

STILL FIGHTING TO STOP THE KILLING



**UNITED STEELWORKERS REVIEW OF BC
FOREST SAFETY PERFORMANCE
March, 2007**



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The recently-convened Auditor General's review of forest safety in British Columbia represents the realization of one of the key demands United Steelworkers put forward at our union's BC Forest Fatalities Summit in December 2005.

Our recent testimony before the review led by Mr. Ralph McGinn provides a good opportunity to critically review what has happened – and not happened – since the Summit. We believe that although some good things have taken place and some good policies enacted, in many respects we remain very far from the goal of safe and secure workplaces throughout the BC forest industry. In particular, more steps must be taken to ensure that decision-makers and policy-makers assume responsibility for their actions and decisions.

HOW WE GOT HERE

Steelworkers' began to be concerned about the sharp rise in forest industry deaths in early in 2005. In spite of opposition and intimidation from some employers and contractors, we began working with groups like the Vancouver Island Loggers' Safety Support Group to raise public awareness of the situation and urge immediate action.

But only when we began to plan the summit did we get the full attention of industry, government and media.

We began trying to meet with labour minister Mike de Jong in June, for instance. Yet it was only in October, when plans for the Summit were already in progress, that the minister found time to meet with Steelworkers to discuss our concerns.

Steelworkers hosted the BC Forest Fatality Summit on December 5 2005. It was attended by government ministers and opposition MLAs, CEOs, contractors, representatives of regulatory agencies, Steelworkers and other union members. It was thoroughly covered and widely reported in the media, greatly enhancing public awareness of the crisis of forest-sector safety. It also focused companies, government and regulators on the need for immediate action and in fact elicited a number of promises of action.

Don Dahr of WorkSafe BC, for instance, noted that the industry has changed rapidly and admitted that “when the restructuring occurred, something got left behind and it appears that it’s the health and safety element.” He also promised that WorkSafe BC will conduct more investigations in the future. After incidents occur, it will help determine who should be held responsible, he said.

Minister de Jong stated bluntly that industry and government are not “getting the job done...,” vowing that in future “safety is going to be paramount – the way it hasn’t been.”

Western Forest Products CEO Reynold Hert said there is a basic requirement for leadership on health and safety at the top of the corporate ladder and that safe work systems are an economic benefit to the company. Darshan Sihota of Island Timberlands promised more “open and honest” communication on health and safety, adding his firm will work to communicate more effectively with workers on health and safety matters, with leadership extending from the top down to supervisors and workers.

Steelworkers called the summit because forest-sector worker fatalities went through the roof in 2005: by year’s end 43 forest-sector workers had died in traumatic accidents. In addition, there were about 100 serious injuries. This came after an average of 25 forest sector workers died every year in the preceding decade.

STEELWORKERS’ POSITION

In our background report “*Stop the Killing*” we argued that there are some important systemic reasons for the industry’s recent horrific safety record:

- ✚ Corporate and government policies have been largely responsible for the decline in safety standards and compliance;

- ✦ Contracting out, de-unionization and low-bid contracting, all results of government or corporate policy changes, led to a “culture of desperation” as a sudden explosion of small contractors started a competitive race to the bottom in which they are forced to cut costs merely to survive;
- ✦ Owner-operators effectively have no right to refuse unsafe work, while non-union workers’ right to refuse is ineffective, in spite of the WCB Act;
- ✦ Companies that contracted out various aspects of their operations walked away from any responsibility for safety by claiming they could simply download it onto their contractors;
- ✦ Most of those small firms are really owner-operators who are ill-equipped, inexperienced as business operators and lacked the resources to implement safety programs or deal with safety in anything more than a rudimentary way;
- ✦ In the Interior, there was an explosion of rapid-scale harvesting, highball hauling and round-the-clock sawmilling due to the combined effects of the mountain pine beetle infestation and the industry’s response to U.S. lumber tariffs, both leading to a massive ramping up of production aimed at rapid harvesting and driving down to the price of lumber;
- ✦ Cuts in WCB inspections created an atmosphere in which those who wanted to cut corners were able to do so with relative impunity;
- ✦ There were also cuts to first-aid requirements on worksites;
- ✦ Longer hours of work such as those approved by mediator-arbitrator Don Munroe in an imposed collective agreement for coastal forest workers increased hours of work, adding to fatigue and stress.

In short, we argued, we were dealing with *a crisis of accidents, not an accidental crisis*.

INITIAL RESPONSE TO THE SUMMIT...

In 2006 some changes were made:

- ✚ In some sharply-worded correspondence to industry CEOs, WorkSafe warned companies that their responsibility for safety did not stop simply because they contracted out;
- ✚ WorkSafe also initiated a review of cascading responsibilities in contracted-out workplaces;
- ✚ Some of the inspectors cut in 2002 were restored and more workplace inspections were conducted;
- ✚ Reporters such as Gordon Hamilton at the *Vancouver Sun* and Gordon Hoekstra at the *Prince George Citizen* continued to dig into the causes and consequences of the forest-sector's rash of accidents;
- ✚ A coroner dedicated to forest-sector cases was appointed;
- ✚ The Ted Gramlich inquiry provided a close-up of safety performance in a non-union contract operation and an opportunity for Steelworkers, who sought and were granted standing, to reveal some of the gaps and failings;
- ✚ Companies became more aware of the reality of Bill C-45, the Westray Act;
- ✚ WorkSafe conducted a compliance audit;

✚ Forest minister Rich Coleman asked the Auditor-General to review forest-sector safety.

... AND THE SITUATION NOW

In 2007, however, we regret to say that the situation is nonetheless still quite grim. While fatalities were reduced from 45 in 2005 to 12 in 2006, there have already been four deaths in under two months of 2007. And serious injuries have remained stubbornly high: 93 in 2005, 94 in 2006. Meanwhile:

- ✚ The Gramlich Inquest showed a dismal lack of safety standards or procedures in place in at least one contract-logging show. The contractor testified that his commitments to safety were viewed as so much “paperwork”, while TimberWest appeared to take quality control more seriously than safety;
- ✚ TimberWest immediately contracted two consultants’ whose report sought to justify the company’s safety record while virtually ignoring the Gramlich incident – except to blame the victim himself;
- ✚ WorkSafe’s compliance audit showed that many companies still pay little attention to safety when hiring or instructing contractors. In addition:
 - too many workers work alone;
 - too many workers are unsupervised or inadequately supervised;
 - too many firms fail to review contractors’ safety programs;
 - too many companies have no written health and safety program at all.
- ✚ Companies have rejected calls for inclusion of a safety objective in the Forest and Range Practices Act, arguing that it would cost too much or make no difference;

- ✚ The BC forest safety council has often obscured issues or failed to support workers;
- ✚ A continued lack of training puts workers at risk as Safety Council ombudsman Roger Harris noted in a recent report;
- ✚ While WorkSafe recently fined Weyerhaeuser a record \$297,000 in connection with the November 2004 death of sawmill worker Lyle Hower, Crown counsel declined to lay charges, in spite of a recommendation from New Westminster police.

In short, *many of the systemic factors that undermine workers' safety remain in place.*

Too many workers continue to suffer the ill-effects of contracting out, deregulation and de-unionization. Too many are overworked, under-trained and under-supervised. Many of the measures intended to improve the situation have proven ineffective; many of the most important problems have still not been addressed and many of our key demands have not been addressed.

THE FOREST SAFETY COUNCIL IS A DISAPPOINTMENT

Perhaps the most disappointing development has been the creation and performance of the BC Forest Safety Council. Perhaps the best we can say is that the Safety Council continues to provide very mixed results. The worst is that it often appears to more clearly express the concerns and interests of employers, not workers.

For example:

- ✚ The Council's composition is highly unbalanced – there is only one worker representative out of 18 board members -- so that it has too little worker representation to avoid frequently acting as a mouth-piece for companies, the industry and contractors;
- ✚ It has often obscured issues rather than dealing with them head-on, for instance by creating a forest-sector “ombudsman” whose actual ability to represent unionized workers or contract employees or act on their concerns – even though they constitute about 90 percent of industry workers – is highly circumscribed by the terms of his mandate;

- ✚ The Council was immediately attracted to issues of interest to employers, such as alleged widespread substance abuse in the workplace, while neglecting to investigate or act on more urgent matters such as fatigue or contracting out;
- ✚ It is busy creating an elaborate bureaucracy rather than dealing with problems on the ground;
- ✚ Too much of what it does competes with or duplicates services already offered by WorkSafe BC or other agencies;
- ✚ It too often does not work collaboratively with either WorkSafe or the Steelworkers and in fact has sometimes taken positions that directly contradict or oppose ours, for instance on the issue of truck-drivers' hours of work and fatigue;
- ✚ The council has also often been quick to blame workers for their own misfortunes, alleging a so-called "culture of risk-taking" among workers or blaming accidents on allegedly-rampant substance abuse. These are complex issues and there is in fact often little evidence behind the Council's claims. On his first day on the job ombudsman Harris undermined his own credibility when he joined in this attack by saying the industry is marked by a "tough-guy" culture;
- ✚ When Harris suggests there is a lack of training in the sector he is correct but he fails to note that the Council itself now charges *workers* \$10,000 to get their fallers' certification, a levy that discourages many prospective trainees.

In fact, the current model of the BC Forest Safety Council is a far cry from what was originally envisioned by the Forest Safety Task Force. We believe the Council should have worker-management parity and should be mandated to deal directly with problems

identified by workers and employers on the ground, with deference to the WCB as the authority with ultimate responsibility for safety and health in the industry.

As currently structured, there is little to keep the Council's board and staff from simply parroting industry's position rather than investigating issues, drawing its own conclusions or diligently seeking out the views of workers or their union. It has consistently avoided policies or programs that would empower workers to protect themselves on the job in favour of employer-driven and top-down initiatives.

STILL A NEED FOR ACTION

Finally, many of Steelworkers' most important recommendations made at the time of the Forest Fatalities Summit remain unimplemented. These include:

- ✚ Implementation committees whose role would be to ensure that coroner's or juries' recommendations are actually implemented. The process we advocate would include dual sign-off by a provincial tribunal and a workplace committee;
- ✚ A legislated day of mourning in the event of a forest-industry fatality;
- ✚ A dedicated prosecutor to handle forest-sector cases under the Criminal Code.

In conclusion, we believe that it is essential that there must be *consequences* whenever a worker is killed or injured on the job. That means there should *always* be a thorough investigation such as a coroner's inquest or a police investigation. And, in instances where there appears to be negligence or culpability, there must be recommendations or

prosecutions leading to strong legal and financial consequences for those found responsible. Lastly, steps must be taken to remove the likelihood of any repetition of the circumstances that led to that death or injury.

It is instructive, therefore, to note that the proposals that have *not* been implemented are precisely those that involve specific *consequences* for failure to consider worker safety. This is crucially important: without an implementation process, for example, coroner's recommendations will continue to languish on the shelf as they have so many times in the past or be effectively ignored as they were in TimberWest's Halkett-Haggard report.

Without a dedicated prosecutor, there are unlikely to be very many prosecutions under the Westray Act, which Steelworkers stewarded through Parliament over the course of 12 tortuous years of lobbying. A good case in point is the death of Lyle Hewer at Weyerhaeuser's New Westminster sawmill. WorkSafe levied its highest fine ever and the police recommended charges, yet Crown prosecutors have failed to act. Bill C-45 provides the sanction of criminal prosecutions for companies that willfully neglect their employees' health and safety on the job.

Without a Day of Mourning, meanwhile, companies collectively have little to lose in continuing to pursue the status quo or treating workplace deaths and injuries as little more than a cost of doing business.

The same goes for the goal of a health and safety objective in the *Forest and Range Practices Act*. FRPA is the so-called “results-based” replacement for the more prescriptive *Forest Practices Code*. With the introduction of FRPA, many of the safety standards and references in the Code were removed. Instead, licensees must submit plans which are reviewed and approved to the extent that they meet FRPA’s 11 objectives, which are currently mostly timber or environmental standards. The onus to meet the objectives is on those who submit and those who approve plans; they currently do not have a mandate to plan for safety and do not see safety as falling within their field of expertise or responsibility. WorkSafe, which *does* have that responsibility and expertise, never sees the plans. And ministry officials do not currently see safety as falling within their mandate or responsibilities. But in spite of continued efforts by Steelworkers and our supporters in the community, industry has rebuffed efforts to include a safety objective; in the face of industry objections, the Ministry of Forests recently backed off its earlier support for such a provision in the Act.

We have therefore urged the Auditor General’s review to recommend these measures, which we believe will help to underscore the responsibility that industry, government, regulators, contractors and workers each have for worker safety. Companies after all respond primarily to costs and profits. Government officials are guided by their statutory obligations. Both corporate and government decision-makers need to be held legislatively accountable for the plans they approve and the choices they make. As long as the costs of workplace tragedies are minimal, as we have noted, they are likely to be treated as an acceptable cost of doing business or as someone else’s responsibility.

In other words, the costs society imposes must be severe enough to make sure regulators, governments and companies are roused from apathy and indifference. Justice K. Peter Richard recognized this when he wrote his Westray inquiry report. The Westray tragedy, he wrote, “is a story of incompetence, of mismanagement, of bureaucratic bungling, of deceit, of ruthlessness, of cover-up, of apathy, of expediency and of cynical indifference.”

At the end of the day, however, regardless of whether we believe companies and governments have *moral or ethical responsibilities* to workers, in the case of Westray in they were not met; as a result 26 miners died in one terrible moment. Similarly, in our view, *those responsibilities are not being met with reasonable regularity in the BC forest industry*. We believe that they will only be met when society insists on clearly-stated, legislated rules of compliance and sternly-enforced consequences for failure to anticipate reasonably-likely events, take necessary steps to prevent them and properly prepare for or respond to them when they occur.

It is instructive, for instance, that Justice Richard ended his report with a strong, clear call for laws requiring *corporate responsibility* at both federal and provincial levels. This is exactly what is currently lacking, in our view in the BC forest sector. Either there are not sufficient consequences or they are not effectively enforced. And too often, they are given only lip-service rather than being taken seriously.

We therefore hope that the Auditor General's review will soon help clarify the legal and administrative responsibilities those in authority have for worker safety. We hope the review will clearly indicate the need for stern consequences when those responsibilities are not met. We believe this is the sole benefit that can flow from the series of tragedies we have seen recently in the BC forest sector. But we also believe we owe it to those who have died; their brothers and sisters still working in our industry, their communities and their families.