

Index

- Acts of commission and omission**, 9-10
- Association of Workers' Compensation Boards of Canada (AWCBC)**, 3, 4, 7
 - National Work Injury Disease and Fatality Statistics, 6
- Bill C-45 (Westray bill)**
 - Directing mind, 12-13
 - Purpose of, 198
 - Strict liability vs. criminal law, 198
- Canada Labour Code**
 - Due diligence as legal defence, 23
 - Employer's duty to protect, 16
 - Federal Labour Program (Workplace Health and Safety) oversees, 307
 - Fines and penalties, 258-262
 - Joint committee members and health representatives, 179
 - Legislation relevant to federally regulated workplaces, 218-223
 - Officers and senior officials, 60-61
 - Public Welfare statutes, 10
 - Regulatory law/strict liability, 179
- Cases**
 - Director's liability and due diligence, *R. v. Bata*, 61, 217
 - "Disregard" for safety, 265-266
 - • *R. v. Metron Construction Corporation*, 266
 - • *R. v. Scrocca*, 267
 - • *R. v. Stave Lake Quarries Inc.*, 267-269
 - Due diligence defence, *R. v. Sault Ste. Marie*, 196-196
 - Individuals charged, 263-265
 - • *R. v. Bellai Brothers (Ontario) Ltd.*, 216
 - • *R. v. Cotton Felts Ltd.*, 216

Index

- Cases (*cont'd*)
 - Westray, 266
- Contracted Work**
 - Alberta, 149-152
 - Benefits of, 157-159
 - • Cost savings, 158
 - • High-risk work, 159
 - • Increased flexibility, 159
 - • Specialized skills, 158
 - • Unpleasant work, 158-159
 - Contract for service, 58
 - Contracted employer, 155
 - Defined, 155
 - Degree of control and legal duties, 172-173
 - Examples of, 155-157
 - • Construction, 155
 - • “One-offs” or infrequent activities, 156
 - • Regular activities, 156
 - • • Short duration, 156
 - • Shutdowns, 155-156
 - • Temporary workers, 157
 - • Turnarounds, 155-156
 - • Vendors, 157
 - Hazards change, how, 159-163
 - • Meeting assigned duties, 162-163
 - • • Work completed by contracted employer, 163
 - • • Work involving temporary workers, 162-163
 - Health and safety, managing, 163, 164-169
 - • Correction, 169
 - • Monitoring, 168-169
 - • Orientation, 166-167
 - • “Primary duty,” contracted employer has, 163
 - • “Secondary” or backup duty, site operator has, 163
 - • Selection, 164-165
 - • Writing Contract, 165-166
 - Multiple-employer work sites, 170-171
 - Parties involved, 148-149
 - Prime contractor
 - • Alberta, 30, 63, 141, 142, 149, 150-151, 152
 - • • Joint committee duties to, 183
 - • Meet duties of employer and, 149
 - • Owner as, 148
 - • Saskatchewan, 152-155

Index

- Contracted Work (*cont'd*)
 - “Principal contractor” defined term in Newfoundland and Labrador, 148
 - Site owner defined, 155
 - Site owner not site operator, where, 171-172
 - Supervision, contracted worker provides own, 163
- Control and incident prevention**
 - Degree of control by work site parties, 97-99
 - • Employer (company or organization), 97
 - • Managers, 97-98
 - • Supervisor, 98
 - • Worker, 99
 - Elements of control, 95-96
 - • Authority, 95-96
 - • Knowledge, 96
 - • Proximity, 96
 - General, 93-95
- Corporations**
 - Criminal liability for negligence, 194
 - Criminal liability imposed by *Criminal Code*, 194, 195
 - Directing mind, 12-13
 - Industry standards, must be aware of, 66
 - Penalties, 203, 263
- Criminal Code of Canada***
 - Criminal charges laid by police or crown attorneys for OHS offences, 16, 193
 - Criminal liability for negligence, 17, 194
 - Duty to prevent harm, 194
 - Offences of negligence, 195-196
 - Penalties, 263
 - • Amended by Bill C-45, 12, 13
 - • Case examples, 263-268
 - • Individuals and organizations, different for, 202-203
 - • Maximum financial, 220
 - Prosecutions only with consent of Minister of Labour, 220
- Criminal liability for OHS Offences, *see also* Due diligence defence**
 - Charges laid by police or crown attorneys, 193
 - Comparative factors about criminal and regulatory law, 201-202, 203-204, 204-205

Index

- Criminal liability for OHS Offences (*cont'd*)
 - • Burden of proof, 202, 204
 - • Commission of act (physical element), 201, 204
 - • Standard of proof, 202, 204
 - • State of mind (mental element), 201-202, 204
 - Creative sentencing, 205
 - Criminal law, 199-200
 - Criminal negligence defined, 200
 - Duty definition, 196
 - Organizations and representatives, 194
 - • *Criminal Code* amendments, 194-196
 - • • Criminal negligence, s. 219, 196
 - • • Defence of due diligence not specifically written in, 196
 - • • Duty of persons directing work, s. 217.1, 17, 194
 - • • Offences of negligence, s. 22.1, 17, 195
 - • • Offences, other, s. 22.2, 17, 195-196
 - Penalties for *Criminal Code* offences, 202-203
 - • Convicted, impact of being, 203-204
 - *R. v. Sault Ste. Marie*, 196-197, 198
 - Regulatory Law (Strict liability), 200
 - • Comparative factors between criminal law and, 198-199, 201-205
 - • Standard of care, 201, 204
 - • Plea bargains, 205
 - Trends, 197-198
- Criminal prosecutions**
 - Directing mind, 12-13
 - Historical background, 11-13
 - “Identification theory”, 13
 - Mental element (*mens rea*), 11
 - Physical element (*actus reus*), 11
- Due diligence checklist**, 71-72
- Due diligence defence**, *see also* Foreseeability
 - Best practices, focus on, 37-38
 - Employer obligations, 23-24

Index

- Due diligence
defence (*cont'd*)
- Ignorance not a defence, 34
 - Learning from experience, 37
 - Minimum acceptable standard is meeting regulatory requirements, 43
 - Negligence and degree of diligence, 32-33
 - *R. v. Sault Ste. Marie*, 196-196
 - Reasonable belief in mistaken set of facts, 36
 - Reasonable care, 33-36
 - Example, 34-35
 - Special significance, 21-23
- Due diligence definition, 20**
- Employer Definition**
- Alberta, 59-60
 - British Columbia, 58-59
 - Contract of service, 58
 - Federally regulated employers, 60-61
 - Generally, 57-61
 - Manager as employer, 58-59
 - Manitoba, 58
 - Officer or director as employer, 59-61
 - Supervisor as employer, 58-59
- Employer Duties**
- “Acceptable level” of risk, 65
 - Alberta, 62-64
 - Best practices, 66-67
 - British Columbia, 60
 - Due diligence checklist, 71-72
 - Financial losses due to injury incident, 5
 - General, 62
 - Industry standards, 66
 - Ontario, 60
 - Policies, procedures and standards, 67
 - Previous incidents, 67-68
 - Protect health and safety of workers, 61
 - Reasonably practicable, meaning of, 68-71
 - Regulations, 65-66
 - Specific, 62
 - Strict liability, 64-65
- Enforcement, methods of, *see also* Penalties**
- Administration penalties, 27, 211-212
 - “Duly diligent” efforts considered, 212
 - Alberta

Index

- Enforcement, methods of (*cont'd*)
 - • Administrative penalties, 230-237, 234-236
 - • Creative sentencing, 231-232
 - • • Corporate probation, 232-233
 - • Not reporting a reportable offence, 231
 - • Tickets for OHS contraventions, 237
 - British Columbia, 223-230
 - • Administrative penalties, 225-228, 230
 - • Fines and penalties under the Act, 224-225
 - • OHS citations (Lower Maximum Administrative Penalties Regulation, 229-230
 - • WorkSafeBC, 212
 - Common methods, 208-211
 - • Fines and penalties, 211
 - • Inspections, 16, 210
 - • Investigations, 210
 - • Orders, 210
 - Creative penalties, 212-214
 - • Prince Edward Island, 213-214
 - Criminal charges, 16-17
 - Federally regulated workplaces, 218-223
 - • *Canada Labour Code* the relevant legislation in, 218
 - • Defined, 221
 - • Health and safety officers, 222-223
 - • Injunctions, 221-223
 - • Labour Program's *Occupational and Safety Compliance* publication
 - • • Assurance of voluntary compliance (AC), 219
 - • • Court actions, 220
 - • • Direction, 219-220
 - • • Limitation period, 220
 - • • Minister of Labour's consent, 220-221
 - Fine amounts do not go to injured worker, 213-214
 - Imprisonment, 217, Appendix 12-A
 - Manitoba, 240-244
 - • Administrative penalty regulation, 243-244
 - • Improvement orders, 242, 243
 - • Stop work orders, 242, 243
 - New Brunswick, 247-248

Index

- Enforcement, methods
 - of (*cont'd*)
 - • WorkSafe NB, 247-248
 - • • Policy 24-104, Occupational Health and Safety Investigations, 248
 - Newfoundland and Labrador, 250-252
 - Northwest Territories and Nunavut, 253-254
 - • Workers Safety and Compensation Commission (WSCC), 253
 - Nova Scotia, 250
 - Offences, types of, 210-211
 - Ontario, 244-246
 - • MOL website, 244-246
 - Prince Edward Island, 249-250
 - • Inspections, 249
 - • • Policy 152 — OHS Orders, 249-250
 - Quebec, 246-247
 - • CNESST, 246
 - Saskatchewan
 - • Compliance undertakings, 239-240
 - • Notice of contravention, 239
 - • Officer reports, 238-239
 - • Prosecutions, 239, Appendix 12-A
 - • • *Saskatchewan Employment Act*, 238
 - • Summary offence tickets, 240
 - Sentencing factors, 216-217
 - • “After-the-fact” due diligence, 217
 - Yukon, 252-253
 - • Yukon Workers’ Compensation Health and Safety Board (YWCHSB), 252, 253
- Foreseeability**, 1-2
 - Blindspots, 49-53
 - • Change, 50-52
 - • Shortcuts, 52-53
 - • Stress, 49-50
 - Different perspectives, 48-56
 - Employer’s duty, 56
 - Experience of employer
 - • Previous incidents, 47-48
 - Experience of others
 - • Best practices, 46-47
 - • Industry standards, 46
 - General due diligence not enough, 42
 - General foreseeability

Index

- Foreseeability (*cont'd*)
- • Contingency planning, 55-56
 - • Specific vs., 55
 - General vs. specific, 55-56
 - Maintaining awareness, 53-54
 - Unforeseeable incidents, 54
 - Before work begins, steps taken, 42-48
 - • Applicable regulations, 43-44
 - • Experience of others, 45-46
 - • Hazard assessments and other safe-work planning techniques, 44-45
 - • • Experience of employer, 47-48
 - • Hazard identification system, 45
- Health and safety committees**, *see* Joint committees
- Health and safety representatives, worker**, 176, 179, 184-185, 186
- Injury incident**
- Financial losses to employer, 5
 - Higher standard of care, 8-9
 - People affected, 5
 - “Societal cost,” 5
- Internal responsibility system (IRS)**, 176, 245
- International Labour Organization**, 6
- Joint committees**
- Auditing role, 177-178
 - • British Columbia, 177-178
 - Duties and functions, main, 182-184
 - • Alberta, 183-184
 - • British Columbia, 182-183
 - Employer Support, 185
 - Federally regulated employers, 179-180
 - General, 176-177
 - Hazard identification and control, 192
 - Internal responsibility system, 176
 - Member selection, 180-182
 - Procedure for running successful, 187
 - Recommendations to employers, 184
 - Resources, accessing, 190-192

Index

- Joint committees (*cont'd*)
 - • British Columbia, 190-191, 190-192
 - Worker health and safety representative
 - • Education and training, 82, 186, 191
 - • Employer support, 185
 - • Role of, 184-185
 - • • British Columbia, 185
 - Workplace inspections, 187-188
 - • Operations and locations, address all, 188-189
 - • Purposes of, 188
 - • Reports, 190
- Multiple employer worksite**, 170-171
 - Prime contractors required under Alberta legislation, 150-151
- National Work Injury Statistics Program (NWISP) data**, 7
- Negligence**
 - Acts of commission or omission, 9
 - Breach of duty, 29-30
 - Consequent loss or damage (injury), 29, 31
 - Criminal, defined, 17
 - Defined, 28
 - Degree of diligence and, 32-33
 - Duty to take reasonable care, 29-30
 - Elements of, three distinct, 28-29
 - No injury, 31
 - Regulatory offence, basis for determining guilt in, 28
 - Without breach, 31
- Organizations**
 - Criminal liability imposed by *Criminal Code*, 194, 195
 - Penalties, 203, 263
- Penalties**, *see also* Enforcement, methods of
 - Administrative, 211-212
 - • Alternative to prosecution, 27
 - • Higher standard of care, achieving, 8-9, 15
 - • Primary enforcement mechanism, 25
 - • • British Columbia, 26, 27
 - • Publishing names of companies or persons issued, 15
 - Amount, assessing penalty, 214-216

Index

- Penalties (*cont'd*)
- • “Fine or penalize” corporation out of existence, reason not to, 215-216
 - • Purpose of penalty to deter not punish, 215
 - Corporate probation, 39
 - Creative, 212-214
 - Creative sentences, 39
 - Fines, 38
 - Fines and penalties by jurisdiction, 257-305
 - Alberta, 233, 234, 235, 236, 273-276
 - • British Columbia, 229, 269-272
 - • *Criminal Code*, 263-268
 - • Federally regulated employers, 220, 258-262
 - • Manitoba, 283-286
 - • New Brunswick, 294-296
 - • Newfoundland and Labrador, 300-301
 - • Northwest Territories, 303-305
 - • Nova Scotia, 297-300
 - • Ontario, 246, 286-291
 - • Prince Edward Island, 296-297
 - • Quebec, 292-294
 - • Saskatchewan, 276-283
 - • Yukon, 301-303
 - Jail sentence / imprisonment, 211, 217
- Personal protective equipment and devices**
- Controls for reasonable care defence, 35
 - Employer’s responsibilities, 144
 - Failing to ensure worker wears
 - • Ontario, 288
 - Joint committee auditing role, 177
 - Lead by example, 84
 - Monitoring, 169
 - Safe work planning techniques, 44
 - Supervisor duties, 82, 105, 107, 114, 115
 - Systems of work to prevent harm, 73, 79-80
 - Worker duties, 123, 126, 127, 140, 167
- Preface**, iii-iv
- Prime contractor**, *see* Contracted work
- R. vs. Sault Ste. Marie (1978)**, 32

- Reasonable care, *see also***
Foreseeability; Standard of care
- Due diligence defence, 21, 33-36
 - Duty to take, 8, 23, 123
 - Fault based on standard of reasonable care, 14
- Regulatory offences (strict liability), 14-16**
- “Safety leaders”, 255**
- Standard of care**
- Ability to prevent incident places higher, 94
 - “Acceptable standard of care” example, 64-65
 - Achieving a higher, 8-10
 - Appropriate to particular situation, 32-33
 - Breach a failure to meet duty of, 29
 - Intent of penalties to promote acceptable, 9
 - Legislation, common features of, 8-9
 - “Sufficient”, 201
 - Supervisor requirement may be different from employer’s, 59
 - Temporary workers, 163
 - Vulnerable workers, 126
 - Worker has lesser, 99
- Strict liability prosecutions**
- “Balance of probabilities”, 202
 - Commission of Act (physical element), 201, 204
 - Criminal law vs., 198-199
 - Differences between criminal law prosecutions and, 199
 - Employer duties, 64-68
 - Public welfare offences, 14
 - *R. vs. Sault Ste. Marie* (1978), 14
 - Regulatory offences, 14-16, 200-202
 - State of mind (mental element), 201, 204
- Supervisor duties**
- Alberta, 106-107, 118
 - British Columbia
 - • *Workers Compensation Act*, Part II, s. 23, 105-106
 - Checklist, 112-114
 - Correcting workers for future safety, 109
 - Discipline as due diligence, 109-111
 - • Record of discipline, 111-112

Index

- Supervisor duties (*cont'd*)
- Discriminatory action, avoiding, 112
 - Due diligence on the front line, 102-104
 - General, 105-108
 - Meeting employer's duty, 114-119
 - Change management, 119
 - Competency, 115
 - Competency, verifying, 116
 - Direct supervision, 118
 - Direction and instruction, 85-86, 115
 - Eliminate hazards, 192
 - Equipment, 114-115
 - Experience, 117
 - Information, 119
 - Leadership, 118
 - Monitoring and correction, 89-90, 119
 - PPE and protective devices, 115
 - Qualifications, 116
 - Situational factors, 117
 - Systems of work, 114
 - Training, 115, 116
 - Work planning, 118
 - Specific, 105
 - Stopping work for immediate safety, 108-109
 - Support joint committees, 185
- Supervisors**
- Control and incident prevention, 98
 - Correcting workers for future safety, 109
 - Defined, 58
 - Alberta, 106
 - British Columbia, 105
 - Reasonable care and due diligence, 68-69
 - Employer's responsibility to
 - Training, 75, 78, 121-12
 - Front-line, 96
 - Lead hands, 103, 104
 - Persons who are not, 104
 - "Representative of the employer", 59
 - Role in training, 81-82
 - Tips for supervising young and new workers, 83-85
- Systems of work to prevent harm**
- Appropriate equipment, inspections and maintenance, 78
 - Developing, 74-77

Index

- Systems of work to prevent harm (*cont'd*)
- Direction and instruction, 85-86
 - General, 73-74
 - Information, providing, 86
 - Hazards, possible exposure to, 87-88
 - Regulations or standards that apply to work, 88
 - Safety policies, rules and procedures, 87
 - Legislation, 75
 - Alberta, 75-76
 - Monitoring and correction, 88-91
 - Audits, through, 91
 - Observation, through, 89-90
 - General observations, 90
 - Planned observations, 89
 - Reports, through, 90
 - Workplace inspections, through, 90-91
 - PPE and other protective devices, 79-80
 - Supervisors, role of, 81-82
 - Training, effective, 81-85
 - Ongoing, 83
 - Supervisors, role of, 81-82
 - Testing, 82-83
 - Training, ongoing
 - New workers, 83-85
 - Young workers, 83-85
- Work-related injury risks, history of**
- “Hecatomb”, 6
 - 1913 Royal Commission to study workers’ compensation, 2-3
 - 2020 World Day for Health and Safety at Work, 6
 - Association of Workers’ Compensation Boards of Canada (AWCBC), 3
 - Regulatory approaches modernized, 20th century, 4-5
 - Lost-time claims reduced, number of, 4
 - Royal Commission on the Health and Safety of Workers in Mines, 3-4
 - Societal expectations in 21st century, 5-7
 - Number of workplace fatalities, 6-7
 - Underreporting workplace fatalities, 6-7
 - *The Worker’s Compensation for Injuries Act* (1886), 2

Index

- Worker**
 - Control and incident prevention, 79, 99, 132-135
 - Inexperienced worker, 32-33, 52-52
 - • Foreseeability and taking shortcuts, 52-53
 - • Negligence example, 32-33
 - Relinquish right to sue
 - • Meredith Report, 3
- Worker duties**
 - Discriminatory action, protection against, 135-137
 - • British Columbia, 136-137
 - Employer's responsibilities, knowing, 143-144
 - • Alberta, 143-144
 - General
 - • British Columbia, 126-127
 - Reasonable care, 123-124
 - Refusing unsafe work, 79, 99, 132-135
 - • Alberta, 132-133
 - • British Columbia, 133-134
 - Resources, use, 144-145
 - Rights, knowing basic, 127-128
 - Role in health and safety, 124-125
 - Safety behaviours, adopting essential, 128-130
 - Unsafe conditions, reporting, 131
 - Vulnerable workers, 125-126
 - Working alone or in isolation, 137-139
 - • British Columbia, 137-139
 - Workplace health and safety information, 139-143
 - • Alberta, 141-143
- “Zero” injuries, 255