Corporate Criminal Liability 2004-2022

A review of legal cases since the enactment of the Westray amendments to the Criminal Code of Canada

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Corporate Criminal Liability 2004-2022

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

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Summary

Amendments passed in 2004 to the *Criminal Code* of Canada to make it easier to impose criminal liability on corporations for serious workplace injuries and fatalities are being woefully underutilized. There have been only nine successful prosecutions under the Westray amendments to date. Sentences issued in these prosecutions have been paltry. Serious workplace injuries and fatalities continue to occur at alarming rates.

Governments can take concrete steps to better enforce the Westray amendments in order to hold corporations liable for their criminally negligent actions.

The Westray mine disaster

In 1992, 26 miners died at the Westray mine in Pictou County, Nova Scotia as a result of an explosion caused by a build-up of methane gas and coal dust. Only 15 miners' bodies were ever recovered.

The Government of Nova Scotia called a public inquiry to investigate the causes of the disaster. Justice K. Peter Richard presided over the inquiry, which heard 76 days of testimony.

Justice Richard concluded that the explosions and the workers' deaths resulted from a combination of corporate neglect and mismanagement, as well as government bungling and indifference. His key findings were:

- The mine's Internal Responsibility System for health and safety had failed
- Mine managers blatantly disregarded health and safety regulations
- Mine managers intimidated and coerced miners with threats and firings
- Mine management prioritized production at the expense of safety
- Government inspectors and officials failed to carry out their oversight responsibilities

Justice Richard made over 70 recommendations to improve workers' health and safety, including a recommendation that the Government of Canada amend the *Criminal Code* to ensure that corporations and corporate executives be held accountable for workplace safety.

The Westray amendments to the Criminal Code of Canada

No individual or corporation was ever successfully prosecuted for the workers' deaths at the Westray mine. At the time, Canada's *Criminal Code* made it difficult to hold corporate executives and corporations criminally liable for serious workplace injuries and fatalities.

For over a decade, Westray family survivors and the labour movement, particularly the United Steelworkers, lobbied the Federal Government and members of Parliament to amend the *Criminal Code* to make it easier to hold corporate executives and corporations criminally liable for serious workplace injuries and fatalities.

In 2004, the federal Parliament unanimously adopted the Westray amendments to the *Criminal Code*. The Westray amendments are primarily focused on the offence of criminal negligence.

The Westray amendments make it easier to hold corporations liable for criminal negligence by:

- Creating 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

- Creating rules (s. 22.1) for attributing liability to organizations for the acts of their representatives which are criminally negligent.

In brief, if a person with the duty to take all reasonable steps to prevent bodily harm to a worker fails to do so, and in failing to do so acts with wanton or reckless disregard for the life and safety of the worker, then that person is guilty of criminal negligence (s. 217.1).

If one or more representatives of a corporation commit criminal negligence and the actions of a senior officer (or officers) of the corporation departs markedly from the standard of care that could be reasonably expected to prevent the representative from committing criminal negligence, then a corporation can be convicted of criminal negligence (s. 22.1).

The maximum penalties for a conviction for the indictable offence of criminal negligence under the Westray amendments are:

Individuals
- Causing Injury by Criminal Negligence – 10 years in prison
- Causing Death by Criminal Negligence – life in prison
- Unlimited fine and 30% victim surcharge

Corporations
- Criminal record
- Probation
- Unlimited fine and 30% victim surcharge

Application of the Westray amendments

Between 2004 and 2022, the Westray amendments to the *Criminal Code* have been utilized in approximately 23 incidents to bring criminal negligence charges in cases of serious worker injury and death. Of those 23 cases, criminal negligence charges were brought against 13 corporations and 17 individuals.

As of early 2022, there have been only nine successful prosecutions under the Westray amendments – four in Quebec, four in Ontario and one in British Columbia. Those prosecutions resulted in the conviction of seven corporations and two individuals. Sentences have been relatively minor.

- R v. Transpave – employee of concrete product manufacturer crushed to death; disabled guarding system, no inspection system, inadequate safety training
  Sentence: $110,000 fine, plus $10,000 victim surcharge

- R v. Scrocca – employee of landscape contractor crushed to death by backhoe; failure to maintain multiple braking systems
  Sentence: 2 years, less a day, to be served in the community, subject to conditions including a curfew

- R v. Metron – four employees killed, one seriously injured, after collapse of faulty swing stage scaffold; employees not wearing safety lifelines
  Original sentence at trial: $200,000 fine, plus $30,000 victim surcharge
  Sentence on appeal: $750,000 fine, plus $112,500 victim surcharge

- R v. Kazenelson – project manager personally charged for Metron employees' deaths and injury
  Sentence: 3.5 years imprisonment for each of the five counts, to be served concurrently; conviction and sentence upheld on appeal

- R v. Detour Gold Corp – employee of gold mining corporation died from acute cyanide poisoning; no protective equipment or medical supplies, inadequately trained medics
  Sentence: $1,400,000 fine, $420,000 victim surcharge, plus $805,333 restitution

- R v. Stave Lake Quarries – employee of quarry operator crushed to death by rock hauler; no proper training or supervision, no tire chocks
  Sentence: $100,000 fine, plus $15,000 victim surcharge

- R v. Century Mining Corp – employee of mining company blinded and severely injured after being crushed by truck
  Sentence: $200,000 fine; employer declared bankruptcy, fine not recoverable

- R v. CFG Construction – employee of construction company lost control of truck; faulty brake system due to improper maintenance
  Sentence: $300,000 fine, plus three-year probation order

- R v. Rainbow Concrete – employee of construction company was operating a dump truck, archway on company property collapsed onto truck crushing employee
  Sentence: $1000 fine, plus $200,000 victim surcharge

Charges have been withdrawn in five cases; acquittals followed trials in four cases; charges in three cases were stayed by the Crown, including one charge laid as a result of a private prosecution brought by the United Steelworkers; two charges against two individuals and one charge against one corporation are pending.

More comprehensive summaries of these cases can be found at Appendix "A" to this Report.

Workplace fatalities in Canada continue at alarming rate

Between about 900 and 1000 workers die due to work-related causes in Canada every year.

- 1993 – 2019: 24,519 deaths due to work-related causes (average of 943 worker deaths per year)

* Source: Association of Workers' Compensation Boards of Canada

According to data from the Association of Workers' Compensation Boards of Canada, 925 workers died due to work-related causes in 2019. In 2018, 1,027 workers died due to work-related causes. Data for 2020 will be available some time in 2022.

For more information on statistics related to workplace fatalities in Canada and comparisons across the provinces and territories, please refer to the 2021 Report on Work Fatality and Injury Rates in Canada prepared by Sean Tucker and Anya Keefe from the University of Regina.

Reasons why the Westray amendments are not being utilized more

Key reasons for the under-utilization of the Westray amendments:

- The consequences and criminal significance of serious workplace injuries and fatalities have not penetrated the consciousness of police, Crown attorneys, and provincial health and safety regulators. There is a prevalent belief that serious workplace injuries and deaths are matters for provincial regulatory response and not criminal sanction. The evolution of thinking on the need to prosecute impaired driving offences and domestic violence demonstrates an important parallel.

- Police and Crown attorneys face a lack of knowledge, education, training and resources in utilizing the Westray amendments.

- There is a lack of cooperation and coordination amongst health and safety regulators, police and Crown attorneys in the investigations of serious workplace injuries and fatalities.

- Governments and employers continue to push an agenda of deregulation which undercuts the desire and means to hold corporations liable for their criminally negligent actions that result in serious workplace injuries and deaths.

What is needed for better enforcement of the Westray amendments?

- Health and safety regulators, police and Crown attorneys need education and training about the Westray amendments and their application.
- Attorneys general need to curtail Crown attorney discretion to not prosecute for criminal negligence in cases of serious workplace injuries and fatalities.
- Dedicated Crown prosecutors are needed to criminally prosecute cases involving serious workplace injuries and fatalities.
- Police investigations should be mandatory in all cases involving a serious workplace injury or fatality.
- Police need education and training in carrying out workplace accident investigations.
- Health and safety regulators must be directed to reach out to police when Westray amendment charges may be in order.
- A written protocol is needed to coordinate the efforts of health and safety regulators, police, and the Crown in dealing with cases of serious workplace injuries and fatalities.
- Dedicated and coordinated teams of health and safety regulators, police and Crown attorneys should work on the application of the Westray amendments.
- Greater financial resources need to be provided to police and Crown attorneys to help ensure proper application of the Westray amendments.

Appendix "A"

In progress

- *R v Gooch* [trial scheduled for May 2022]
- *R v Springhill Construction Ltd.* [trial scheduled for June 2022]

Convictions/guilty pleas

- *R v CFG Construction* [2019]
- *R v Rainbow Concrete* [2019]
- *R v Century Mining Corp* [2017]
- *R v Detour Gold Corporation* [2017]
- *R v Stave Lake Quarries Inc.* [2016]
- *R v Kazenelson* [2015]
- *R v Metron* [2012]
- *R v Scrocca* [2010]
- *R v Transpavé Inc.* [2008]

Acquittals

- *R v Hoyeck* [2019]
- *R v Ressources Métanor* [2017]
- *R v Gagne and Lemieux* [2010]
- *R v Ontario Power Generation, Tammadge and Bednarek* [2006]

Stayed

- *R v Peter Kiewit Sons ULC* [2021]
- *R v Fournier,* 2018 QCCQ 1071
- *Steelworkers v Weyerhaeuser* [2011]

Withdrawn

- *R v Chantiers Chibougamau* [2018]
- *R v Hritchuk* [2012]
- *R v Millennium Crane, Selvers, and Vanderloo* [2011]
- *R v Peck* [2011]
- *R v Fantini* [2005]

Case summaries – In progress

R v Gooch

In March 2018, Brandon Alcorn died after falling from a roof at a construction site.

In 2019, Jeff Scott Gooch, a manager at Insulated Panel Structures in Nova Scotia, was charged with criminal negligence causing death. While the company was charged under the occupational health and safety legislation, it was not charged under the *Criminal Code*.

Gooch was discharged in April 2021 following a preliminary inquiry in a Dartmouth provincial court. In June 2021, the Crown subsequently filed a direct indictment to resurrect the charge and to send it to the Nova Scotia Supreme Court for trial.

The trial is scheduled for five days beginning May 9, 2022.

R v Springhill Construction Ltd.

In July 2020, Springhill Construction Ltd., and a former supervisor, Jason King, 43, were both charged with criminal negligence causing death. These charges arose out of the death of eighteen-year-old Michael Anthony Henderson in August 2018 at a wastewater treatment facility.

This was the first time charges were laid under section 217.1 of the *Criminal Code* in New Brunswick.

Springhill Construction Ltd. and Jason King were expected to appear in Fredericton Provincial Court on January 29, 2021. The case is set to return to trial on June 3, 2022, due to an election for a judge of the Queen's Bench to sit alone.

Case summaries – convictions/guilty pleas

R v CFG Construction, 2019 QCCQ 1244

- Death of worker after truck lost control, employer fined $300,000 and subject to a probation order for three years.

In September 2012, a truck driver lost control of his truck on a construction site. He died as a result of the injuries he sustained. The employer was convicted of criminal negligence causing death arising from the failure to properly maintain their heavy truck fleet. Faulty brakes were blamed for the worker's death. The maintenance and condition of the breaking system were at issue and found to be irresponsibly maintained.

In its decision, the court noted that the employer had an attitude of detachment, indifference and carelessness in the face of maintenance of its trucks. They paid little heed to compliance with regulatory directives and disregarded safety concerns beyond mere negligence.

GFC Construction had numerous regulatory offences for safety issues and had been warned by authorities and courts of the need to make changes to the dangerous practices at the workplace. The court considered the apathy from the company in light of other directions to correct issues in the workplace as well as the high risk of recurrence when assessing the case.

The employer was fined $300,000 and subject to a three-year probation order which included the following provisions:

- Retaining an external consultant to ensure compliance with health and safety laws and regulations;
- Annual Inspections must be performed by the consultant and the Société de l'assurance automobile du Québec;
- Mandatory annual training for employees on operation of heavy vehicles; and
- Various administrative and record keeping obligations.

R v Rainbow Concrete (2019)

- Death of worker operating dump truck, archway collapsed crushing cab and employee, employer pled guilty to criminal negligence causing death, employer fined $1000 plus $200,000 victim surcharge.

In February 2017, Rhéal Dionne was operating a dump truck on Rainbow Concrete property to haul snow. He drove through an archway and the structure collapsed onto the truck. Debris fell through the truck's cab and crushed Dionne.

Charges were laid under sections 22.1 and 217.1 of the *Criminal Code* against Rainbow Concrete. Charges were also laid against a supervisor. Rainbow Concrete pleaded guilty to the

charges and entered into a plea agreement that included a fine of $1000 and a victim surcharge of $200,000. Charges against the supervisor were dropped.

R v Century Mining Corp, CQ, No 615-01-021168-136 (2017)

- Worker injured and blinded after being crushed by a truck, employer fined $200,000 despite declaring bankruptcy in 2012

Century Mining Corp operated a mine in Val-d'Or, QC. In December 2007, Gerald Miville was performing drilling around the wall of a mine in the dark when he was crushed by a truck. No reflective gear was provided to the worker and the truck driver was not informed that work was being performed in the area. The worker was blinded, suffered crushed bones and had to have several organs surgically removed as a result of the incident. The worker testified that he had sought protective equipment from the warehouse before performing the work, in the form of reflective or high-visibility gear, but none was available for use.

In 2012, Century Mining declared bankruptcy. The prosecutor, however, was of the opinion that:

> We really want the message to be clear, that just because a company is bankrupt doesn't mean we won't pursue a criminal prosecution against them … We want to avoid a company saying to itself based on the example of Century Mining that "good, that's the solution, I'll declare bankruptcy, they can't prosecute me". [*Translation*]

In 2013 the company was charged with criminal negligence causing bodily harm, and found guilty on July 21, 2017. They were fined $200,000 despite having declared bankruptcy five years earlier. The Trustee in Receivership stated that although the government has been added as an unsecured creditor to recover the fine, repayment of secured creditors will mean that no money will remain to pay it.

R v Detour Gold Corporation, 2017 ONCJ 954

- Death of a worker due to acute cyanide intoxication, employer fined $1.4M + $420,000 victim surcharge and $805,333 restitution to widow

Detour Gold Corp operates a gold mine northeast of Cochrane, Ontario, and employs approximately 1,000 people. Part of the processing of the ore includes the use of an "InLine Leach Reactor" (an intensive cyanide reactor) which uses sodium cyanide to leach gold from the ore. The reactor is locked up and requires written authorization from management along with a security escort to access the enclosure.

In April 2015 a leak developed in the system. Several repairs were attempted during April and May. On June 3, 2015 Denis Millette was tasked with completing repairs, and was provided authorization to enter the enclosure. Between 11:23 am and 1:57 pm he worked on the repair. He wore only cloth coveralls and latex gloves as protective equipment. During the time he worked on the system he was exposed to cyanide, which came into contact with his skin. Millette died at 4:19 pm, the cause of death being recorded as "acute cyanide intoxication via skin absorption".

Millette's death was seen as avoidable, and was attributed to:

- The absence of proper personal protective equipment
- No standard operating procedure for maintenance work on the reactor
- The absence of properly trained emergency response persons
- The absence of an antidote kit and shower facilities

Onsite emergency service providers were not trained to recognize cyanide poisoning, and even if they had been, medical tools were not readily available.

The corporation pleaded guilty to charges under ss 220(b) (causing death by criminal negligence) and 22.1 of the *Criminal Code*. They were fined $1,400,000 + $420,000 (30% victim surcharge) and ordered to pay $805,333 in restitution to Millette's widow (Millette's future earnings until retirement), totaling $2,625,333.

R v Stave Lake Quarries Inc, 2016 BCPC 377

- Death of an untrained worker after being crushed by truck, employer fined $100,000 + $15,000 victim surcharge

SLQ operated a rock quarry in Mission, British Columbia. The employer hired 22-year old Kelsey Ann Kristian as a rock hauler operator, a Caterpillar 769B large truck. She had no prior experience driving trucks with air brakes. On her first day of work, she was shown how to drive the rock hauler by an experienced coworker. The coworker reviewed pre-check of the truck, the checklist binder and how to use the air brakes, parking brakes and tire chocks. There were no actual chocks, and instead the coworker's practice was to use large rocks to chock the tires.

On May 17, 2007, Kristian's second day of work, she was instructed to back up the rock hauler under an excavator, drive forward to unload the cargo and drive back for another load. That afternoon, the excavator broke down and the coworker told her to stop working. She parked the rock hailer on a 10% grade slope, using only the air brakes. She did not engage the parking brake nor chock the tires. After turning the engine off, the air pressure in the air brakes slowly bled off over a two hour period, and eventually the 30-ton truck began to roll down the slope.

Kristian hung off the door in an attempt to regain control of the vehicle; however, she could not open it because the handle was missing and it was secured with a bungee cord. The rock hauler drove over a berm on the passenger side, causing it to flip over onto Kristian, and crushed her to death.

The problems identified were:

- Hiring a 22-year old with no experience or license to drive a truck with air brakes
- Failing to properly train her how to drive and park the truck, and ensuring she was able to do so before allowing her to operate it
- Failing to provide tire chocks
- Failing to supervise her and ensure she had safely parked the truck

The corporation pleaded guilty to charges under ss 219 (criminal negligence), 22.1 and 217.1 of the *Criminal Code*. They were fined $100,000 with a victim surcharge of 15%, totaling $115,000.

R v Kazenelson, 2015 ONSC 3639; 2018 ONCA 77

- 4 dead and 1 injured worker after swing stage collapsed, project manager convicted personally and sentenced to 3.5 years on each of 5 counts to be served concurrently

Kazenelson was the project manager for Metron. Metron was previously fined $200,000 + $30,000 victim surcharge, appealed to $750,000 + $112,500 victim surcharge arising from the same facts. Metron was contracted to maintain the balconies of a residential building. Seven people, including Kazenelson, were working on a swing stage at the 13th floor when it collapsed. Five workers fell 100 feet, resulting in four deaths and one injury. The single worker who had been tied to a safety line was left dangling in the air, and Kazenelson, who had managed to grab the safety line before falling, climbed onto the 12th floor balcony.

The problems identified were:

- Only two lifelines were in place for 6 workers
- Only one worker was secured to a lifeline
- The swing stage was a new design that was not tested by an engineer, nor did it have a capacity sticker affixed to it
- The swing stage had defective welds

Kazenelson pleaded not guilty to 4 counts of criminal negligence causing death and 1 count of criminal negligence causing bodily harm. His defence rested on the arguments that 1) there was no way that he could have reasonably foreseen that the swing stage would collapse after only two months of use, and 2) that the workers themselves made the decision not to attach to a lifeline. The court disagreed, stating:

> [146] The relevant question, therefore, is whether a reasonable project manager would have contemplated the risk of equipment failure "as part of the general risk involved" in failing to provide lifelines for workers on a swing stage suspended 100 feet or more above the ground. In my opinion, the only possible answer to that question is yes. The risk of equipment failure was not only an objectively foreseeable risk, it was virtually the entire reason why the provision of a fall arrest system was regarded as the fundamental rule of swing stage work. The failure of the swing stage, even if unexpected, was not an event that was outside the ambit of the general risk animating the requirement for a fall arrest system. It is not necessary that the precise cause of the failure have been foreseen.

In response to the second defence, the court held that not only did Kazenelson not ensure that sufficient lifelines were available, but also that "a victim's contributory negligence is no answer to a charge of crime … it is generally no defence that the victim laid himself open to the act, or was himself guilty of negligence bringing it about" (at para 147).

Kazenelson was found guilty on all five counts of criminal negligence and sentenced to 3.5 years imprisonment for each, to be served concurrently. The conviction and sentence were upheld on appeal in *R v Kazenelson*, 2018 ONCA 77.

R v Metron, 2012 ONCJ 506; 2013 ONCA 541

This case consisted of the same facts as *R v Kazenelson*, above but the charges are against the company, Metron. The Ontario Superior Court originally fined Metron $200,000 in addition to a victim surcharge of $30,000. The Ontario Court of Appeal found the sentence manifestly unfit and increased the fine to $750,000 because the original fine was not proportionate to the gravity of the offence. The Court of Appeal noted several facts that justified the fine increase, including:

- This offence is amongst the most serious offences in the *Criminal Code* and carries a maximum penalty of life imprisonment for individuals
- The victims were young and had families, some with young children
- The respondent had been operating with faulty equipment for more than two months
- The original fine imposed did not sufficiently reflect the importance of worker safety and might have been seen simply as the cost of doing business

R v Scrocca, 2010 QCCQ 8218

Pasquale Scrocca owned a Quebec landscape company. In June 2006, Scrocca was moving soil with a backhoe when the brakes failed and pinned an employee against a wall, fatally injuring the worker. The Court found that the backhoe's brakes were functioning at less than 30% capacity and the machine had not been serviced in five years. Scrocca received a two-year conditional sentence of imprisonment.

R v Transpavé Inc., 2008 QCCQ 1598

Transpavé operates a plant that manufactures concrete slabs and blocks. In October 2005, a worker was killed when a pallet loader's grappling hook fell and crushed him while he was clearing boards that were jamming a conveyor. At the time, the emergency safety device had been unplugged and disabled, without the knowledge of Transpavé or its senior officers.

Upon a guilty plea, the Court fined the company $110,000 and imposed a victim surcharge of $10,000. The Court placed emphasis on the following facts for its sentence:

- The offender was a family-owned business with no previous occupational health and safety convictions
- The offender had demonstrated significant remorse and spent more than $750,000 on improving safety measures at the plant
- The $100,000 fine ensured the survival of the corporation and the continuation of the 100 jobs

Case summaries – Acquittals

R v Hoyeck, 2019 NSSC 7

- Death of worker after explosion while servicing automobile, employer charged with criminal negligence causing death, acquitted.

In 2013, Elie Hoyeck, part-owner of "Your Mechanic Auto Corner", asked Peter Kempton, automobile mechanic, to remove a gas tank from underneath a minivan. Kempton used a welding torch, and the van caught fire. Kempton was trapped underneath the vehicle, was badly burned and later died of his injuries.

An expert inspected the site after the incident, and reported that conditions were deplorable. The yard was filled with boats, cars, oil and gas containers and garbage. The eyewash station was used to wash carburetors. The hoist normally used in the garage was blocked, and as a result Kempton had been performing the work in the yard. When the vehicle caught fire, Kempton was trapped under the vehicle.

The problems identified were:

- No use of a working hoist
- No flashback arrestors between the torch and the fuel source
- Excess garbage preventing escape from the burning vehicle

Hoyeck denied responsibility for Kempton's death, and believed that Kempton should have known better than to use a torch to complete the work. Hoyeck was charged with criminal negligence causing death, the first time an employer was charged under the Westray Law in Nova Scotia.

The court noted that the workplace was in 'deplorable condition' and that "[t]here were a myriad of safety issues and it can be fairly stated that the site presented an accident waiting to happen". However, the court explained that they must focus on the employer's actions or omissions which caused Kempton's death.

It was found that the method used by Kempton was an unsafe procedure and it was unreasonable to expect that Hoyeck, who was an untrained mechanic and shop owner, supervise his trained mechanics throughout all of their work. In acquitting Hoyeck, the court stated that the state of the workplace showed a "wanton or reckless disregard for the lives and safety of other persons (and himself)", but the actions of Hoyeck could not be determined beyond a reasonable doubt to have been the cause of Kempton's death.

R v Ressources Métanor, CQ, No 632-01-003393-149 (decided 2017)

- Employer found not guilty on 3 counts of criminal negligence causing death, after 3 miners drowned in a flooded mine shaft

Métanor Resources operates a mine at Bachelor Lake, PQ. In November 2009, three miners descended into a mine shaft in an elevator at night to refurbish it. When they reached near the bottom, the shaft was filled with water. The water had been filling the bottom of the mine shaft for 10 days. The flood alarm had been disabled and the water pumping system had failed. When company officials raised the elevator after not hearing from the workers for some time, they found it was empty and the top hatch was open. When the bodies of the three miners were subsequently recovered, they were frozen solid.

In 2014, Métanor was charged with three counts of criminal negligence causing death. The company pleaded not guilty, and was found not guilty as the court held that the company had not shown wanton or reckless disregard.

R v Gagne and Lemieux (2010)

In October 2006, one worker was killed and three others were injured when a train collided with track maintenance vehicles. Simon Gagne and Steve Lemieux were the train operators at the time of the accident and faced criminal negligence charges due to this incident. Both were acquitted because their behaviour, though clearly dangerous, did not represent a marked departure from reasonable standards, which is one of the tests for criminal negligence. Rather, the men's actions reflected a "corporate culture of tolerance" that had developed at the company, Quebec Cartier. Evidence of this included deficient training, failure to obtain proper permits, and drug use.

R v Ontario Power Generation, Tammadge and Bednarek (2006)

In the summer of 2002, a group of approximately twenty people were sunbathing and swimming in an area known as High Falls, which was downriver from the Barret Chute dam. When the sluice gates of the Barrett Chute Generating Station opened, it unleashed a wall of water. A mother and her son were swept away by the water over a ten-metre cliff and drowned, and seven others were injured. At the time, Robert Bednarek was operating the dam and John Tammadge was the manager of Ontario Power Generation's ("OPG") Ottawa/St. Lawrence Plant group.

OPG, Bednarek, and Tammadge faced two homicide charges and seven more charges of criminal negligence causing bodily harm. The case against OPG was thrown out first. The conviction would require that any alleged deadly acts were the product of the corporation's directing mind, but there was insufficient evidence to support a case against the senior directing minds. The other charges against Bednarek and Tammadge were later dismissed as well because the judge found that it was a single incident of questionable judgment. Further, he found that the restructuring of Ontario's electricity system at the time made for a "chaotic corporate environment" that "resulted in havoc" along a previously well-managed river system.

Case summaries – Stayed

R v Peter Kiewit Sons ULC (2021)

- Death of a worker after boulder fell at a rock slope site and crushed him, employer and two supervisors charged with criminal negligence causing death, charges stayed.

In February 2009, Sam Fitzpatrick and other employees were ordered to drill rock in an area where an excavator was working directly above them. Excavators were working to clear loose rock above Fitzpatrick and the others. A large boulder rolled down the rock slope and struck Fitzpatrick, killing him.

The day before construction operations had been suspended at the site due to a 'near miss' accident, where an excavator had dislodged rock and it had fallen down the slope. The investigation showed that the excavation above the worksite was the root cause of the rock fall. The day of Fitzpatrick's death the excavators were once again operating above the work site. On the day of Fitzpatrick's death, the company has records of a rock falling and damaging equipment.

Peter Kiewit Sons ULC was charged with several regulatory fines and violations and in 2019 the company and two supervisors were charged with criminal negligence causing death under the *Criminal Code*.

The trial was set for September 7, 2021. However, one week before the trial, the British Columbia Prosecution Service stayed the charge because the memories of the witnesses had degraded significantly. There was a delay of almost six years in initiating the RCMP investigation and another two-and-a-half years until the Crown had all the material it needed from the police. The resulting inconsistencies in the witness accounts led to the Crown to conclude it could no longer meet the threshold of "substantial likelihood of conviction" required in order to continue the prosecution.

R v Fournier, 2018 QCCQ 1071

On April 3, 2012, Gilles Lévesque was working at the bottom of a trench and died when the trench collapsed. The trench was not shored and there were deposits of excavated soil on both sides located at unsafe distances. Sylvain Fournier was the employer and was charged with both criminal negligence and manslaughter. The Court ultimately found Fournier guilty of manslaughter and stayed the charge of criminal negligence causing death, because of the rule against double jeopardy based on the same facts.

The Court sentenced Fournier to 18 months' imprisonment, two years' probation, and a victim surcharge of an unknown amount.

Steelworkers v Weyerhaeuser (2011)

On November 17, 2004, Lyle Hewer was asked to clean out material from a high-speed grinder at a sawmill. The grinder was frequently clogged, and workers were ordered to clear it of wood waste and debris. The company's process of clearing out the grinder required workers to climb inside a confined space to manually remove waste-wood products and clear out jams. Hewer became trapped inside the space under the load of debris and was asphyxiated. The police had recommended criminal charges, but the Crown refused to prosecute in light of insufficient evidence.

The Steelworkers subsequently commenced private prosecutions against the company for criminal negligence causing death. Three days of hearings occurred in October and November 2010, where the Steelworkers called sixteen witnesses to show that there was sufficient evidence for Weyerhaeuser to be tried under the Westray amendments. A provincial court judge allowed the prosecution to proceed. Unfortunately, the policy of the B.C. Crown is to take over and handle all privately-initiated prosecutions itself. In August 2011, it decided to stay the proceedings, stating that the was no evidence of management awareness of the workers climbing into the confined space to clear the debris.

Case summaries – Withdrawn

R v Chantiers Chibougamau (2018)

- Death of subcontractor after 9 metre fall, company charged with criminal negligence causing death

In November 2013, Martial Larouche, a plumber subcontracted by Chantiers Chibougamau, a lumber company, was working when he fell and plummeted 9 metres in a silo filled with sawdust. He died of asphyxiation. The company was charged with criminal negligence causing death, and pleaded not guilty.

The charges were withdrawn in 2018 for unknown reasons. News coverage of the incident suggests that Chantiers Chibougamau paid a fine of $65,000, undertook to invest $200,000 in the health and safety of its company over three years, and donated $50,000 to each of the victim's children.

R v Hritchuk, 2012 QCCS 4525

Mark Hritchuk was the manager at an automobile service facility. On February 10, 2005, while under his supervision, two mechanics suffered serious burn injuries while using a hand-crafted fuel pump to transfer gas. The pump had been broken for years, without the mechanics' knowledge. Hritchuk was charged with criminal negligence causing bodily harm in May 2007. In exchange for pleading guilty to the charge of unlawfully causing bodily harm contrary to section 269(a) of the *Criminal Code*, the criminal negligence charges under the Westray amendments were withdrawn.

R v Millennium Crane (2011)

On April 16, 2009, a mobile crane owned by Millennium Crane Rentals killed a worker by falling into a hole where he was working and crushing him. The company, owner David Brian Selvers, and operator Anthony Vanderloo were charged with criminal negligence causing death because they failed to take reasonable steps to ensure the crane was properly maintained, inspected, and in good safe operating condition. The charges were later withdrawn by the Crown after it determined that there was no reasonable prospect of a conviction. In particular, the engineering opinion was unable to establish with certainty whether the braking capacity of the crane was able to stop the crane from entering the excavation.

R v Peck (2011)

Diane Peck worked as a personal support worker in a nursing home. She was charged after a nursing home resident died, presumably due to a fall while being moved without the assistance of a co-worker or the use of a company mandatory lift system. During the move, it was assumed that the client was accidentally dropped and suffered a leg injury. Peck did not report the injury. When fellow staff members noticed the leg injury a few days later, the client was taken to a local hospital. The injury was diagnosed as a fractured femur and a week later, the client died due to complications from the leg injury. The charges were withdrawn after the Crown determined that there was no reasonable prospect of a conviction.

R v Fantini (2005)

Domenico Fantini was a supervisor employed by a small construction contractor in Ontario. He was charged with one count of criminal negligence causing death when a trench collapsed and killed a worker under his supervision. In exchange for a guilty plea to three violations under the Ontario *Occupational Health and Safety Act* and a fine of $50,000, the criminal negligence charge under the *Criminal Code* was withdrawn.

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