

Confronting COVID-19

COVID-19 and workplace criminal negligence

April 30, 2020, 11:00 am

Webinar objectives

Create awareness of

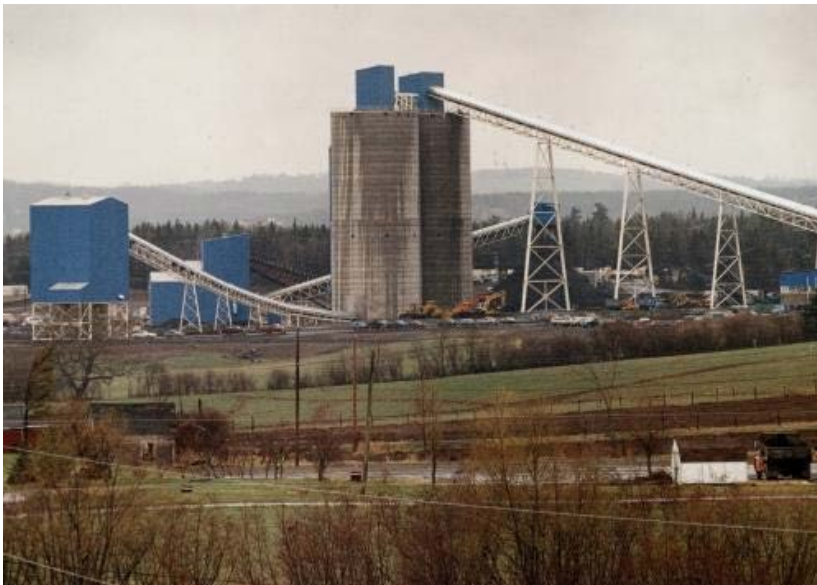
- *Criminal Code of Canada* amendments creating crime of workplace health and safety negligence
- Westray Mine deaths and inquiry leading to Bill C-45
- Examples of C-45 prosecutions and convictions
- Alberta Federation of Labour's call for a criminal probe into packinghouse outbreak infecting 800+

“Cargill Death and Disease a 21st Century Version of the Westray Explosion”

- At 38 cases, union wanted two week shut down
- Alberta Labour Ministry investigated, said safe
- Now 800+ cases, one death linked to workplace
- Federation of Labour calling for criminal probe



Crime of workplace safety negligence resulted from Westray Mine explosion



- Stellarton, Nova Scotia
- Curragh Resources owned the coal mine
- Catastrophic underground explosion May 9, 1992
- 26 miners died – entire shift

The tragedy that changed Everything

- Sometimes an 'accident' isn't really an 'accident'
- Warning signs, blatant non-compliance with laws
- No company manager ever held criminally accountable for 26 foreseeable deaths
- Triggered accountability reform



Early warning signs of a predictable path



- Many signals, explosion was foreseeable, predictable
- Every day, a roll of the dice
- Yet lack of Dep't of Labour enforcement
- United Steelworkers union was organizing concerned workers

An outcry for justice led by the United Steelworkers, supported across labour movement

A Public Inquiry was announced

Justice K. Peter Richards,
Commissioner



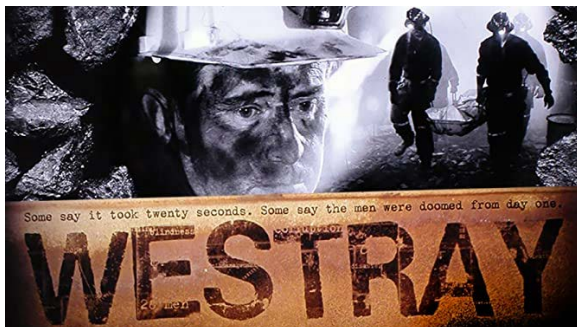
The Westray mine public inquiry

The Westray Story

A Predictable Path to Disaster

Report of the Westray Mine Public Inquiry
Justice K. Peter Richard, Commissioner

- Five years to complete
- Scathing 800 page report
- Over 70 witnesses
- Actions and inactions of managers, provincial bureaucrats and politicians



Inquiry recommendation #73

Corporate accountability:

- “The Government of Canada, through the Department of Justice, should...introduce in the Parliament of Canada such amendments to legislation as are necessary to ensure that corporate executives and directors are held properly accountable for workplace safety.”



Bill C-45, the “Westray Bill”

- Added to Criminal Code of Canada
- Those who “direct the work of others”
- “Reasonable steps” duty to ensure safety
- Corporation and officers can be charged



Bill C-45 created new duty of care

- “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”
- *Criminal Code of Canada, 217.1*



Criminal negligence is a crime against a duty of care



- “Every one is criminally negligent who in doing anything, or in omitting to do anything that is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons”
- *Criminal Code of Canada, 219(1)*

Supreme Court on “wanton and reckless disregard”

- “Marked and substantial departure” from what a reasonably prudent person would have done in the same circumstances
- Supreme Court of Canada in *R v J(F)*, [2008]



Punishment for criminal conviction

- Where criminal negligence causes death, punishment up to imprisonment for life



First conviction: Transpavé Inc., 2008



- Management failed duties under Quebec safety law
- Court said duty failure was “wanton and reckless disregard” and convicted
- But worker’s death only resulted in \$110,000 fine
- Was C-45 a paper tiger?

Then the Metron Construction tragedy occurred.....

- Toronto, Ontario, December 24, 2009 (Christmas Eve)
- Swing stage split
- 5 workers fell 13 stories
- 4 killed, 1 critically injured
- Many breaches of *Occupational Health and Safety Act* duties



Criminal charges leading to jail term



- MOL inspectors cannot lay criminal charges
- Investigated by police
- Charged under Criminal Code of Canada
- 3½ year jail term for project manager

Another Westray or Metron? UFCW sounded alarm, but was ignored

- UFCW local 401 President Tom Hesse alerted Cargill execs mid-April
- 38 cases at time
- “Elbow to elbow” working conditions
- Union asked for two-week closure
- Alberta MOL health and safety inspector plant declared safe
- Agriculture Minister said plant safe



Predictable and preventable?



- 2,000 workers at plant
- 558 workers have COVID-19
- 1 dead
- 798 total cases linked to the outbreak
- Plant remained open despite workers' calls
- Now calls for criminal investigation

Coincidence? Or negligence?

- Similar circumstances in Westray, Transpave, Metron and Cargill
- Warning signs before each tragedy
- “Wanton and reckless” breaches of duty are happening today with COVID-19?
- Why so few charges and prosecuted?
- How many more?



Do MOL investigations shield?

- Police first on scene, it looks like an 'accident'
- Scene turned over to provincial MOL
- MOL inspectors can't
 - lay criminal charges
 - invite police to investigate
 - directly provide evidence to police



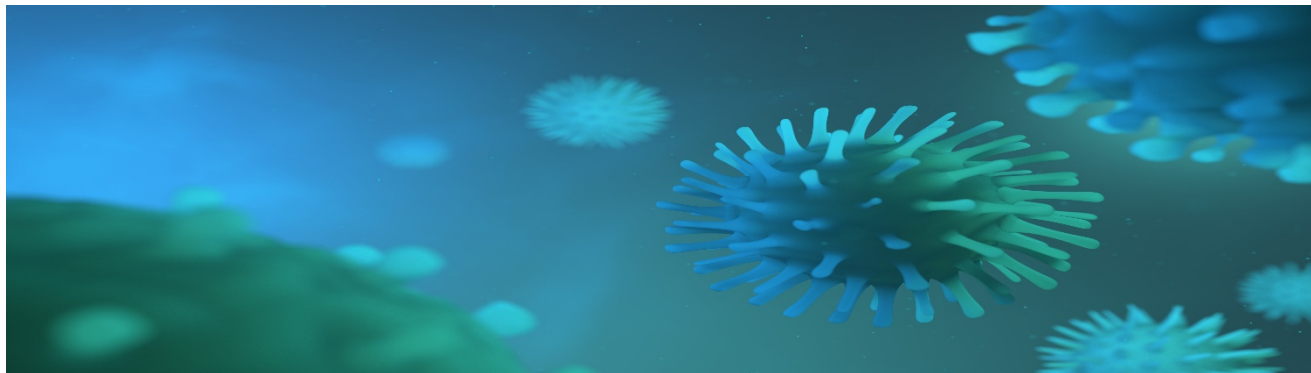
Did government officials induce error?



- Can company argue no negligence since following direction of gov't experts?
- Is "officially induced error" a legal shield?
- Are enforcement decisions made transparently?

Prevention through health & safety

- Employer duties must be taken seriously
- Legal duties, not production, gets priority
- Criminal negligence causing death is a serious
- No employer conviction greater than the price workers pay

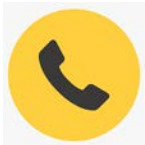


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