

# Hell's History

The USW's fight to prevent workplace deaths and injuries from the 1992 Westray Mine disaster through 2016

By  
Tom Sandborn





---

**The Miner's Lamp Pin:** This emblem stands atop a monument in Westray Memorial Park in New Glasgow, N.S., honouring the memory of the 26 miners killed at the Plymouth Mine on May 9, 1992. The monument features a miner's lamp – representing the miners' pride in their profession – emitting 26 rays of light, each inscribed with the name of one of the men who lost their lives.

# Hell's History

The USW's fight to prevent workplace deaths and injuries  
from the 1992 Westray Mine disaster through 2016

By  
Tom Sandborn

2016





# Table of Contents

---

Foreword	5
1. Introduction	9
2. Before the Tragedy: Westray's "Predictable Path to Disaster"	13
3. Hell Underground: The Day the Westray Mine Exploded	19
4. Hell's Impunity: The Failure of the Courts, the Partial Success of the Public Inquiry	25
5. Workers' Lobby Efforts in Ottawa	31
6. Hell's Victory: The Failures of the Act's First Decade	35
A. Lax Enforcement	
B. The Sam Fitzpatrick Case	
C. The Lyle Hewer Case	
D. Deaths at Vale's Stobie Mine: Two Workers Die in a "run of muck"	
7. Hell Again: The B.C. Mill Fires of 2012	53
A. Babine Forest Products	
B. Lakeland Mills	
Between Two Fires: WorkSafeBC and a Decision Not to Enforce Existing Regulations	58
8. Hope for the Future? Glimmers of Hope on Enforcement 2012-2016	65
Endnotes	71





*In 1974 it was a wildcat strike by Steelworkers at the Elliot Lake, Ontario uranium mine, who walked off the job after their employer and their government refused to address growing rates of lung cancer and silicosis suffered by these workers. Their action forced the government of Ontario to introduce Canada's first modern health and safety laws and declare health and safety as a fundamental workers' right.*

*The history of our union is a history of action to protect and save workers' lives. It's the reason the United Steelworkers are known as the health and safety union. It's the reason workers at Westray Mine in Nova Scotia asked for help to organize and join a union.*

*These workers knew conditions in the mine were dangerous. Three significant cave-ins occurred within a month of the mine's opening. Workers trusted their employer and the government to do the right thing, but as regulators openly looked the other way, they realized they needed the help of a union to improve safety in the mine.*

*The organizing campaign never got a chance to finish. Early in the morning, May 9, 1992, a lethal buildup of methane gas led to an explosion that rocked the mine, killing 26 workers, injuring dozens of others and forever scarring the surrounding communities. The bodies of 11 men were never recovered.*

*We pledged then and there that there would be no more Westrays. For our leaders and our members our pledge wasn't rhetorical, it had to mean action. We went to work right away participating in the Westray public inquiry led by Justice K. Peter Richard, offering expert testimony and support to affected workers and their families.*

*Richard's findings concluded the tragic disaster was not only preventable but was the result of "incompetence, mismanagement, bureaucratic bungling, deceit, ruthlessness, coverups, apathy, expediency and cynical indifference." Despite these findings no mine manager, no CEO, and no government regulator was held responsible for their failures.*

*We all learned the hard way, that if the laws of Canada could not hold an employer accountable for their negligence, then the laws had to be changed. That's why the United Steelworkers lobbied Members of Parliament to amend the Criminal Code to include corporate executives and directors responsible for negligence leading to serious workplace injuries or fatalities. It took three separate efforts over a decade to finally secure unanimous passage in 2003 of what is known today as the Westray Law.*

## Foreword

---

*Yet sadly our work was not done. Close to 1,000 workers in Canada die on the job every year. Case after case showed that many of these deaths were preventable yet they still resulted in no Criminal Code charges, sometimes barely mustering a slap on the wrist or a fine that employers dismissed as the cost of doing business. The law was on the books, but no police or prosecutorial agencies were using it. We had successfully changed the laws but we had more work to do to make police, prosecutors and health and safety regulators aware and equipped to enforce it.*

*In 2010 we worked with a leading criminal lawyer to launch a private prosecution in the case of Lyle Hewer, a sawmill worker whose death could have been prevented had his employer stopped ignoring well-documented safety hazards. New Westminster, B.C. police had investigated and in fact recommended criminal charges. However provincial crown prosecutors rejected the police recommendations. We knew even if we were successful, prosecutors would likely rinse and repeat their previous rejection, and that's exactly what happened. But we knew these efforts were critical to get government agencies, with overlapping jurisdictions, most under provincial auspices, to wake up and work together to enforce the law.*

*We investigated and asked questions. Why were some police agencies willing to use the law while others were not? Why were health and safety agencies reluctant to work with police? Why were Crown attorneys avoiding prosecutions?*

*We know every day that the laws that protect worker health and safety are meaningless unless they are enforced. To achieve the societal change necessary to keep workers from dying on the job requires that just like impaired driving, workplace fatalities must become a public anathema. That's why in 2012, to ensure the Westray Law is enforced, we launched our campaign, Stop the Killing, Enforce the Law. It is the largest national campaign our union has ever conducted.*

*We lobbied Canada's attorneys-general to train prosecutors and police to enforce the law. We've encouraged safety regulators to formalize their relationship with other agencies to ensure the criminal lens is applied where necessary. Steelworker members lobbied local governments for their support. From big cities to the small towns our members live in, our activists ensured every politician who could play a role knew we were watching and would remain vigilant until enforcement was achieved. We're often asked, "are you looking to put every CEO in jail," the answer is no. However, just like other criminal laws, we know the power of deterrence is critical to see the societal change necessary to keep our members and other workers alive.*

*The good news is with the work of USW activists and allies we are making change a reality. Today we have witnessed the successful prosecution of a criminal charge filed under the Westray Law. More charges are being laid across the country. Regulators and police are co-operating. Employers' lawyers are warning them they too could face prosecution for failing to respect worker health and safety. It's far from perfect, and more work remains to be done, but Steelworkers can be proud that they have improved and saved the lives of working Canadians, union and non-union alike.*

*Over our history we've become good at building family support groups to work with loved ones of those killed and injured on the job. It is the saddest and toughest part of the work we do, and not what we want to be doing. Equally important, we have trained hundreds of health and safety activists who*



*work every day to ensure they and their fellow workers have full access to their health and safety rights on the job. We've trained even more to lobby and be politically active to ensure workers' voices are heard by politicians of every stripe. Because if we don't fight, who will?*

*For 25 years, a third of our union's 75-year history, we have kept up the fight. We know even more needs to be done. With the same persistence, patience and perseverance we'll continue to keep workers alive and hold employers to account. Yes, we mourn for the dead, but we fight like hell for the living, and we're definitely not done fighting yet.*



**Leo W. Gerard**  
USW International President



**Ken Neumann**  
USW National Director



**Stephen Hunt**  
USW District 3 Director  
(Western Canada)



**Alain Croteau**  
USW District 5 Director  
(Quebec)



**Marty Warren**  
USW District 6 Director  
(Ontario & Atlantic Canada)



*“Some say the world will end in fire,  
Some say in ice.”*

– Robert Frost, Fire and Ice



For 26 miners deep in the notorious Westray mine, the end came in fire. On May 9, 1992, every man underground in that misbegotten Pictou County mine died as untreated coal dust and poorly ventilated methane gas ignited, driving a hellish fireball through the tunnels. The dust and gases had been allowed to accumulate in the depths of the mine by a management team far more interested in maximizing profit for shareholders and fulfilling promises made to political sponsors than in worker safety. Safety regulators who were responsible for inspecting the mine failed to effectively identify and correct many defects to the recently opened mine’s ventilation, coal dust suppression and methane detection technologies. Regulators failed to act when Westray management redirected tunnelling operations from those specified in its provincial permit and took the excavation into a part of the coal seam that was even more unstable than the area covered by the permit.

The spark that set off the underground firestorm came from a piece of mining machinery that should have been shut down when methane concentrations became dangerous; that didn’t happen because the methane-detecting gauge that should have stopped the machine had been disconnected as part of the mine management’s

drive to increase production. You could say that the lethal explosion was caused by a mix of dust and gas and an accidental ignition; or you could say that the 26 men who died underground at Westray were killed by a lethal mix of management incompetence, inadequate regulatory oversight, corporate greed and criminal negligence. Far too many Canadian workers still die every year from similar causes.

Nova Scotia Supreme Court Justice K. Peter Richard, who led an inquiry into the disaster, opted for the second version as he delivered a scathing report that called the process around opening and operating the mine “a predictable path to disaster.”

Over the years, there have been a number of moving tributes to the men who died at Westray.<sup>1</sup> Justice Richard also wrote: “The Westray story is a complex mosaic of actions, omissions, mistakes, incompetence, apathy, cynicism, stupidity and neglect.”

In the end, criminal charges laid against Curragh Resources, the company behind the debacle at Westray, and Gerald Phillips and Roger Parry, two local mine managers, were dropped, and no one was held accountable for the miners’ deaths.

Twenty years later, across the country in the Interior of British Columbia, two lumber mills exploded and burned, killing four workers and seriously injuring many more. In an eerie echo of

the Westray deaths, the explosions at the Babine and Lakeland mills were blamed on fine dust (in the case of the mills, extra dry dust from pine-beetle-killed wood rather than coal dust) ignited by a spark.

Even more disturbingly, it is possible to argue that the B.C. mill fires were the result of similar dynamics to those that led to the Westray mine

Why did Canadian employers and government safety regulators not learn the lesson of the Westray deaths? Why, in fact, do close to 1,000 Canadian workers die every year at work or from work-related illness, a figure that has held relatively steady now for decades? Why has the reform legislation finally adopted a decade after the Westray deaths been so inadequately enforced?

“

*Why do close to 1,000 Canadian workers die every year at work or from work-related illness?*

disaster and eloquently denounced by the learned judge K. Peter Richard, whose report detailed failures by regulators and mine management to properly insure the safety of Westray miners. At the B.C. mills that exploded, (as detailed in many media reports and analyses, including “What Did Not Have To Be,” in *Our Times* magazine), safety inspections failed to compel mill management to reduce the dangerous levels of dust that led to the lethal explosions and fires.<sup>2</sup>

As *Our Times* notes, “The investigating officer found the accident could have been prevented. “Preventing a wood dust explosion involves removing one of the five components that need to be available for the explosion to occur: oxygen, containment, dust as fuel, dispersion of dust, and ignition. Oxygen is in the air but the other four components can be controlled.”

That was the problem. Contrary to safety regulations, highly combustible wood dust had not been controlled.

These tragic deaths are not isolated incidents.

Steelworkers and their allies in the union movement have been tireless in campaigning for reforms, first to push the Westray Act of 2004 and since to demand the law be properly enforced.<sup>3</sup>

But all that effort failed to save the lives of the B.C. mill workers killed when the Babine and Lakeland mills exploded in 2012, or the lives of the tens of thousands of Canadian workers killed between the two events. These are grim additions to a butcher’s bill that records the results of class war in action. The death figures suggest that Anne Feeney’s classic “War on the Workers” could serve as a theme song for industrial relations in Canada as well as in her native U.S.<sup>4</sup>

This document tells the story of some of the unnecessary industrial deaths in Canada over the past 24 years, taking Westray as a beginning point and the recent B.C. mill fires as a tragic coda to the litany of deaths arguable caused by management negligence.

But not all the news is bad. Thanks to more than a decade of trade union and other progressive

lobbying led by the United Steelworkers, the Westray Act is on the books and, if properly enforced, it could give managers and directors some incentive to make sure their operations are not killing fields for workers. In the past few years (2013-2016) the RCMP and Crown counsel across Canada have increased the number of cases being investigated for possible Westray Act charges and in a few cases new charges have been laid. In a historic first, project manager Vadim Kazenelson recently became the first person sentenced to prison in Ontario under the Westray Act. Kazenelson was given 3½ years for his part in the deaths of four workers and injury of a fifth. The deaths occurred when a swing stage being

operated high above Toronto streets by Metron Construction on Christmas Eve 2009 fell to the ground. Kazenelson is appealing his conviction and has been released on bail.

It is obscene that it has taken so long for the lessons of Westray to be applied, and it is discouraging that even now, we have so few charges and prosecutions to celebrate. We owe it to our honoured dead to do better. This document is dedicated to the 26 men who died at Westray, the four who died at the Babine and Lakeland mills and to the thousands of other Canadian workers who have died unnecessarily, their lives collateral damage in a conscienceless rush for profits and productivity.







Men have been going underground to mine Pictou County's dangerous coal seams in Nova Scotia for centuries. Early attempts

to access unstable, methane-rich coal from notoriously fragmented seams like the Foord (the site of the Westray mine), led to 246 underground explosion deaths between 1838 and 1950 in the county. The last mine to work the Foord seam prior to Westray – the Allan Mine – experienced eight methane gas explosions before closing in the 1950s.

Another 330 miners died underground between 1838 and 1950 in Pictou County mines in events that did not include coal dust explosions.

According to Nova Scotia Archives:

"Over nearly three centuries of mining activity in Nova Scotia, countless numbers of miners and quarrymen have been killed in disasters large and small. Major coal-mining catastrophes in the last 130 years include:

- ▶ Drummond Colliery Disaster, Westville, 1873 (60-70 deaths) <sup>5</sup>
- ▶ Foord Pit Explosion, Stellarton, 1880 (50 deaths)
- ▶ Springhill Mine Disaster, 1891 (125 deaths) <sup>6</sup>

- ▶ Dominion No. 12 Colliery Explosion, New Waterford, 1917 (65 deaths) <sup>7</sup>
- ▶ Albion Mine Explosion, Stellarton, 1918 (88 deaths)
- ▶ Sydney Mines, cable break in mine shaft, 1938 (20 deaths)
- ▶ Springhill Explosion, 1956 (39 deaths)
- ▶ Springhill Bump, 1958 (74 or 75 deaths)
- ▶ Westray Coal Mine Explosion, Plymouth, 1992 (26 deaths) <sup>8</sup>

The deadly work below ground in Nova Scotia mines inspired many efforts by miners to organize unions, and safety issues were often high on the agendas of the new workers' organizations, both in the mines and at other Nova Scotia job sites. For example, the Carpenters' Society, formed in Halifax in 1799, was one of Canada's first labour organizations. (However, from 1816 until 1851, it was a crime to organize a union in the province.) In 1879 the Provincial Workmen's Association was formed in Springhill, and quickly gained supporters in the coal mines of Pictou County. The association won some significant safety concessions from mine owners during its existence, which ended in 1917 in a merger with the United Mine Workers to form the Amalgamated Mine Workers.



MSA G.A. Mackay Collection, Album 55 no. 3

But employers in Nova Scotia and their allies in government pushed back successfully against worker demands for safety and for fair representation of their interests in the mines. By 1990, Nova Scotia had the second-lowest rate of unionization in Canada and regulation of mine safety was notoriously lax. Between 1987 and 1992, for example, while government inspectors issued over 1,000 safety directives to Nova Scotia mines, no companies were prosecuted for safety offences and the Richard Inquiry report (powerfully titled "The Westray Story: A Predictable Path to Disaster") detailed countless safety breaches identified by inspectors in the Westray mine but never corrected. Rock

falls, tunnelling in non-approved areas, methane and coal dust buildup, non-approved machinery operating underground – all of these dangerous practices were endemic at Westray and regulators did little to correct them. Twenty-six miners died because of this pattern of company negligence and lax inspection by government regulators.

Westray workers tried to unionize – despite crippling levels of unemployment in Pictou County – that made standing up to management a significant risk. If you lost your job in the one new mine in the county, which was promising 15 years of steady work, you were in trouble. Nevertheless, workers tried first to organize into





Photo: Nova Scotia Information Service, photographer, NSA, Nova Scotia Information Service Photo Collection

**Elmer MacKay, Conservative MP for Central Nova, and father of Peter MacKay, helped secured federal financing for the mine.**



Photo: The Canadian Press/Fred Chartrand

**Donald Cameron, former Nova Scotia Minister of Industry, Trade and Technology was an avid supporter of the Westray mine development**

Local 26 of the United Mine Workers in October of 1991. That bid failed by a narrow vote, and in the spring of 1992 a successful unionization drive at Westray was mounted by the United Steelworkers. The explosion occurred before the certification process could be implemented, but the Steelworkers kept faith with the men who had joined the union. The union continued to support the families who survived and to campaign for law reform that would make a repeat of the Westray disaster less likely.

Steelworkers helped Westray family members bring together an organization dedicated to the memory of the miners who died, and mounted a decade-long lobbying campaign that resulted in the legal reforms embodied in 2004's Westray Act being added to Canada's Criminal Code.

On Sept. 1, 1988, five days before an impending provincial election, Curragh Resources, a mining company with connections to Nova Scotia's Conservative government, announced its plans to go back into the notoriously unstable Foord seam as part of a new project, the Westray Mine, based in Plymouth, N.S. The company's political friends rushed to support the Westray project, and the promise of long-term mining jobs to be created by Westray may well have helped the provincial Conservatives, then led by John Buchanan, eke out another majority mandate. (The day after the announcement, the province publicly pledged to lend \$12 million to support the mine and guaranteed that Nova Scotia would buy 250,000 tons of Westray coal each year.)



The Westray coal mine in Plymouth, Nova Scotia.

The Nova Scotia Power Corporation (then a public body, although privatized soon thereafter) announced a deal to buy 700,000 tons of coal a year for 15 years at prices set between \$60 and \$74 a ton. The next week the Bank of Nova Scotia announced that a federal loan guarantee would make it possible for the bank to lend Westray \$100 million. Donald Cameron, then the area's MLA and Nova Scotia's Minister of Industry, Trade and Technology (and after 1990, the province's premier), was an avid promoter of the Westray project, as was Elmer MacKay, the Tory MP who represented the federal Central Nova riding where the mine was to be opened. MacKay's

support for Westray is widely viewed as having been crucial in securing the federal loan and guarantees. MacKay, who stepped down from his seat in Parliament in 1983 to allow newly chosen Tory leader Brian Mulroney a safe by-election win in Central Nova, had thereby earned himself considerable influence with the Prime Minister.

But even with its political friends providing loans and guarantees based on public money, Curragh took years to bring the dodgy project into production in the summer of 1991. According to the May 1992, CBC TV documentary "The Last Shift," private-sector investors had backed away from funding Westray by 1987, about the time

Derrick Rance of the Cape Breton Development Corporation met with Central Nova MP Elmer MacKay. Rance reportedly told MacKay, an enthusiastic supporter of the mine project, that Westray was too dangerous to merit government support. The announcement of government subsidies through loan guarantees, provincial direct-purchase commitments and the fixed-price contract with Nova Scotia Power clearly represented a multi-faceted, politically motivated rescue with public money of a project too chancy to attract private investors.

The political support paid off. On September 9, 1988, Westray finalized a deal to purchase Suncor's Pictou County holdings. The key figure in this deal was Clifford Frame, the politically connected businessman who had created the company that controlled the Westray mine, Curragh Resources Inc. The new firm was created through a complex series of deals and purchases, which often involved several companies Frame controlled in each transaction.

Safely insulated from any full liability for Curragh Resources Inc.'s decisions by the company's newly established status as a limited liability corporation, Frame and his associates in the

boardroom set out to wring as much profit as possible out of the precarious mining project. And they needed profits badly. In 1991, world commodity prices for lead and zinc (produced at other Curragh holdings) were down. A strike linked to health and safety issues at the firm's Yukon mine further damaged the company's bottom line, which showed \$98 million in losses at the end of the year. To make matters worse, the guaranteed coal sales deal with Nova Scotia Power stipulated that Curragh had to deliver the first annual instalment of coal to the corporation's Trenton power plant on time or its long-term cash flow from that agreement could disappear. Westray management had lots of motivation to speed up work on the mine, and the provincial regulators showed very little enthusiasm for enforcing safety regulations, despite a number of rock falls and inspections that showed too much coal dust and methane in the mine. The stage was set for a murderously lethal disaster at Westray, an explosion and loss of life that it would be wrong to call an accident. The Westray miners died because management put production and profit ahead of safety, a pattern that repeats itself all too often in the years after the mine exploded.



# Hell Underground: The Day the Westray Mine Exploded

## Chapter 3



On May 9, 1992, at 5:20 a.m., the hellish mix of methane and coal dust that had been allowed to accumulate in the Westray mine exploded.

Alan Doyle, whose brother Robbie, at 22, was the youngest miner to die when the fireball raced through the underground works, was working above ground that morning. In a January 2016 conversation with me, Doyle remembered hearing the explosion and seeing flames belch out of the mine entrance. His brother, at the surface earlier in the shift to haul supplies below, had told him the miners were experiencing trouble on the North Main tunnel. Robbie's co-worker Larry complained of a headache.

"I argued with Robbie," Doyle told me in 2016, "told him not to go back down. That was the last I seen of him."

Shortly after his brother went back down into the mine, Doyle felt the ground shake and saw the lights above ground go dim.



Photo: The Canadian Press/Kerry Doubleday

---

The aftermath of a deadly explosion at the Westray mine that killed 26 miners.

The men who died underground that night with Robbie Doyle were:

John Thomas Bates, 56

Larry Arthur Bell, 25

Bennie Joseph Benoit, 42

Wayne Michael Conway, 38

Ferris Todd Dewan, 35

Adonis J. Dollimont, 36

Rémi Joseph Drolet, 38

Roy Edward Feltmate, 33

Charles Robert Fraser, 29

Myles Daniel Gillis, 32

John Philip Halloran, 33

Randolph Brian House, 27

Trevor Martin Jahn, 36

Laurence Elwyn James, 34

Eugene W. Johnson, 33

Stephen Paul Lilley, 40

Michael Frederick MacKay, 38

Angus Joseph MacNeil, 39

Glenn David Martin, 35

Harry A. McCallum, 41

Eric Earl McIsaac, 38

George S. James Munroe, 38

Danny James Poplar, 39

Romeo Andrew Short, 35

Peter Francis Vickers, 38



Twenty-six crosses mark the lives lost at Westray.

As described above, the lethal disaster had been made inevitable by Westray management negligence, corner cutting and speed-up, as well as by company decisions to ignore and/or disable crucial safety equipment. One of the disabled sensors, attached to a machine called a “continuous miner” in the mine’s Southwest 2 tunnel, was supposed to detect methane levels as the explosive gas was released from the coal face by the machine’s excavation. Instead, the

his fucking job.”

Allen Martin lost a brother too in the Westray mine. His brother Glenn had been working at Westray for nine months when it exploded. It was his first mining job, at 35, although his family had been coal miners in Nova Scotia for generations.

In an email exchange in early 2016, he agreed with what Alan Doyle told me about safety conditions at Westray.

“

*That mine was a place called hell.*

unmonitored level of methane reached a critical level and a spark from the machinery ignited it. The methane explosion drove fine particles of highly flammable coal dust (which should have been regularly ventilated out of the mine and/or “stone dusted” with ground rock to make it less volatile, but was neither properly ventilated nor stone dusted), into the air and created a secondary explosion that drove a fireball through the mine’s tunnels, killing the 26 men on the night shift in less than a minute.

Alan Doyle has bitter memories about the dangerous practices encouraged at Westray.

“That mine was a place called hell,” he told me in 2016. “It was run through intimidation. The inspectors were led around by the nose and mainly ignored. Once an inspector caught them with a bulldozer underground with unshielded sparks coming off it. Once the inspector left the mine, the foreman ordered Robbie to take the dozer back underground ‘... if he wanted to keep

“Glenn told me of rock falls, coal dust up past his boots, harassment by his bosses, welding in the mine ... You must remember that Glenn never worked in a mine of any kind before Westray so it took a while for him to realize what a bad situation he was in.”

Martin was eager for me to know more about his brother and remembered one incident with particular pride.

“Another time,” he told me, “one of my co-workers, John MacDonald, approached me at shift change and told me of an incident involving his son and Glenn. Apparently there was a rock fall during their shift and everyone was panicking trying to get out of the way. John’s son was hit by something and he was knocked onto the conveyor belt. He was stunned and unable to help himself but Glenn saw he was in distress and was able to grab him and yank him free. John, understandably, was quite distressed while telling me this story but wanted me to know how grateful

he was to Glenn for pulling his son to safety. Glenn, himself, never mentioned the event to me and when I brought it up to him he just shrugged it off. “

But like any miner, Glenn Martin had a life outside the mine, and it was clear as I spoke with his brother that Glenn had many friends and family members who cherished him.

“When I think of Glenn,” Martin told me, “the first thing that comes to mind is him playing with his nieces and nephews. He would tease them mercilessly and they adored him for it. He loved to hunt and fish, loved to party and you could always count on him to lend a hand. He never had much but he didn’t need much either. Friends – and he had many – family and fun, THAT was

Glenn. He was very popular with the ladies. My wife Debbie always said that Glenn had bedroom eyes.

“The thing I most admired about Glenn was how much he could do with so little. He owned his home, dug out the basement by hand and poured the footings and put up a cinder block wall. He then gutted the house room by room, insulated, painted, rewired. It was well done when completed.”

Like Alan Doyle, Glenn Matheson was close enough to the mine to hear the explosion, but even more than the detonation, he remembers the eerie silence that followed and the stink of coal dust in the air. Matheson, a Presbyterian minister in nearby New Glasgow, a volunteer firefighter and paramedic, rushed to the Westray mine entrance shortly after the explosion and didn’t go back home for days, helping move the bodies retrieved by rescue miners (draegermen) from the mine to the improvised morgue and consoling family members. In a January 2016 interview, he remembers with obvious emotion a moment when a miner’s wife came to the RCMP roadblock near the mine entrance on the day of the explosion, only to be told that there was no news yet about the men below. The wife turned the car around to drive away, and the Mountie saw a child in the back seat of the woman’s car, pressing her face to the rear window and howling for her Daddy.

“Everyone who was at the mine entrance during the rescue operation has at least one big memory like that, something you wish you could delete,” Matheson told me.

He remembers how people rallied around to help, mentioning a fax he got hand delivered on the

---

Vernon Theriault, a former Westray miner, was one of the first draegermen to go back into the mine during rescue attempts. He received the Medal of Bravery for his work on the rescue and recovery team and became a life-long advocate for worker safety.





rescue line, a message from the fire hall in a town where he had formerly been a pastor, a town that had endured its own mining disasters. The fax told him that workers from that community were mobilized and could come to the mine.

“Just tell us what you need,” the message read.

Similarly, Matheson tells stories about local merchants who came to him at the mine entrance and gave him the keys to their stores, saying he should go into their shops at any time if the survivors or rescue workers needed anything.

Matheson has special praise for the draegermen, the rescue workers who went back down into the devastated mine searching for survivors and, as that hope faded, for the bodies of the miners who were killed underground. Justice Richard, who led the provincial public inquiry into the Westray disaster, also praised these heroic workers. In his report, Richard noted:

“I would be remiss if I did not comment on the selfless bravery shown by the rescue teams in the days following the explosion. The conditions in the mine were terrifying. The force of the explosion resulted in severe instability within the roof and walls of the mine. Rock falls, of varying degrees of intensity, were almost continuous. Signs of the devastation were rampant, as were signs of impending danger. The poisonous, unbreathable atmosphere and the actively ‘working’ ground surrounding the mine openings, with the attendant grinding and cracking, were extremely stressful. Yet these men, miners trained in mine rescue, each wearing his personal life-support system, went unquestioningly into that perilous environment with the hope of finding some of their comrades alive. The rescuers came from mainland Nova Scotia, Cape Breton and New Brunswick. We can only be thankful for this valiant display of concern for fellow workers.”

In 2016, Matheson told me that the rescue workers “aged 20 years in the hours they spent underground.”

In a 2012 videotaped interview he gave to Straight Goods News, Vern Theriault, one of the Westray survivors and one of the first draegermen to go back into the mine, remembered going five days without sleep during the rescue attempts.<sup>9</sup>

“I know what hell looks like, after that,” he said.

Like the 95 other courageous rescue workers – draegermen and barefaced miners – who went back underground in the still-unstable and dangerous ruins of the Westray mine, Theriault was awarded a Medal of Bravery in the fall of 1994 by then-governor general Ramon Hnatyshyn in the largest civilian investiture ceremony ever held. The rescuers were able to retrieve 15 bodies, but 11 remain in the collapsed tunnels.

The brave efforts of Theriault and his fellow rescuers “demonstrates ... what is best about the human spirit, giving and sacrificing for one’s fellow citizens,” said the governor general.

“Look about you, the faces you see are the faces of decent people (who) ... did not want to have to be heroes, but heroes they are,” Hnatyshyn added.

Later, Theriault was one of the workers who were mobilized by the Steelworkers to go to Ottawa and lobby for a new law, the Westray Act. He and others like him who had lived through the disaster at Westray hoped the new law would make it possible for owners, bosses and managers whose negligence killed workers, to be made accountable and liable to imprisonment. He travelled to the nation’s capital to help with the lobbying efforts in 1999, 2000, 2002 and 2003. In 2012, Theriault told Straight Goods that he was happy to have seen the law passed in 2004, but “... now I don’t see the law being enforced. Let’s use it.”



# Hell's Impunity: The Failure of the Courts, the Partial Success of the Public Inquiry

## Chapter 4



T

he deaths at Westray Mine inspired a number of regulatory and criminal cases (all of which failed to make anyone responsible for the

tragedy), and an inquiry led by a prominent Nova Scotia jurist, which, much to the surprise of many who expected it to be a whitewash, delivered a detailed and passionate indictment of Westray owners and managers, as well as describing a failed and politically corrupted regulatory process in the province's mines. Justice Richard tellingly called his report "The Westray Story – A Predictable Path to Disaster."

Workers killed by their bosses' negligence were a common feature of Nova Scotia coal mining, as they have been throughout Canadian history and in all the provinces. But something about Westray's stench of political favouritism, regulatory neglect and heedless profit-mongering hit home with the public and the provincial government, sensitive for once to public opinion, established an inquiry into the Westray deaths quickly – only six days after the mine disaster. This inquiry, led by Nova Scotia Supreme Court Judge K. Peter Richard, was delayed for years in order to avoid prejudicing trials on the criminal and regulatory charges laid in connection with the disaster. Five years and \$5 million later, well after the province had abandoned both regulatory and criminal charges, the Richard Inquiry delivered

its report, and with it a scathing condemnation of those who should have protected the miners' safety.

But before the partial victory represented by the Richard Inquiry, the family members and surviving miners of Westray had to witness a complex (and in the end ineffective) attempt by Nova Scotia officials to at least be seen as taking steps toward justice.

The RCMP in Nova Scotia started an investigation into the disaster as soon as search and rescue operations were called off in late May, 1992, and by Sept. 17 of that year, the Mounties were going underground in the ruined mine guided by some of the draegermen who had conducted the heartbreaking search for survivors. On Oct. 5, Westray and four of its managers were charged with 52 non-criminal regulatory offences under the Nova Scotia Health and Safety Act. But in December 1992, 34 of the 52 charges were dropped. On March 4, 1993, the rest of the regulatory charges were also dropped, with John Pearson, the director of public prosecutions for the province citing the danger of jeopardizing future criminal charges.

A few such criminal charges were finally laid in April 1993, when Westray officials Gerald Phillips and Roger Parry were targeted for 26 separate counts including manslaughter and criminal negligence causing death. In the end, the criminal

charges were stayed after it was learned that the Crown had failed to disclose significant evidence to the lawyers defending the Westray managers. It took several years for that stay to be appealed to the Supreme Court of Canada, which ordered a new trial in its review of a Court of Appeal ruling. However, in June 1999, provincial prosecutors decided not to proceed with the charges, saying they did not believe they had enough evidence to secure a conviction. So Phillips and Parry, who as management figures for Westray Mine had done much to create the culture of negligence and

Richard's sympathies lay, the fact that he then went on to dedicate his report to the 26 miners who died at Westray made them clear. This was not going to be a coverup.

The inquiry report conveys a detailed description of what Richard called, in a much-quoted phrase, "a predictable path to disaster." Early on, the report notes Westray management's "... disdain for safety" and goes on to say that the Westray story was one of "... incompetence, of mismanagement, of bureaucratic bungling, of deceit, of ruthlessness, of coverup, of apathy, of

“

*The most important thing to come out of a mine is the miner.*

disdain for safety regulations that helped kill 26 miners, walked free without any punishment.

While the criminal case was winding its long way through the courts, the Richard Inquiry, long delayed by legal challenges from Westray managers, began its investigation in 1995. The work of the inquiry was hampered by the refusal of two key Westray figures, Clifford Frame, the company founder, and Marvin Pelley, the president of Westray, to attend the hearings and testify. Nevertheless, after two years of intensive work, Justice Richard issued his report.

A first hint that this document was not going to be the coverup operation some observers in Pictou County had feared came on its opening pages, where the justice quoted a 19th century French mine inspector, Frederic Le Play, who had said, "The most important thing to come out of a mine is the miner." If any doubt remained about where

expediency and of cynical indifference." Little wonder that Westray managers had done their best to slow and sabotage the inquiry!

Richard notes that in the first two months the mine was officially open after Sept. 11, 1991, it experienced four more roof-falls in addition to ones that had occurred during preliminary work before the gala opening. Mine manager Gerald Phillips, one of the Westray officials who refused to return to Nova Scotia to testify, had minimized the rock falls at the time, but miners testified that they included very dangerous near misses. They also told the inquiry that the company deferred and delayed implementing the improved roof supports and regular stonedusting of coal dust that would have improved their safety at work. Throughout the inquiry, Justice Richard heard accounts of coal dust coating the tunnel floors and other surfaces in the mine, of inadequate

ventilation and systematic management disdain for safety regulations, all possible because provincial regulators took a light touch, don't-make-waves approach to the many safety breaches observed at Westray.

had been a key political backer for Westray, tried to blame the miners for the disaster.

But if the (non) progress on regulatory and criminal charges might have been bitter for the Westray families, the report of the



“The Department of Natural Resources had failed to carry out its statutory duties and responsibilities as they related to the Westray project,” said Richard in evaluating the regulatory failures that allowed Westray to continue to operate without any effective remedies being implemented for the serious (and soon-to-be lethal) safety breaches encouraged by managers.

Given all this, it was a particularly bitter pill to swallow when Phillips and company founder Clifford Frame, as well as Douglas Cameron, who

Richard inquiry was a different matter. It is, in some ways, a curious document, drafted with all the verbal precision and attention to detail consonant with the lead author's legal background but still infused with passionate outrage (what Jonathan Swift called “savage indignation”) at the wilful failures of due diligence on the part of mine management and government safety inspectors he discovered while working his way through a staggering amount of evidence and testimony. Justice

## Chapter 4 Hell's Impunity: The Failure of the Courts, the Partial Success of the Public Inquiry

Richard summarized the evidence his inquiry had heard in a report that weighed in at 800 pages and included 74 recommendations. One of his key suggestions was the creation of a new criminal law to make it more possible to hold companies and executives to account.

For Allen, whose brother died in the mine, the outcome of the inquiry was a positive surprise.

"The day the inquiry report was released, we (family members) were all in a room at the

Museum of Industry," Martin told me. "The thinking was that co-operation to that point was non-existent from any officials and since Justice Richard was appointed by then-premier Donald Cameron, a big Westray supporter (and a coward, I might add), we could expect nothing good. However, in my opinion, Justice Richard wrote an excellent report, pulled no punches, made excellent recommendations, vindicated the miners themselves and laid the blame squarely where it belonged."

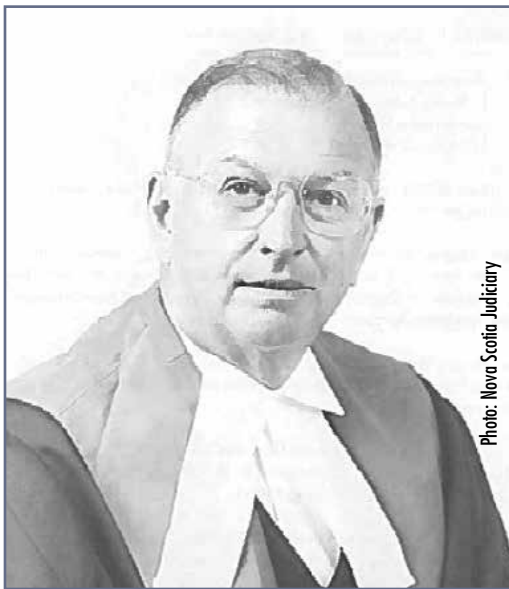
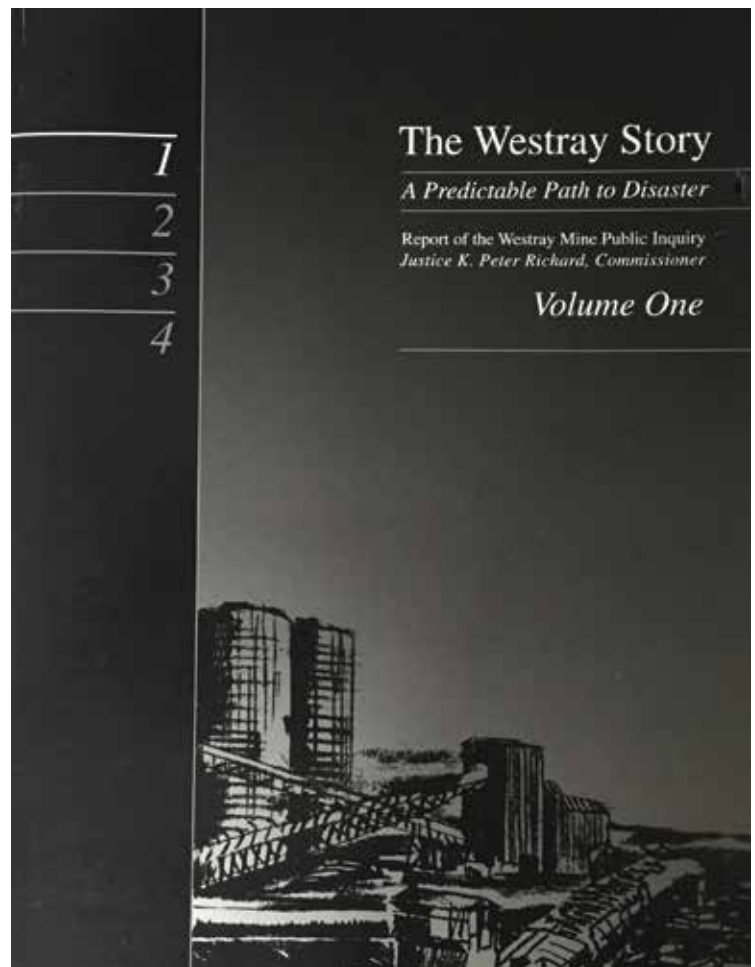


Photo: Nova Scotia Judiciary

Justice K. Peter Richard



As the next chapter makes clear, it took far more than a judicial recommendation to get the Westray bill passed. Workers and their unions, in a drive spearheaded by the USW, had to lobby hard for another six years before C-45, the Westray Act, a flawed but important first step toward holding businesses and managers to account when they recklessly endangered workers, was passed in 2003, coming into force in 2004.

Although no Westray management figures were ever successfully prosecuted, the surviving

miners (117 not killed in the blast) were awarded severance pay for 12 weeks, which came to \$1.2 million. Individual cheques to the miners ranged from \$6,626 to \$12,367. The severance pay was only awarded six years after the mine explosion and only because of concerted public pressure. A \$30-million lawsuit was launched against the Province of Nova Scotia by families of the dead miners, but Nova Scotia's Supreme Court threw it out, ruling that the province was protected from lawsuits under the Workers' Compensation Act.



Name	Party	Meeting	Date	Time	Comments	No.	Yec!
John FINDLAY	L	C. Block Gov Lobby	TUESDAY APRIL 30	11 AM			
STAN KEYES	L	C. Block entrance	MONDAY APRIL 29	3:30 PM			✓?
JANKO PERIC	L		TUES APRIL 30	10 AM			✓
Philip MAYFIELD	CA	WEST BLOCK 352	TUES A-30	11:45 AM			✓
DIANE MARIEAU	L	CONFEDERATION 529	WED MAY 1	3:30 PM			✓
BOB MILLS	CA	OFF LOBBY	THURS MAY 2	1 PM			✓
IVAN GROSE	L	C 313	TUES A 30	1:30 PM			✓
John Richardson	L	Justice R100	MAY 3	9:30 AM			
DAVE Chatters	CA	Justice 611	MAY 1	8:30 AM			RAT
Bob KILGER	CA	members lobby	MAY 2	10:30 AM			✓✓
	L	CASE 234	MAY 1	4 PM			✓✓





**P**

at Van Horne, currently legislative representative for the United Steelworkers in Ottawa, told me recently that her union's efforts to

get Parliament to respond to one of the key recommendations of the Westray Inquiry, a law that would make it more likely that management and board figures could be held criminally responsible for negligent decisions that led to

worker deaths and injuries, began very soon after the inquiry report was tabled.

"We held our first member lobby for a Westray bill in 1999," she said. "Our members met with panels of politicians while they were in Ottawa for a policy conference."

Noting that the Westray Act was only passed in 2003, Van Horne remembers the years of lobbying that led up to the bill's final passage.



Steelworkers take their campaign to Parliament Hill, launching a lobby campaign of Members of Parliament.

"We brought people in from across the country, put them up in hotels and kept them there for weeks. Dozens of members were involved. We roamed the halls and talked to MPs. This was before security on the Hill got tighter and we were able to go everywhere."

"We fought for the public inquiry in the mid-1990s, which put forward a recommendation in favour of this kind of law. Our activists lobbied every federal politician in two separate Parliaments to get their support for a law to amend the Criminal Code of Canada."

“

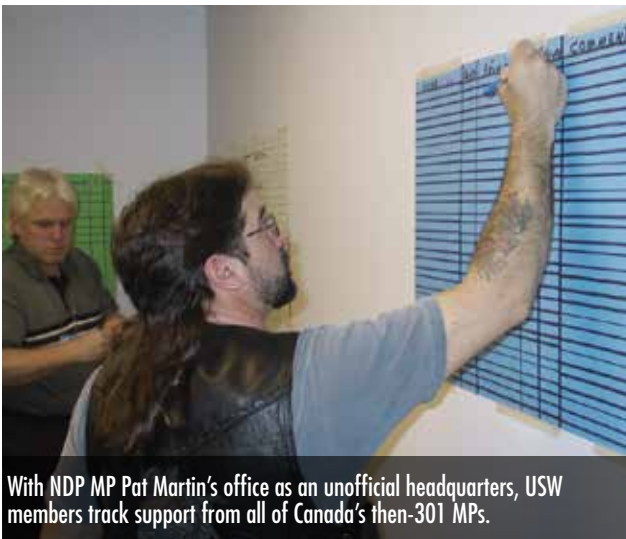
*Our activists lobbied every federal politician in two separate Parliaments to get their support for a law to amend the Criminal Code of Canada.*

Immediately after the Westray Act was passed in late 2003, Steelworkers National Director Lawrence McBrearty told the press:

"Our union has fought long and hard for this legislation to hold corporations, their executives and directors criminally accountable for deliberately putting workers' lives at risk.

Van Horne credits the NDP for its active support for a new bill. NDP members introduced private member's bills to keep the debate alive, she said, mentioning Alexa McDonough, then the party's leader, and Pat Martin, then-Winnipeg Centre MP, as two NDP members who had authored private member's bills. She credited Martin for allowing Steelworkers in Ottawa to lobby for a Westray bill to use his offices on the Hill as an unofficial headquarters for their efforts.

But the NDP was not alone in addressing Westray issues. Peter MacKay, Elmer MacKay's son, held a parliamentary seat from Nova Scotia during the years that unions were lobbying for a bill to correct the deficits in legal accountability revealed by the Westray disaster. In 1999, MacKay introduced a private member's motion calling for accountability on the part of employers when employees were injured or killed at work. (I owe this detail to the research of Dr. Steven Bittle, Assistant Professor of Criminology at the University of Ottawa. His richly researched and comprehensive book *Still Dying for a Living* is



With NDP MP Pat Martin's office as an unofficial headquarters, USW members track support from all of Canada's then-301 MPs.

an invaluable resource for anyone who cares about workplace health and safety issues and in particular the sordid history of the Westray Mine and the courageous work done by the Steelworkers and other trade unions in fighting for legislative reform on these issues. This document is heavily in debt to Dr. Bittle and his exemplary scholarship.) MacKay's motion and one of the NDP-sponsored private member's bills were sent together to the Justice Committee of the House of Commons in June of 2000, but the government was slow to respond, and that version of a possible Westray Act died on the order paper.

The next Parliament's Justice Committee held hearings on Westray but failed to come to consensus and reported out to the House, where government law writers drafted a bill, only to see progress stalled by another year of government delays. The NDP, in particular MP Bev Desjarlais, pushed hard to get Bill C-45 addressed and the bill passed unanimously in the House of Commons (Oct. 27, 2003) and the Senate, receiving Royal Assent on Nov. 7, 2003. The amended Criminal Code became law on March 31, 2004.

The new law created rules for establishing criminal liability to organizations for the acts of their representatives, and established a legal duty for all persons "directing the work of others" to take reasonable steps to ensure the safety of workers and the public. It set out the factors that courts must consider when sentencing an organization and provided optional conditions of probation that a court may impose on an organization (i.e., municipal governments, corporations, private companies, unions, charities and non-governmental organizations).

Vern Theriault, the mine worker whose comments about his experience going back down into the Westray mine as part of the rescue efforts are cited in an earlier section of this document, played an

active role in the ongoing lobby for a new law.

"I was in Ottawa in 1999 for a health and safety meeting," he told Straight Goods News in 2012. "In 2000 I got a chance to lobby. We fought hard but the bill didn't get passed then," he said. "In 2002, I lobbied again, and again the bill didn't get passed. In 2003 we came back up on the Hill, and that time we got the bill passed."

"We wouldn't have got the bill passed if we hadn't been persistent," Van Horne told me in late 2015. Even more persistence has been needed to get the Westray Act effectively enforced, and that is still a work in progress. As the next chapter illustrates, the enforcement record for the law's first decade has been dismal. However, thanks to unrelenting work by the labour movement, led again by the Steelworkers and their Stop the Killing, Enforce the Law campaign<sup>10</sup>, the past few years have seen some small progress, with at least one criminal investigation aimed at a major corporation in B.C. launched in 2015 and charges under the Westray Act laid in a second B.C. case the same year.



Retired USW Canadian National Director Lawrence McBrearty holds a copy of Bill C-45, the Westray Law, with former Prime Minister Jean Chrétien.



# W

riting in 2013, a decade after the Westray Act was passed, Steelworkers legal counsel Robert Champagne was not impressed by what had been accomplished to that date in enforcing the law. In a document prepared for his union, Champagne wrote:

"Amendments passed in 2004 to the Criminal Code of Canada to make it easier to impose criminal liability on corporations for serious

workplace injuries and fatalities are being woefully underutilized. There have been only three successful prosecutions under the Westray amendments to date. Sentences issued in these prosecutions have been paltry. Serious workplace injuries and fatalities continue to occur at alarming rates."

Champagne also provides a clear summary of what, in theory, is now possible under the Westray Act.



USW National Director Ken Neumann, District 6 Health and Safety Coordinator Sylvia Boyce and District 3 Director Stephen Hunt lay a wreath at the Westray Memorial as the union steps up its campaign to enforce the Westray Law.

"The Westray amendments," he writes, "make it easier to hold corporations liable for criminal negligence by:

- ▶ creating a new legal duty (s. 217.1) that all persons directing work, or having the authority to direct work, must take reasonable steps to prevent bodily harm arising from work, and
- ▶ creating rules (s. 22.1) for attributing liability to organizations for the acts of their representatives which are criminally negligent."

In brief, he explains, "... if a person with the duty to take all reasonable steps to prevent bodily harm to a worker fails to do so, and in failing

offence of criminal negligence under the Westray amendments seem tough, and they might be if the law were properly enforced. The penalties, in theory, include for individuals:

- ▶ Injury – 10 years in prison
- ▶ Death – life in prison
- ▶ Unlimited fine and 15% victim surcharge

And for corporations the penalties could in theory include:

- ▶ Criminal record
- ▶ Probation
- ▶ Unlimited fine and 15% victim surcharge

“

*Amendments ... to the Criminal Code of Canada to make it easier to impose criminal liability on corporations for serious workplace injuries and fatalities are being woefully underutilized.*

to do so acts with wanton or reckless disregard for the life and safety of the worker, then that person is guilty of criminal negligence (s. 219). If one or more representatives of a corporation commit criminal negligence and a senior officer (or officers) of the corporation departs markedly from the standard of care that could be reasonably expected to prevent the representative from committing criminal negligence, then a corporation can be convicted of criminal negligence (s. 22.1)."

Penalties for a conviction for the indictable

## A. Lax Enforcement

The devil, the old saying goes, is in the details. The devil in Westray Act history during the law's first decade lay in its startlingly thin record of enforcement. As noted, when Steelworkers lawyer Rob Champagne was writing about Westray in 2013, only a few charges had been laid and sentences were 'paltry.'

On July 10, 2014, the Canadian Criminal Justice Association, a group founded in 1919 that describes itself as "... an umbrella organization representing all elements of the criminal

justice system, including the public," sent a letter to Justice Minister Peter MacKay echoing Champagne's concerns. It read, in part:

"The CCJA recommends that this issue be referred back to the Standing Committee on Justice and Human Rights to investigate the root causes of the well-documented lack of application of the Westray laws across Canada. After more than 10 years since the law's enactment, we feel that it is an appropriate time to look into the enforcement status of this bill. We recommend that this committee conduct an inquiry into the existing training provided to police officers, Crown attorneys, and health and safety regulators in each province and territory to assess existing gaps in awareness and training and investigate potential solutions. Further, we recommend that this

to the death of Steve Ecuyer, a Transpave worker, in October of 2005. Ecuyer was crushed by a machine that was operating with its safety cut-off mechanism unplugged. (The observant reader will note the similarity here to the situation at the Westray mine, where methane sensors that should have detected buildup of the explosive gas had also been disconnected.) The company pled guilty to criminal negligence in December of 2005, and in March of 2008 the courts imposed a fine of \$110,000.

The second Westray Act conviction also took place in Quebec. (It is worth noting that Quebec workers have built up a very strong union movement in the province, a fact that may both reflect and enhance a public culture that takes workers' lives more seriously than in other

“

*Quebec's strong union movement and public education work done by the USW ... have created a much higher level of popular consciousness about health and safety issues.*

committee work toward identifying other reasons for the limited application of the Westray laws to injuries and fatalities in the workplace. Following this inquiry, we suggest that the minister's office work with provincial and territorial counterparts toward a more thorough and accurate application of the Westray amendments to appropriate workplace injuries and fatalities."

The first two convictions under the Westray Act did not occur until years after the law was passed. The first was laid against Transpave, a Quebec paving stone manufacturer and it related

parts of Canada.) On June 12, 2006, Pasquale Scorocca, the owner of a Quebec landscape company, was driving a backhoe when it struck and killed Aniello Bocanfuso. The court heard evidence that the backhoe had no functional front brakes, had no brake fluid in the reservoir and had never undergone routine maintenance since it was purchased in 1976. After the fatal accident, inspection revealed 14 other serious defects, including non-functional horn, turn signals and parking brakes. Despite evidence of ongoing and serious negligence, the court imposed a

relatively light sentence, a conditional sentence of imprisonment of two years less a day, to be served in the community with conditions, including a curfew.

Dominic Lemieux, assistant to the director of USW's District 5 in Quebec, told me in a phone interview in early August, 2016 that he agreed with the suggestion that Quebec's strong union movement and public education work done

## B. The Sam Fitzpatrick Case

(Much of this section first appeared in earlier form as articles on The Tyee website, [www.thetyee.ca](http://www.thetyee.ca).)

"They ought to slap the cuffs on them," Brian Fitzpatrick said. The tall, rugged former logger and heavy equipment operator was talking about the Peter Kiewit Sons Co. managers and supervisors who he holds responsible for his son Sam's death.<sup>11</sup>

“

*Kill a worker, go to jail,  
should be the rule.*

*Stephen Hunt*

*United Steelworkers District 3 Director*

by the USW over the last decade have created a much higher level of popular consciousness about health and safety issues at the province's work sites.

"Quebec media used to put stories about workplace deaths on the back pages," Lemieux told me. "Now, when a worker dies on the job, it is more often a front-page story. People in Quebec get angry when a worker dies and want to know if management has made decisions that put workers' lives at risk. People say it is not normal for workers to be killed at work."

There have been a few more prosecutions and one more conviction since Champagne made his disheartening assessment, and that qualified good news is described in more detail below. But first, a closer look at some of the cases that should have generated Westray Act charges but have not yet done so.

I first met Fitzpatrick in the summer of 2012, when he and nearly a dozen family members of other workers killed on the job formed a delegation, organized by the BC Federation of Labour, to meet in Vancouver with two provincial ministers to press demands that employers who take management risks that kill or injure their employees face real and effective legal sanctions, up to and including imprisonment.

According to the brief the family members delivered to the ministers that summer:

"It is our firm conviction that until corporate criminal negligence is taken seriously; until corporate representatives are sentenced to jail time due to their criminal negligence; these preventable and tragic deaths and serious injuries will continue to occur."

Sam was crushed by a falling boulder at a work site on Toba Inlet in 2009, in an incident that a WorkSafeBC inspector said reflected "reckless



and grossly negligent" decision-making by company management who had ordered heavy equipment to operate upslope from where Sam and his brother Arlen were working despite an incident the previous day in which a huge rock came down the slope and barely missed workers below.

Fitzpatrick and the other family members urged the provincial politicians to support a series of reforms designed by the United Steelworkers as part of its Stop the Killing, Enforce the Law campaign. They included:

1. **Dedicate a Crown prosecutor to deal with workplace fatality and serious injury cases**

The dedicated prosecutor will become an expert in reviewing these investigations against section 217.1 of the Criminal Code<sup>12</sup> and, therefore, more accurately determining the likelihood of conviction.

2. **Train police services on section 217.1 of the Criminal Code**

This will ensure that police understand the law and know what to look for in workplace fatality and serious injury cases in order to collect the best evidence to support the Crown counsel's decision-making.

The Canadian Labour Congress has produced a guide to the Criminal Code's role in workplace death and injuries<sup>13</sup>

### **Mandatory police investigations of all workplace fatalities and serious injuries**

"Kill a worker, go to jail, should be the rule," Stephen Hunt of the United Steelworkers<sup>14</sup> who was part of the meeting with ministers, told me in a phone conversation on Aug. 23, 2012. (To date, more than 50 Canadian towns and cities have endorsed the demands of the USW Stop the Killing, Enforce the Law campaign.<sup>15</sup>)



Sam Fitzpatrick, pictured left, with his brother Arlen was crushed by a falling boulder while working for Peter Kiewit Sons Co. at a work site on Toba Inlet, B.C. in 2009.

"In just one ugly moment, Sam was killed," Brian Fitzpatrick told me. "His hopes, dreams and joy of life smashed out of him. Arlen's days as a young man, looking forward with youthful enthusiasm to the future, were ripped away from him in the same ugly moment. In that horrible instant, the colour left his world. Sam and Arlen relied on each other for many things and were closer than twins on many levels spiritually and emotionally."

### **Sam's Story and the Story of Kiewit, the Firm that Killed Him and Too Many Other Workers**

Bent over the rock he was drilling, focused on the noisy, high-power drill, working without a radio and shut off from hearing any shouted warning by the ear protection he wore, Sam Fitzpatrick may not have even seen the boulder that killed him. On the clear, cold morning of Feb. 22, 2009, two young B.C. brothers went to work together at a construction project on Toba Inlet north of Powell River. Before the end of their shift, one of the men, Arlen Fitzpatrick, had watched in horror as an enormous stone rolled down the hill and crushed the life out of his brother Sam.<sup>16</sup>

Peter Kiewit Sons Co., the Fitzpatrick brothers' employer at the time of Sam's death, is a huge U.S.-based multinational firm that does a lot of work for the B.C. government and other clients in the province. The firm, implicated in seven other B.C. worker deaths, has also been fined for safety breaches leading to worker death and injury in the U.S., and accused of shoddy workmanship on at least two major U.S. public works projects. Kiewit veterans describe a dangerous corporate culture of speed-up and corner cutting on company sites, but the B.C. government says it is entirely happy with Kiewit's work. Perhaps coincidentally, Kiewit has been a significant donor to the B.C. Liberals over the past decade.<sup>17</sup>

### **Death in the Afternoon**

According to a WorkSafeBC inspection report, the Fitzpatrick brothers, employed by the construction giant Kiewit as rock scalers on Plutonic Power's run-of-the-river project at the head of Toba Inlet, had raised safety concerns with their supervisor about their work assignment that morning, pointing out that the day before, heavy equipment working uphill from them had knocked down a boulder that tore through the construction area and damaged a piece of equipment.

Despite the explicit commitment made the day before by Kiewit management that workers would not be assigned to work downhill from heavy equipment, the Fitzpatrick brothers were being ordered back into the same dangerous situation.

Over the morning the clear weather turned ugly, bringing a steady, moderate rainfall that may have further destabilized the uncleared piles of debris above the Fitzpatrick brothers. Or perhaps the excavator operator, working above them, inadvertently displaced the killer boulder. At least that's what Sam and Arlen's father Brian Fitzpatrick thinks happened. A ruling by a government appeals tribunal, however, says the source of the fatal boulder is still undetermined.

In any event, around 1 p.m., the excavator operator first observed a boulder rolling downhill toward the brothers and radioed a warning. Arlen, who had walked down to the hoe drill (a piece of heavy equipment) below where Sam was working, heard the radioed warning and tried to alert his brother. But Sam didn't hear the desperate shouts and by the time Arlen had run uphill to where the boulder had struck, his brother was dead.

Barbara Deschenes, the WorkSafeBC inspector who investigated Sam's death blamed Kiewit for "deficient safety planning and supervision and

lack of effective risk assessment." After the release of her report, which led to the company being assessed a record-level quarter-million-dollar fine<sup>18</sup>, the inspector told the Vancouver Province that Kiewit had been "reckless and grossly negligent," at Toba Inlet.<sup>19</sup>

In mid-March, 2013, the Workers' Compensation Appeals Tribunal (WCAT) ruled on a Kiewit appeal against that record-setting "presidential" fine. In the ruling, the WCAT officers reiterated many of the earlier WorkSafeBC criticisms of Kiewit. They said that while they could not find that the boulder that killed Fitzpatrick was dislodged by the heavy equipment operating above the Fitzpatricks, they could confirm that Kiewit "committed high-risk violations with reckless disregard." The tribunal reduced the fine originally assessed against Kiewit to a 'Class A' penalty just under \$100,000.

Although the tribunal ruled that it could not with certainty say that the boulder that killed Fitzpatrick came from the work site, it did say:

"In these circumstances, we would describe it as "heedless," "wanton," "extreme," "gross," and "highly irresponsible" for the employer to have known that there was a potential for rocks to roll through the work site but not take adequate steps to contain this risk by way of a detailed and carefully monitored scaling program."

Peter Louvros, an expert at rock scaling and slope stabilization, worked for Kiewit on its Sea to Sky Highway project before the 2010 Olympics. He told me in 2012 that he came to be very critical of the company and what he saw as its safety shortfalls. Kiewit hired Louvros as a contractor to complete the Toba rock slope work after the Fitzpatrick death. Louvros provided the Fitzpatrick family with a document detailing both his negative experiences with Kiewit management on

the Sea to Sky and his assessment of what factors led to Sam Fitzpatrick's death. The document was filed with WCAT as evidence in the tribunal's review of the Kiewit penalty, but the tribunal



Before Sam Fitzpatrick was killed by a boulder, concerns had been expressed to Kiewit management about excavator work being performed above workers.

declined to treat Mr. Louvros as an expert witness because he was viewed as evincing insufficient neutrality. Be that as it may, Louvros was, like the original WorkSafeBC inspector, critical of Kiewit's safety procedures. Describing his frustrations while working for Kiewit on the Sea to Sky, Louvros wrote:

"When scheduled maintenance of slopes (rock scaling after blasts or excavation operations) management and the general superintendents would direct machinery to proceed with work in the safety perimeter of scaling operations being performed, resulting in scaling operations being suspended by myself due to the unsafe environment."

Louvros says that he quit his position with Kiewit's Sea to Sky project because of his safety concerns.

"When I walked into the manager's office and personally handed him my resignation, I stated to him "you will one day kill someone if you keep operating in this manner," he writes in the document submitted to the WCAT hearing.

He is equally scathing in his assessment of the company's role in Sam Fitzpatrick's death. "If I were to rate the management support for worker and public safety, with 1 being poor and 10 being excellent, I would be required to rate their support as 1," he writes in his conclusions, after citing multiple instances during his contract work for Kiewit in which the company continued to order his scaling crew to work downslope from heavy equipment or to otherwise endanger his workers.

Sam Fitzpatrick was not the only worker to die in connection with Kiewit's Toba Inlet project. Only a few months before Sam's death, a pilot and six workers (five of them Kiewit employees) being flown to Toba Inlet died in a plane crash that federal investigators linked to ongoing company pressure for the shuttle planes to fly under unsafe conditions.<sup>20</sup>

Although the Federal Transportation Safety Board report on the crash cautiously said it found no evidence of 'overt' pressure on the pilot to fly on the day of the accident, it did note that Kiewit's travel coordinator had previously pressured the airline to ignore safety concerns, and that such pressure continued to be applied after the fatal crash.

### **Firm Has Been Blamed for Worker Deaths and Construction Flaws Both in B.C. and U.S.**

Kiewit divisions and joint-venture structures to which the company belongs have been

held responsible for multiple worker deaths in Boston and Texas by a U.S. government agency.<sup>2</sup> In addition, the construction giant has been accused by American journalists of dangerously flawed work on two major U.S. projects as well as allowing a drinking party to be held at a Washington State work site.<sup>22</sup>

Here in B.C., in addition to the worker deaths, the company was targeted by BC Hydro and the BC Transmission Corporation in a suit for nearly \$400,000 in 2009. The suit alleges the company had failed to pay for consulting services. The company endured a storm of criticism and ridicule in 2012 over the notorious 'ice bomb' debacle on the Port Mann bridge<sup>23</sup> (on which the American company was contracted for "design and build" responsibilities). One of Kiewit's cranes on the same project collapsed, hurling a huge slab of bridge deck into the Fraser River. And the lethal Toba Inlet project was back in the news in December 2012, when Alterra Power management told the *Vancouver Sun* that an early December landslide had done so much damage to the penstock on the Montrose Creek portion of the project that it would require up to \$10 million and months of delay before the project could be once more fully operational.<sup>24</sup>

Brian Fitzpatrick had for several years been calling for the firm he holds responsible for his son Sam's death to be banned from doing business in Canada. All of this will seem horribly familiar to anyone who has studied the Westray mine disaster. The combination of speedup and lax enforcement of safety rules looks a lot like what happened at Westray decades before.

### **"Ban Kiewit from B.C."**

When I spoke with him in 2013, Brian Fitzpatrick said the company ought to be banned from work in Canada because of its flawed safety record.

Fitzpatrick also said that Kiewit management figures ought to be charged criminally under the seldom-enforced federal Westray law that allows for prosecutions against bosses who endanger their workers. (As noted below, the RCMP have opened an investigation into Sam Fitzpatrick's death and indicated they are looking into the possibility of Westray charges against Kiewit and some of its managers.)

Johnson, Manager, Communications, for the Port Mann/Highway One project, the Transportation Investment Corporation.<sup>26</sup>

Johnson speaks for Transportation Investment Corporation, the public agency in charge of the project. The email read in part:

"TI Corp. is very pleased with the performance of Kiewit/Flatiron in the delivery of the Port Mann/Highway 1 Improvement Project. We have the

“

*Until corporate representatives are sentenced to jail time ... these preventable and tragic deaths and serious injuries will continue to occur.*

Few B.C. taxpayers know how much public work is done in this province by Peter Kiewit Sons Co. and joint-venture structures in which Kiewit participates. For the \$2.46-billion Port Mann/Highway One project, Kiewit is part of the Keiwit-Flatiron General Partnership. In various other corporate incarnations, Kiewit has been a major player in the taxpayer-funded development of the Sky Train system, the pre-Olympic Sea to Sky Highway expansion and the \$600-million, 196-megawatt Toba Inlet/Montrose Plutonic Power run-of-the-river hydroelectric project (which stands to garner up to \$73 million in federal subsidies over its lifetime, according to media reports.)<sup>25</sup>

Plutonic is now doing business as Alterra Power Corp.

Although the local Kiewit office, like headquarters in Omaha, did not choose to respond directly to requests for comment, after my request went to the B.C. office, I did receive an email from Greg

highest confidence in Kiewit/Flatiron's work and they adhere to strict and multilayered quality assurance processes to ensure all construction meets design and quality criteria."

Some Kiewit veterans don't share the government's confidence in the firm.

Mike Pearson, who contacted Brian Fitzpatrick when he read early media accounts of Sam's death and Kiewit's appeal against the penalty assessed by WorkSafeBC, was a blasting superintendent for Kiewit on the Sea to Sky project. He told me he felt he had to speak out about what he knows about the company.

"There is no way they should get away with this," he said when he and Brian Fitzpatrick met with me at a west end coffee shop. "When I worked for Kiewit, we got asked to do stupid, dangerous things."

Another worker who had been with Kiewit since he got out of high school was unwilling to be

quoted by name, for fear of retaliation from the company, but he did confirm Pearson's account of being told to do dangerous things on Kiewit sites.

"They're hypocrites," the young man said. "They make a lot of noise about safety in public, but then they tell you to do unsafe work on the job. When I got hurt doing something by hand we should have had a crane for, they pressured me not to report it to WCB. Now I'm sorry I didn't." (American investigative journalists have reported that Kiewit-associated joint ventures operating in California regularly paid workers on a Bay Bridge project not to report injuries.)<sup>27</sup>

This is another eerie echo from the situation at Westray. There too, workers were bribed and pressured not to report workplace injuries. This policy of hiding injuries from government regulators paid off for Westray Mine. In the weeks before the mine blew up, it was awarded the Canadian Institute of Mining, Metallurgy and Petroleum's prestigious John T. Ryan safety award, given to the mine each year that has the fewest injuries reported to provincial regulators. Ironically, the Westray miner who attended the safety award ceremony to accept the honour on behalf of his company died only weeks later in a preventable accident. The institute rescinded the award in 1998, announcing that Westray had conspired to hide injuries that occurred at the mine.

Despite the troubling death toll associated with Kiewit's B.C. operations and their projects in the U.S., the Omaha-based giant continues to profit from many contracts in B.C., including the trouble-plagued Port Mann Bridge/Highway One project. In addition to the 'ice bomb' incident of December 2012, the Kiewit operation on the Port Mann was marred earlier that year by a crane collapse that sent a 90-ton section of bridge deck thundering into the Fraser River.<sup>28</sup>

The year before, the company was required to rebuild a flawed retaining wall at the Cape Horn interchange.<sup>29</sup>

### **"Don't Get in the Way of Companies Like Kiewit"**

Curious about the relationship between Kiewit and the provincial government, I spoke in 2012 with a knowledgeable observer who has decades of experience both within the Ministry of Transportation and in the heavy construction industry. The ministry awards a lot of its largest contracts to Kiewit. The observer, who asked to remain anonymous, told me that Kiewit is "... the biggest road-and-bridge building presence in the province. They do good work, but they are notorious for how belligerent they are with front-line provincial employees."

The source said that front-line staff are well aware that Kiewit is a powerful company with direct access to heavy hitters within the B.C. Liberals and to senior officials throughout the provincial government. (According to Elections BC, Kiewit donated \$96,575 to the B.C. Liberals between 2005 and 2011.)

Here is another disturbing echo of the Westray mine disaster. Kiewit, like the companies and financiers behind Westray, reportedly enjoys close and friendly relations with key provincial politicians. Like the Westray mine, Kiewit projects in B.C. sometimes seem to benefit from inattentive government safety regulation. Only a cynic would suggest that generous political donations can buy a company a pass on safety inspections, accident investigations or criminal charges, but it is hard not to wonder about what looks like a repeating pattern. If you are a friend of the party in power, does that friendship win you regulatory and criminal law immunity?

### Meanwhile, in Another Part of the Forest: Kiewit's American Troubles

B.C. is not the only jurisdiction in which Kiewit has been plagued with problems. My research has identified a number of Kiewit-worker deaths blamed on company failures to enforce safety procedures in the U.S., and several large public projects on which the Omaha company stands accused of improper reporting of injuries and deceptive record-keeping on work quality. These troubling official reprimands were issued in Massachusetts, Texas, California and Washington State.

In 2012, I asked B.C.'s Minister of Transportation, Mary Polak, if she was aware of Kiewit's spotty safety and performance record in the U.S. and whether it gave her any concern about the firm doing so much business with the province. She replied by email, saying:

"Every life lost in the workplace is tragic and government, ministries and contractors work very hard to ensure the safety of workers on all our projects.

"I cannot speak to what has occurred in other jurisdictions, but I am confident that for the Port Mann Highway 1 Project, TI Corp. has the necessary oversights in place to ensure that Kiewit meets the safety and performance expectations, and that all B.C. regulations are adhered to – as is the case with all ministry projects undertaken in B.C."

### Kiewit Basics and No Comment from Company

Peter Kiewit Sons ("Kiewit") is an Omaha-based multinational construction, mining and engineering firm. Founded in 1884 and ranking as the 32nd-largest private firm in the U.S. in 2015, Kiewit reported revenues of over US\$10

billion that year<sup>30</sup>. According to its website, Kiewit employs 11,350 core staff and 14,350 skilled craft workers.<sup>31</sup> Kiewit is often described as 'worker owned,' with 100% of stock held by active Kiewit employees.

I contacted Kiewit's head office in the U.S. to invite company comment on worker deaths and claims of bad corporate behaviour heard from a number of sources, but despite repeated requests and calls to Kiewit's B.C. headquarters, no one from the company made themselves available for an interview. The company also failed to respond to my requests for clarification on connections between the Omaha headquarters of Kiewit and various corporate entities and joint ventures cited for safety and quality problems in the U.S. and B.C.

Where a firm or joint venture is cited in this story as linked to Kiewit, I have been able to procure independent evidence for that link.

## C. The Lyle Hewer Case

Sometimes, when the law is not being appropriately enforced, a civil-society body like a trade union will undertake launching a private prosecution. In November 2010, the USW in B.C. did just that. In November 2004, sawmill worker and Steelworkers member (Local 1-3567) Lyle Hewer worked at Weyerhaeuser's New Westminster sawmill. Hewer died a terrible death by asphyxiation in an enclosed space at the mill. He left behind a wife and two children. WorkSafeBC vice-president Roberta Ellis told the *Vancouver Sun* in 2007, announcing a record-breaking fine against the company for its safety failures in the Hewer death that the case "...arose out of a high-risk violation and the violations were committed wilfully or with reckless disregard."<sup>32</sup>

A supervisor had ordered Hewer to clean out material from a hog, a high-speed grinder that reduces wood waste. The nearly 20-foot-high hopper that fed waste wood down onto the

be dislodged and bury the worker, exactly what happened to Lyle Hewer.

Another worker, ordered into the hog by a manager, had indicated that day he thought doing

“

*In spite of the glaring nature of the case and the urging of WorkSafeBC and police, the B.C. prosecution service declined to launch a prosecution.*

grinding mechanism of the hog often clogged, and workers were then ordered to enter the hopper and poke at the plug of wood and waste overhead, creating a danger the material would

so would expose him to danger. Workers regularly climbed inside to manually remove waste-wood products and clear out any jams, even though the hog constitutes a “confined space” as defined in B.C.’s workers’ compensation laws. WorksafeBC documents say that confined spaces represent “significant risk of injury and death.”<sup>33</sup>

Hewer climbed into the hopper, became trapped and was asphyxiated.

At first it seemed that Hewer’s needless death would lead to some accountability for the lumber giant. Investigators from both WorkSafeBC and the New Westminster police found that Weyerhaeuser management was aware that the hopper was a safety hazard but had resisted repeated requests to fix it. After Lyle Hewer died, Weyerhaeuser repaired the hopper at a modest cost of about \$30,000.

Following its investigation, WorkSafeBC fined Weyerhaeuser \$297,000, the largest such penalty up to that date in B.C. history. The New Westminster police recommended charges under the Westray amendments to the Criminal Code. So, the case was on its way to court and Hewer’s



USW Member Lyle Hewer was killed at Weyerhaeuser's New Westminster sawmill.



family and fellow workers could feel some relief that his tragic loss would at least lead to some boardroom accountability, right? Apparently not.

In spite of the glaring nature of the case and the urging of WorkSafeBC and police, the B.C. prosecution service declined to launch a prosecution. Asked in the legislature, then-attorney general Wally Oppal indicated there

was no need to explain the Crown's reasons. His office (incorrectly) said that the matter was under federal jurisdiction.

The United Steelworkers decided that it wasn't going to allow this needless death to go unpunished. So it sought leave from the courts to launch a private prosecution. Vancouver lawyer Glen Orris began a year of legal work to



Hewer was ordered to climb into the hog, a grinder that mulches wood waste. He became trapped and was asphyxiated.

show that there were reasonable grounds for a prosecution.

"Crown counsel rejected the recommendation of the New Westminster Police that a charge of criminal negligence causing death was warranted against Weyerhaeuser," said USW Western Canada Director Stephen Hunt. "Therefore we have been left with no alternative other than pursuing a private prosecution to see that justice is done."

I talked with Glenn Orris in August of 2016, and he remembers the case vividly.

"Although the crown doesn't have to give reasons

for not laying charges," he told me, "I assume that the decision reflected an opinion in the Crown counsel office that there was 'no substantial likelihood of conviction' on the base of the evidence. I believed that there was a charge to be laid and a case to be met. There was evidence, in my opinion, of gross negligence."

Orris explained that private prosecutions are rare. Even as a long-serving veteran in the Canadian courts, he has attempted four such prosecutions in his career. He advised the USW that if the prosecution relied upon the Westray Act language to charge Weyerhaeuser as a corporation with



District 3 Director Stephen Hunt, Assistant to the Director Scott Lunny and lawyer Glen Orris speak to the media as the union launches a private prosecution against Weyerhaeuser

criminal negligence "...we could possibly get charges laid."

The private prosecution was launched in March 2010 in New Westminster Provincial Court. Over three days of hearings in October and November 2010, Orris called 16 witnesses, presenting the Steelworkers' case that there was sufficient evidence for Weyerhaeuser to be tried under the Westray amendments. In March 2011, Provincial Court Judge Therese Alexander ordered a process hearing, allowing the prosecution to proceed. Orris indicated that he was prepared to proceed as prosecutor on behalf of USW.

However, the policy of the B.C. Crown is to take over and handle all privately initiated prosecutions itself. In August 2011, rather than proceed with the prosecution, having reclaimed the case, the Criminal Justice Branch stayed the proceedings against Weyerhaeuser, saying in a statement that, "There is no evidence that management at Weyerhaeuser was aware that workers were entering the hog in these circumstances."

"Once the judge made her ruling," Orris said in 2016, "we had used all our options under criminal law. The standard of proof in criminal negligence is high – you have to show the company showed "wanton and reckless disregard" for worker safety. In the Hewer case I believed we had evidence that showed obvious disregard for safety. The company knew the hog was likely to clog, and had discussed the safety issue in boardroom discussions, but Weyerhaeuser took its time. It was a low-priority issue."

Looking back in 2016 on the Hewer case, Orris remembers how shocked he was when he learned how many workers die at work every year in Canada.

"It still stuns me," he said. "Why do we tolerate so many deaths at work?"

### D. Deaths at Vale's Stobie Mine: Two Workers Die in a "run of muck"

On June 8, 2011, Jason Chenier, 35, and Jordan Fram, 26, were working deep underground at the Vale Stobie nickel mine near Sudbury, Ont., when they were engulfed in a 350-ton "run of muck." Investigators found that the flood of mud, rock and water that killed the two men was created by



USW member Jordan Fram was working at the Vale Stobie mine near Sudbury when a run of muck killed him and co-worker Jason Chenier.

“

*None of the regulatory charges initially laid against management at the mine were pursued, and the Crown's option to lay criminal charges under the Westray Act was not exercised.*

the company's failure to deal with water issues in the mine. Before his death, Chenier warned his employer that Vale “should not be dumping or blasting this ore pass until the water situation is under control.”

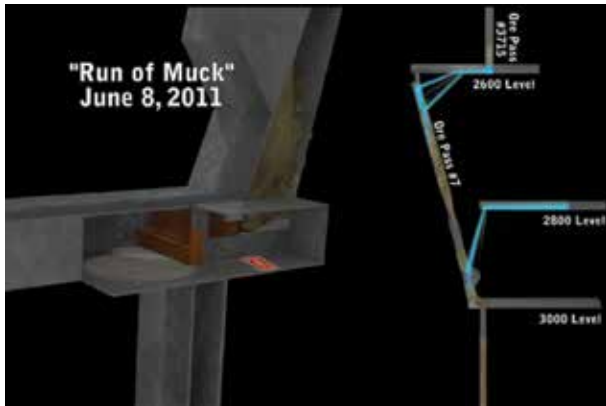
Jordan Fram's mother Wendy and his sister Briana support the demands of the United Steelworkers Stop the Killing, Enforce the Law campaign. Reflecting on Jordan's death, Wendy Fram says in a moving video that can be viewed on YouTube that “someone should be held accountable.”<sup>34</sup>

Briana says in the same video that she believes if the Westray Act was being properly enforced in Canada, mine management would have addressed the water safety issues that killed her brother before he and his co-worker died.

Vale was assessed a million-dollar fine for its safety failures in the two deaths, but none of the regulatory charges initially laid against management at the mine were pursued, and the Crown's option to lay criminal charges under the Westray Act was not exercised, so the deaths



Brian Fitzpatrick, Briana Fram and Wendy Fram have channelled grief into action, becoming strong advocates for their lost loved ones and all workers.



Workers had complained to Vale Stobie management about the dangers of water issues in the mine before the deaths of Jason Chenier and Jordan Fram.

of Jason Chenier and Jordan Fram have to be counted among the enforcement failures during the law's first decade.

Rick Bertrand is the president of USW Local 6500 (and, when not working full-time for the union, an employee at the Vale mine where Chenier and

Fram died) and he believes that criminal charges should have been laid in the two deaths.

"This case was a perfect fit for Westray. Our investigation shows that management negligence killed Jason and Jordan," a clearly exasperated Bertrand told me by phone on August 2, 2016. "The company refused to co-operate with us in investigating the deaths, so we had to do our own independent investigation. We made 165 recommendations for safety improvements at the Vale Stobie mine. I can't tell you that the reforms have been adopted at every mine in Ontario, but I am happy with the work being done at Vale Stobie."

Bertrand told me that the Westray Act is very important for worker safety in Canada and that it should be enforced more effectively.

"If there is any neglect of worker safety and someone is killed or injured, the responsible manager should go to jail," he said.



B.F.P. SURVIVOR

KEEP MICHELLE

TRUE WARRIOR

ENFORCE BILL C 45  
STOP KILLING SAVE LIVES!

Photos: Brent Branten, Prince George Citizen



In 2012, two B.C. lumber mills (Babine Forest Products at Burns Lake and Lakeland Mills near Prince George) exploded and burned.

In a nightmarish mirroring of the Westray mine disaster, the lethal explosions at the mills took place in a context of work speedup and imperfect regulatory inspections, long, exhausting shifts and work sites covered with fine, flammable dust

report on the Westray disaster, discussed above and by media reports such as the Oct. 8, 2014 Global News 16x9 investigation: “What was behind the deadly B.C. sawmills explosions?”<sup>35</sup>

While coroners’ juries declared that both mill fires were accidental, in January 2016, survivors of the workers who died in the mill fires filed a suit against WorkSafeBC, the provincial regulator, alleging negligence on the part of the regulator led to the fatal tragedy.<sup>36</sup>



*In both cases, regulatory inspections and worker complaints about safety defects were effectively ignored.*

that should have been cleared away. At Westray, the fine particulate matter was coal dust and at the B.C. mills it was dry, fine sawdust from trees killed by the mountain pine beetle infestation that has swept the province since the 1990s. Underground at Westray and in the B.C. mills two decades later, explosive combustible dust was allowed to accumulate.

In both cases, regulatory inspections and worker complaints about safety defects were effectively ignored, as is clearly shown in Justice Richard’s

The mine disaster was more lethal, killing 26 miners, while at Babine and Lakeland two workers died at each mill and many others were horribly injured. Like the horrors in Nova Scotia two decades before, the B.C. mill fires were preceded by warnings from workers that disaster was looming.<sup>37</sup>

And according to the CBC in January 2014, “The long-awaited WorkSafeBC report ... finds the disaster could have been prevented if mill management had been doing its job.”<sup>38</sup>

Two decades after Westray and nearly a decade after the Westray Act was passed, some things on Canadian work sites hadn't changed enough to prevent the loss of life in the flaming mills.

At 8:15 p.m., Jan. 20, 2012, the Babine mill exploded. Robert Luggi, a lead hand and Carl Charlie, the #1 cutoff saw operator, were killed and 20 other workers were injured, many very seriously burned, as the fireball engulfed their workplace.



Photo: Jonathan Heyward, Canadian Press

The explosion at the Babine Forest Products mill in Burns Lake, B.C., killed Robert Luggi and Carl Charlie and seriously injured over 20 other workers.

Only a few months later and despite the warning example of the Babine deaths and injuries, Lakeland Mills outside Prince George went up in explosive flames fed by an unsafe level of dry sawdust in the air and on surfaces throughout the mill. Glenn Roche and Alan Little were killed and 22 of their fellow workers were injured.

In another echo from the Westray story, Crown counsel declined to lay criminal charges against any of the management figures at the two mills for their part in the deaths and injuries, saying that WorkSafeBC (the provincial safety regulator) had so badly bungled the initial investigation into the fires that there would be no reasonable possibility of getting a conviction. Twenty years later, the

Canadian justice system still apparently couldn't get it right when confronted by extraordinary and lethal negligence on the part of management.

And in another darkly ironic twist, Lakeland management went on in July of 2014 to treat the bungled WorkSafeBC investigation and Crown counsel decision not to lay charges as the rationale for an appeal against the \$724,000 fine WorkSafeBC had levied against the mill. A month earlier, Babine management had similarly appealed the \$1-million fine WorkSafeBC had levied against the company, citing alleged procedural flaws in the regulator's investigation and Crown counsel's decision not to lay charges.

The press release in which Lakeland Mills management announced their intention to challenge WorkSafeBC's fine suggested that the Crown counsel decision not to lay charges totally exonerated the firm. It read in part:

"Crown counsel reviewed all the same evidence as WorkSafeBC. The Crown published a clear statement that concluded that a sawdust-related explosion was a "previously unrecognized hazard" to both the B.C. sawmilling industry and WorkSafeBC. The Crown even discovered that a WorkSafeBC officer responsible for inspecting the Lakeland mill in the months prior to the incident did not observe a dust violation and in fact believed Lakeland was a 'clean mill' compared to others." The Crown said, according to the Lakeland release, that "... risk of catastrophic explosion was not foreseeable to Lakeland...."

This is a curious contention, however comforting it may have been in the Lakeland (and by implication Babine) boardroom. No one could be blamed, or should be fined, let alone charged in the mill fires, management at both firms argued, because no one saw the explosions coming, or knew that fine particulate sawdust represented an explosion risk. Move along, folks, nothing to see here!



But does the evidence support this claim? Were the murderous fireballs that raged through the two B.C. mills really such a surprise? Not according to an application to certify a class action suit against WorkSafeBC and the province of B.C. filed Jan. 11, 2016. The application, which named 10 potential plaintiffs with connections to the two mill fires (as workers injured in the fires, workers who were off shift when the fire occurred and family members of on- and off-shift workers), suggests that any silence from WorkSafeBC on dust and safety issues at the mills reflects not the absence of danger but a failure on the part of WorkSafeBC inspectors to do their due diligence and recognize the mills for what they were, ticking time bombs waiting to go off.

According to a *Globe and Mail* story published Jan. 12, 2016, the application referenced at least 24 separate inspections of the Prince George mill in the years leading up to the April 2012 explosion, uncovering unacceptable levels of wood dust, yet producing no WorkSafeBC orders to clean up.

Further, the claim alleges that “WorkSafeBC’s conduct was reckless and departed to a very marked degree from the standard of conduct expected of a responsible and competent inspector.”

And evidence from the U.S. introduced at the coroner’s inquest into the Lakeland mill fire reports on many American incidents involving



Photo: Brent Braaten, Prince George Citizen

Like the communities of Pictou County before them, Burns Lake and Prince George residents join the USW in demanding justice.

fine dust, explosions and fires. Shouldn't someone in authority in B.C. have been paying attention?

The coroner's inquest viewed a U.S. Chemical Safety Board video from 2007 that outlined the dangers of dust explosions involving substances as diverse as rubber and aluminum. Research by the board indicated that between 1980 and 2005 in the U.S., fine dust caused 281 explosions and fires in plants, killing 119 people and injuring 718. Since 2005, another 71 dust explosions have occurred.

So, were the deaths at the Babine and Lakeland mills unforeseeable and unavoidable, the kind of shocking surprise no one could have anticipated, as WorkSafeBC ruled? Or were numerous warning signs ignored in a rush for corporate profit that was facilitated by incompetent or irresponsible inspection and enforcement by WorkSafeBC? In the wake of the two mill fires, two coroner's inquests were held and many media stories weighed in on what caused the explosions, the fires and the tragic deaths and injuries.

Let's take a look at these investigations and other revelations about the backstory to the two mill fires and see what they tell us about whether the mill fires were entirely unpredictable and unexpected, as mill owners and managers, not to mention WorkSafeBC inspectors and regulators, would like us to think. Or, like the Westray explosion, did they reflect a "predictable path to disaster?" The more you know about the backstory to the two 2012 mill fires, the less plausible seems the claim by WorkSafeBC cited by mill managers – that the role of excessive dust in the explosions came as a surprise to everyone.

The catastrophic mill fires in 2012 were far from being the first time that sawdust and wood chips were implicated in explosions and fires.

According to an April 2, 2014, *Globe and Mail* article, WorkSafeBC held a workshop in March 2010 that was attended by its own prevention officers, on the dangers of combustible dust. There the officers were told "a layer of dust as thin as a dime" was dangerous, but they "failed to bring this information into the mills."

In July 2012, Gordon Hoekstra, writing in the *Vancouver Sun*, reported on a decade's worth of reports from the B.C. Fire Commissioner, reports spanning 2001 to 2011. More than half of the 89 mill fires reported during that decade featured sawdust or chips as the first material to burn (and three arguably dust-involved fires occurred at the Lakeland mill itself, in 2004, 2006 and in 2012 when a fire broke out in the dust-filtering 'baghouse' section of the mill.)

According to the *Sun* story, the fire incident reports also found:

- In May 2005, at Tolko's Soda Creek sawmill in Williams Lake, wiring to an electrical motor had loosened and arced, igniting dust and sawdust in the room and creating a "minor" dust explosion.
- In July 2009, at West Fraser sawmill in Williams Lake, large fuses blew, igniting dust above panels. Fire damage was minimal.
- In October 2006, at Canfor's Prince George sawmill, an electric short of breakers caused sparks that ignited fine sawdust in the lumber edger. Damage was contained to electrical controls and catwalk.
- In August 2011, at Dollar Saver Lumber in Prince George, sparks from an overheated electrical motor ignited sawdust and hydraulic fluid. The interior walls of the compressor room were charred.

## Babine Forest Products

In November 2011, a WorkSafeBC inspection cited dust in the Babine mill “in excess of the acceptable exposure level for employees’ health and safety.”

Steve Dominic, a Babine worker, told the coroner’s inquest that when WorkSafeBC came to test the dust levels in the mill, the apparatus that was supposed to measure particles in the air for his entire shift became plugged after only two hours.

But the inquest jury looking into the Babine Forest Products fire didn’t just hear about failures of prevention before the disaster. It also heard harrowing stories from workers who were at the mill when it exploded.

According to a July 16, 2015 report on First Nations Radio, Ryan Clay described how he had just hit send while texting his future wife about how much he was looking forward to going on a two-week vacation next week, just as the mill exploded.

He said that if it weren’t for a wall blowing out, he wouldn’t have been able to escape his office, as all the exits were blocked by burning debris. Calmly, he described reaching for his radio to call for help, only to see the skin on his hand melt off.

Clay told the inquest how the week leading up to the explosion was full of mishaps as the extremely cold weather froze water pipes, broke equipment and forced the mill to close windows in an attempt to keep workers warm. He also spoke of very little communication between workers, the company management, the union and WorkSafeBC.

Next to the stand was Steve Dominic, who was working in the basement when the explosion occurred. Dominic was overcome with emotion

when he was asked when he last saw Robert Luggi. He said that Luggi went to check on a malfunctioning machine that he (Dominic) normally would’ve gone to work on, but because he was already busy, Luggi went in his place right before the mill exploded.

Dominic told jurors how he thought he was going to die after being thrown against a concrete wall and to find himself on fire, and when he looked up, instead of the ceiling, he saw the sky. He said he jumped into a puddle of water and rolled around, only to be set on fire again by secondary explosions.

Just when he had mentally said his last goodbyes to his family, he was able to join two other workers and escape the burning mill.

According to a Canadian Press story datelined July 17, 2015, Claude Briere, a longtime machinist and millwright at the mill, told the inquest that conditions “totally changed” after shifts were extended to 10 hours from eight hours in an effort to boost production. Before that, Briere said there was no dust on the beams, the floors were clean and the debris was removed when he arrived at the mill every morning.

“After the 10-hour shift, the piles were there from the day before, or the day before or the day before or the day before,” he said, adding a crew had less time for cleanup duties because they were also required to do other duties.

The shift change was introduced after Oregon-based Hampton Affiliates bought the 30-year-old mill from West Fraser in 2006, he said. It seems fair to suppose that the extended shifts and reduced time for cleanups could have increased the volume of dust in the mill, thus making the explosion that occurred on Jan. 20 more likely.

According to the WorkSafeBC investigation report on the Babine explosion, a worker outside the

mill in the log yard north of the plant said he saw the mill's roof blow off, followed by a fireball.

A USW report on the deaths at the Babine mill

notes that the operation had experienced a fire in February 2011, a fire blamed on excessive dust in and on mill machinery. The fire did half-

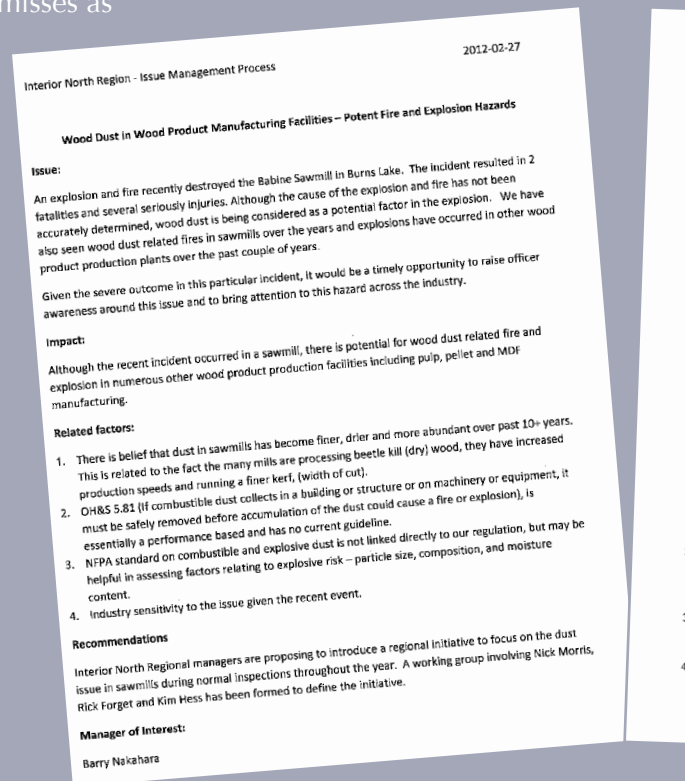
## Between Two Fires: WorkSafeBC and a Decision Not to

Even if you were persuaded that mill owners and the government regulator had no way of knowing that combustible dust represented a killing danger in B.C. mills before Babine exploded (and, as noted above, a lot of evidence already existed), the issue was certainly clearly defined after that disaster. So it is deeply disturbing to see a WorkSafeBC memo that seems to argue for avoiding possible flak from mill owners by soft-peddling dust enforcement after Babine.

In the immediate wake of the fiery deaths at Babine Forest Products, as workers at Lakeland Mills worried that their job site could be the next one to explode, Barry Nakahara apparently had different worries. A WorkSafeBC internal document obtained by the United Steelworkers' Stephen Hunt (after several frustrating freedom of information requests) suggests that even after the many dust-related fires that preceded it, and after the deaths and injuries at Burns Lake, Nakahara, WorkSafeBC's regional prevention manager for the Interior North, was still reluctant to enforce existing standards. Although Nakahara's Feb. 27, 2012 memo, "Wood Dust in Wood Product Manufacturing Facilities – Potent Fire and Explosion Hazards" (see below), admits that "wood dust is being considered as a potential factor in the explosion" and cites section 5.81 of his agency's occupational health and safety regulations, which read "If combustible dust collects in a building or structure or on machinery or equipment, it must be safely removed before

accumulation of the dust could cause a fire or explosion," he does not draw the obvious conclusion that enforcement of dust regulations had failed at Babine and should be pursued immediately and aggressively in B.C. mills. Instead, he cites worries about "pushback" from industry "... if enforcement strategy is pursued at this time."

Instead of enforcement of 5.81, which he dismisses as



Take a look at the two versions of the memo

a-million dollars in damage. In December of the same year, a WorkSafeBC inspector remarked on excessive dust levels. On Jan. 20, 2012, Robert

Luggi spotted and extinguished another fire early in his night shift. Around 8 p.m., the fire that killed Luggi and Roche and seriously injured most

## Enforce Existing Regulations

“performance based,” whatever that means, and noting that the regulation “has no current guideline,” Nakahara’s memo calls for creating a committee and gathering more information from mills during regular inspections on their policies for handling dust. So, he seems to be arguing for no new enforcement of dust-level limits despite existing regulations and the horrible cautionary example of the Babine Forest Products explosion.

This stirring call for business as usual and not annoying the industry came nearly two months before the explosion at Lakeland Mills. It raises the question as to whether the Lakeland explosion could have been avoided if WorkSafeBC had taken a more active role in identifying and eliminating

excess combustible dust at the mill immediately after the Babine disaster.

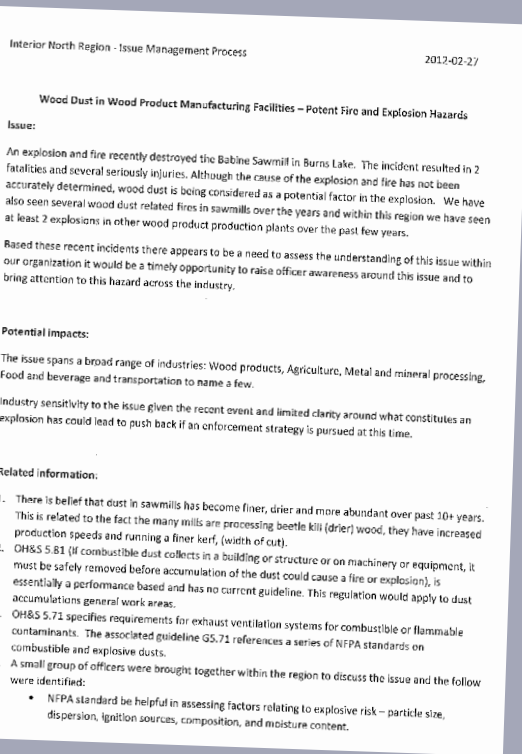
You also have to wonder why WorkSafeBC was so reluctant for the union to see this memo, reluctant enough that it required two freedom of information applications from the union to obtain the memo referring to “industry pushback.”

The alert reader will note that this WorkSafeBC internal memo expressing concern about enforcement leading to “industry pushback” is dated nearly two months before the next lethal mill fire at Lakeland. Two months that could have allowed time for effective safety enforcement and did not! Once again, as in the Westray tragedy, it is possible to draw direct lines between lax enforcement and ongoing safety shortfalls that led to worker deaths and injuries.

Gordon Hoekstra, writing in the *Vancouver Sun* on Oct. 9, 2015, reported that the United Steelworkers was citing the internal memo as reason for creating an independent inquiry into the two mill fires, and quoted USW Western Director Steve Hunt’s comments:

“You have an agency whose sole responsibility is the protection of workers – not the protection of industry, not the protection of themselves over potential industry pushback,” United Steelworkers western director Steve Hunt said Thursday.

“It says to me they made a conscious decision not to enforce the regulations, and put more people at risk than they already had.”<sup>39</sup>



and draw your own conclusions.

of the men on shift that night broke out. Men who survived the flames told investigators of seeing a pillar of flame from the mill's #3 line and hearing explosions.

### Lakeland Mills

Ronda Roche, the wife of Glenn Roche, one of the two men who died in the Lakeland Mills explosion, told the coroner's inquest into his death that her husband often expressed concerns about the mill's safety.

"After the explosion at Babine in January 2012, he was extremely concerned that Lakeland could end in the same fate," she told the coroner.

"The day before Babine, he assisted in putting out a fire in his work area. He described it as a huge fireball and stated that it wasn't just a regular fire but that the air in front of him was on fire. I told him he should have just got out, but he insisted that they had to put it out so they'd have a job to go to. The next day Babine exploded. I remember just how devastated he was. He was – he was – it was like he knew everybody there. He kept saying, 'My brothers have suffered.'"

Brian Primrose, a Lakeland worker who survived the flames that killed Alan Little and Glenn Roche, told the coroner's inquest he had protested to mill management about dust conditions



Photo: Brent Branten, Prince George Citizen

Only months after the mill explosion in Burns Lake, Lakeland Mills explodes in Prince George, B.C. killing Glenn Roche and Alan Little.

after the Babine explosion. He testified that he demanded of managers:

“What the hell have we got to do? Are we just going to wait until somebody dies before we do something about this?”

A USW staff member has prepared a timeline of the events leading up to the Lakeland Mills fire. Here, extracted from that research, are the key events leading up to the second fatal mill fire.

- ▶ September, 2008. The Prince George Fire Department directed Lakeland Mills to develop a fire and safety plan for the mill.
- ▶ Feb. 13, 2009. WorkSafeBC tells Lakeland to review dust conditions due to production changes.
- ▶ May 27, 2010. WorkSafeBC tells Lakeland that cleanup crews need proper respiratory protection when cleaning dust. An employer statement says there is “no significant problem.”
- ▶ September, 2010. The Prince George Fire Department orders Lakeland again to develop a fire safety plan.
- ▶ Jan. 18, 2011. A near miss occurs when the dust collection system at the mill starts up unexpectedly while being cleaned.
- ▶ Nov. 29, 2011. The Prince George Fire Department yet again directs Lakeland to develop a fire safety plan and tells company to develop and adopt a policy and procedure on cleanup and removal of combustible hazard materials. Also on this date, the fire department notes cleaning deficiencies in the mill, dust on surfaces.
- ▶ Dec. 27, 2011. A fire occurred in the baghouse section of the mill when welding sparks ignited dust. (A baghouse is the section in a mill where dust and other pollutants are filtered out of the air.)
- ▶ Jan. 17, 2012. A motor blows up in the mill, creating a small fire.
- ▶ Jan. 19, 2012. Sparks from a band saw ignites a larger fire that shoots flames 30-40 feet into the air and creates a dozen smaller fires.
- ▶ Jan. 20, 2012. The Babine mill explodes and burns, killing two and injuring 20. Lakeland Mills workers worry about a repeat at their mill.
- ▶ Feb. 5, 2012. Another fire occurs in the baghouse, this one blamed on a halogen light.
- ▶ Feb. 9, 2012. More dust accumulation reported in the mill.
- ▶ Feb. 10, 2012. Another fire reported at the mill, this one created at the hot oil heat exchanger.
- ▶ March 19, 2012. Prince George Fire Department says Lakeland cleanup policy is still deficient.
- ▶ April 23, 2012. The Lakeland mill explodes and burns.
- ▶ April 24, 2012. Alan Little and Glenn Roche, Lakeland workers, die from injuries sustained in the mill fire.

On March 22, 2015, the USW withdrew its participation in the coroner's inquest into the deaths at Lakeland. Stephen Hunt, the union's District 3 Director explained why.

"Over the past week, the inquest has heard how WorkSafeBC's failure to carry out its mandate to ensure the health and safety of workers resulted in a complete mishandling of sawmill safety both before and after the explosion. Despite this tragic failure to do its job, the agency is not being held accountable.

"As a result of relying upon WorkSafeBC's flawed investigation, the RCMP and B.C. Safety Authority also produced failed investigations. It is now clear that the inquest is not going to adequately answer any of the questions that demand to be answered. The withholding of crucial evidence from the employer would have made a difference as to how the USW conducted its case and we will not participate in an exercise that does such a disservice to the families who lost loved ones and to the larger community."

Things did not improve after USW's withdrawal. Neither the Lakeland nor the Babine inquests, nor the WorkSafeBC investigation reports led to any criminal charges being laid by Crown counsel in the explosions, and the modest regulatory fines imposed on mill management at Babine and Lakeland by WorkSafeBC were almost immediately appealed. Crown counsel blamed what they saw as procedurally flawed WorkSafeBC investigations at both mills for diminishing the chances of getting any convictions and declined to lay charges.

The premier tasked her deputy minister, John Dyble, with generating a report on improving co-operation between WorkSafeBC, the RCMP and Crown counsel in future industrial deaths. She also appointed Gord Macatee as a temporary

administrator at WorkSafeBC, tasked with producing internal reforms and new policies to improve accident investigation and cooperation with the justice system. So, a lot of ink was spilled and voluminous reports were created, but it remains to be seen whether any of these bureaucratic exercises will succeed in protecting workers' lives. In the meantime, the independent inquiry into the mill fires that many observers think would be preferable to all this in-house navel gazing and paragraph production has not been called and B.C. Premier Christy Clark has indicated she does not favour such an inquiry.

Many in labour and the First Nations communities disagree with the premier. For some time now, the USW has joined with the BC Federation of Labour, the First Nations Summit and the Union of B.C. Indian Chiefs in calling for an independent inquiry. On Jan. 20, 2016, these groups issued a statement on the anniversary of the Babine mill deaths, saying, in part:

"... (We) are renewing our collective demand for Premier Christy Clark to honour her commitment to answers and accountability, and immediately establish an independent public inquiry to ensure tragedies like these never happen again.

"Coroner's inquests were held in 2015 into the explosion at the Babine sawmill, as well as the explosion that occurred three months later at the Lakeland Mills sawmill in Prince George on April 23, 2012, killing Alan Little and Glenn Roche, and seriously injuring another 21 workers. These inquests, as a strictly fact-finding process, left the families and the victims with more questions than answers.

"No justice or substantive changes resulted from these inquests. It is important to note that the lay jury's recommendations, although comprehensive and well-intentioned, are only voluntary and



do not have the power to ensure the necessary changes are made in order to hold the employers, the government and other organizations such as the Workers' Compensation Board accountable.

"The Coroner's inquests were also limited to the events leading up to the incident, and not the seriously flawed investigations that followed. Questions remain unanswered, including why did

the policies and practices that are supposed to protect workers fail to do so?

"The surviving families, the victims and all workers in British Columbia deserve justice. It is time for real and meaningful changes that will protect working people and ensure that these tragedies never happen again."<sup>40</sup>





Photo: Brent Braaten, Prince George Citizen



Photo: Brent Braaten, Prince George Citizen



Photo: The Canadian Press/Kerry Doubleday



While the government response to the B.C. mill fires in 2012 has been disappointing, there are a few reasons for cautious optimism about how the law treats criminally negligent companies. The Westray Act may be in the midst of a belated but

encouraging increase in enforcement. In 2015, in response to Brian Fitzpatrick's ongoing demand that the company and managers who he holds responsible for the death of his son be brought to account, the RCMP opened an investigation into whether Westray Act criminal charges should be laid against Kiewit and some of the managers



The Hamilton Steelworkers Area Council takes the union's Stop The Killing, Enforce The Law campaign to Hamilton City Council.

directly involved in Sam Fitzpatrick’s death. This new investigation was opened as B.C. Mounties laid the first Westray-related criminal charges ever pursued in the province in another case. The criminal negligence charges, laid March

15, 2015, against Stave Lake Quarries and two managers, relate to the death of Kelsey Anne Kristian, a young and inadequately trained truck driver working in a Mission, B.C., quarry.

“ Whatever improvements have been made in the way the criminal law treats corporate killers have been won by organized workers putting pressure on politicians and regulators



In small communities and big cities, the United Steelworkers is finding support to ensure every worker comes home safe to their family.

USW has been lobbying local governments to build grassroots support across the country.

And there were other hopeful developments in Westray enforcement recently. In September 2015, in the first action based on the Westray Law in Nova Scotia history, charges were laid against auto body shop owner Elle Hayeck in the 2013 death of shop employee Peter Kempton. And as noted above, in Toronto, Vadim Kazenelson, a construction project manager for Metron Construction was sentenced to 3½ years imprisonment in the 2009 Christmas Eve deaths of four men who fell from a swing stage suspended high above the pavement. The company was reportedly rushing completion of

the work being done by these men in order to cash in on a \$50,000 bonus for early completion and Kazenelson was found responsible for overloading the swing stage with too many workers. It is notable, however, that charges against Metron’s president Joel Swartz were dropped and that the company was assessed a relatively modest \$750,000 in fines for regulatory offences. A separate company that provided Metron with the swing stage (Swing N Scaff) and a Swing N Scaff director were also fined for regulatory offences. Once again, however, the pattern that emerged in the Westray Act’s first decade was in evidence. Even with the new law, the prosecutions are typically of low-level



District 3 Director Stephen Hunt and National Director Ken Neumann took the campaign directly to then-Attorney General Peter MacKay.

managers working for relatively small companies. The investigation into Kiewit and Sam Fitzpatrick's death launched in 2015 by the RCMP in British Columbia could conceivably see criminal charges laid against Kiewit higher-ups. If such charges are laid and boardroom types convicted, it would mark a dramatic step forward in the evolution of Canadian law and, arguably, a step toward safer workplaces for Canadian workers.

By Summer 2016, as this document was completed, other glimmers of hope about Westray Act enforcement had emerged. In July, the B.C. Ministry of Energy and Mines signed a protocol with the province's police agencies "for the investigation of mine site fatalities and bodily harm."

USW director Steve Hunt emphasized that the protocol represented a message to employers.

"Our union's first priority is to ensure the health and safety of all workers, but if tragedy strikes we also want to ensure that employers are held accountable. There are far too many examples of workers dying and employers getting off the hook. Through this protocol with police agencies, a clear message is being sent to mining companies that if they are negligent in a case of workplace death, they will be criminally investigated and held accountable," he said.

Earlier, in April 2016 in Ontario, criminal negligence charges under the Westray Act were laid against another mining operation, Detour Gold's Cochrane mine. The charges relate to the death in June 2015 of Denis Millette, poisoned by cyanide exposure while repairing equipment at the mine. A trial on these charges has been scheduled for Fall, 2016.

So, by Summer 2016, the quarter century of focused work the United Steelworkers union has put into first passing the Westray Act and then

campaigning to see it properly enforced may be beginning to produce significant results.

Any fair-minded person will hope this will be the case. But if the sad path from Westray to Lakeland Mills has taught us anything, it is that hope is not enough. Whatever improvements have been made in the way the criminal law treats corporate killers have been won by organized workers putting pressure on politicians and regulators. A friend of mine says that the best way to help a powerful person see the light is to turn up the heat. Our unions and our civil society organizations are the best tools we have to generate that heat. We owe it to the dead and injured of Westray and the B.C. mill fires and all the other workers sickened, crippled and killed by employers' negligence to keep the heat on.

The next time you are subjected to the claim that unions were okay in the past, but not needed now, please remember Robbie Doyle, Glenn Martin, Robert Luggi, Carl Charlie, Alan Little, Glenn Roche, Sam Fitzpatrick and Kelsey Anne Kristian, all collateral damage to a war on workers waged by companies that put profit over safety. Without unions to unite and amplify our collective voices and conduct struggles from the picket line to the courts to the chambers of Parliament, there would be no hope for justice and accountability in their deaths or for improved conditions to prevent future needless deaths.

Reader, if you are now coming to the end of this article, you may very well be saddened and enraged by the tales of industrial carnage it contains, as I was while compiling them. Take a final moment to listen to "You Will Not Stand Alone" from Vancouver's Gram Partisans, a song I guarantee will encourage you and send you back to your own struggles with more optimism and commitment.<sup>41</sup>

Let that, and a renewed intention to support union organizing and health and safety activism in your own workplace and your community be the final legacy of the many lost lives we have been learning about together. I commend to your attention the wise words of a great Italian radical

Antonio Gramsci, who urged those who want to change the world to adopt "... pessimism of the intellect and optimism of the will." The pessimism part is easy. Our task, and what we owe the workers slaughtered by their bosses, is to help each other achieve the optimism of the will part.







1. Listen to a moving tribute to the men who died at Westray. [www.youtube.com/watch?v=mMUsojFjuUQ](http://www.youtube.com/watch?v=mMUsojFjuUQ)
2. "What Did Not Have To Be," Carole Pearson, *Our Times*, Vol. 34, Issue 2, 2015, [ourtimes.ca/Features/article\\_410.php](http://ourtimes.ca/Features/article_410.php)
3. Stop The Killing, Enforce The Law, Feb. 4, 2014, [www.usw.ca/news/media-centre/articles/2014/stop-the-killing-enforce-the-law](http://www.usw.ca/news/media-centre/articles/2014/stop-the-killing-enforce-the-law)
4. Anne Feeney's classic song "War on the Workers" [www.youtube.com/watch?v=e78TqI53bPQ](http://www.youtube.com/watch?v=e78TqI53bPQ)
5. Drummond Colliery Disaster, 1873 (60-70 deaths) [novascotia.ca/archives/meninmines/disasters.asp?Language=English#drummond](http://novascotia.ca/archives/meninmines/disasters.asp?Language=English#drummond)
6. Springhill Mine Disaster, 1891 (125 deaths) [novascotia.ca/archives/meninmines/disasters.asp?Language=English#springhill](http://novascotia.ca/archives/meninmines/disasters.asp?Language=English#springhill)
7. Dominion No. 12 Colliery Explosion, New Waterford, 1917 (65 deaths) [novascotia.ca/archives/meninmines/disasters.asp?Language=English#dominion](http://novascotia.ca/archives/meninmines/disasters.asp?Language=English#dominion)
8. Westray Coal Mine Explosion, Plymouth, 1992 (26 deaths) [novascotia.ca/archives/meninmines/disasters.asp?Language=English#westray](http://novascotia.ca/archives/meninmines/disasters.asp?Language=English#westray)
9. Vern Theriault videotaped interview with *Straight Goods News*, 2012, [www.youtube.com/watch?v=RPyalAQzFvk](http://www.youtube.com/watch?v=RPyalAQzFvk)
10. USW's Stop the Killing, Enforce the Law campaign, [www.stopthekilling.ca](http://www.stopthekilling.ca)
11. Video interview with Brian Fitzpatrick, 2013, [www.youtube.com/watch?v=7L1OPIXyUrQ](http://www.youtube.com/watch?v=7L1OPIXyUrQ)
12. Section 217.1 of the Criminal Code of Canada, [yourlaws.ca/criminal-code-canada/2171-duty-persons-directing-work](http://yourlaws.ca/criminal-code-canada/2171-duty-persons-directing-work)
13. Canadian Labour Congress guide A Criminal Code Offence: Death & Injury at Work [canadianlabour.ca/sites/default/files/media/death-and-injury-at-work-en.pdf](http://canadianlabour.ca/sites/default/files/media/death-and-injury-at-work-en.pdf)
14. Stephen Hunt, USW District 3 Director (Western Canada), [www.usw.ca/districts/3/about](http://www.usw.ca/districts/3/about)
15. Stop the Killing, Enforce the Law endorsements, [www.stopthekilling.ca/endorsements](http://www.stopthekilling.ca/endorsements)
16. "Grieving Families Want Tougher Justice for Workplace Deaths," Tom Sandborn, *The Tyee*, Aug. 28, 2012, [theyee.ca/News/2012/08/28/BC-Workplace-Deaths](http://theyee.ca/News/2012/08/28/BC-Workplace-Deaths)
17. "Big Liberal Donor's Rocky Safety Record," Tom Sandborn, *The Tyee*, April 8, 2013, [theyee.ca/News/2013/04/08/Kiewit-Record](http://theyee.ca/News/2013/04/08/Kiewit-Record)
18. WorkSafe BC 2011 Enforcement Report, [www.worksafebc.com/en/about-us/news-events/news-releases/2012/February/worksafebc-2011-enforcement-report](http://www.worksafebc.com/en/about-us/news-events/news-releases/2012/February/worksafebc-2011-enforcement-report)
19. "Sam is gone, Dad," Sam Cooper, *The Province*, May 13, 2012, [iuoe882.ca/wordpress/wp-content/uploads/2012/05/Sam-is-gone-Dad-Article-from-The-Province.pdf](http://iuoe882.ca/wordpress/wp-content/uploads/2012/05/Sam-is-gone-Dad-Article-from-The-Province.pdf)
20. The Transportation Safety Board of Canada (TSB), Aviation Investigation Report A08P0353, report released 11 Aug. 2010, [www.tsb.gc.ca/eng/rapports-reports/aviation/2008/a08p0353/a08p0353.asp#section1\\_13](http://www.tsb.gc.ca/eng/rapports-reports/aviation/2008/a08p0353/a08p0353.asp#section1_13)
21. "Boston Harbor Tunnel Contractor Cited by OSHA," Massachusetts Employment Law Letter, HR Laws, Jan. 1, 1993, [benefits.hrlaws.com/node/1032367](http://benefits.hrlaws.com/node/1032367)

## Endnotes

---

- "OSHA Cites Four Contractors in Connection with Double Fatality in Boston Harbor Outfall Tunnel; Over \$410,000 in Penalties Proposed," Occupational Safety and Health Administration, United States Department of Labor, Jan. 19, 2000, [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_id=776&p\\_table=NEWS\\_RELEASES](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=776&p_table=NEWS_RELEASES)
- "Big Dig Contractor Cited by OSHA for Alleged Workplace Safety Violation in Fatal Fall of Worker," Occupational Safety and Health Administration, United States Department of Labor, Oct. 5, 1999, [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=830](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=830)
- "Texas Welding Company Agrees to Pay OSHA Fine for Failing to Implement Confined Space Standards," Occupational Safety and Health Administration, United States Department of Labor, July 3, 2003, [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=10305](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=10305)
- "Services for rig worker set for Wednesday," Kathryn Garcia, *Corpus Christi Caller Times*, Oct. 25, 2005, [www.caller.com/news/services-for-rig-worker-set-for-wednesday-ep-366134443-317267081.html](http://www.caller.com/news/services-for-rig-worker-set-for-wednesday-ep-366134443-317267081.html)
22. "Worker Killed; 405 Fwy Project Halted," Angie Crouch, Jason Kandel, Annette Arreola and Jonathan Lloyd, *NBC Los Angeles*, Oct. 12, 2012, [www.nbclausangeles.com/news/local/Construction-Worker-Killed-405-Freeway-Santa-Monica-Boulevard-173684571.html](http://www.nbclausangeles.com/news/local/Construction-Worker-Killed-405-Freeway-Santa-Monica-Boulevard-173684571.html)
- San Francisco-Oakland Bay Bridge Worker Safety, California State Auditor, Bureau of State Audits, February 2006, 2005-119, [www.bsa.ca.gov/pdfs/reports/2005-119.pdf](http://www.bsa.ca.gov/pdfs/reports/2005-119.pdf)
- "WSDOT secrets: Inside the 520 Bridge investigation," Tracy Vedder, Nov. 8, 2012, KOMO News, [komonews.com/archive/wsdot-secrets-inside-the-520-bridge-investigation](http://komonews.com/archive/wsdot-secrets-inside-the-520-bridge-investigation)
23. "Port Mann Bridge reopens after ice damages cars," *CBC News*, Dec. 19, 2012, [www.cbc.ca/news/canada/british-columbia/story/2012/12/19/bc-snow-ferries-school-closures.html](http://www.cbc.ca/news/canada/british-columbia/story/2012/12/19/bc-snow-ferries-school-closures.html)
24. "Repairs to damaged run-of-river project expected to take months, cost \$10 million," Larry Pynn, *Vancouver Sun*, March 20, 2013, reposted by Friends of Bute Inlet, [www.buteinlet.net/node/353](http://www.buteinlet.net/node/353)
25. "Plutonic gets \$73 million for Toba power project," The Electricity Forum, March 2009, [www.electricityforum.com/news/mar09/PlutonicreceivesecoENERGYmoney.html](http://www.electricityforum.com/news/mar09/PlutonicreceivesecoENERGYmoney.html)
26. Transportation Investment Corporation (TI Corp.), [www.ticorp.ca/who-we-are](http://www.ticorp.ca/who-we-are)
27. "COOKING THE BOOKS: Underreporting Worker Injuries and Illnesses on the San Francisco Bay Bridge Project," *Confined Space*, [users.rcn.com/jbarab/Cooking%20The%20Books.html](http://users.rcn.com/jbarab/Cooking%20The%20Books.html)
- "Bay Bridge Contractor Failed to Report Injuries, Cal/OSHA Concludes," Katherine Torres, *EHSToday*, June 5, 2006, [ehstoday.com/news/ehs\\_imp\\_38270](http://ehstoday.com/news/ehs_imp_38270)
- San Francisco-Oakland Bay Bridge Worker Safety, California State Auditor, Bureau of State Audits, February 2006, 2005-119, [www.bsa.ca.gov/pdfs/reports/2005-119.pdf](http://www.bsa.ca.gov/pdfs/reports/2005-119.pdf)
28. "Crane collapse slows Port Mann Bridge construction," *BC CTV News*, Feb. 10, 2012, [bc.ctvnews.ca/crane-collapse-slows-port-mann-bridge-construction-1.766885](http://bc.ctvnews.ca/crane-collapse-slows-port-mann-bridge-construction-1.766885)
29. "Highway retaining wall being rebuilt in Coquitlam, British Columbia," Richard Gilbert, *Journal of Commerce*, Aug. 3, 2011, [www.journalofcommerce.com/article/id46056](http://www.journalofcommerce.com/article/id46056)
30. Forbes, Ranking of American companies, [www.forbes.com/companies/kiewit-corporation](http://www.forbes.com/companies/kiewit-corporation)
31. Kiewit – The Basics, [www.kiewit.com/files/7014/2852/8084/Kiewit\\_Basics\\_Page\\_2015.pdf](http://www.kiewit.com/files/7014/2852/8084/Kiewit_Basics_Page_2015.pdf)
32. "Weyerhaeuser faces highest fine ever for man's death," Gordon Hamilton, *Vancouver Sun*, March 16, 2007, [www.fwsn.org/pdf/lyle\\_hewer\\_death\\_15Mar07.pdf](http://www.fwsn.org/pdf/lyle_hewer_death_15Mar07.pdf)
33. WorkSafeBC, Confined spaces, [www.worksafebc.com/en/health-safety/hazards-exposures/confined-spaces](http://www.worksafebc.com/en/health-safety/hazards-exposures/confined-spaces)

33. WorkSafeBC, Confined spaces, [www.worksafebc.com/en/health-safety/hazards-exposures/confined-spaces](http://www.worksafebc.com/en/health-safety/hazards-exposures/confined-spaces)
34. Stop the Killing! Steelworkers, Dec. 9, 2013, [www.youtube.com/watch?v=v8zEkl0zlpC](http://www.youtube.com/watch?v=v8zEkl0zlpC)
35. 16x9 investigation: What was behind the deadly B.C. sawmills explosions?," Claude Adams and Megan Rowney, *Global News*, Oct. 8, 2014, [globalnews.ca/news/1604346/16x9-investigation-what-was-behind-the-deadly-b-c-sawmills-explosions](http://globalnews.ca/news/1604346/16x9-investigation-what-was-behind-the-deadly-b-c-sawmills-explosions)
36. "B.C. sawmill explosion victims suing WorkSafeBC," *The Canadian Press*, CBC News, Jan. 12, 2016, [www.cbc.ca/news/canada/british-columbia/b-c-sawmill-explosion-victims-suing-worksafebc-1.3400506](http://www.cbc.ca/news/canada/british-columbia/b-c-sawmill-explosion-victims-suing-worksafebc-1.3400506)
37. "Mill warned about risk of dust explosion days before blast," Mark Nielson, *Prince George Citizen*, March 17, 2015, [www.princegeorgecitizen.com/news/local-news/mill-warned-about-risk-of-dust-explosion-days-before-blast-1.1794730](http://www.princegeorgecitizen.com/news/local-news/mill-warned-about-risk-of-dust-explosion-days-before-blast-1.1794730)
38. "Burns Lake sawmill explosion and fire called preventable," CBC News, Jan. 16, 2014, [www.cbc.ca/news/canada/british-columbia/burns-lake-sawmill-explosion-and-fire-called-preventable-1.2499632](http://www.cbc.ca/news/canada/british-columbia/burns-lake-sawmill-explosion-and-fire-called-preventable-1.2499632)
39. "WorkSafeBC feared wood-dust enforcement in 2012 would lead to pushback from industry: internal document," Gordon Hoekstra, *Vancouver Sun*, Oct. 9, 2015, [www.vancouversun.com/business/worksafebc+feared+wood+dust+enforcement+2012+would+lead+pushback+from+industry+internal/11425454/story.html](http://www.vancouversun.com/business/worksafebc+feared+wood+dust+enforcement+2012+would+lead+pushback+from+industry+internal/11425454/story.html)
40. "Renewed calls for Public Inquiry on the Anniversary of Babine Sawmill Explosion," Joint statement by the United Steelworkers, the BC Federation of Labour, the First Nations Summit, the Union of B.C. Indian Chiefs and the B.C. Assembly of First Nations, Jan. 20, 2016, [www.fns.bc.ca/pdf/Joint-PR\\_with-BCfed-and-USW-re-call-for-mill-explosion-inquiry\\_January-20-2016.pdf](http://www.fns.bc.ca/pdf/Joint-PR_with-BCfed-and-USW-re-call-for-mill-explosion-inquiry_January-20-2016.pdf)
41. "You Will Not Stand Alone," the Gram Partisans, Feb. 2007, [www.youtube.com/watch?v=8l2zup\\_uJRM&list=PL1E57874BF7174F1E&index=26](http://www.youtube.com/watch?v=8l2zup_uJRM&list=PL1E57874BF7174F1E&index=26)



**Stop the Killing, Enforce the Law** is a Canada-wide campaign led by the United Steelworkers to hold people criminally accountable for the health and safety of workers.

Responding to the over 1,000 workers across Canada who are killed each year on the job, the campaign has gained the support of towns and cities, law enforcement officials and professional associations across the country.



MÉTALLOS

[www.usw.ca](http://www.usw.ca)

[www.stopthekilling.ca](http://www.stopthekilling.ca)

 [uswmetallos](https://www.facebook.com/uswmetallos)  [@SteelworkersCA](https://twitter.com/SteelworkersCA)

