations?

- Officers and directors are legally liable to ensure that there is compliance with the Act, the regulations and MOL orders. **Sec. 32 (a)**

### Can directors and officers be found criminally liable?

- Yes. The loss of 26 miners in the Westray disaster in 1992 led to the enactment of Bill C45 in 2004. Bill C45 makes a clear statement in the Criminal Code that wanton or



# DUTIES AND RESPONSIBILITIES

reckless disregard for the safety of workers and the public at large in a workplace setting is a criminal offence and that corporate executives, directors and managers could be held criminally accountable.

## Bill C-45 convictions (directors & officers liability)

- The most significant case dealing with directors/officers liability was Metron Construction Corporation (Metron).
- In September 2009, Metron entered into an agreement to restore the concrete balconies on two high-rise buildings.
- On December 24, 2009, at approximately 4:30 p.m., six workers, including the site supervisor, all of whom had been working on the 14th floor, climbed onto a swing stage at the project to travel back to the ground to close and leave the project site for the day. The platform collapsed, and five of the workers fell some 14 floors to the ground. Four of the five died as a result of injuries. The fifth survived but suffered serious injuries. The sixth was properly attached to a safety line, which prevented him from falling, and he was uninjured.
- Justice R. Bigelow's decision fined Metron \$312,500 (including a victim fine surcharge). The fines amounted to three times the net earnings of Metron in its last profitable year, effectively crippling the company.
- Metron's last profitable year was 2009, with losses reported in both 2010 and 2011. Still, union groups, including the Ontario Federation of Labour, were sharply critical of the court's decision, calling the fine far too low. Ontario's Ministry of the Attorney General also appealed the decision. Prosecutors originally sought a \$1 million fine against Metron, which would most likely have resulted in the company declaring bankruptcy. Court case documents can be found here.

(<http://www.canlii.org/en/on/oncj/doc/2012/2012oncj506/2012oncj506.html>).

- Another two C-45 convictions have occurred in Quebec. A paving company (Transpave) was fined \$100,000 in the death of a 23-year-old worker, killed in October 2005 while trying to remove a blockage in a machine.

- An owner of a landscaping company was sentenced to 2 years less a day in the community with a curfew when found guilty of criminal negligence causing death when employee was crushed by a backhoe against a wall on June 12, 2006.

## Company and director fined under the Occupational Health and Safety Act

- Another ruling demonstrates that workplace safety incidents can carry consequences not only for a company but also for executives or supervisors responsible for ensuring compliance with the Occupational Health and Safety Act and its regulations.
- On September 17, 2008, a worker fell from a cement pier while dismantling a guardrail system in Field, Ontario. The court found that the worker did not have fall protection of any kind. Three other workers at the construction project were similarly unprotected. The safety equipment for each worker on the job was inadequate, and the equipment that was present was not properly cared for or inspected. The court also found that the supervisor on-site was unqualified.
- Chelmsford-based construction companies Bélanger Construction (1981) Inc. and R.M. Bélanger Limited were fined \$290,000 (plus a 25% victim fine surcharge) on August 10, 2012, for violations of the Occupational Health and Safety Act in relation to the incident. The companies' director, Ronald Bélanger, was also fined \$10,000 (plus a 25% victim fine surcharge).
- A company executive can be charged under either the Occupational Health and Safety Act or the Criminal Code.

Section 217.1 of the Criminal Code provides that "Everyone 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."

