

SAFETY COMPROMISED RIGHTS DENIED

**A Report on the first
anniversary of the death of
three farmworkers in BC**

**MARCH
2008**



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INTRODUCTION

One year ago, March 7, 2007, a van transporting 17 women farmworkers overturned on Highway 1 near Abbotsford, killing three farmworkers: Sukhvinder Kaur Punia, Sarbjit Kaur Sidhu and Armarjit Kaur Bal.

On behalf of the families of the three women and the Canadian Farmworkers Union (CFU), the B.C. Federation of Labour, (The Federation) submitted a Report and 29 Recommendations to Labour Minister Olga Ilich on March 14, 2007, demanding the government act immediately to protect farmworkers travelling to work, as well as working on the farms. The fundamental conclusion of the Report was that solutions were readily available if only the government had the will to listen and act.

Van accidents transporting farmworkers to work are not uncommon. Overloaded vans, no seatbelts and vehicles in horrific shape were well-known to the Ministry of Labour, Ministry of Transportation and agencies like the Workers' Compensation Board (WCB) and Royal Canadian Mounted Police (RCMP) responsible for ensuring that safety regulations are enforced.

In 2003, Mohinder Sunar died 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 Coroner's inquest and the WCB accident investigation into this fatality made a series of recommendations but they were ignored.

It took another three farmworker deaths before British Columbians saw a response from the government. The horrific images of the vehicle crash being played repeatedly on national television and the ongoing pressure from the families, the farmworker community, the New Democratic Party (NDP) Opposition and the B.C. Federation of Labour, forced the government to implement a number of measures that would make it safer for farmworkers to go to work.

In 2007 the government amended the **Motor Vehicle Act (MVA)**, established the Inter-Agency Farmworker Committee, and reinstated the compliance team to conduct roadside inspections of farmworker transportation vehicles.

It was through the media the Federation learned that roadside inspections were being carried out by the inter-agency team in March 2007, and the results were horrifying. 180 farmworker vans were inspected in the Fraser Valley during an eight-day period and 37 percent (67 vans) were pulled off the road and out of service because they were not fit to be used to transport workers.

In reviewing the WCB Inspection Reports for 2007, there was a wide variety of employer violations cited, including:

- Worker transportation vehicles so unsafe that vehicle plates were seized and the vehicles towed;
- Impounded vehicles being used without orders being complied with;
- Improper seats and seat belts;
- Overloading of the vans (e.g., 15-passenger van insured for 18 people carrying 19 at the time of inspection);
- All manner of mechanical deficiencies;
- No pre-shift inspections;
- No proper first aid kits;
- Emergency exits not opening, door latches not operating;
- Vehicle drivers not properly licensed; and
- Employers not registered with the WCB.

The inspection results clearly identify how the conditions had been allowed to deteriorate to a horrific level. Clearly, the work of the Inter-Agency Farmworker Committee is critical and must be provided the resources necessary to continue the roadside inspections.

GOVERNMENT'S LACK OF ACTION

Despite the well publicized activities, especially the roadside inspections, many of the Federation's recommendations have not been addressed at all, or in a manner not comprehensive enough to bring about sustained improvements for farmworkers while travelling to work and working in the fields and farms.

1. No criminal charges laid

One year later, no criminal charges have been laid. In the fall of 2007, the RCMP submitted its recommendations to the Crown; however, the Crown has not acted on the recommendations to date. This is unacceptable.

2. Delay in Coroner's Inquest

Shortly after the van tragedy the government announced a Coroner's Inquest would be held. A date was set for April 28, 2008, but now has been delayed until the Crown acts on the RCMP's recommendations.

The absence of a Coroner's Inquest and/or recommendations means that the government and other involved agencies are not addressing in a comprehensive way the solutions required to ensure farmworkers are fully protected while being transported to work and while working on the farms.

3. No changes to employment standards legislation

The government completely ignored the Federation's Recommendation to introduce legislation to restore farmworkers employment standards and rights. In 2001, the government amended the **Employment Standards Act** and stripped away the already meager rights of farmworkers, removing their entitlement to even the most basic rights.

Farmworkers like most BC workers, must be entitled to minimum wage, rest periods, vacation, statutory holiday and overtime pay.

4. No changes to the vehicle certification process

Immediately following the van crash, there were many concerns and questions about the process used to certify the vans and the possible conflict of interest between the one doing the work and the one doing the inspection. The Federation recommended the issue be referred to the Inter-Agency Farmworker Committee to undertake the review and make recommendations within 90 days.

To date, we are not aware of the review being conducted or any recommendations to change the process.

5. No changes to the use of 15-passengers vans

The stability issue for 15-passenger vans raises serious concerns when they are used as worker transportation vehicles. No changes have been made to the requirements for using these vans and the government has only committed to reviewing the matter again. When interviewed by the Canadian Press, Transport Minister Kevin Falcon could not remember “any serious accidents” involving 15-passenger vans, not even the gruesome crash of March 7, 2007.

2008 RECOMMENDATIONS

One year later, on this dreadful anniversary, the families of the deceased women and the women who survived have been left angry and demoralized. They are still waiting for the Coroner’s Service to hold an inquest and for criminal charges to be laid against the driver of the van.

Farmworkers get paid on a piece rate basis rather than an hourly wage, and because compensation is based on a worker’s wage, the survivors received very low rates of compensation. Consequently, in order to put food on the table, they were forced to return to their physically demanding jobs before they fully recovered from their injuries. Needless to say, this situation added complication to the recovery process for them.

As stated in our 2007 Report, the Federation is committed to carrying on this fight until the basic rights to safety dignity and economic justice are achieved for farmworkers. One year later, we see some improvements have been made; however, there were no real consequences for the owner of the van.

As well, farmworkers are still not entitled to the basic employment rights enjoyed by the vast majority of workers in British Columbia, including the right to a minimum wage, rest periods, vacation pay, statutory holiday pay and overtime pay.

We saw a burst of activity in response to the van crash of March 7, 2007, but the Federation wants assurances from the government that they will develop and implement a comprehensive and stringent enforcement strategy that will ensure farmworkers’ safety into the future.

The Federation is concerned, that like the failure to act on the recommendations following the death of Mohinder Sunar in 2003, once again, the will to implement full protection for these vulnerable workers will fade.

The Federation recommends that the government act immediately on the following:

1. The Crown must act on the RCMP recommendations and lay criminal charges;
2. The Crown must re-instate the date of April 28th as the opening of the Coroner's Inquest;
3. The government must introduce legislation in the current legislative session to restore farmworkers' employment standards and rights;
4. The government must address the issue of vehicle inspections and certifications;
5. The government must resource adequately, the Inter-Agency Farmworker Committee to meet monthly, to conduct regular roadside inspections throughout the year and to carry out field and farm inspections and enforcement;
6. The Inter-Agency Farmworker Committee must make public, the Committee's Terms of Reference, monthly status reports, and 2007 and 2008 enforcement strategies; and
7. The government must ban 15-passenger vans as worker transportation vehicles.

**PROGRESS REPORT ON FARMWORKERS
2007 RECOMMENDATIONS**

1. INTER-AGENCY FARMWORKER COMMITTEE

2007 RECOMMENDATIONS	2008 UPDATE
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.	Completed
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.	No public disclosure
3. The Committee should have a one-year mandate. A continued mandate will be reviewed at that time. It should issue monthly status reports.	No public disclosure
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.	Completed
5. The Inter-Agency Farmworker Committee should develop a strategic enforcement plan and begin inspections immediately.	No public disclosure

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.	Transportation was provided. Minimum wage not paid
7.	An industry stakeholder committee should be established to advise the Inter-Agency Farmworker Committee, including representatives of farmworkers, labour, community and employer associations.	Ignored
8.	The Committee must work closely with the Farm and Ranch Safety and Health Association to continue and expand education on safety issues.	Partially completed
9.	The Committee shall not be mandated, nor will its focus be the enforcement of immigration laws against the employers or employees.	Completed
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.)	Not completed

COMMENTS

In November 2007, the B.C. Federation of Labour met with the Director of the Employment Standards Branch requesting a progress report on the Federation's Recommendations.

In our meeting we were told:

- An Inter-Agency Farmworker Committee was established bringing together staff from the Employment Standards Branch, the WCB, the Commercial Vehicle Safety Branch, and the RCMP;
- The Committee met 3 times over the spring and fall of 2007;
- In 2007, the Employment Standards Branch added 2 full-time staff, WCB added 4 full-time positions of which 3 were filled, and the RCMP added 5 full-time positions;
- Inter-agency roadside inspections were conducted throughout the spring and summer of 2007;
- The Employment Standards Branch conducted 100 on-site inspections in 2007, an increase of only 18 inspections since 2006 (conducted 82 inspections), and spoke to 3,000 farmworkers;
- Farmworkers stranded when the vehicle they were in was pulled off the road by a roadside inspection could not be guaranteed eight-hours pay based on the minimum wage rate as the Federation recommended as necessary. This would require a legislative amendment which the government does not intend to make; and
- The Committee will not be establishing an Industry Stakeholder Committee as the Federation had recommended. Rather, stakeholders could request to have a meeting with the Inter-Agency Farmworker Committee.

It is very concerning there has been no public disclosure of the Inter-Agency Farmworker Committee's Terms of Reference, meeting minutes, enforcement strategy and compliance team statistics. We were informed that the information would be posted on the Employment Standards Branch website, however, to date, that has not occurred.

The Federation also learned from the WCB that the joint worker transport vehicle inspection team consisting of the RCMP, the WCB and the Commercial Vehicle Enforcement Branch have been conducting farm vehicle inspections since March 2007. In 2007, the enforcement teams conducted 799 inspections and issued

1,388 orders. Only 17 administrative penalties were recommended.

The number of inspection and orders is a dramatic increase over the past few years, but only brings back the number of inspections and orders to the levels in the mid-1990s. (See Appendix A Table1.)

In reviewing the WCB Inspection Reports for 2007, there was a wide variety of employer violations including:

- Worker transportation vehicles so unsafe that vehicle plates were seized and the vehicles towed;
- Impounded vehicles being used without orders being complied with;
- Improper seats and seat belts;
- Overloading of the vans (e.g., 15-passenger van insured for 18 people carrying 19 at the time of inspection);
- All manner of mechanical deficiencies;
- No pre-shift inspections;
- No proper first aid kits;
- Emergency exits not opening, door latches not operating;
- Vehicle drivers not properly licensed; and
- Employers not registered with the WCB.

The inspections clearly identified how the conditions had been allowed to deteriorate to a horrific level. Clearly, the work of the Inter-Agency Farmworker Committee is critical and must be provided the resources necessary to continue the roadside inspections.

2. VEHICLE SAFETY INSPECTIONS

	2007 RECOMMENDATIONS	2008 UPDATE
11.	The issue of motor vehicle inspection be referred to the Inter-Agency Farmworker Committee to undertake a review and make recommendations within 90 days.	Referred to the Minister of Transportation

COMMENTS

Currently, vans used to transport farmworkers to work must be inspected every 6 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, often at a local garage.

During the inspection of the van that crashed, investigators discovered the 15-passenger van was equipped with seatbelts for the driver and the front passenger only, an illegal modification to the factory installed equipment. As well, according to the mechanic who inspected the van for certification, the wooden benches found in the van when it crashed were not in the van at the time it was inspected.

Immediately following the van crash, there many concerns and questions about the process used to certify the vans and the possible conflict of interest between the one doing the work and the one doing the inspection. The Federation recommended the issue be referred to the Inter-Agency Farmworker Committee to undertake the review and make recommendations within 90 days. To date we are not aware of the review being conducted or any recommendations to change the process.

3. SEAT BELT USE

	2007 RECOMMENDATIONS	2008 UPDATE
12.	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.	Completed
13.	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.	Completed
14.	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.	Fines increased. No criminal charges laid
15.	Vehicles found operating without seat belts should be impounded by the RCMP.	Done

16.	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.	No information
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COMMENTS

Effective May 14, 2007, changes were made to the **MVA** to provide greater protection for farmworkers by requiring drivers, owners and employers to ensure that there are proper seats and seatbelts for every passenger. Fines were also increased for infractions. For operating a vehicle without seatbelts and with too many seats the fine is \$167, an increase from \$138.

The fine for requiring or allowing a vehicle to be operated overloaded, with inoperative seatbelts or too many seats is \$598 and \$311 for operating a vehicle with too many persons in the vehicle.

The WCB is recommending amendments to the Occupational Health & Safety Regulation (OHSR), Part 17 Worker Transportation Regulation, to bring it in line with the **MVA** seat belt and seat requirements.

4. OVERCROWDING AND OVERLOADING VEHICLES

	2007 RECOMMENDATIONS	2008 UPDATE
17.	The MVA should be changed to allow the RCMP to fine the driver a minimum of \$500 for overloading the van.	Completed
18.	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.	Completed
19.	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.	Not done

20.	The WCB must increase fines levied on the owner if the van is overloaded.	Completed
21.	The RCMP should be mandated to impound vans where it is discovered they are overloaded.	Done

COMMENTS

The changes to the **MVA** included fines of \$311 for operating an overloaded van and \$598 for requiring or allowing a vehicle to operate overloaded.

The stability issue for 15-passenger vans raises serious concerns when they are used as worker transportation vehicles. No changes have been made to the requirements for using these vans, and the government has only committed to reviewing the matter again. When interviewed by the Canadian Press, Transport Minister Kevin Falcon could not remember "any serious accidents" involving 15-passenger vans, not even the gruesome crash of March 7, 2007.

5. LICENSING OF DRIVERS

2007 RECOMMENDATIONS

2008 UPDATE

22.	The WCB should fine employers who, themselves or allow other employees, to drive vehicles without the proper licenses, should face significantly increased fines	No information
23.	The Inter-Agency Farmworker Committee should review increased requirements for these vehicles (including in other jurisdictions) and recommend additional training if necessary.	Not done
24.	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.	Not done

COMMENTS

The **MVA** specifies that a commercial class 4 unrestricted license is required to operate a commercial vehicle to transport more than 10, but fewer than 25 workers. According to the WCB investigation report of the March 7, 2007 van crash, the driver was driving without a proper license. To date, no criminal charges have been laid.

6. FARM SAFETY AND EMPLOYMENT STANDARDS

	2007 RECOMMENDATIONS	2008 UPDATE
25.	The Inter-Agency Farmworker Committee must develop and implement a coordinated approach, especially with employment standards and the WCB, to enforce the standards and rights on British Columbian farms, nurseries and greenhouse operations.	Started, not complete
26.	The government must introduce in this legislative session, a Bill to restore farmworker's rights to the standards enjoyed by other workers in British Columbia.	Ignored
27.	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 .	No information

COMMENTS

The Inter-Agency Farmworker Committee, as previously mentioned has been meeting to develop a coordinated approach to enforcing safety standards and rights in agricultural workplaces. The Committee has not provided the Federation with the information about their strategic plan for 2008. In BC, an OH&S Committee is required in any workplace where there are 20 or more workers regularly employed. Again, the Federation has not been provided with information on how the WCB will ensure that agricultural employers are in compliance with this requirement.

The government has not introduced legislation to restore the rights of farmworkers to the level of all other workers in British Columbia.

7. BC AGRICULTURE COUNCIL MEMORANDUM

2007 RECOMMENDATIONS	2008 UPDATE
28. The Agreement should not be renewed until the other steps outlined in this Report are implemented and reviewed to ensure they are effective.	Ignored
29. The Agreement should only be renewed with sign-off from organizations representing farmworkers and community advocate organizations.	Ignored

COMMENTS

The Agreement was renewed without sign-off from organizations representing farmworkers.

Appendix A Table 1

WCB INSPECTION REPORTS & PREVENTION ORDERS												
	<i>2007</i>	<i>2006</i>	<i>2005</i>	<i>2004</i>	<i>2003</i>	<i>2002</i>	<i>2001</i>	<i>2000</i>	<i>1999</i>	<i>1998</i>	<i>1997</i>	<i>1996</i>
<i>Inspection Reports</i>	<i>799</i>	<i>238</i>	<i>169</i>	<i>159</i>	<i>156</i>	<i>279</i>	<i>442</i>	<i>370</i>	<i>540</i>	<i>477</i>	<i>570</i>	<i>705</i>
<i>Prevention Orders</i>	<i>1,388</i>	<i>311</i>	<i>168</i>	<i>222</i>	<i>170</i>	<i>393</i>	<i>607</i>	<i>575</i>	<i>1,065</i>	<i>814</i>	<i>824</i>	<i>1,225</i>

LB/sm/mp



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