



Ref: 61594

April 8, 2010

Mr. Norm Leibel
Deputy Chief Coroner
Office of the Chief Coroner
Metrotower II
Suite 800 – 4720 Kingsway
Burnaby, BC V5H 4N2

Dear Mr. Leibel:

Thank you for your letter of February 1, 2010 regarding the findings and recommendations of the Coroner's Inquest into the deaths of Amarjit Bal, Sarabjit Sidhu and Sukhvinder Punia that occurred on March 7, 2007.

As Minister of Labour, your letter and enclosure brings to my attention the Jury's recommendation #17. The Jury also issued a number of recommendations to other government ministries and agencies. These include:

- Minister of Public Safety and Solicitor General
- WorkSafeBC
- Office of the Superintendent of Motor Vehicles
- Minister of Transportation and Infrastructure
- The Inter-Agency Agricultural Compliance Committee
- Minister of Labour
- Attorney General of British Columbia

As you note in your correspondence, the purpose of the Jury's recommendations is to help prevent deaths of a similar nature from occurring in the future. You also request a response that indicates what actions have been taken or are planned with respect to the recommendations.

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As Minister of Labour, I have assumed the role of coordinating the responses to all of the Jury's recommendations directed to government ministries and agencies. In addition to the responses that have already been provided to you, this letter captures additional measures that my colleagues and I have committed to implement in response to the recommendations.

At the outset I would like to emphasize on behalf of my colleagues that the matters raised by the Jury's recommendations are very important and that they are matters that I, as Minister of Labour, and Government take most seriously.

Responses provided by the affected ministries and agencies are provided as follows:

Minister of Solicitor General and Public Safety

Recommendation 2:

To increase enforcement of commercial vehicle speeding and tailgating (more strict adherence to 60 metre minimum space between commercial vehicles).

Commercial vehicle speeding and tailgating enforcement has been a priority for this government that has produced results. For example, police working in enhanced traffic enforcement units across British Columbia have steadily increased the number of violation tickets issued for commercial vehicle infractions, from 1,322 tickets in 2005 to over 4,000 in 2009 (estimate based on preliminary data – final statistics not yet available).

On behalf of my Cabinet colleagues, I can confirm that enforcement of commercial vehicle speeding and tailgating will continue to be a priority for this Government.

Recommendation 3:

That the Minister issue a directive to all provincial police Traffic Sections to incorporate random checks targeting loaded 15 passenger vans to ensure proper operator licensing, seatbelt compliance and vehicle safety.

In direct response to this recommendation, the Ministry of Public Safety and Solicitor General wrote in December 2009 to all police agencies throughout the province. In this letter, the Ministry advised police agencies of the Coroner's Jury's recommendations and emphasized the

need for continued enforcement of all license, occupant restraint and vehicle safety requirements for 15 passenger vans. In addition, the Ministry will be following up with these police agencies and asking them to report regularly on their specific actions in response to this recommendation.

In addition, Lower Mainland police also participate in the interagency roadside inspection program in partnership with Commercial Vehicle Safety and Enforcement (CVSE), WorkSafeBC and the Employment Standards Branch since its creation in May 2007. This program targets vehicle safety standards and inspections for passenger vans, drivers and Farm Labour Contractors, and is an important component of police enforcement activities in light of the issues raised in the Coroner's Report. Lower Mainland police will continue to participate in this program.

For more information on the interagency roadside inspection program, the results it has demonstrated to date and future plans, please see the response to recommendation 16.

WorkSafeBC

Recommendation 4:

To remind business owners/operators of vehicles with 13 or more passengers that a Class 4 license is required and that there will be strict enforcement and severe penalties for failure to comply.

In response to this recommendation, WorkSafeBC's website will be modified to establish a link to a generic inspection checklist which can be used by employers engaged in transporting workers. This inspection checklist will provide guidance with respect to the regulatory, driver qualification and licensing requirements for the vehicle and operator, and will remind employers that administrative penalties may be levied in cases of repeated non-compliance with occupational health and safety laws and regulations.

In addition, as part of its participation in the interagency roadside inspection program, WorkSafeBC officers inspect for all applicable health and safety issues and, with its CVSE partners, highlight driver qualification and licensing requirements. WorkSafeBC will continue to participate in this program and use it to vigorously enforce all applicable health and safety, driver qualification and licensing requirements. WorkSafeBC's continued participation in this program in and of itself serves as a clear reminder to owners/operators of their legal obligations and of the consequences flowing from a failure to comply.

Recommendation 5:

That WorkSafeBC create commercials for English and multi-cultural television and radio stations on the rights and responsibilities of farm workers.

WorkSafeBC has created a significant number of print and radio ads and editorials in Punjabi and English-language publications and radio stations aimed at the South Asian community since fall 2008. Through to the end of 2009, there were 240 ads and editorials regarding rights and responsibilities of workers and employers and information about WorkSafeBC's ability to dialogue in various languages, including Punjabi. In addition, WorkSafeBC has created web portals in seven languages, including Punjabi, featuring information about health and safety, claims and assessments on WorkSafeBC's website. For example, there are 25 health and safety publications and videos in Punjabi on WorkSafeBC's website.

In 2010, WorkSafeBC has committed increased resources to communicating with the South Asian community about a range of issues, most especially health and safety rights and responsibilities for workers and employers. WorkSafeBC is closely examining the inquest recommendation and while details are still being finalized for WorkSafeBC's 2010 outreach program, they have already published safety columns in the Asian Pacific Post, the South Asian Post and the Filipino Post with more to come through 2010.

In addition, WorkSafeBC funds the Farm and Ranch Safety and Health Association (FARSHA), which promotes health and safety in the industry. FARSHA has received \$8.9 million in funding through WorkSafeBC since its inception in 1994 (approximately \$550,000/year).

The association develops and provides a range of educational services to Agriculture workers and employers, including:

- Safety services and training to agricultural employers
- Industry-specific health and safety programs to farm labour contractors
- Strategies for reducing injuries in the top claim-producing commodity groups, including greenhouses and farm labour contractors
- Health and safety services in Spanish to farms under the federal guest worker program
- Pesticide applicator training in English, Punjabi, and Vietnamese
- FARSHA's other outreach activities include workplace evaluations, site consultations, industry trade shows, Farmedic first aid training, creating publications and articles, and participating in media opportunities.

Recommendation 6:

That random on-site inspections of all vehicles used by the current 92 labour contractors be conducted.

As part of its participation in the interagency roadside inspection program, WorkSafeBC undertakes random roadside inspections of all recognized worker transport vehicles. In addition, WorkSafeBC undertakes random on farm inspections where worker transports vehicles are present. These inspections will continue.

At present, there is no mechanism to determine when and where a Farm Labour Contractor is transporting workers. However, WorkSafeBC will continue its partnership with the Employment Standards Branch (ESB) where ESB provides identification information on registered Farm Labour Contractors to WorkSafeBC. When Farm Labour Contractors are identified at a worksite (farm) where an inspection is being conducted, the Farm Labour Contractor's vehicles will be included in the inspection. Additionally, ESB has confirmed that its inspectors will contact WorkSafeBC to identify sites where four or more transport vehicles are found to be present. WorkSafeBC Officers will respond promptly to conduct an inspection of the vehicle as well as the farming operations. WorkSafeBC will request the attendance of CVSE personnel if deemed necessary.

Office of the Superintendent of Motor Vehicles

Recommendation 7:

To increase random checks of all commercial vehicles and specifically 15 passenger vans.

Since its creation in May 2007, the interagency roadside inspection program has provided for increased random checks of all commercial vehicles and specifically 15 passenger vans. The Office of the Superintendent of Motor Vehicles will continue to participate in this program.

For more information on the interagency roadside inspection program, the results it has demonstrated to date and future plans, please see the response to recommendation 16.

Recommendation 8:

That loaded 15 passenger vans be classified as high-risk vehicles which can be pulled over especially when fully loaded.

The intent of this recommendation has been addressed by legislative amendments that were implemented to improve the safety of passengers of 15 passenger vans, and farm workers in particular. Specifically, changes to the *Employment Standards Act* were announced in May 2007 and were passed in April 2008. The legislation provides for the cancellation or suspension of a Farm Labour Contractor's license for safety reasons. In addition, when an unsafe Farm Labour Contractor vehicle is taken off the road following a roadside check, the contractor is required to pay for alternative transportation to the workplace. The legislation also requires farm producers to hire only licensed Farm Labour Contractors.

As well, the *Motor Vehicle Act* Regulations (MVAR) were updated in May 2007 to require vehicles to be equipped with one seatbelt for every passenger. Wearing seatbelts dramatically increases the chances of survival during a rollover crash.

Recommendation 9:

That the Superintendent review and forward amendments to the legislation related to the current terminology clarifying the term "bus" to ensure that there is no confusion respecting mandatory seatbelt use.

This recommendation has already been addressed by way of an amendment to the *Motor Vehicle Act* Regulation that was enacted in May 2007. Specifically, in order to clarify when mandatory seatbelt use is required, the Regulation was revised to require one seatbelt for every person in a vehicle, with fines for carriers, employers, vehicles owners, and drivers if they allow a vehicle to be driven with more passengers than proper seats.

A \$167 ticket (including victim surcharge) can be issued to drivers or passengers for:

- Failing to remain seated;
- Failing to wear a seatbelt;
- Failing to be the only occupant of a seat;

A \$167 ticket (including victim surcharge) can be issued to drivers for:

- Permitting passengers without seatbelts.;
- Operating a vehicle without seatbelts;
- Operating a vehicle with inoperative seatbelts;
- Operating a vehicle while a person is riding on the vehicle;
- Operating a vehicle with more than one person in a seat;
- Operating a vehicle while a person is not seated;
- Operating a vehicle with too many seats.

Carriers of, owners of, or employers of drivers of, vehicles will receive a \$598 ticket (including victim surcharge) for requesting, requiring or allowing a vehicle to be operated:

- With too many people in the vehicle;
- With inoperative seatbelts or seatbelts modified so as to reduce their effectiveness;
- With too many seats.

In addition, operating a vehicle with too many persons in the vehicle will result in a \$311 ticket (including victim surcharges). The new regulations apply to vehicles that were manufactured with seatbelts. Older vehicles and vehicles such as large buses that were not manufactured with seatbelts are not required to be retro-fitted with seatbelts; however, they may only carry as many passengers as there are seating positions available.

Minister of Transportation and Infrastructure

Recommendation 10¹:

Ensure inspection sites are separate from repair facilities.

Inspection facility designation is granted by the Province and it generally only forms part of a facility's regular business. If inspection facilities are not allowed to provide repair and maintenance services for customers requiring inspection services, facility owners may cease to provide inspection services in favour of repairs and maintenance as a more lucrative business stream.

Facilities are subject to mandatory audits and can expect focused intervention when roadside inspections fail vehicles which previously passed inspection at designated facilities. Where discrepancies are identified between the roadside and facility inspections, audits are expedited and sanctions, up to and including cancellation of the facility's ability to perform inspections, are imposed.

The Ministry of Transportation and Infrastructure is also developing additional measures to strengthen oversight of inspection facilities, including potential changes to the *Motor Vehicle Act* to enable improved monitoring and enforcement of both facilities and inspectors. This includes enhanced access to conduct mechanical audits and allows the Ministry closer scrutiny over facilities and individuals who conduct inspections.

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¹ Although recommendations 10 and 11 were directed to the Office of the Superintendent of Motor Vehicles, the Ministry of Transportation and Infrastructure is responsible for these issues, and is thus responsible for implementing Government's response to these recommendations.

Recommendation 11:

Ensure continuous testing and re-educating of private testing facilities to ensure quality and safety standards are maintained.

At present, inspectors must complete trade certified training and maintain performance levels required by their trade qualification standards.

The Ministry of Transportation and Infrastructure is giving priority focus to developing options to implement enhanced training and recertification programs. Ministry staff are currently reviewing structured program options such as online training and testing, community college program implementation or a combination of both. The Ministry expects to be in the position to implement these enhanced training and recertification programs later this year.

Recommendation 12:

Study replacing concrete freeway barriers with new, flexible, stranded steel rope barriers (now in use in the United States).

The Ministry of Transportation and Infrastructure has studied this issue and indeed recognizes the benefits cable barriers present, and will continue to utilize them in future projects where appropriate. While cable barriers have been proven to enhance safety, they are not right for every site. Unlike concrete barriers, cable barriers absorb kinetic energy from impacting vehicles, which reduces the impact on vehicle occupants. The impact creates deflection in the barriers, so there must be adequate median distance to ensure the barriers operate safely.

Recommendation 13:

Consider the feasibility of restricting heavy commercial vehicles such as multi-axle tractor trailers to travel in the slow lane in selected portions of highways in British Columbia.

While some jurisdictions restrict commercial vehicles to certain lanes, most of British Columbia's 47,299 kilometers of highways are only two lanes wide. Where four lanes exist, commercial drivers need at least two lanes to give room to merging traffic, pass slower vehicles and change lanes as necessary. Providing drivers the flexibility they need precludes the Ministry of Transportation and Infrastructure from restricting them to the right-hand lane.

On provincial highways, signs are placed to encourage slow drivers to keep right. On routes with higher traffic volumes, "Slower Traffic Keep Right" signs are installed. In response to this recommendation, the Ministry of Transportation and Infrastructure will regularly include this message on overhead electronic signs on primary corridors throughout the province.

Recommendation 14:

Consider a review to increase the minimum tire tread depth from 3.5 mm.

In response to this recommendation, an increase to the *Motor Vehicle Act* tire tread depth regulations is being considered, and consultation with stakeholders and other jurisdictions is underway through the CVSE.

Recommendation 15:

That mandatory annual inspections be conducted by a government employed inspector specifically on all 15 passenger vans.

A system of mandatory inspections is already in place. 15-passenger vans which operate as commercial vehicles must be inspected every six months at a designated inspection facility.

In addition, CVSE staff have been conducting targeted roadside inspections of vehicles operated by Farm Labour Contractors and have documented a notable reduction in the out of service rates for vans transporting farm workers. In 2007, initial inspections resulted in a 30 percent out of service rate. In 2008, that figured dropped to 11 percent and in 2009 that figure was 10 percent. Recent inspections indicate a continued positive trend.

CVSE staff also conducts regular seasonal voluntary inspection periods for operators to have their vehicles inspected. CVSE staff will continue to focus their efforts on removing non-compliant vehicles from provincial roads and educating those who use 15-passenger vans on regulations and maintenance practices for their vans' safe operation

The Inter-Agency Agricultural Compliance Committee

Recommendation 16:

That the multi-agency roadside checks be continued at the current level (10-12/year) and/or increased in number if deemed appropriate in summer months in order to maintain a level of compliance with all applicable regulations by the operators of 15 passenger vans.

As noted in the responses to several of the recommendations, the Inter-Agency Agricultural Compliance Committee was established shortly after the March 7, 2007 collision, and is considered to be an integral part of Government's efforts to help prevent deaths of a similar nature from occurring in the future.

During each of the last three years representatives of the Inter-agency committee have undertaken a regime of random roadside inspections. Results of the inspections have demonstrated a significant decrease in the percentage of vehicles failing inspections, resulting in substantial improvements in overall safety. The inspections are scheduled over the course of the entire harvest season and there is an inspection plan in place for 2010. The number of inspections may increase or decrease depending upon the results of the individual inspections and the general compliance trends. However, in response to the recommendation, I can assure you that the multi-agency road-side checks will continue at least at the current level, and will be increased if deemed appropriate. Members of the Inter-agency committee meet regularly and assess the effectiveness of current initiatives and modify compliance strategies and efforts as appropriate in order to achieve compliance. The committee is committed to compliance and will continue to engage in both enforcement and education initiatives.

Minister of Labour

Recommendation 17:

That the Minister seek changes to the legislation so that business operators contracting the services of seasonal agricultural workers (such as owners of farms, nurseries and greenhouses) be given the responsibility to recognize such workers as employees and:

- a) Ensure that each new worker that reports for work at their place of business is educated and informed of their rights and responsibilities under the Workers Compensation Act and the Regulation;*
- b) Ensure that the business owners have a system in place to ensure that the labour contractors they are using are providing worker transportation in accordance with the applicable laws; and*
- c) Ensure that employees are supplied with written documentation outlining their rights.*

Presiding Coroner Comments: The Jury heard that the current legislation excludes farm workers from falling under the responsibility of the land based businesses that are contracting their services and they are therefore not covered under the employer's Health and Safety program.

In response to the presiding Coroner's comments, it is important to be clear that a worker is covered at all times by an employer's occupational health and safety program. The Farm Labour Contractor, as an employer of the workers it is transporting, is responsible for ensuring it is in compliance with Section 115 of the *Workers' Compensation Act* (General Duties of Employers) while they are transporting the workers. This includes ensuring the health and safety of all workers working for that employer, remedying any workplace conditions that are hazardous to the health or safety of the workers, and ensuring that workers are aware of their rights and duties under Part 3 of the *Workers' Compensation Act*.

Once the farm workers arrive at the land based business that has contracted the Farm Labour Contractor's services, the farm owner's obligation under Section 115 (1) of the *Workers' Compensation Act* is to ensure the health and safety of its own workers and any other workers (including the employees of the Farm Labour Contractor) present at its workplace (the farm) for the duration of the time the workers are present at that workplace. Once again, this includes ensuring the health and safety of all workers working for that employer, remedying any workplace conditions that are hazardous to the health or safety of the workers, and ensuring that workers are aware of their rights and duties under Part 3 of the *Workers' Compensation Act*.

Given that workers are covered at all times and in all worksites (farms or while being transported) by occupational health and safety laws and regulations, it is my view that the intent of this recommendation can be accomplished without further legislation. Specifically, employers are already responsible for ensuring that new workers are aware of their rights and duties under the *Workers Compensation Act* and the *Regulation*, and the employer's efforts are supplemented by WorkSafeBC's and FARSHA's own efforts in promoting public awareness on the rights and responsibilities of farm workers in the Punjabi community (see response to Recommendation 5 above).

In addition and in direct response to this recommendation, WorkSafeBC will develop materials and translate them into Punjabi and Spanish that will be distributed to farm workers. These materials will explain key safety issues and farm worker rights.

Attorney General of British Columbia

Recommendation 18:

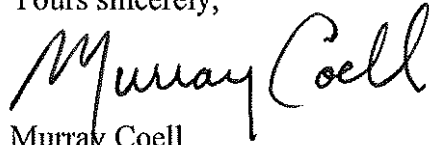
That the Attorney General sponsor a study of the practicality of a bonding scheme to ensure payment of fines and other assessments issued against limited companies involved in the transportation of people.

Responsibility for this recommendation resides with the Minister of Finance, who has asked the Risk Management Branch in the Ministry of Finance to consider the feasibility of this recommendation. I am advised that the Risk Management Branch will be consulting with the Surety Association of Canada on this issue and will provide the Coroner's Office with the results of the consultation.

In closing, on behalf of the Government of British Columbia I would again express condolences to the victims and families of this terrible accident. I would also like to express my appreciation to the members of the Jury who have presented these thoughtful and important recommendations to government.

Thank you, again, for your correspondence.

Yours sincerely,

A handwritten signature in black ink that reads "Murray Coell". The signature is written in a cursive, flowing style.

Murray Coell
Minister

cc: Honourable Bill Bennett
Minister of Community and Rural Development

Honourable Shirley Bond
Minister of Transportation and Infrastructure

Honourable Mike de Jong
Attorney General

Honourable Kevin Falcon
Minister of Health Services

Honourable Colin Hansen
Minister of Finance

Honourable Kash Heed
Minister of Public Safety and Solicitor General

Roslyn Kunin, Chair
WorkSafeBC

Mr. David Anderson, President and CEO
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Dale Wall, Deputy Minister
Ministry of Community and Rural Development

Peter Milburn, Deputy Minister
Ministry of Transportation and Infrastructure

David Loukidelis, Deputy Attorney General
Ministry of Attorney General

John Dyble, Deputy Minister
Ministry of Health Services

Graham Whitmarsh, Deputy Minister
Ministry of Finance

David Morhart, Deputy Solicitor General
Ministry of Public Safety and Solicitor General