



Canadian Criminal Justice Association

Proudly Serving Canadians Since 1919

ccja-acjp@rogers.com

613-725-3715

[Home](#)

[About the CCJA](#)

[Publications](#)

[Why Join?](#)

[Student Space](#)

[Contact Us](#)

Re: Enforcing Westray Amendments in Canada

July 10, 2014

The Honourable Peter Gordon MacKay, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, Ontario
K1A 0A6

Re: Enforcing Westray Amendments in Canada

Dear Sir,

The Canadian Criminal Justice Association is one of the longest serving non-governmental organizations comprised of professionals and individuals interested in criminal justice issues in Canada. Since 1919, its members have analyzed trends related to victimization, policing, adjudication, punishment and related matters, raising awareness in numerous forms, including in parliamentary committees. Our association consists of nearly 800 members and publishes the *Canadian Journal of Criminology and Criminal Justice*, the *Justice Report*, and the *Justice Directory of Services*. CCJA also hosts a well-attended pan-Canadian congress biennially.

In 1992, a massive explosion at the Westray mine in Pictou County, Nova Scotia killed 26 miners. A public inquiry led by Justice Peter Richard found that the explosions and corresponding deaths were caused by a combination of corporate negligence and mismanagement, as well as administrative failures at the government level. However, at the time the *Criminal Code* was not equipped to hold corporations or employers criminally responsible for this negligence and mismanagement. After a lengthy inquiry, Justice Peter Richard recommended that the *Criminal Code* be amended to hold corporations and corporate executives accountable for workplace safety. Scholarship on the Westray mine disaster commonly refers to this tragedy as an example of corporate crime, negligence, and violence (Bittle, 2013; Glasbeek, 2002; McCormick, 1999; Glasbeek & Tucker, 1994).

In 2004, amendments to the *Criminal Code* were introduced that would address this gap in the law. These amendments are referred to as the 'Westray amendments', and:

1. Created a new legal duty (s.217.1) that all persons directing work, or having the authority to direct work, must take reasonable steps to prevent bodily harm arising from work, and,
2. Created rules (s.22.1) for attributing liability to organizations for the acts of their representatives which are criminally negligent.

These amendments would seem to address the gap in criminal law recognized by Justice Peter Richard in 1997. However, research has shown that these amendments are rarely applied to cases of workplace accidents and deaths, and that the potential influences of neglect, corporate mismanagement, and disregard of health and safety regulations are not often considered. In *Still Dying for a Living: Corporate Criminal Liability after the Westray Mine Disaster* (2013: 185-187), Steven Bittle wrote that the Westray bill "occupies a marginal position within mainstream law-and-order agendas", a bill that was and is subject to "constrained development and poor enforcement" in Canada.

With the introduction of the Westray amendments, the Canadian criminal justice system obtained tools with which to investigate and prosecute corporate crime in the workplace. However, these tools are underutilized in many ways, some of which could be addressed at the provincial legislative level.

Workplace accidents and deaths are often influenced by factors that are invisible at the time of the event – these can range from occupational diseases linked to asbestos and other working/environmental conditions (Sharpe & Hardt, 2006) to neglect and mismanagement further up the chain of command (Bittle, 2013; McCormick, 1999). At face value, what appears to be human error or chance may in fact be caused by the direct or indirect actions of the corporation at large or specific individuals acting on behalf of the corporation. Due to the unique nature of this type of crime, the United Steelworkers have a number of recommendations to each province that would ensure greater awareness of, and training for, the Westray amendments. Chief among these recommendations is the proposal that each province raise awareness and train police officers, Crown attorneys, and health and safety regulators on how to properly investigate, prosecute, and otherwise deal with workplace accidents and fatalities that may have been caused by criminal negligence or failing to take reasonable steps to prevent bodily harm.

The CCJA recommends that this issue be referred back to the Standing Committee on Justice and Human Rights to investigate the root causes of the well-documented lack of application of the Westray laws across Canada. After more than ten years since the law's enactment, we feel that it is an appropriate time to look into the enforcement status of this bill. We recommend that this committee conduct an inquiry into the existing training provided to police officers, Crown attorneys, and health and safety regulators in each province and territory to assess existing gaps in awareness and training and investigate potential solutions. Further, we recommend that this committee work toward identifying other reasons for the limited application of the Westray laws to injuries and fatalities in the workplace. Following this inquiry, we suggest that the Minister's office work with provincial and territorial counterparts toward a more thorough and accurate application of the Westray amendments to appropriate workplace injuries and fatalities.

On behalf of Board of Directors,

Irving Kulik, Executive Director

c.c. The Honourable Steven Blaney, P.C., M.P., Minister of Public Safety and Emergency Preparedness

References

Bittle, Steven (2013). *Still Dying for a Living: Corporate Criminal Liability after the Westray Mine Disaster*. Vancouver: UBC Press.

Glasbeek, Harry (2002). *Wealth by Stealth: Corporate Crime, Corporate Law, and the Perversion of Democracy*. Toronto: Between the Lines.

Glasbeek, Harry & Tucker, Eric (1994). Corporate crime and the Westray tragedy. *Canadian Dimension*, 28(1), 11-14.

McCormick, Christopher (ed.) (1999). *The Westray Chronicles: A Case Study of Corporate Crime*. Halifax: Fernwood Publishing.

McMullan, John (2001). Westray and after: Power, truth and news reporting of the Westray mine disaster, in, Boyd, Chunn & Menzies (eds.), *Using Power: The Canadian Experience*. Halifax: Fernwood Publishing, 130-145.

Sharpe, Andrew & Hardt, Jill (2006). Five deaths a day: Workplace fatalities in Canada 1993-2005. *CSLS Research Paper 2006-04*. Ottawa: Centre for the Study of Living Standards. <http://www.csls.ca/reports/csls2006-04.pdf>. Last retrieved July 10, 2014.

Further Sources on Westray and Corporate Crime

Allen, Martin (2003). No More Westrays. *Canadian Review of Social Policy*, 52.

Norman, Keith (2004). *Workplace Health and Safety Crimes: Bill C-45 and new Westray criminal offences*. Markham, ON: LexisNexis Butterworths.

Schichor, David, Pontell, Henry & Geis, Gilbert (eds.) (2001). *Contemporary Issues in Crime and Criminal Justice: Essays in honor of Gilbert Geis*. Upper Saddle River, NJ: Prentice-Hall.

Tucker, Eric (1995). The Westray Mine Disaster and its Aftermath: The Politics of Causation. *Canadian Journal of Law and Society*, 10(1).



The use of the Canadian Criminal Justice Association's logo is prohibited without its express permission.