

# Health and Safety Legislation in Canada

## Health and Safety Legislation in Canada - Responsibilities of Directors or Senior Managers

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### What is the role of a director or senior manager?

Everyone in the workplace has a duty to keep the workplace safe. Those individuals in key leadership positions play a very important role in developing and maintaining a healthy and safe work culture. Directors, senior managers, senior executives, chief operating/financial/etc. officers, board members...regardless of the title used, these positions have an overall responsibility to provide a healthy and safe workplace and to ensure that adequate resources are provided to meet the organization's occupational health and safety (OH&S) objectives.

Employers are required to take certain steps to ensure health and safety. As a director or senior manager, your obligation is to ensure these steps have been taken and were done properly.

Please see the OSH Answers, [OH&S Legislation in Canada - Basic Responsibilities](#) for more information, including the responsibilities of employees, supervisor or manager, and employer.

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### Who is a "senior officer" at an organization?

The inclusion of workplace health and safety into the Canadian *Criminal Code* (via the Westray Bill (Bill-C-45)) provided rules for attributing criminal liability to organizations, including corporations, their representatives, and those who direct the work of others.

The amendment added Section 217.1 to the *Criminal Code* which reads:

"217.1 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 section created rules for establishing criminal liability to organizations for the acts of their representatives, and established a legal duty for all persons "directing the work of others" to take reasonable steps to ensure the safety of workers and the public.

According to Justice Canada's "[A Plain Language Guide: Bill C-45 - Amendments to the Criminal Code Affecting the Criminal Liability of Organizations](#)":

The definition of "senior officer" includes everyone who has an important role in:

- setting policy (which is the current Canadian law); or
- managing an important part of the organization's activities (which is new).

The definition therefore focuses on the function of the individual, rather than on any particular title. For example, the "executive assistant to the president" could have a great deal of authority and effectively speak for the president in one organization and have only minor administrative functions, like scheduling the president's meetings, in another organization.

In addition, the new definition makes it clear that the directors, the chief executive officer and the chief financial officer of a corporation are, by virtue of the position they hold, automatically "senior officers". A corporation charged with an offence cannot argue that the individuals occupying these positions actually had no real role in setting policy or managing the organization and therefore were not senior officers.

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Bill C-45 uses "representative," which is defined under the proposed amendments to s.2 to mean directors, partners, members, agents and contractors, as well as employees. These representatives must be acting within the scope of their employment at the time of the alleged crime.

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## What are some senior management responsibilities for OH&S?

While exact responsibilities will vary, those with the role of senior management should:

- Provide adequate resources for implementing, maintaining, and improving the OH&S program.

- Appoint management representatives (managers and supervisors) with defined roles, authority, and responsibility, including responsibilities for the OH&S program.
- Define roles and responsibilities, establish accountability, and delegate authority for implementing the program.
- Establish and implement the OH&S policy.
- Ensure workers and worker representatives are consulted and can actively participate in developing and maintaining the program.
- Include OH&S activities and initiatives in the overall business plans.
- Make health and safety part of the business culture of your organization.

Examples of questions to ask to show a director's or senior management's involvement and compliance in OH&S could include:

- Do managers with operational roles have a copy of all of the applicable current legislation?
- Do all senior managers understand the hazards in the workplace, and the health and safety program in place to prevent harm from those hazards? The level of involvement will vary with the individuals' role when overseeing workers.
- Have all managers reviewed OH&S policies and procedures for the operations they are responsible for, and regularly confirm these policies and procedures are up to date? Document this review.
- Have managers reviewed the summary reports done to document compliance of the health and safety system within the company? Does the system meet all applicable standards? Document this review.
- Is there an annual review of the safety system to ensure compliance with any legislative changes, or changes due to incident investigation or other safety improvement measures? How are these changes enacted and confirmed?
- Have managers ensured new and transferred employees receive complete safety orientation training? Is there on-going training for all employees? Document training efforts and results.
- Is there confirmation that supervisors are monitoring to ensure policies and procedures are followed? Document this step.
- Are site visits by directors or senior managers (operations) documented? If directives are given, is there a record and follow-up?
- Do senior managers receive results of compliance audits? (Audits can include annual reviews, supervisory audits or other reports). Are any directives acted upon, rectified, and documented?

(Adapted from: Preventing OH&S Corporate Criminal Liability: Senior Management Risk Management Essentials. By C Edwards and K MacNeill, Heenan Blaikie LLP.)

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