

The “cost of doing business”:

Court rules on Toronto construction worker deaths

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Earlier this month, Ontario Justice Robert Bigelow rejected submissions for a \$1million penalty and fined Toronto company Metron Construction just \$200,000 after it pled guilty to a charge of criminal negligence causing death.

The charge arose from the Christmas Eve 2009 deaths of four Eastern European workers, who plummeted 13 stories to the ground after the swing-stage scaffolding they were on broke in half. The company was also ordered to pay an additional \$30,000 “victim surcharge,” while sole owner and Metron director, Joel Swartz, was fined \$112,500 for four violations of the provincial Occupational Health and Safety Act.

The ruling drew breathless reportage from the country’s major newspapers. “Historic guilty plea,” intoned the *National Post*. “This is the first time in Ontario the criminal code has been used to hold a company responsible for a worker’s death,” said the *Globe and Mail*. For his part, Judge Bigelow claimed that his ruling was meant to send a message that breaches of workplace safety provisions “will not be tolerated.”

A closer look at the facts surrounding the case points, however, to an entirely different conclusion.

Swartz and his company had pled guilty to a series of safety code contraventions that included failure to take reasonable care that workers were adequately trained in using the fall protection system (the workers were not using their fall arrest lines), failure to keep proper records of training given, failure to take reasonable care that a scaffold was not defective or hazardous, and failure to ensure a suspended platform complied with construction regulations. Swartz had struck the plea deal in order to escape criminal conviction.

Immediately after the sentencing, however, Swartz’s lawyer, Jay Napster was more interested in “taking care” that blame for the tragedy be shifted away from his convicted client. “For reasons we will never know,” said Napster, “the workers, including the site supervisor, all of whom were trained and experienced, and knew better, decided to assume a risk that had tragic consequences.”

Napster did not feel it necessary to mention in his statement that in the months and weeks leading up to the tragedy, safety inspectors had issued at least five “stop work” orders for the high-rise balcony repair project that the victims were working at. Nor did Napster note that even though his client ultimately pled guilty to a handful of charges, 16 charges had been initially laid against him and another 30 lodged against the company.

The four dead workers and a fifth who was seriously injured in the accident were all recent immigrants. Lacking means and Canadian work experience, they become part of a pool of cheap labour workers, many of whom are driven to seek employment in the “underground economy” and are hence reluctant to press for proper safety training.

Killed in the incident were Vladimir Korostin, whose wife and two children face a deportation threat, Aleksey Blumberg, Alexander Bonderev and Fayzullo Fazilov. A fifth man, Dilshod Marupuv, who survived the fall suffered severe spinal and leg injuries, and according to his lawyer, will probably never work again.

The judge's ruling has caused considerable outrage amongst workers across Canada. Under the criminal negligence law, Swartz was liable to a lengthy jail sentence. Instead, his company has been ordered to pay a fine that amounts to a paltry \$50,000 for the life of each of the four dead workers. The Crown Attorney had asked for five times that amount—a still modest fine of \$1 million—but the judge accepted the complaint of Swartz's lawyer that since the deaths of the four men Metron Construction has lost up to 50 percent of its earnings.

The penalty levied against Metron, a company that admitted blatant disregard for standard safety practices, pales beside fines imposed on companies where deaths occurred without a finding that the safety code had been contravened. For example, Wesbell and Bell Canada were recently fined \$480,000 after two Toronto area workers drowned in a metre of water after passing out from lack of oxygen in a fibre-optic vault.

It is not simply in the boardrooms and the courts where one finds the issue of workplace deaths placed into the category of "the cost of doing business." Provincial and national governments defend business interests and regard workers as expendable grist for grinding out profit. The corporate mantra of "deregulation" has become the watchword for all levels of government. Safety regulations become only so much "red tape," while cutbacks to workplace inspectors make a mockery of workplace health and safety legislation. To take just the latest example, the Conservative government of Stephen Harper now requires all federal departments to perform a "cost-benefit" analysis on any new regulatory proposal.

The ruling in the Metron case places the spotlight on amendments to the Criminal Code of Canada made in 2004. Known as the "Westray Act," the amendments supposedly make it easier to lodge criminal charges with the possibility of up to life in prison for corporate managers and directors found guilty of failing to keep workers in their employ safe. The revisions, announced with much fanfare at the time, came as a result of the lengthy investigation into the Westray mine disaster in

Nova Scotia in 1992 that took the lives of 26 miners.

Every detail about that incident pointed to corporate greed and political corruption as the chief culprits in the miners' deaths. The mine, considered to be dangerous, was opened in New Glasgow, a town blighted by unemployment and poverty. Poorly trained men took the work out of desperation; fearful for their jobs, they kept quiet about a multitude of safety violations. One miner who did complain to government inspectors was fired. The inspectors, under the company's thumb, failed to take action. A methane explosion quickly ensued and 26 miners paid the ultimate price. Not one company official spent even a day in jail as a result of the disaster.

Twenty years after that criminal incident, and eight years since the amendments to the Criminal Code, not a single corporate director has been jailed. Between 2004 and 2010 there have been 7,045 workplace deaths in Canada. According to the Ontario Federation of Labour (OFL), last year alone, 436 workers died in the province from either workplace accidents or occupational disease. Another 240,000 injury claims have been filed.

Labour leaders were quick to denounce Swartz's light sentence. "It is shameful that it has taken twenty years to see an Ontario company fined for killing workers. Victims and their families can't wait another twenty years to see bosses held to account," said OFL President Sid Ryan. But Ryan and the rest of the trade union officialdom remained culpably silent on their own role in the carnage afflicting workers at Canadian job sites. For decades, they have acted as the junior partner of the corporations in gutting work rules, grievance procedures and job classifications and enforcing speed-up and mandatory overtime in countless concession contracts—all factors contributing to the ever-expanding enrichment of a wealthy elite at the expense of workers' personal safety and indeed, their lives.



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