

WHATEVER HAPPENED TO THE WESTRAY BILL?



WHY ARE WE STILL DYING
FOR A LIVING?

UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS



“Mr. Speaker, the passage of Bill C-45 represents the final step in the House in making significant reforms to the criminal law as it applies to all organizations. The bill has its origins in the terrible tragedy of the Westray mine explosion. All parties in the House co-operated in ensuring that the bill received high priority.”

**PAUL MACKLIN,
LIBERAL MP AND
PARLIAMENTARY SECRETARY
TO THE MINISTER OF JUSTICE
AND ATTORNEY GENERAL OF
CANADA ON INTRODUCING
THIRD READING OF
BILL C-45 ON
OCTOBER 27, 2003.**

WHATEVER HAPPENED TO THE WESTRAY BILL?

In March 2004, to great acclaim and with the support of a unanimous House of Commons and Senate, the Governor General signed into law amendments to the Criminal Code of Canada, Bill C-45.

Widely known as the “Westray Bill,” these amendments were inspired by the deaths of 26 men when the Westray coal mine exploded on April 5, 1992.

Designed to punish those corporations which failed to protect the health of their employees or the public, the amendments marked a significant shift in the liabilities of organizations for the failure of their senior officers to act.

Today, two years later, the “Westray Bill” has faded from sight. Only one set of charges has been laid, and they were withdrawn.

DOES THIS MEAN EVERYTHING IS OKAY?

Every year across Canada there are almost 1,000 people killed at work, and that number has been rising over the past decade. Canada, in fact, has one of the worst safety records of the developed world.

What Canada needs is a societal change in how we look at death, illness and injury caused by work. And we need the enforcement of the Westray Bill.

Westray was a coal mine in Pictou County, Nova Scotia that exploded on May 9, 1992 killing all 26 miners who were working underground at the time.

The resulting public inquiry delivered a damning report of management greed and government incompetence. In

all, Judge Richard made over 80 findings and 74 recommendations. Most notable is recommendation #73:

“The Government of Canada, through the Department of Justice, should institute a study of the accountability of corporate executives and directors for the wrongful or negligent acts of the corporation and 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.”

The United Steelworkers, a union which represents workers in mines, mills, and thousands of other kinds of employment across North America, took up the cause and with the Westray

“The fundamental and basic responsibility for the safe operation of an undertaking, rests clearly with management.... [M]anagement failed in this primary responsibility and the significance of that failure cannot be mitigated or diluted simply because others were derelict in their responsibilities.”

**JUSTICE K. PETER RICHARD,
COMMISSIONER, WESTRAY
MINE PUBLIC INQUIRY**

“There was a time, especially after the charges were dropped, that I could have broken some laws myself. I thought about it seriously. I thought about punishing those who did this to me and my family, and the only thing that stopped me was that I knew that I would be held accountable, and I couldn’t stand the thought of being taken away from my family, losing everything I worked for, future plans. I still can’t understand why that fear is not present with corporations and companies.”

ALLEN MARTIN, BROTHER OF KILLED WESTRAY MINER AND LEADER OF THE WESTRAY FAMILIES.

Families, lobbied Parliament for a decade.

In the end, representatives of all parties in the House of Commons and Senate unanimously agreed on Bill C-45, or, as it is better known, the Westray Bill.

The Westray Bill did not address all of the goals of preventing fatal injuries in the workplace, but begins by acknowledging management responsibility and the need for criminal liability for the failure to exercise it.

The Westray Bill will not bring back the 26 miners who died, nor the thousands that have died because of work since then.

Careful and judicious use of the Westray Bill by provincial authorities, to address corporate leadership that fails to exercise their responsibility for health and safety of employees and contractors, will

prevent future fatalities from happening.

Despite the cries of workers, provincial governments and industry were of no help to Westray employees. The government of the day actively pursued a policy of deregulation in which inspectors were taught not to enforce the law and individual workers were penalized if they applied for compensation, quit for safety reasons, or spoke with inspectors.

Industry gave Westray a reward for safety just a week before the mine exploded. One of the workers, sent by the company to receive the JT Ryan Safety Award, was killed in the explosion. Despite the overwhelming evidence that came to light, industry refused to take the award away from Westray until years afterwards, after Judge Richard’s report was released, and then only after a letter writing campaign from

disgusted miners and their union.

The industry never apologized and corporate leaders of Westray were never penalized. They got to work until they retired.

The Steelworkers' Union actively pursued the Federal government to respond to Judge Richard's recommendation and amend the Criminal Code. With the support of private members from all political parties and the unanimous support of the Justice Committee, Steelworkers from across Canada twice came to the House to lobby members on behalf of Canadians who had, in two independent polls, overwhelmingly supported holding corporations and senior management accountable for their impact on the safety and health of employees and the public.

WHY DID PARLIAMENT UNANIMOUSLY SUPPORT THE WESTRAY BILL?

In October 2003 when the Westray Bill was debated for the last time, the House of Commons was made up of 172 Liberals, 66 Reform Alliance, 38 Bloc Quebecois, 13 NDP, and 12 Conservatives. In one of the most fractious and uncooperative Parliaments in history, members were able to come together in one common cause in both the Commons and the Senate.

“This Bill is the outcome of the efforts of ordinary members of this House and not an initiative of the Government. Members worked hard to ensure that tragedies such as the one at the Westray mine would never occur again or, if they did, that very harsh penalties could be



“It is not widely discussed publicly, and there are of course multiple shining examples to the contrary, but this writer hears regularly from frustrated OH&S directors or managers of corporations where upper management believes that OH&S is ‘for the safety committee or safety people to worry about’, or worse, ignores significant on-going high risk safety issues.”

**CHERYL EDWARDS,
MANAGEMENT HEALTH AND
SAFETY LAWYER.**



“Ultimately, the chief executive officer and the board of directors are responsible for how work is carried out. Clearly, they are not involved in the day-to-day decisions on the shop floor, but if they act with total disregard of their obligations with respect to work or worker safety and put pressure on the lower level managers to sacrifice safety to production, they could be personally liable.”

**PAUL MACKLIN,
PARLIAMENTARY SECRETARY
TO THE MINISTER OF
JUSTICE AND ATTORNEY
GENERAL OF CANADA**

incurred,” said Richard Marceau, Bloc Quebecois MP from Charlesbourg–Jacques-Cartier.

No one spoke against the Westray Bill. Some wanted it to be stronger. In the end, it was accepted by everyone because something had to be done.

Businesses choose to incorporate in the first place to protect shareholders and directors from personal liability arising from the activities of the business

“Simply because individuals have arranged their affairs in such a way as to avoid personal responsibility it should [not] excuse criminal conduct.

“Criminal conduct should be punished, whether it is done

directly by individuals or indirectly through the mechanism of the corporation,” said Vic Toews, then Justice Critic for the Canadian Reform Alliance and MP for Provencher, Manitoba.

New Democrat members brought forward private members’ bills to ensure the debate continued and pushed the government to bring forward appropriate measures.

“Every day in Canada, workers are still being killed or injured on the job while some corporations simply continue what they do best, make a profit.... Financial aspects have not proven to be enough to motivate all corporations into creating safe workplaces,” said Darrel Stinson, Reform Alliance MP from Okanagan–Shuswap, British Columbia.

WHAT IS THE WESTRAY BILL ABOUT?

Prior to the Westray Bill, corporations could only be held criminally liable if the CEO had personal knowledge of and involvement in the problem. This ignored management's role in the design, planning, and supervision of work. Safety and health is a part of the process and not just an afterthought. Often workers are confronted with the reality that "production and profit take precedence over safety and health."

Before the Westray Bill, organizations and individuals in charge could claim they were unaware of the potential risks or harm and escape responsibility. The Westray Bill creates a legal duty to take reasonable steps to avoid bodily harm.

It is no defence for an individual or organization to say they didn't know there was a problem.

Such a claim could be an admission of guilt. If an individual did not even know of a problem, then they may not have taken reasonable steps to avoid bodily harm to other persons and failure to inquire could support a charge of criminal negligence.

Consider Justice Canada's example of the three switches:

"In a workplace with three separate safety switches, if three employees each turned off one of the safety systems, each thinking that it was not a problem because the other two systems would still be in place, they would probably not be subject to criminal prosecution."

*"That an individual employee might escape prosecution should not mean that their employer necessarily would not be prosecuted. After all, the organization, through its three employees, turned off the three systems."**

"Another highlight is the physical and mental elements of criminal offences attributable to corporations and other organizations will no longer need to be derived from the same individual. The class of personnel whose act or omissions can supply the physical elements of a crime attributable to a corporation or other organizations will be expanded to include all employees, agents and contractors."

**INKY MARK,
CONSERVATIVE MP FOR
DAUPHIN – SWAN RIVER,
MANITOBA**

* See *"Plain Language Guide to Bill C-45"*

“I want to underscore the legislation through 21-year-old Lewis Wheelan. He was employed by Ontario Hydro to clear brush. Through what was a horrendously irresponsible set of circumstances, for which the employer was responsible, this young man initially suffered a serious workplace injury and became a triple amputee and then died.

“Had the legislation now before the House been in place in May 2001, when Mr. Wheelan’s son suffered his severe workplace accident, the employer would have found itself in the criminal courts

THE PUBLIC RESPONSE

The headlines after Bill C-45 was adopted by both Houses in November 2003 were unambiguous:

Stronger laws now affect criminal liability of organizations

Bill C-45: The advent of a new health and safety crime

Bill C-45 Criminalizing the failure to protect workplace safety

New Health and Safety Legislation – Bill C-45

Very soon these headlines were replaced by those more concerned about the legal implications for corporations, management, and other organizations.

Numerous commentaries were published by lawyers to advise corporations, governments, and other organizations on their new responsibilities under C-45.

Whether from members of parliament, lawyers and legal scholars, media, safety professionals, trade unionists, and/or surviving family members of killed workers, the message was the same:

The chief executive officer and the board of directors are responsible for how work is carried out. Clearly, they are not involved in the day-to-day decisions on the shop floor, but if they act with total disregard of their obligations with respect to work or worker safety and put pressure on the lower level managers to sacrifice safety to production, they could be personally liable.

“Corporate Canada would be well advised to assess their current OH&S programs, training budgets and real

commitment to workplace health and safety. An effective program, with clear communication demonstrated throughout the organization, is not only the way to ensure compliance with legal obligations, but more importantly it helps to ensure the health and safety of one's employees," said Paul Macklin, Liberal MP and Parliamentary Secretary to the Minister of Justice.

WHAT DID THE WESTRAY BILL DO?

- It changed the liability of organizations.
- It makes senior officers responsible for health and safety in the organizations that they run.
- It imposes a duty on those who direct or have the authority to direct work.
- It holds corporations and

their senior officers liable for the failure of its representatives to comply with the law.

Despite the urgency and the rare all party cooperation to produce the Westray Bill, very little has happened since.

In Canada, enforcement of the Criminal Code is a provincial responsibility, lead by the provincial Attorney General.

The performance across Canada of the provincial authorities responsible for protecting workers' lives is very poor.

Despite on-going reductions in the number of claims by injured workers for lost time, the number of fatalities at work has increased over the past decade, profoundly contradicting claims that work is safer.

A study in 2001 showed Canada



facing the kind of sanctions and ultimate justice that are in the bill.

"It is too late for Lewis Wheelan and the other Lewis Wheelans of the world who have lost their lives over the last 10 years in preventable workplace accidents or injuries and ultimately workplace fatalities but let us not delay further the full implementation of the legislation."

**ALEXA McDONOUGH,
NDP MP FOR HALIFAX,
THIRD READING OF THE
WESTRAY BILL**

“In the forest sector, the ultimate accountability [for health and safety] will be on the owners and prime contractors.

“Industry restructuring has led to the presence of some 6,500 small companies... Only about 3 per cent are large companies. Two thirds of serious injuries and 70 per cent of fatalities happen to workers employed by small companies.”

DON DAHR, MANAGER OF FOREST COMPLIANCE STRATEGY, WORKSAFE BC (PROVINCIAL HEALTH AND SAFETY REGULATOR).

has one of the worst workplace safety records in the industrialized world.

The odds of getting killed on the job in Canada are greater than in any of the other 16 OECD countries, except Italy. And this number does not even begin to address the virtually invisible toll that work takes on our health through occupational disease and stress.

Almost a thousand people now die annually because of a traumatic event at work. One in 10 severe injuries among Canadians occurred while working.

Since the Westray Bill was proclaimed only one charge has been attributed to it.

On April 19, 2004 a young father was buried alive in a 9-foot trench that the supervisor admittedly did not protect, despite explicit regulations and the known hazard.

Criminal charges were withdrawn because the owner had not previously been convicted and was not a big corporation.

The Westray Bill was brought in to ensure that managers carried out their health and safety responsibilities in everything they do, regardless of the size of the organization that they run.

WHY ARE PROSECUTORS UNWILLING TO ACT?

Attorney Generals must give policy direction to the crown attorneys in order for change to occur. Drunk driving, domestic assault, gun violence, workplace fatalities – they are all the same in that there is a point when the cause is criminal.

The Criminal Code represents the outside boundary of acceptable behaviour.

Governments today continue to pursue policies of deregulation.

In only one circumstance today, when a police officer is killed, does society stop and recognize the true significance of what has happened.

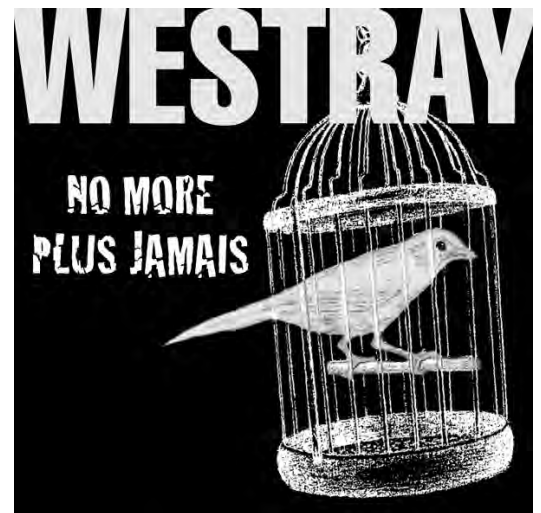
Today, policing or fire fighting are not the most dangerous jobs – there is greater risk of being killed at work as a security guard, a logger, or truck driver. And if your job is contracted out, that risk increases further.

Since 1992, government, media, and industry have turned a blind eye and washed their hands over what happened at Westray. Thousands have died since then as a result.

SPEAKING OUT

“Long before the ‘Westray Bill’ passed, Heather Crowe was drawing a comparison between restaurants and coal mines. Heather Crowe worked as a waitress for 40 years, never smoked, and now suffers from lung cancer. She has received workers’ compensation as a result of the terminal illness that she got from second-hand smoke at work. During her remaining time on this earth, Heather has become an active campaigner for smoke-free workplaces.

“Heather is not incorrect when she says of smoky restaurants: ‘They are gas chambers, and they are sending the workers in there to perish.’ She has described herself as ‘the canary in the coal mine for the restaurant industry.’ Now that failure to provide a safe and healthy workplace has become a



“Health and safety has changed with industry restructuring. When restructuring occurred, something got left behind and it appears that it is the health and safety element.”

**DON DAHR, MANAGER OF
FOREST COMPLIANCE
STRATEGY, WORKSAFE
BC.**



No doubt you saw the headlines:

**From
pinstripes to
prison stripes**

• • •

**From the
boardroom to
the courtroom**

• • •

**Bringing
vicarious
criminal
liability into
the
boardroom**

crime, punishable by time in jail, will Canadians start paying serious attention to ‘the canary in the coal mine’ for the restaurant industry?”

**PHYSICIANS FOR A SMOKE
FREE CANADA**

“In 2005, we saw 43 deaths and 115 serious injuries in the forest industry in B.C., the highest numbers since the 1970s when loggers were still on bonus and not salary. Employers blame the workers and claim that there is a ‘culture of risk-taking’ causing this.

“Today there are more contractors in the forest industry than ever before, and workers are being forced by economic blackmail to work longer hours with fewer resources to protect their safety.

“Industry then claims it is all due to alcohol and drug abuse, yet the autopsies tell us otherwise.

“Industry, by its reckless, single-

minded and selfish pursuit of corporate profits above all else, has created a ‘Culture of Desperation’ in which workers are pushed to their physical and mental limits.”

**STEVE HUNT,
DISTRICT 3 DIRECTOR
UNITED STEELWORKERS**

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