

Inquest into deadly construction accident convenes 12 years after four workers fell to their deaths in Toronto

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More than twelve years after four Toronto construction workers fell 13 floors to their deaths from faulty swing stage scaffolding, an Ontario Coroner's Inquest convened January 31 to consider if recommendations already made in earlier legal proceedings can be improved in order to avoid any future calamity. Legal responsibility and blame are not the subject of the current proceedings, as these matters were resolved during earlier trials.

The interminable delay in the hearings, although officially blamed on the necessity to await the conclusion of various criminal and civil suits and more recently the pandemic, reflects the perennially low priority assigned to cases of unsafe working conditions in Canadian labour jurisprudence.

The inquest convened as Ontario (and indeed the country and the world) endures the latest COVID-19 onslaught from the Omicron variant. A grim milestone was reached nationally on January 27 as 309 COVID-19 deaths were recorded, the highest-ever daily total since the start of the pandemic. The seven-day rolling average of daily deaths was at 156 as of January 30, nearing the highs of the first two waves of the pandemic, before vaccines were widely available. Already over 35,000 Canadians have died from the virus with some 11,450 in Ontario.

As the provincial inquest deliberates on ways to possibly address issues of worker safety, the Ontario government, in lockstep with provinces across the country, continues to pursue "let it rip" policies pushing children back into schools, further weakening quarantine provisions and lifting minimal public safety restrictions on gatherings. On Monday, Ontario Premier Doug Ford announced the scrapping of vaccine passports as of March 1 in the latest move to abandon all remaining public health measures.

Even in the hospitals, asymptomatic workers are being told that after five days they should return to work even if still testing positive for the virus. Child care and elderly care workers, teachers and factory workers still complain of inadequate supplies of personal protective equipment a full two years since the pandemic was declared. In Ontario, the right-wing Ford government has refused demands to provide 10 days of sick pay for infected workers.

Throughout the pandemic, a bare handful of work refusals have been granted by federal authorities despite thousands of complaints. Unions, in concert with provincial governments and the corporations, have refused to organize strikes to safeguard their members, citing "legal restraints" on such life-saving activity.

Such is the background to the government's professed interest in improving worker on-the-job safety in this current provincial inquest.

The proceedings are looking into a horrific industrial "accident" that occurred on Christmas Eve in 2009, when high rise swing stage scaffolding used by the workers broke in half. Sixteen faulty welds on the scaffolding equipment, a shortage of safety harnesses in the swing stage and near non-existent training practices have already been cited as causes of the tragedy.

Killed in the fall were four recent immigrants to Canada, Vladimir Korostin, whose wife and two children later fought deportation proceedings, Aleksey Blumberg, Alexander Bonderev and Fayzullo Fazilov. A fifth man, Dilshod Marupuv, who survived the fall, suffered severe spinal and leg injuries. According to his lawyer, he will probably never work again. A sixth individual, project supervisor Vadim Kazenelson, survived after he managed to hold on to a balcony with the aid of one of only two safety harnesses available when the swing stage split in

two.

In the first criminal trial held in 2012, Ontario Justice Robert Bigelow rejected submissions for a \$1 million penalty and fined Toronto company Metron Construction just \$200,000 after it pleaded guilty to a charge of criminal negligence causing death. 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.

Despite glowing reports from the country’s mainstream newspapers about the judge’s brave and historic ruling, there was popular outrage over the avoidance of any jail time for company executives. A subsequent appeal of the fines raised the company penalty to \$750,000. The only jail time meted out was in a separate criminal trial against site supervisor Kazenelson—the man who survived the 2009 tragedy by clinging to a balcony. Kazenelson was convicted on four counts of criminal negligence causing death and one of causing bodily harm after it was found that he was aware that protections against falls were not in place. He was sentenced to three-and-a-half years in prison.

The ruling in the Metron case placed the spotlight on amendments to the Criminal Code of Canada made in 2004. Known as the “Westray Act,” the amendments supposedly made 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 the Westray incident pointed to corporate malfeasance 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 and women 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 and all charges against the company were eventually dropped.

In the Toronto swing stage disaster, Metron director Swartz’s social position and extensive monetary layout

for top lawyers allowed him to escape supervisor Kazenelson’s prison fate. Swartz’s corporate entity pleaded 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, 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 struck the plea deal in order to escape criminal conviction.

Immediately after the sentencing, however, Swartz’s lawyer, Jay Napster was more interested in blaming the victims. “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 mention to the judge that his client had already been punished by a loss of business after the tragedy.

The attorney did not deem it necessary to mention 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 pleaded guilty to a handful of charges, 16 charges were initially laid against him and another 30 against the company. It was shown that the desperation for work, the ignorance of labour laws and the language comprehension of the victims could well have played a part in the workers’ ultimate demise.

The Metron Christmas Eve disaster sparked a long-delayed industry report with dozens of recommendations and new training requirements that were adopted for construction workplaces across Ontario. The current inquest is empowered to add its own recommendations should the jury see fit. That jury should note that since the implementation of the recommendations arising from the swing stage disaster, annual worker deaths in the construction industry have risen from 17 to a high of 22. In a 2020 industry report, critical injuries had also grown to a total of 357 for 2019. That same year, only 10 work refusals were deemed appropriate by labour board inspectors.



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