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VIA FACSIMILE

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File 10106

Dear Mr. Lefebvre:

Re: Criminal Liability of IAMAW Members (Lead Hands) As a Result of Amendments to the Criminal Code of Canada

You have asked me for an opinion concerning the significance of recent changes to the Criminal Code of Canada brought about by Bill C-45.

The amendments introduced by Bill C-45 were generally directed to making "organizations" criminally liable for misconduct, including negligence.

The definition of "organization" includes a company such as Air Canada, which now may be corporately liable for criminal negligence.

The amendments brought about by Bill C-45 include an amendment to impose a duty on persons directing work. Section 217.1 has been added to the Criminal Code reads as follows:

"217.1 Duty of Persons Directing Work - Every one 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.

This additional statutory duty set out in the Criminal Code is important in the context of the offence of criminal negligence. Criminal negligence is defined in the Criminal Code as follows:

"219(1) Criminal Negligence - Every one is criminally negligent who

(a) in doing anything, or
(b) in omitting to do anything that it is his duty to do,
shows wanton and reckless disregard for the lives or safety of other persons.

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(2) “**Duty**” – for the purposes of this section, “duty” means a duty imposed by law.”

The addition of section 217.1 makes it clear that a person directing the work of another person in the workplace now has a positive duty to take reasonable steps to prevent bodily harm to that person, or any other person arising from the work or task.

As a practical matter, this means that a lead hand, for example, now has a positive duty to assure that those persons working under his direction and authority undertake work tasks in a manner that will prevent them, or other persons, from suffering bodily harm or injury.

Presumably, this positive duty will be taken into consideration in a prosecution for criminal negligence. However, the definition of criminal negligence has not changed. It still requires proof that the defendant showed “wanton or reckless disregard for the lives or safety of other persons”.

Thus, a lead hand who now has a positive legal duty to take reasonable steps to prevent bodily harm to persons working under his authority or direction will be guilty of criminal negligence *if* he shows “wanton reckless disregard for the lives and safety of those persons”. The test for criminal negligence is whether there has been a *marked* departure from the standard of the reasonable person.

The standard of a reasonable person is an objective test. The amendment in section 217.1 specifically expresses the standard of reasonableness expected of a lead hand i.e., “to take reasonable steps to prevent bodily harm” to persons working under his authority or direction, arising from the work or task performed at the time. Reasonableness is now to be measured in light of the positive obligation to take reasonable steps to prevent bodily harm and those who are in the lead hand is responsible.

Ordinary civil negligence is elevated to the crime of criminal negligence by the magnitude of the lead hand’s omissions or commissions, in light of his legal duty to take reasonable steps to prevent bodily harm, which show a wanton and reckless disregard for the lives and safety of others.

As a practical matter, all persons directing the work of others should be continually concerned with, and vigilant for, the risk of bodily harm to those employees under their authority and direction, and act accordingly.

If you have any questions concerning these matters, please call me at your convenience.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

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