

The Rise of Criminal Liability in Workplace Fatalities: What Canadian OHS Professionals Need to Know



Not long ago, most Canadian workplace fatalities followed a predictable path. Inspectors arrived. Orders were written. Fines or charges under provincial OHS legislation sometimes followed. The process stayed inside the regulatory system, and while the consequences were serious, they were familiar.

That is no longer the reality. Across Canada, workplace deaths are increasingly drawing police involvement, criminal investigations, and in some cases criminal charges against companies and individuals. Jail sentences, probation orders, and permanent criminal records are no longer unthinkable outcomes. They are happening.

For OHS professionals, this shift changes the context of everything from hazard assessments to incident response. Fatal incidents are no longer just regulatory events. They can become criminal matters, with standards and consequences that look very different from traditional OHS enforcement.

How Criminal Law Became Part of Workplace Safety

The roots of this shift go back more than twenty years. After

the 1992 Westray Mine explosion in Nova Scotia killed 26 workers and resulted in no criminal convictions, public trust in the justice system took a serious hit. In response, Parliament amended the Criminal Code of Canada in 2004, adding what is commonly called the Westray provisions. At the heart of those amendments is section 217.1, which creates a legal duty for anyone who directs work to take reasonable steps to prevent bodily harm.

At the time, many employers and safety professionals viewed these changes as symbolic. Criminal prosecutions were expected to be rare, reserved for extreme cases. They were rare at first. They are less so now.

Police services have become more willing to treat workplace fatalities as potential crime scenes. Crown prosecutors are more comfortable applying criminal negligence concepts to occupational settings. Regulators are increasingly prepared to step aside or work alongside police when they believe conduct may cross the criminal threshold.

Why Criminal Charges are Appearing More Often

Several forces are pushing this change. Public tolerance for workplace deaths has dropped sharply. Fatalities are no longer framed as tragic but unavoidable accidents. Families and communities expect accountability, especially when risks were known.

Police services have also evolved. In the past, many police forces deferred entirely to OHS regulators. Today, joint investigations are more common, particularly in construction, mining, and industrial sectors where hazards are well understood.

Courts have added clarity. Earlier uncertainty about how criminal negligence applied to workplaces has been reduced by

case law. Judges now have a clearer framework for evaluating safety systems, supervision, and decision making.

Finally, regulators themselves are sending stronger signals. When inspectors see repeated non compliance, ignored orders, or systemic failures, referrals to police are no longer exceptional. The practical result is that a single fatality can now trigger two parallel processes. A regulatory investigation and a criminal one. Each has different rules, different timelines, and very different consequences.

Not Every Fatality Becomes a Criminal Case

It is important to be precise here. Most workplace deaths in Canada do not result in criminal charges, and that is unlikely to change. Criminal negligence is a high bar. Prosecutors must prove beyond a reasonable doubt that the accused showed a wanton or reckless disregard for life or safety. That is far more demanding than proving a regulatory violation.

Courts look for conduct that represents a marked and substantial departure from what a reasonable person would have done. Patterns matter more than isolated mistakes. Warnings ignored. Hazards normalized. Controls skipped to save time or money.

This is where OHS programs and documentation quietly become decisive. The difference between a tragic failure and criminal negligence often lies in what an organization knew, what it did about it, and how consistently it acted.

What Recent Cases Reveal About Real Risk

Canadian case law offers some hard lessons. One of the most influential decisions remains *R v Metron Construction Corporation*. Four workers died when a swing stage collapsed in Toronto. The evidence showed overloaded equipment, untrained

supervision, and routine noncompliance. The court concluded these were not one-off errors. They reflected how the work was normally done.

The company was convicted of criminal negligence causing death and fined \$750,000. More importantly, the case established that corporate safety culture and systems can be central to criminal liability.

More recently, R v Vale Canada Limited illustrated the other side of the analysis. Following a workplace fatality, Vale faced criminal negligence charges. The company was ultimately acquitted. The acquittal was not because the incident was harmless or unavoidable. It turned on whether the evidence met the criminal standard. The court closely examined hazard identification, training, supervision, and how safety concerns were escalated and addressed. The systems in place mattered.

For OHS professionals, this contrast is critical. Strong prevention programs do not guarantee that nothing will go wrong, but they can change how conduct is judged when it does.

Who Faces Criminal Exposure

Another misconception is that criminal liability stops at the corporate level. Corporations can be charged, but so can supervisors, managers, and in some circumstances senior executives or directors. The key question is control. Who directed the work. Who had authority to fix the problem. Who knew or should have known about the risk.

Individuals have faced charges where they had clear supervisory authority and failed to act. In several cases, the focus was not on intent, but on inaction in the face of obvious danger. OHS professionals are rarely the ones giving production orders, but they are often central to identifying hazards and advising leadership. When that

advice is ignored, clear records matter. Internal emails, inspection reports, and meeting minutes often become evidence later.

The First Hours After a Fatality Now Carry More Weight

When a fatal incident occurs, the immediate response has always mattered. In the current environment, it matters more than ever. Police may attend the scene alongside OHS inspectors. Evidence may be seized. Statements may be requested quickly. These early moments can shape how the incident is understood months or years later.

This creates a difficult balance. Cooperation remains essential, but so does structure. Many organizations have learned too late that informal conversations and incomplete early statements can be misinterpreted once the full picture emerges.

Clear incident response plans, developed in advance, are now a core part of due diligence. Leadership should understand when to involve legal counsel and how to manage parallel investigations without obstructing either process.

How Courts Really Look at Safety Programs

One of the clearest lessons from criminal cases is that paper compliance carries very little weight. Courts do not stop at policies. They look at how work was actually done. Whether training was meaningful. Whether supervision was competent. Whether known issues were corrected or quietly tolerated.

In some prosecutions, safety manuals were used against employers because they highlighted the gap between written rules and real practices. The existence of a policy did not help when it was routinely ignored. On the other hand,

evidence of active hazard management, worker involvement, corrective action, and leadership engagement has helped organizations demonstrate that failures were not the result of reckless disregard.

Safety Culture is not Abstract in Criminal Court

Safety culture often sounds like a soft concept. In criminal cases, it becomes very concrete. Judges examine whether production pressures routinely overrode safety. Whether workers felt able to refuse unsafe work. Whether supervisors enforced rules consistently or selectively.

In several prosecutions, unsafe practices were described as normal. Equipment was overloaded because it saved time. Training was skipped because crews were experienced. These cultural norms often tipped cases toward criminal liability. OHS professionals influence culture every day through training, reporting systems, and how leadership responds to concerns. That influence shows up clearly when incidents are examined under a criminal lens.

What OHS Professionals Should be Doing Differently

The rise of criminal liability does not require a complete overhaul of safety practice, but it does raise expectations. Hazard identification needs to be current and honest, especially for high-risk activities. Known dangers should never be treated as routine.

Training needs to work in practice, not just on paper. Courts look for evidence that workers understood risks and controls, not just that sessions occurred. Supervision matters more than ever. Competent, trained supervision is a recurring theme in cases where criminal liability is avoided or imposed.

Documentation should tell a clear story. Risk identified. Controls applied. Issues corrected. Follow up completed. Finally, serious incident response plans should be reviewed with criminal exposure in mind. Waiting until after a fatality to consider these issues leaves organizations exposed.

Criminal Liability is now Part of the OHS Landscape

Criminal prosecutions in workplace fatalities will likely remain the exception rather than the rule. But they are no longer rare enough to ignore. For Canadian OHS professionals, this reality changes how prevention, leadership engagement, and accountability are framed. Decisions made months or years before an incident can be examined in a criminal courtroom.

This is not about fear. It is about clarity. The expectations have changed, and the consequences have expanded. Workplace fatalities will always be tragedies. When they lead to criminal charges, the impact reaches far beyond fines and orders.

Understanding this shift is part of modern OHS practice. The question is not whether criminal liability belongs in workplace safety anymore. It is whether your organization is prepared when the line between regulation and criminal law is crossed.