

CANADIAN OHS LAW: COURSE DESCRIPTION AND OUTLINE

1. **Course Description:**

This is a post-secondary University course providing an introduction to Canadian Occupational Health and Safety (“OHS”) law. The course will provide students with an overview of the Canadian legal system and how OHS law is part of that system. The course will provide a brief introduction to the division of powers between the federal and provincial government; a brief contrast of OHS law to workers’ compensation law; an introduction to the Internal Responsibility System, as it has been developed in OHS law. The course will also introduce the role of the OHS Regulators, in all 14 Canadian jurisdictions. The course will also focus on judicial interpretation and jurisprudence that lead to the development of the legal defence of due diligence to OHS charges. The course will address the enforcement of Canadian OHS law. The course will also briefly review the Bill C-45 amendments to the *Criminal Code*, the new OHS legal duty in the *Criminal Code*, the new formula for establishing corporate guilt, and the new sentencing provisions arising from these important amendments.

2. **Evaluation:**

Students will be evaluated on three criteria:

- (i) Class attendance, 20% and participation, 10%
- (ii) Preparation of a chapter summary of the course text and brief presentation during the course session, 20%
- (iii) An examination based on the course lectures, text and materials, 50%

3. **Text and Materials**

- (i) Mandatory: Canadian Health and Safety Law, N. A. Keith, Canada Law Book;
- (ii) Mandatory: Legislation, Regulations and judicial decisions that will be provided by the instructor;
- (iii) Recommended: “Workplace Health and Safety Crimes”: Bill C-45, 2nd Edition, N. A. Keith, (Lexis/Nexis)

4. **Tentative Course Dates and Outline:**

Monday, September 20, 2010

- (i) **Origins of Canadian Health and Safety Law:** This session will introduce the basic elements of the Canadian legal system; the division of powers under the Constitution Act, 1867, the historical developments of health and safety and workers’ compensation law in the United Kingdom

and Canada, the four predominant policy models for the development of OHS legislation and how OHS law fits into the Canadian justice system.

Monday, September 27, 2010

- (ii) **OHS Representatives and Committees:** Introduction of the Internal Responsibility System, introduction of health and safety representatives and when they are required, the authority of health and safety representatives, requirement for OHS committees, the authority of OHS committees, the role of the policy committee in the federal jurisdiction, legal immunity of OHS community members. Case study – TBA;

Monday, October 4, 2010

- (iii) **Workplace Stakeholder Legal Duties:** Legal theory behind establishing legal duties on workplace stakeholders; stakeholders that may have duties, stakeholders with no duties, the legal concept of joint and several responsibility, the primacy of the legal duties of employers for OHS management systems and enforcement; Case study - *R. v. Wyssen*;

Monday, October 18, 2010

- (iv) **Workplace Hazardous Materials Information System:** A constitutional and political miracle for Canadian OHS law, the nationally consistent hazardous materials information system, the legislative and regulatory elements that make up WHMIS, labelling, material safety data sheets, and employee training, protection of trade secrets and confidential business information, pending changes to WHMIS as a result of Global Harmonization System.

Monday, October 25, 2010

- (v) **Right to Refuse Unsafe Work:** The important, yet often overlooked worker right to refuse unsafe work, procedure in exercising a work refusal, assignment of replacement workers to do work that has been refused, work stoppages by certified members in Ontario, work refusals that lead to intervention by the OHS regulator, when the employer may discipline the worker for a frivolous or unlawful work refusal; Case Study – TBA;

Monday, November 1, 2010

- (vi) **Workplace Incidents and Investigations:** Legal duty to report workplace incidents to the OHS Regulatory, policy behind reporting workplace incidents, OHS Regulator use of self-reporting in enforcement activity, OHS Regulator Order making powers; right to appeal Orders; legal liability for not reporting workplace incidents; Case Study - *Blue Mountain Ski Resort*.

Monday, November 8, 2010

- (vii) **Introduction to OHS Prosecutions:** The legal basis for an OHS prosecution, three types of offences, *quasi-Criminal* process of an OHS prosecution and common law due diligence and statutory due diligence, the first branch of the due diligence defence; Case study - *R. v. Lonkar*;

Monday, November 15, 2010

- (viii) **Bill C-45, Radical Amendments to the *Criminal Code*:** The Westray Mine disaster and Bill C-45, the new OHS duty in the *Criminal Code*, the new statutory formula for organization guilt in the *Criminal Code*, penalty provisions for individuals and organizations the new sentencing and probationary requirements to convict organizations under the *Criminal Code*, who decides to prosecute under the Bill C-45 amendments, why there have been so few prosecutions under the Bill C-45 amendments to the *Criminal Code*. Case Study, *R. v. Transpave*.

Monday, November 29, 2010

- (ix) **Examination – 7:00 p.m. – 9:00 p.m.**

5. **Course Instructor:** Norm Keith, Partner, Gowlings LLP, 100 King Street West, Suite 1600, Toronto, Ontario, M5X 1G5, 416-862-5699, norm.keith@gowlings.com; other representatives from Gowlings may substitute for Norm Keith from time to time, as required.
6. **Instructional Time:** Mondays, 7:00 – 9:00 p.m. (ETZ)