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The Fight for Safe Working Conditions in BC

Nine Farm Workers Injured in School Bus Rollover in Abbotsford



BC farm workers in the Fraser Valley, most of whom are immigrant workers or temporary foreign workers, face working conditions that are in many cases dangerous and unacceptable. Typically workers are driven daily to and from farms in vans or buses.

On August 31, a school bus carrying 36 workers overturned in a ditch in Abbotsford in the Fraser Valley. The accident injured nine farm workers, three of whom were transported to hospital by ambulance.

This is not the first incident of its kind. Three women farm workers -- Amarjit Kaur Bal, Sukhvinder Kaur Punia, and Sarbjit Kaur Sidhu -- were killed March 7, 2007, in a crash on Highway 1, again in the Fraser Valley. The women were travelling to a farm site in a van with 14 others when they tragically lost their lives. An investigation discovered the over-packed van had only two seat belts, inadequate tires and a fraudulent safety permit. The driver did not have the proper licence.

In another serious incident of a different kind, three farm workers were killed and two others left with irreversible brain damage in 2008, when hydrogen sulfide gas was released from a pipe in a

composting facility pump house on a mushroom farm in Langley, also in the Fraser Valley.

As part of the now three-decade-long anti-social offensive, the former Liberal government in BC rescinded many regulations enforcing inspections of farms and farm vehicles, making a bad situation for farm workers even worse. For example, legislation was passed in 2003 excluding farm workers from regulations governing hours of work, overtime and statutory holiday pay. One consequence is that some drivers transporting workers to and from farms have not had adequate sleep to operate the vehicles safely.

The BC Federation of Labour pointed out in 2018 that some of the most critical recommendations of the 2009 Coroner's Inquest into the 2007 traffic accident that killed three farm workers had been ignored.

Among the recommendations not implemented are:

- Classifying 15-passenger vans as "high risk vehicles."
- Mandatory annual inspections by a government-employed inspector for all 15-passenger vans.
- Educating farm workers about their rights and responsibilities under the BC *Workers Compensation Act*.
- Making business owners responsible for the safety compliance of the labour contractors they hire.

Also ignored was the recommendation that sought to ensure vehicle inspection sites are separate from maintenance and repair facilities. The Inquest recognized the practice of having the same site for both maintenance and inspections was a significant conflict of interest that led to false vehicle safety certifications such as in the deadly crash in 2007.

Not implemented as well was the recommendation to sustain random roadside and onsite inspection of commercial vehicles. Inspections actually decreased by 80 per cent between 2007 and 2018 even though in the immediate aftermath of the 2007 tragedy, 35 per cent of vans inspected in an inter-agency blitz were immediately impounded as being unsafe to drive.

The fight for humane and safe working conditions for farm workers, including transportation to and from farms, is ongoing and a matter of concern for all workers.

Criminal Trial Starts for U.S. Company Charged in Death of Young BC Worker

The criminal trial of Peter Kiewit Sons ULC and two company managers in the death of a 24-year-old construction worker began in Vancouver on September 6.

Sam Fitzpatrick, employed as a rock scaler, was struck and killed by a boulder in 2009 while working for Peter Kiewit Sons ULC on the Toba Inlet private power project near Powell River on the BC coast. Heavy equipment dislodged the huge rock from a work site above the slope where Sam, his brother Arlen, and others were working.

BC Worksafe investigators determined in 2011 that Fitzpatrick's death was caused by being struck by a rock estimated to be over 1.5 metres in diameter. The company had allowed work to proceed without clearing loose material uphill from where Sam and his crew were working, Worksafe said.

The Worksafe investigation also found that prior to the day of the accident on February 22, supervisors were well aware of the danger from loose rock and had documented the possibility of a rockfall. Investigators also discovered that the day before the young man's death, falling rock had damaged equipment at the same site where Sam, his brother and others were working. The company was fined \$250,000 but appealed and in 2013 the fine was reduced to less than \$100,000.

The company and two individuals who were supervisors at the worksite at the time of Sam Fitzpatrick's death have been charged under section 217.1 of the *Criminal Code*, which states, "Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Amendments to the *Criminal Code*, including section 217.1, arise from the federal "Westray Bill" C-45, which became law on March 31, 2004. The law imposes criminal liability on organizations and their representatives for negligence and other offences, and provides penalties of up to life imprisonment.

The charges, brought by the RCMP in May 2019, allege the company and its managers Timothy Rule and Gerald Karjala, "Did by criminal negligence fail, while under a legal duty to do so, to take reasonable steps to prevent bodily harm to Samuel Joseph Fitzpatrick."

Charges were laid after a tenacious fight by Sam Fitzpatrick's family, the families of other workers killed on the job in BC, the United Steelworkers and the BC Federation of Labour. The United Steelworkers waged a ten-year-long battle to have the Westray legislation passed following the 1992 Westray Mine explosion in Nova Scotia that killed 26 miners. An organized campaign to ensure the law was enforced, called "Stop the Killing, Enforce the Law," began in 2004.

Peter Kiewit Sons ULC is a major multinational U.S.-based company involved in multiple projects in BC, including many for the BC government. Seven other workers have died on Kiewit worksites in BC in recent times, including one at the same Toba Inlet project where Sam was killed.

The U.S. company has declared its intention to plead not guilty despite the findings of the Worksafe BC investigation and subsequent fine. The criminal case will be precedent-setting as charges under the Westray law have been laid in only a small number of cases, usually with the company pleading guilty, and never against a multinational of the size, power and influence of Kiewit.



Rock scalars Arlen Fitzpatrick, left, and brother Sam were working together when a boulder dislodged from where heavy equipment was operating above. The rock tumbled down striking and killing Sam. (Mike Pearson).

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