

# Recommendations to protect the lives and rights of BC farmworkers

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**“No one else  
should die.”**

*Darshan S. Punia,  
husband of Sukhvinder K. Punia,  
farmworker killed in overloaded van crash*

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Submitted to  
Honourable  
Olga Ilich,  
Minister of Labour

Submitted by the  
B.C. Federation of  
Labour

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# FARMWORKERS RECOMMENDATIONS

## INTRODUCTION

**W**e are presenting this Brief on behalf of the B.C. Federation of Labour, the Canadian Farmworkers' Union and the families of those who lost a loved one in the recent tragedy that took the lives of three farmworkers and injured others, when the van they were travelling to work, overturned on Highway 1 near Abbotsford.

For the families of Sukhvinder Kaur Punia, Sarbjit Kaur Sidhu and Armarjit Kaur Bal, nothing in this Report can change the sense of loss, the pain and the suffering they are feeling today and will continue to feel for the rest of their lives.

For the family of Mohinder Sunar, this Report will be bittersweet. They, too, lost a loved one in 2003 when she was travelling to work in an overloaded van without seatbelts. She was not killed by the impact, but later when other workers, without seatbelts, smothered her.

The Coroners' inquest and the review by the Workers Compensation Board (WCB) of that incident made a series of recommendations. Those recommendations were ignored. Now, three more workers are dead and another is in critical condition in the hospital.

Today, this Report is being presented by the husbands, sons and relatives of the three women who were killed. Despite their grief, they are joining together to demand that no one else die going to work to provide food for British Columbians.

This Report speaks of the transportation issue, but also addresses the issue of safety and standards on the farms. For farmworkers, the experience of going to work is only part of the risks they face. This Reports calls for action to protect farmworkers in the vehicles and on the farms. Anything less would be a betrayal of our responsibility.

The Coroner’s recommendations and the WCB recommendations are the backbone of this Report. We particularly wish to thank the Royal Canadian Mounted Police (RCMP) and the WCB for their insights into the crisis. We also want to thank the farmworkers’, their community advocates and the Canadian Farmworkers’ Union for their input.

The fundamental conclusion of this Report is that the solutions are readily available for those who wish to listen. The job of this government is to listen AND to act. We hope that these solutions will form the basis of that action, because without action it is not a question of, if, the next tragedy will occur, but when.

In the words of Darshan Punia, “No one else should die.”

### **INTER-AGENCY FARMWORKERS COMMITTEE**

British Columbia’s farmworkers toil in difficult conditions, their industry supervised by competing government jurisdictions and agencies with overlapping, but often, unenforced regulations.

So it should come as no surprise, that the B.C. Federation of Labour is recommending the establishment of an Inter-Agency Farmworker Committee.

Past experience tells us that the only serious attempts to deal with the problems and deaths of farmworkers in the last three decades came when government agencies came together to form a joint approach.

The first attempt came in the mid nineties when the RCMP, the Commercial Vehicle Branch, the Ministry of Labour and other agencies joined together to crack down on the dangerous operation of vehicles carrying workers to and from the fields.

The second came after the introduction of new legislation that extended many of the rights already enjoyed by other British Columbian workers, to farmworkers. Tagged the Agriculture Compliance Team (ACT), it involved the Ministry of Labour, Human Resources Development Canada and Canadian Customs and Revenue. They focused mostly on the economic issues in the fields. Attempts to involve other agencies such as the Commercial Vehicle Branch and the RCMP were curtailed because of funding issues.

ACT instituted a systematic approach to ensuring standards for farmworkers were respected. It involved a team of inspectors who focused on the contractors and growers. This program was greatly curtailed (or cancelled, depending on who you talk to) in 2003. Suffice to say, none of the co-operation between the agencies continued after this decision and each group went back to doing its own thing – with disastrous results.

The need for coordination is not in dispute. Following the death from suffocation by Mohinder Sunar, the WCB report, *Lessons Learned*, called for the reinstatement of roadside inspections by the RCMP, Motor Vehicle Branch, Gas Safety Branch, Workers' Compensation Board and the Ministry of Labour.

The Coroner's report into the death of Mohinder Sunar also endorsed this recommendation and called on the provincial government to implement it. But after three years, and three more unnecessary deaths, no action has been taken to follow up and establish the joint agency.

The need for the Inter-Agency Farmworker Committee is obvious to anyone who spends time discussing this with the agencies involved and the farmworkers themselves. As you will see from the rest of our Report, the need for cooperation is fundamental to effective enforcement and protection.

Unless government embraces a coordinated approach that is open and transparent, the real crisis facing farmworkers will never be solved.

This must not be a one-shot affair which disappears shortly after the headlines. It must represent a long-term commitment to the people who do the tough work to provide food for British Columbians and for our export economy.

## **RECOMMENDATIONS**

1. The provincial government, through the Ministry of Labour, take a leadership role and immediately establish the Inter-Agency Farmworker Committee. The Committee should be composed of a minimum of two full time staff from the Employment Standards Branch, the WCB, the Commercial Vehicle Safety Branch, the RCMP and Canada Revenue Agency. Additional funding for the Committee should be provided by the provincial government.
2. The Committee must ensure that all applicable laws and regulations are enforced with regard to the rights and safety of farmworkers during transportation and on the job.
3. The Committee should have a one-year mandate. A continued mandate will be reviewed at that time. It should issue monthly status reports.

4. The Inter-Agency Farmworker Committee should immediately call a meeting of all labour contractors to review all the requirements of the law and regulations.
5. The Inter-Agency Farmworker Committee should develop a strategic enforcement plan and begin inspections immediately.
6. Where enforcement measures result in vehicles being impounded, any farmworkers stranded shall be provided return transportation to their original departure point. In addition, eight-hours pay based on the prevailing hourly minimum wage rate shall be paid to each of them from the bond posted by the employer.
7. An industry stakeholder committee should be established to advise the Inter-Agency Farmworker Committee, including representatives of farmworkers, labour, community and employer associations.
8. The Committee must work closely with the Farm and Ranch Safety and Health Association to continue and expand education on safety issues.
9. The Committee shall not be mandated, nor will its focus be the enforcement of immigration laws against the employers or employees.
10. The RCMP should extend INFORM program to agriculture industry to ensure a coordinated approach. (This program involves the RCMP reporting to the WCB any vehicles that do not meet minimum standards. It is already in place in northern BC and Alberta.)

## **VEHICLE SAFETY**

The standards and enforcement of regulations to protect the safety of farmworkers on the way to and from work, is a story of loopholes and sometimes conflicting jurisdictions. The issue of vehicle safety is a dramatic case in point about why a coordinated

and focused approach is absolutely necessary if we are going to bring safety standards up to an acceptable level and ensure that farmworkers are no longer put at risk.

At every turn of our investigation, we found sincere people who wanted to do the right thing. It is perhaps the seatbelt issue which so dramatically points out the need for changes to laws, and just as importantly, the need for coordinated action to ensure every worker being transported to work has the right to a seat and a seat belt. The reality is that what is required by law for everyday motorists, is regularly ignored for farmworkers when vehicles have the belts removed and overloaded vans head out on the road.

There is no question that there is a significant economic incentive for contractors and growers to ignore regulations and common sense. Each additional employee transported to the farm or greenhouse adds to the bottom line. The overcrowding of vans is a plus for the balance sheet. It will require coordinated action including, as we suggest elsewhere, increased fines and quick action, if the incentive is to be taken away.

## **INSPECTIONS**

Currently, vehicles being used for the transportation of farmworkers must be inspected every six months. The inspection is carried out by a certified government appointed inspector who, in most cases, is a mechanic that works in the private sector, usually a local garage.

During our discussions to prepare this Report, a number of concerns and questions were raised about this process. These included the consistency of the inspections and the need for those doing the inspections to be properly monitored. Another issue raised was the need for the inspectors to be free from other financial relationships with those who they are inspecting. The conflict of interest between the one doing the work and the one doing the inspection is transparent and obvious.

However, the Federation did not conclude an immediate course of action on this front since more research was necessary to consult a wider group of people.

## RECOMMENDATIONS

1. The issue of motor vehicle inspection be referred to the Inter-Agency Farmworker Committee to undertake a review and make recommendations within 90 days.

## SEAT BELT USE

The seat belt issue has been, to say the least, a glaring example of how the lack of clear regulation, coordination and enforcement has led directly to the unnecessary deaths of farmworkers travelling to and from work.

For the record, the RCMP reported the obvious in the aftermath of the most recent tragedy. Of those that die in motor vehicle accidents, a full 60 percent would probably be alive today if they had simply worn their seat belts. The RCMP also report that there is a direct relationship between the level of enforcement and the number of fatalities on the road. The higher the enforcement, the lower the fatalities.

It's not that people and agencies don't care. There are, at the latest count, four groups that have some responsibility around the basic question of seat belt use. Yet, none appear to have a clear mandate to enforce the simple practice of providing a seat belt and ensuring it is used.

The RCMP report they can enforce the seat belt rules under the **Motor Vehicle Act (MVA)**, but only if there are seat belts in place. They have the authority to stop the vehicle during transport to inspect the vehicle. However, if the seat belts have been removed, then they have no authority to demand they be put back in the van. This is especially true if the van has been registered as a bus. This is done by simply getting the insurance agent to declare it a bus.

A review of the **MVA** does not necessarily lead to the conclusion that an owner can simply declare the van a "bus" and take out the seatbelts. However, despite some confusion, the practice of the

RCMP is not to enforce the seat belt rule if the van is classified as a bus.

The WCB has some clear regulations regarding the use of seat belts on vehicles used to transport people to work. The vehicle must have seat belts, it must have proper seats with backs and each worker must have a 16-inch width of seat to sit on. Again, a simple glance would suggest that these measures are plenty strong enough to enforce and ensure workers are protected.

But, the WCB regulations have a caveat that suggests exceptions could be made where it is not “feasible” to have a seat belt. WCB staff report that they believe the regulation requires the vans to have seat belts.

Enforcement becomes even more problematic. The RCMP can stop the van and inspect it on the road. The WCB cannot stop the van when it is moving and do an inspection, even though the van is a place of work. The WCB takes the position when the van is moving it is under the jurisdiction of the **MVA**.

If the van stops 10 feet from the farm, the van is in a “grey area” and enforcement of the rules may be at risk. When the van is on the farmsite, the Board has clear jurisdiction for inspection.

The Motor Vehicle Branch operates under the same understanding and regulation as the RCMP. It, too, has the power to stop vehicles and inspect them. But, it has no power to enforce seat belt use.

Employers go to the Insurance Corporation of British Columbia (ICBC) agent and have the van declared a bus and then remove the seat belts. While there is some confusion whether this is legal or not, the results are tragic: the practice of overloading vans without seat belts continues with deadly results.

The Coroner’s inquest into the death of Mohinder Sunar concluded that the government must act to clarify and change the **MVA** to make clear the need for seat belt use and to prevent the removal of seat belts. This was echoed by the WCB report. Both reports were sent to the provincial government ministries three years ago and no action was taken.

Now is the time for action.

## **RECOMMENDATIONS**

1. The Solicitor General must change the **MVA** to require that all motor vehicles used in the transportation of workers have a proper seat and seat belt for every passenger.
2. The WCB must clarify its role and ensure that it has the jurisdiction to work jointly with the RCMP and/or the Commercial Vehicle Safety Branch to inspect vehicles while on route to work.
3. Owners found guilty of removing seatbelts and/or operating a vehicle without seat belts must face significant penalties, including substantial fines and criminal charges, under the **MVA** and WCB regulations.
4. Vehicles found operating without seat belts should be impounded by the RCMP.
5. An educational campaign must be launched in sectors using vans and other vehicles to transport workers to ensure both employers and workers understand their responsibilities and rights.

## **OVERCROWDING AND OVERLOADING VEHICLES**

Another significant factor in the deaths of farmworkers is the overloading of vehicles by growers and contractors. It's a regular and consistent practice to have more employees in the vehicle than there are seats and seat belts. For the contractor, there is a direct economic advantage to have the most workers delivered to the field at the lowest cost, because they are paid by the number of workers. The more workers, the higher the return. For the employees needing to go to work, overloading becomes the only way they have access to a paycheck.

The RCMP can only deal with this as a gross weight issue. The RCMP report they can stop the vehicle, but there is no existing regulation that would allow police to rule a van is overloaded. If

seat belts were in place for 15 workers and there were 17 workers, they could fine up to 15 workers for not wearing a seatbelt, but take no action against those without belts who are part of the overloaded van. There is no way of measuring overloaded vehicles during routine inspections and, therefore, there is no method of enforcement.

The WCB has much clearer language on this point. If there is a passenger, there must be a seat and a seat belt. But enforcing this rule requires the RCMP to stop the vehicle while traveling to and from work.

Overloading, especially with no seat belts, is a deadly game. The traditional vans used to transport farmworkers are already under scrutiny because at 15 passengers, stability is an issue. When passengers can move with sudden motion, the stability is significantly compromised, leading to a potentially very dangerous situation.

## RECOMMENDATIONS

1. The **MVA** should be changed to allow the RCMP to fine the driver a minimum of \$500 for overloading the van.
2. The **MVA** should be changed to require that there be a seat belt and a seat for every passenger on all vehicles used to transport farmworkers to work.
3. The Inter-Agency Farmworker Committee must undertake a review of stability issues related to the operation of the passenger vans used for transportation and make recommendations for improvements in their operations.
4. The WCB must increase fines levied on the owner if the van is overloaded.
5. The RCMP should be mandated to impound vans where it is discovered they are overloaded.

## **LICENSING OF DRIVERS**

The job of driving a vehicle full of people is a complicated and skilled responsibility. The government recognizes this by requiring drivers who carry passengers for work to have a Class 4 license.

In addition, media reports indicate that the level of concern about the passenger vans in some areas has caused employers to require an even higher level of training for the drivers.

## **RECOMMENDATIONS**

1. WCB should fine employers who, themselves or allow other employees, to drive vehicles without the proper licenses; should face significantly increased fines.
2. The Inter-Agency Farmworkers Committee should review increased requirements for these vehicles (including in other jurisdictions) and recommend additional training if necessary.
3. Where the driver is found to be without the proper license and an accident occurs that causes injury or death, criminal charges should be laid by the RCMP through the Crown Council.

## **FARM SAFETY AND EMPLOYMENT STANDARDS**

Work in the greenhouses and farms is long, difficult and often low-paying. We do not need to detail the situation here. Our Report, *Hand-Harvesters of Fraser Valley Crops* published in 2004, documents the plight of farmworkers and the conditions under which they toil.

The Report documents steps by the present government which stripped away the already meager rights of farmworkers to earn a decent living. By watering down the rights of farmworkers, removing their entitlement to even the most basic rights under

employment standards, an already difficult situation was made worse.

Enforcement of both safety and employment standards remains an enormous challenge in the face of continuous denials, that all is well. The fact that farmworkers are particularly vulnerable to exploitation on both these fronts is widely accepted.

A consistent and coordinated approach to these problems, combined with the return of basic employment rights enjoyed by the vast majority of other workers, is required. This includes the right to vacation pay, statutory holiday pay, overtime pay, minimum wage and rest periods.

## **RECOMMENDATIONS**

1. The Inter-Agency Farmworkers Committee must develop and implement a coordinated approach, especially by employment standards and the WCB, to enforce the standards and rights on British Columbian farms, nurseries and greenhouse operations.
2. The government must introduce in this legislative session, a bill to restore farmworkers rights to the standards enjoyed by other workers in British Columbia.
3. A safety committee, including farmworkers, be established at every farm, nursery or greenhouse that employs more than 20 people, as required by the **Workers Compensation Act**.

## **BC AGRICULTURE COUNCIL MEMORANDUM**

As part of the provincial government's deregulation strategy, it agreed to a Memorandum of Agreement with the Agriculture industry. This Memorandum was proposed as an alternative to what employment standards offered to farmworkers. It included a commitment to improving compliance in the fields and educating the employers in the industry as to their obligations and responsibilities.

Part of the Agreement called for industry participants to refrain from using unlicensed contractors to carry out work on their farms. Rainbow Farms was part of the Agreement but was found guilty of using unlicensed contractors. It was this farm that the workers were headed to on the day they were killed.

The Agreement, although dealing in detail with farmworkers, did not include a single voice from the farmworkers, their union, or community advocate groups that work with farmworkers.

This Agreement is now up for review.

## **RECOMMENDATIONS**

1. The Agreement should not be renewed until the other steps outlined in this Report are implemented and reviewed to ensure they are effective.
2. The Agreement should only be renewed with sign-off from organizations representing farmworkers and community advocate organizations.

## **CONCLUSION**

**T**he Federation is committed to carrying on this fight until basic rights to safety, dignity and economic justice are achieved for farmworkers. The government of the day must understand that not only is there a problem, there are solutions.