

Criminal Code Offences

In Canada, there have not been many criminal prosecutions relating to workplace deaths since amendments were made in 2004 in response to the Westray Mine disaster.

The most important amendment at that time was the addition of section 217.1, which imposed a new “legal duty” on anyone who undertakes, or has the authority, to direct how work or a task is performed, to take “reasonable steps” to protect that person and others from bodily harm arising from the work or task.

Possible Criminal Code offences are:

[criminal negligence causing death](#)
[criminal negligence causing bodily harm](#)
[manslaughter by unlawful act](#)
[unlawfully causing bodily harm](#)

Corporations and other types of organizations can also be held criminally responsible for their actions, just as individuals can be held criminally responsible. Although a corporation cannot be sentenced to imprisonment, where a corporation is found guilty of this crime, there is no upper limit on the amount of the fine that can be imposed

Supervisor Jailed 3 Years for Negligence Causing Death

Last week a former construction supervisor was been sentenced to three years in in prison for negligence resulting in an 18 year old employee's death at a job site from drowning in a manhole.



1. Criminal negligence causing death (section 220)

The offence of criminal negligence causing death in the occupational health and safety context requires proof beyond a reasonable doubt of the following elements:

- a breach of the legal duty (i.e., the duty pursuant to section 217.1 of the *Criminal Code* or any other duty emanating from a provincial/federal statute – including provincial legislation on workplace safety – or the common law)
- the breach amounts to a **wanton or reckless disregard for the lives and safety of others**
- a person died as a result
- the act or omission constituting the breach of a legal duty caused the person’s death

Penalty: A maximum penalty of life imprisonment for an individual, in the case of an organization, a fine in the discretion of the court.

This occurred in New Brunswick which does have different provincial Health and Safety legislation.

In Canada, most jurisdictions have adopted a broad definition of “employer”. However, in New Brunswick, the definition of “employer” includes “supervisors”. In New Brunswick supervisors have the same duties as employers. This definition puts a much higher standard of care on supervisors working in New Brunswick than in most other jurisdictions in Canada where the duties on employers and supervisors differ.

Possible Implications

The significance of the most recent case in New Brunswick could have implications for high-risk industries according to a [McLennan Ross](#) article.

If the approach by the trial judge becomes widespread and accepted by other courts, the implications for workplace safety and criminal liability could be profound and we could be witnessing a shift in the enforcement of criminal liability for workplace safety.

Court Bulletins

Review the bulletin below and click on the link to know more if this hazard could occur in your workplace.



[Aug 31 - Critical Injury - University of Guelph Fined \\$50,000](#)

A worker was injured while unloading a pallet of soil from a truck with a manually operated “pump truck”. The worker began unloading a pallet by pulling the “pump truck” onto the liftgate and as the worker was attempting to reach the control mechanism of the liftgate to lower it to the ground, the pump truck with the pallet of soil bales rolled forward. To avoid being struck by the pump truck and its pallet load, the worker jumped off the liftgate and landed on the ground sustaining serious injuries

The employer failed to take every precaution reasonable by ensuring the liftgate manufacturer guidelines were followed, contrary to 25(2)(h) of the OHSA.

[Aug 30 - Working at Heights Critical Injury - B. Phillips Company \(1987\) Limited Fined \\$60,000](#)

A worker was critically injured falling from a height during the maintenance and repair of an oxygen furnace. To access, workers entered from the second floor through three large doors on a high-traffic walkway, which were open to numerous workers. The openings did not have properly constructed guardrails or necessary fall protection devices. A worker, leaned on one of the temporary railings and it came loose, causing the worker to fall, sustaining critical injuries.

The employer, failed to ensure the measures and procedures prescribed by S 13(1)(b) and 14 of Reg. 851, were carried out in the workplace, contrary to S 25(1)(c) of the OHSA and contrary to S 25(2)(h) of the OHSA.

[Aug 28 - Critical Injury - BALuma Systems Inc. Limited Fined \\$60,000](#)

10 concrete finishing workers were pouring concrete from a pump truck onto a defined pour area on the third level of a high-rise building when the shoring under the pour area collapsed and two workers were injured

An investigation found that at the area of the collapse, the design of the shoring was capable of withstanding all loads and forces likely to be applied. However, the design of the re-shoring at and around the area of collapse was deficient and was a probable cause of the collapse.. Aluma Systems Inc. failed to ensure re-shoring was supported and braced appropriately and violated S 87(1)(a) of Reg 213/ contrary to S 25(1)(c) of the OHSA.

[Aug 30 - Confined Space Fatality - Tony Ventrone, Supervisor Fined \\$70,000](#)

A worker died from injuries sustained in an explosion at a workplace. Infrastructure Coatings (Ontario) Corporation was contracted by a constructor under contract to the Regional Municipality of York to re-line an underground water chamber with a spray waterproofing as part of a watermain remediation project. After the initial application of waterproof coating, workers again returned to the site to re-spray the waterproof coating. A worker and a waterstop supervisor acting as a “safety watch” completed the Confined Space Entry Permit and set up rescue and ventilation equipment.

After conducting the repairs, the worker used Methyl Ethyl Ketone (MEK) to clean the chamber. This product is extremely volatile and flammable. A short time later, the worker was going to re-enter the chamber with a propane torch to speed up the drying process before applying the spray waterproofing. The waterstop supervisor indicated to the worker not to use the torch, before being distracted by their phone. At the same time the worker lit the torch near the manhole entrance. There was no fire extinguisher at the scene. MEK fumes being purged from the chamber ignited, causing an explosion that critically injured the worker who died from their injuries days later.

Tony Ventrone, the construction supervisor, was in his truck at the site but not present at the incident scene and failed, as a supervisor, to ensure that fire extinguishing equipment was provided and readily accessible at a project where open-flame operations were carried out, as required by S 52(2)(c) of Reg. 213 and contrary to S 27(1)(a) of the OHSA.

Who is a Supervisor under the OHSA?

This question is discussed during JHSC training but not enough emphasis is focused during staff training. Under the OHSA there are duties and responsibilities and also potential repercussion to these supervisors, it is a topic that needs to be reviewed. Below are excerpts from the [MLITSD website](#).



Determining if a person is a supervisor is an objective test based on the person's actual powers and responsibilities. Whether or not a person subjectively believes s/he is a supervisor is not part of the determination.

Under the OHSA, having either charge of a workplace, or authority over a worker, is sufficient for a person to be a supervisor. In any case, the person must have sufficient authority to carry out the duties in section 27 of the OHSA. If the person does not have such authority, s/he is not a supervisor.

Below are two general lists of powers and responsibilities that may be exercised or carried out by a supervisor.

Powers that are primary indicators of being in a supervisory role include the power to:

- hire, fire or discipline,
- recommend hiring, firing or discipline,
- promote, demote or transfer,
- decide a worker's rate of pay,
- award bonuses,
- approve vacation time,
- grant leaves of absence, or
- enforce procedures established to protect worker health and safety.

A person with none of the powers listed above could still be a supervisor as defined in the OHSA, if he or she has some of the following responsibilities:

- determining the tasks to be done, and by whom,
- directing and monitoring how work is performed,
- managing available resources such as staff, facilities, equipment, budget,
- deciding on and arranging for equipment to be used on a job site,
- deciding the make-up of a work crew,
- deciding on and scheduling hours of work,
- dealing directly with workers' complaints, or
- directing staff and other resources to address health and safety concerns.

The above lists are not exhaustive, and having just one of the powers or responsibilities does not necessarily make one a supervisor.

Other points to consider include:

- An individual temporarily authorized to direct a worker's work activities can be a supervisor during that time period. For example, in the construction sector, if a competent person is temporarily appointed by a supervisor under section 14 of Ontario Regulation 213/91 for Construction Projects, that person is also considered to be a supervisor for enforcement purposes.
- Whether or not a person should be considered a supervisor is based on job functions, not whether the term "supervisor" is in his or her job title.
- A supervisor for the purposes of the OHSA can belong to a bargaining unit.

For more information of examples that may provide guidance and Ontario court decisions it would be well worth your time to peruse this page on the web site..

The employer must, even if a worker is assigned temporary supervisors responsibilities, ensure that [supervisor training](#) is provided. This training is over and above the basic supervisor awareness training required under Ontario Regulation 297.

Joint Health and Safety Training (In Class and Distance Learning)

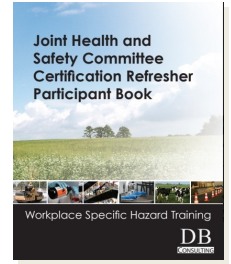
Safetyscope can help with:

- In Class sessions for DBC Inc. JHSC Part 1, Part 2 and Refresher Training
- Distance Learning (Virtual) Refresher training utilizing DBC Inc. approved training

Safetyscope is an approved provider

We have continued to expand our scope and now Safetyscope is an approved provider for the following:

- Toronto Water for Working at Heights
- Safetyscope is a TSSA Approved Training Provider
- Safetyscope is an approved provider for Corrections Canada



Online Training with InFuse

Safetyscope has partnered with InFuse Compliance Systems to offer a full turn-key Health & Safety solution that includes a robust suite of Online Training. For more information [Click Here](#)



Safetyscope's Public Training Sessions

With our COVID-19 procedures in place, Safetyscope is now holding regular public training sessions in Working at Heights, Working at Heights Refresher and Confined Space Awareness.

Safetyscope staff are 100 percent vaccinated.

If your organization requires any additional courses, please contact us with your training needs at training@safetyscope.net.

Safetyscope Continuing to Maintaining Registration as an OWWCO Training Provider

These courses meet the criteria in subsection 29(4) of O.Reg. 128, Certification of Drinking Water System Operators and Water Quality Analysts. On Completion of training all participants will receive a certificate of completion with corresponding CEU Value.

1. Working at Heights	.7 CEU
2. WHMIS 2015	.4 CEU
3. TDG	.4 CEU
4. Working in Confined Spaces Rescue Level	2.8 CEU
5. Confined Spaces Attendant Non Entry	1.3 CEU
6. Confined Spaces Advanced Entrant	.7 CEU
7. Confined Spaces Attendant Refresher	.7 CEU
8. Confined Spaces Rescue Refresher	.7 CEU
9. Standard First Aid	1.4 CEU
10. Self Contained Breathing Apparatus	.4 CEU
11. Spill Response	.7 CEU
12. Trenching Hazards	.4 CEU



SAFETYSCOPE



2023 SCHEDULE

1 Day Entrant & 2 Day Attendant Course

Time: 8:00 am – 4:00 pm

January	16 - 17
February	13 - 14
March	20 - 21
April	17 - 18
May	15 - 16
June	19 - 20
July	17 - 18
August	14 - 15
September	11 - 12
October	16 - 17
November	13 - 14
December	11 - 12



Competent Supervisor 1 Day Course

Time: 8:00 am – 4:00 pm

February 28
April 27
June 29
August 31
October 26



Day 1 - Emergency Level/Recertification Day 2 - Standard First Aid Level C

Time: 8:00 am – 4:00 pm

February	6 - 7
May	8 - 9
August	8 - 9
November	6 - 7



Working At Heights 1 Day Course

Time: 8:00 am – 4:00 pm

January	13 & 27
February	10 & 24
March	10 & 24
April	14 & 28
May	12 & 26
June	9 & 23
July	7 & 21
August	4 & 18
September	1, 15 & 29
October	13 & 27
November	10 & 24
December	8



Working At Heights Refresher 1/2 Day Course

Time: 8:00 am – 4:00 pm

January	6 & 20
February	3 & 17
March	3 & 31
April	21
May	5 & 19
June	2, 16 & 30
July	14 & 28
August	11 & 25
September	8 & 22
October	6 & 20
November	3 & 17
December	1 & 15



JHSC Part 1 Certification Dwight Barratt Inc. - 3 Day Course

Time: 8:00 am – 4:00 pm

March	27 - 29
August	28 - 30
November	27 - 29

Part 2 and Refresher also available



Confined Space Rescue 4 Day Course

Time: 8:00 am – 4:00 pm

May 29 - June 1
December 18 - 21



Course held at the SafetyScope Training Centre
2501 Rutherford Road Unit 22 Vaughan, Ontario L4K 2N6
Phone: 416.231.3752 E-mail: info@safetyscope.net

2022 Calendar Year