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Another Workplace Death Illustrates the Need for More Enhanced Protections for Farm Workers

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Case Commented On: [Report to the Minister of Justice and Solicitor General of a Public Fatality Inquiry into the Death of Stephen Murray Gibson](#)

On June 29, 2017 the Alberta government released the [report](#) of Judge Anne Brown concerning a Public Fatality Inquiry held into the death of Stephen Murray Gibson. Gibson was a farm worker who was killed in 2014 when his clothing became caught in an auger's unshielded power take off (PTO), and he was pulled into the equipment and instantly killed. Gibson worked for Hamilton Farms, a husband and wife cattle, grain and hay operation, and he had not had a day off in four weeks, "as it was a very busy time of year, with winter feeding and calving" (at para 4). Judge Brown's report recognizes that "Farming is hard and hazardous work", and notes that the [Enhanced Protection for Farm and Ranch Workers Act](#) – which I have written about on ABlawg previously (see [here](#), [here](#) and [here](#)) – extended the protection of the *Occupational Health and Safety Act*, [RSA 2000, c O-2](#) and the *Workers Compensation Act*, [RSA 2000, c W-15](#) to farm and ranch workers who are paid non-family members (at paras 9 and 11). What the report does not address, because it was written on May 8, 2017, is the fact that [Bill 17](#), the *Fair and Family-friendly Workplaces Act* [introduced](#) by the government on May 24, 2017, exempts farm and ranch workers from protections regarding hours of work and time off in the *Employment Standards Code*, [RSA 2000, c E-9](#) (see section 4 of Bill 17, adding the new section 2.1 to the *Employment Standards Code*, which will come into effect on January 1, 2018).

Judge Brown recommended that:

1. Farm safety training be made a compulsory component of all post-secondary agriculture programs, at least in graduation year but ideally in every year of a program. This may require a cross-ministry initiative, involving Advanced Education, Agriculture and Forestry, and Labour.
2. The Ministries of Labour and Agriculture and Forestry develop and implement a compulsory regime of annual safety certification of farm equipment, to include PTOs.

These are important recommendations, and the government has the opportunity to implement them when it creates regulations under the *Occupational Health and Safety Act* that are specific to farm and ranch workers. Consultations on the content of these OH & S regulations are [still underway](#).

The government should also take the opportunity presented by Judge Brown's report to reconsider its exemption of farm and ranch workers from protections regarding hours of work

and time off as enacted by Bill 17. Dr David Swann [has written](#) to Labour Minister Christina Gray to urge the government to do so, calling the exemption “a grave mistake”. Bob Barnetson, a noted labour expert, makes a similar argument on his [blog](#), as does the [Farmworkers Union of Alberta](#). As Barnetson argues, fatigue may have been a factor in Gibson’s death, as he reached into the auger to clear a blockage while the unshielded drive shaft was spinning, “a poor decision” that may have been influenced by Gibson’s lack of time off.

As of January 1, 2018, regulations under the *Employment Standards Code* will require that non-family waged farm and ranch workers be given 4 days off every 28 days, with the employer deciding which 4 days “at their convenience and within reason” (see [here](#)). This change was recommended by a Technical Working Group that was struck to follow up on the *Enhanced Protection for Farm and Ranch Workers Act* and was accepted by the government. While the change will provide more protection for farm and ranch workers than that received by Stephen Murray Gibson, it is still inferior to the 1 day off every 7 days or 4 consecutive days off after each 24 consecutive work days that other workers are entitled to under section 19 of the *Employment Standards Code*. As argued by Graham Martinelli and Andrew Lau in [Challenging the Farm Work Exclusions in the Employment Standards Code](#), this lack of equal protection, which may lead to workplace injuries and death, violates the section 7 and section 15 *Charter* rights of farm and ranch workers.

Further discussion of this and other issues facing farm and ranch workers will be held at an [event](#) at the University of Calgary Faculty of Law on August 21, 2017 to mark Farm Workers’ Day. That event will also serve as the Calgary launch of the book *Farm Workers in Western Canada: Injustices and Activism* (edited by Barnetson and Shirley McDonald). ABlawg readers are welcome to attend the event; please RSVP to Shirley.McDonald@ubc.ca.

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