

May 9, 2012

The Honourable Jonathan Denis
Minister of Justice and Solicitor General
Room 132, Legislature Building
10800 - 97 Avenue
Edmonton, AB T5K 2B6

Dear Minister Denis:

Re: Use of Westray Bill to hold employers criminally liable when negligence has led to worker deaths or injuries

On the occasion of the 20th anniversary of the horrific Westray mining disaster in Nova Scotia, I am writing to ensure you are aware of amendments to the Criminal Code that can be used to hold employers criminally liable when they knowingly put their workers at risk of injury or death on the job.

The amendments, contained in Bill C-45 (commonly known as the “Westray Act”), were adopted by Parliament in 2003 in response to energetic lobbying from workers’ organizations and the families of Westray victims. These amendments significantly reformed the law of corporate criminal liability in Canada.

Bill C-45 applies criminal liability to corporations and/or their officers if they fail to take reasonable steps to ensure the safety of workers and the public on their worksites. These amendments to the Criminal Code require law enforcement and prosecutors to use the lens of criminal liability in their investigations of workplace health and safety disasters, and not solely rely on the Occupational Health and Safety Code and regulations.

I have enclosed a memorandum prepared by the Ontario Ministry of Community Safety and Correctional Services about the 2003 amendments to the Criminal Code with the 2003 Bill C-45, also known as the “Westray Bill.” This memorandum went to police services across that province.

I’ve also included a plain-language guide to Bill C-45 prepared by the federal government’s Department of Justice.

We feel very strongly that every worker who is killed or seriously injured due to criminal negligence deserves to have their death investigated through the lens of C-45. Workers and their families deserve to know police have done more than rule out foul play. Specifically, they need to know that authorities have investigated the possibility of criminal negligence. Indeed, it is now the law of the land in Canada.

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In addition to encouraging you to make criminal prosecution a regular part of your government's "tool kit" to promote workplace safety, I would also encourage you to direct police forces around the province to establish dedicated units to investigate worker deaths alongside investigators from the provincial government's occupational health and safety branch. Without dedicated units trained in the use of Bill C-45 provisions, I'm convinced that this important and powerful tool will never be used effectively as a deterrent to criminal negligence on the part of employers (in fact, experience from around the country shows this has, indeed, been the case).

I hope you find the attached information useful in investigations of future deaths or serious injuries on Alberta worksites. Once you settle into your new office, I'd like to meet with you face to face to discuss this matter in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Gil McGowan", followed by a long horizontal line extending to the right.

Gil McGowan, President
Alberta Federation of Labour

cc. Alison Redford, Premier, President of Executive Council, Chair of Agenda & Priorities
David Hancock, Minister of Human Services, Government House Leader