

Prosecutors Jump too Quick on First C-45 Charge

By Lou LeBlanc - www.buildsafe.ca

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Charges were resolved today for Mr. Domenico Fantini, who in August of 2004, received the first health and safety related criminal negligence causing death charge. The charge was as a result of amendments to the Criminal Code of Canada made under the newly passed Bill C-45 (March 2004).

The charge stemmed from an accident on April 19, 2004 in the township of King, Ontario, in which Ameth Garrido an employee of Mr. Fantini, was buried alive in a 9 foot trench that the defendant admitted, was not protected. Mr. Fantini's lawyer, Mr. De Rubeis indicated he did not believe criminal charges should apply in this case because, there was no incentive for his client to cut corners. The job was only worth a few of thousand dollars, the owner of the house supplied the backhoe for the project, and there was no profit in cutting corners. Mr. Fantini is a small contractor with 30+ year's experience, with no prior health and safety or criminal convictions.

The defence council and the crown prosecutor entered a joint submission wherein the criminal charges against Mr. Fantini were dropped in exchange, Mr. Fantini plead guilty to 3 counts of 'failing as an employer to ensure the measures and procedures prescribed are carried out in the workplace', as per section 25.1.C of the Occupational Health and Safety Act and received a \$50,000 fine.

Upon giving the sentence Justice Gorewich stated "This is a tragedy, and hopefully this will send a message to employers that, not just care must be taken but, extreme care must be taken. If this was a corporate defendant the fine would have been much greater".

In an interview with the lawyer for the accused, Mr. De Rubeis indicated that, this case is not the type intended for bill C-45 which was a result of the 1992 Westray Mine disaster in Nova Scotia. Bill C-45 is intended for large corporations that knowingly cut corners for profit, endangering the lives of workers. Mr. De Rubeis further explained, for a good defence against charges laid under the Occupational Health and Safety Act, consistent documentation is critical. The best thing anyone can do after they have been charged for a serious occupational health and safety offence, is hire a safety consultant to review the company's health and safety program, and implement any recommendations asap. This will greatly mitigate any penalties imposed by the courts.

End.