

APRIL 28, 2022

◆ National Day of Mourning to prevent worker disability, disease and death.



Duty of Care. ACTION REQUIRED.

A Day of Mourning message from Andrew Mudge, WHSC Executive Director

Airborne agents that kill? Today, many Canadians would name the virus that causes COVID-19. Thirty years ago, residents of Plymouth, Nova Scotia and surrounding communities would have named methane gas. For it was the hazardous buildup of methane gas that exploded killing 26 miners and injuring dozens more on May 9, 1992, in the now **notorious Westray mine**.

These catastrophic events though have so much more in common.

Of the Westray story, inquiry commissioner, Justice K. Peter Richard concluded, "It is a story of incompetence, of mismanagement, of bureaucratic bungling, of deceit, of ruthlessness, of cover-up, of apathy, of expediency, and of cynical indifference."

Precaution required.

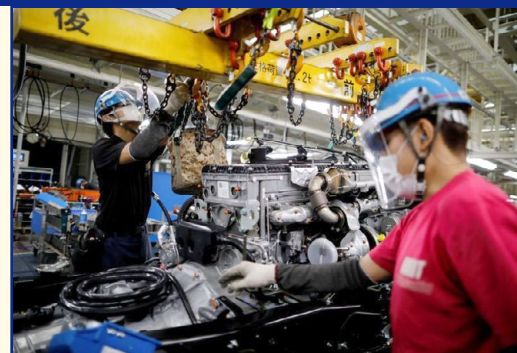
Justice Richard's 800-page report put forward 74 recommendations including the creation of a new criminal law to make it more possible to hold companies and their executives to account. Occupational health laws across Canada require employers to take every precaution reasonable to safeguard workers. When this duty of care is not met, they can be subject to compliance orders and prosecution. But when this breach amounts to a **wanton or reckless disregard for the lives** and safety of workers resulting in death or bodily harm, justice demands more, argued Richard. The Canadian labour movement, and United Steelworkers union in particular, agreed. Following a 12-year campaign, Criminal Code changes embodied in Bill C-45, also known as the 'Westray Law', were finally won in 2004.



With similar purpose many have called for an independent inquiry into Canada's handling of the COVID pandemic. What might its commissioner conclude, if, and when, an inquiry is established? For answers, many have pointed to findings from Justice Archie Campbell's inquiry into a deadly outbreak of severe acute respiratory syndrome (SARS) which began in a Toronto hospital in March 2003. Following his exhaustive investigation, Campbell concluded: "If the Commission has one single take-home message it is the **precautionary principle that safety comes first**, that reasonable efforts to reduce risk need not await scientific proof. Ontario needs to enshrine this principle and to enforce it throughout our entire health system."

Enforcement required.

The precautionary principle was subsequently enshrined in Ontario's Health Protection and Promotion Act. How well this principle has been acted upon and enforced is another matter. **The evidence is not encouraging.** The same might be said for Canadian health and safety laws and the Westray Law.



Throughout the pandemic:

- ▶ The science confirming airborne transmission of COVID-19 went mostly unheeded, leaving the vast majority of workers without proper, fit-tested respirators and enhanced workplace ventilation.
- ▶ Toxic disinfectants continued to be widely used despite the availability of safer, effective alternatives.
- ▶ Many joint health and safety committees' (JHSC) and **worker reps' concerns have been ignored.**
- ▶ Meantime, the concerns of a vocal, and sometimes violent, minority opposed to live-saving, public health measures (and for that matter peace, order, and good government) have been increasingly allowed undue influence.
- ▶ As a result, **front-line workers are beyond burnt out**, their mental health severely impaired.
- ▶ Tens of thousands of Canadian workers have been infected (111,268 healthcare professionals and support workers alone by September 30, 2021) and countless killed. In response, little wonder the issue of criminal negligence charges has been raised in some quarters.
- ▶ Long-standing uncontrolled **workplace hazards have taken a back seat** to the pressing threat posed by the pandemic.
- ▶ Female, racialized, low-income and temporary or precarious workers continue to suffer most.
- ▶ Many remain uninformed of their health and safety rights and legal responsibilities, including those responsible for criminally charging and prosecuting employers who willfully and flagrantly neglect their duty of care for workers in their employ.

Training required.

Where to begin? The pandemic has taught us much. We know, now more than ever, of the need for:

- ◆ Full employer responsibility, including comprehensive health and safety policies and programs that effectively control, or wherever possible, eliminate hazards.
- ◆ **Meaningful worker participation** in the development and implementation of these policies and programs.
- ◆ Vigorous government enforcement of laws enacted to protect workers; and
- ◆ When justice demands it, criminal prosecutions of those responsible for the harms visited on workers.



To this list we add **quality health and safety training** and information upon which all can rely. For as we have seen, work and even community conditions can devolve so very quickly without these essential resources. During the past two years **misinformation has abounded and cost us all dearly.**

So, on April 28, let's mourn for the dead, but every day forward, let's insist on access to trusted health and safety training and information resources. Let's insist on hard-won worker rights AND employer responsibilities. Let's insist on an employer duty of care built on superior workplace programs that embrace precautionary action. In other words, **let's stop the killing and fight for the living.**

TRAINING

▶ THE RIGHT THING. THE RIGHT WAY.

