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Who's to blame for the Barrie six deaths? Company charged makes another court appearance

Betsy Powell

The horrific crash that killed six people all in their 20s on a road closed for construction on the outskirts of Barrie last summer prompted an outpouring of grief and hand-wringing on how such a thing could happen and who, if anyone, was to blame.

On Monday, the construction site's contractor, Condrain Group, is making another court appearance on six charges of criminal negligence causing death for failing to "properly sign and barricade" a temporary road closure. Barrie police charged the company in January.

The case is unusual because a company, and not an individual, faces criminal charges under what's referred to as "the Westray Law." While no one can go to jail, the courts can impose hefty fines.

The federal government introduced the legislation almost two decades ago in response to the Westray Mine disaster in Nova Scotia in 1992, when 26 miners died after an explosion and fire ripped through the coal mine. The purpose of the law was to hold corporations respon-

sible for injuries and deaths and to keep people safe, but many critics believe the law has fallen well short of that goal.

More than 30 years have now passed since that preventable mining disaster struck down those workers, impacting an entire community for decades, says Patty Coates, president of the Ontario Federation of Labour. And yet, the law has only been used "a handful of times" in all of Canada. Noting that 75 workers were killed just in Ontario in 2022, she asked: "is the justice system really telling us that there was no criminal negligence on behalf of the employer in all of those cases?"

What appears to make the Barrie case unprecedented is that the victims weren't workers or employees but members of the public who were killed in a workplace other than their own.

The Concord, Ont.-based company Con-Drain builds sewers, tunnels and water mains and has been involved in scores of construction projects across the province and North America. It was founded by the De Gasperis brothers more than 60 years ago. Another branch

The horrific crash on the outskirts of Barrie last summer killed (clockwise from top left): Curtis King, River Wells, Jason Ono-O'Connor, Haley Marin, Jersey Mitchell and Luke West.

of the De Gasperis family owns properties within the GTA Greenbelt, which the province is proposing to open up. Con-Drain does not share a business relationship with that branch of the family.

Condrain has retained Marie Henein, the prominent Toronto lawyer specializing in criminal law. She did not return a request for comment and the company has said it won't respond to media inquiries because the matter is before the courts.

Police have estimated the Barrie crash happened around 6 a.m. on Saturday, Aug. 27, but the car wasn't discovered at the bottom of a large concrete hole on McKay Road, south of Barrie, until Sunday at 2 a.m. The six occupants were on their way to the nearby casino at Georgian Downs in Innisfil.

They were Curtis King, 22, River Wells, 23, Jason Ono-O'Connor, 22, Luke West, 22, Jersey Mitchell, 20, and Haley

Marin, 21.

Last spring, Barrie officials announced McKay Road would be closed for 20 months while water and sewers and other infrastructure were put in for future nearby residential development.

“The road has been fully closed and signed accordingly for many months,” the city’s chief administrative officer said in a statement after the tragedy.

Just how clearly marked the closure was is expected to be a key issue if this case goes to trial.

Several residents living nearby — whom local reporters interviewed last summer but declined to give their names — alleged there had not been proper signs or barricades preventing traffic on McKay Road, and that some drivers continued to use it as a shortcut to the casino.

The Ministry of Labour meanwhile conducted an investigation and decided not to charge Condrain with occupational safety charges. Lawyers specializing in health and safety suggest this fact doesn’t bode well for prosecutors since it’s harder to get a criminal negligence conviction than it is to find a company guilty of a regulatory charge.

Other key questions in the case include: What responsibility did other entities, such as the local police and City of Barrie, have to ensure a public road was free of deadly hazards? Who was driving that early morning? Where had the young adults been and did alcohol play any role in the tragedy?

Zygmunt Gorski, a recently retired London, Ont.-based consultant specializing in accident reconstruction, was so puz-

zled by the dearth of information on the case he wrote a blog post to flag certain issues. He spent 40 years studying motor vehicle collisions, primarily for insurance companies and lawyers involved in civil litigation, and testified a few dozen times in court.

“It is crucially important to identify what conditions actually existed at the time of the collision, why they existed, and whose actions or inactions led to the result,” he said Friday. In particular, he wonders about the accountability of police and city officials in the tragedy.

While not connected to the case, Gorski went digging on the City of Barrie website to check open data on traffic volume on McKay to determine if officials were meeting what is called Minimum Maintenance Standards. They provide “clear thresholds” for the number of inspections that should be carried out depending on the class of roadway, he said.

In 2018, the data indicates an average of 2,293 vehicles were using McKay Road each day, making it a Class 3 road, Gorski said. That means its inspection frequency should have been once every seven days.

Because the municipality appears to be claiming the road was closed, it can argue inspections were not needed. Gorski doesn’t agree.

Even if a sign says a road is closed to “local traffic only,” drivers often perceive this to mean “I can go through this site,” Gorski said.

Also watching the case unfold will be legal experts specializing in workplace health and safety crimes and organizational criminal liability.

University of Ottawa law professor Jennifer Quaid, vice-dean research in the school’s civil law section, said just because it’s possible the young people drove on the road in defiance of a sign, that doesn’t necessarily absolve the corporation from responsibility.

“You have to minimally protect people,” she said. In general, for an organization to be found guilty of committing a crime of negligence, she added, the Crown must show the employees committed the act and a senior officer should have taken reasonable steps to prevent them from doing so.

The big “hurdle” for the Crown, said Quaid, will be to show that the company failed to act in a way that is “so out of whack with what’s reasonable that... (it) deserves to be convicted of criminal negligence, it’s a pretty high bar.”

Correction — March, 13, 2023: *This story has been updated. A previous version incorrectly stated that Con-Drain is tied to the same billionaire developer family that owns land within the Greenbelt area the province is proposing to open up. In fact, Con-Drain does not share a business relationship with that branch of the De Gasperis family.*

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<https://www.thestar.com/news/gta/2023/03/13/whos-to-blame-for-the-barrie-six-deaths-company-charged-makes-another-court-appearance.html>