

## **MEMORANDUM OF UNDERSTANDING**

**BETWEEN:**

The Workers' Compensation Board of British Columbia  
(hereinafter referred to as "WorkSafeBC")

**AND:**

The British Columbia Safety Authority  
(hereinafter referred to as "BCSA")

**RESPECTING**

**INDUSTRIES, WORKPLACES, RAILWAY SYSTEMS, AND EQUIPMENT  
WITH SHARED JURISDICTION**

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## **PREAMBLE**

### **THE PARTIES AGREE AS FOLLOWS:**

**WHEREAS** the BCSA is an independent statutory agency responsible for fostering public safety through the enforcement and administration of the *Safety Standards Act*, S.B.C. 2003 c.39 (the "*Safety Standards Act*") and provisions of the *Railway Safety Act*, S.B.C. 2004, c.8 (the "*Railway Safety Act*");

**AND WHEREAS** the BCSA, in part, carries out its public safety mandate by performing inspections, and issuing directives and orders in the manufacture, disposal, construction, installation, operation, maintenance and use of equipment and systems named in the *Safety Standards Act* and by performing inspections and issuing Notices and Orders in the construction, operation, and maintenance of provincial railways as is covered by the *Railway Safety Act*;

**AND WHEREAS** the BCSA carries out as part of its public safety mandate investigations of incidents or accidents to determine their causes, except for railways classified as common carriers where it investigates for rule violations, and what action should be taken to address the cause or violation, including making recommendations to eliminate or reduce safety deficiencies uncovered by those investigations or to take regulatory action against those who are at fault under the *Safety Standards Act* or *Railway Safety Act*;

**AND WHEREAS** WorkSafeBC is an independent statutory agency responsible for occupational health and safety in B.C. through the enforcement and administration of Part 3 of the *Workers Compensation Act*, R.S.B.C. 1996, c.492;

**AND WHEREAS** WorkSafeBC carries out its occupational health and safety mandate by performing workplace inspections, investigations and enforcement and may pursue sanctions under the *Workers Compensation Act*;

**AND WHEREAS** the BCSA requires, from time to time, records in the custody and control of WorkSafeBC in order to fulfill its statutory responsibilities under the *Safety Standards Act* and the *Railway Safety Act*;

**AND WHEREAS** Section 37(1) of the *Safety Standards Act* provides that a safety officer may investigate an incident, whether or not the incident was reported, and Section 18(1)(k) provides that in the course of performing their duties, safety officers can require that a person produce any record for inspection;

**AND WHEREAS** Sections 3 and 5 of the *Railway Safety Adopted Provisions Regulation* provides that an investigator who is investigating a transportation occurrence may, where the investigator believes on reasonable grounds that a person is in possession of information relevant to that investigation, by notice in writing signed by the investigator, require the person to produce the information to the investigator or to attend before the



investigator and give a statement referred to in section 19 of the Canadian Transportation Accident Investigation and Safety Board Act and section 30 of the Transportation Safety Board Regulations, under oath or solemn affirmation if required by the investigator, and make such copies of or take such extracts from the information as the investigator deems necessary for the purposes of the investigation;

**AND WHEREAS** WorkSafeBC requires, from time to time, records in the custody and control of the BCSA in order to carry out its responsibilities under the *Workers Compensation Act*;

**AND WHEREAS** Section 87 of the *Workers Compensation Act* provides that WorkSafeBC has the like powers as the Supreme Court of British Columbia to compel the production and inspection of books, papers, documents and things; and Section 88 of the *Workers Compensation Act* provides that an officer of WorkSafeBC and every other person appointed to make an inquiry has all the powers of the Workers' Compensation Board under Section 87 of the *Workers Compensation Act*;

**AND WHEREAS** Section 33.1(1)(d) of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165 (the "*Freedom of Information and Protection of Privacy Act*") provides that a public body may disclose personal information for the purpose of complying with an enactment of, or with a treaty, arrangement or agreement made under an enactment of, British Columbia or Canada;

**AND WHEREAS** WorkSafeBC and the BCSA are public bodies designated in Schedule 2 of the *Freedom of Information and Protection of Privacy Act*;

**AND WHEREAS** WorkSafeBC or the BCSA may require records from the other party that may contain "personal information" as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*;

**AND WHEREAS** it is in the public interest there be efficient, efficacious and appropriate disclosure of records between the BCSA and WorkSafeBC, in accordance with the *Freedom of Information and Protection of Privacy Act*;

**AND WHEREAS** the jurisdiction and powers of the BCSA and those of WorkSafeBC may overlap;

**AND WHEREAS** there are occasions where it would be to the mutual benefit of the parties in fulfilling their statutory mandates to cooperate and coordinate one with the other;

**AND WHEREAS** WorkSafeBC and the BCSA wish to enter into a memorandum of understanding for cooperation on activities that enable both parties to carry out their responsibilities in a comprehensive and coordinated manner, without compromising the independence of either party, and within the provisions of applicable legislative authorities governing privacy and access to information; the following memorandum of understanding is hereby entered into.



## **1. Definitions**

### **1.1 For the purpose of this memorandum of understanding:**

"BCSA Acts" means the statutes and regulations, or parts of statutes and regulations, administered by the BCSA,

"Common carrier railways" means a railway as defined in Part 1 of the British Columbia Railway Act that may move freight and/or passengers for a fee,

"MOU" means this memorandum of understanding,

"Officer" means, for the purpose of this MOU, an authorized officer of WorkSafeBC or BCSA, including BCSA railway inspectors,

"WCA" means Part 3 of the *Worker's Compensation Act*, RSBC 1996, Chapter 492, including amendments to it, and the regulations made under it.

## **2. Jurisdiction**

- 2.1 The BCSA has jurisdiction to carry out safety inspections, investigations and enforcement regarding the manufacture, disposal, construction, installation, operation, maintenance and use of equipment and systems named in the *Safety Standards Act* including amusement rides and recreational railways, passenger ropeways, boilers and pressure vessels, electrical equipment, elevating devices and passenger conveyors, gas systems and equipment, and refrigeration systems and equipment.
- 2.2 The BCSA has jurisdiction to carry out safety inspections, investigations and enforcement regarding the construction, operation, and maintenance of provincial industrial railways, and provincial commuter railways covered by the *Railway Safety Act* (see Appendix A).
- 2.3 The BCSA has jurisdiction to carry out safety inspections and related enforcement regarding the operation and maintenance of provincial common carrier railways covered by the *Railway Safety Act* (see Appendix A).
- 2.4 WorkSafeBC has jurisdiction to carry out occupational health and safety inspections, investigations and enforcement in provincially regulated workplaces, including those that manufacture, dispose of, construct, install, operate, maintain or use equipment and systems noted in clause 2.1 and railways noted in clause 2.2 and 2.3, except for those under the jurisdiction of Human Resources and Social Development Canada.
- 2.5 In exercising their statutory responsibilities and powers in situations where their jurisdiction overlaps, WorkSafeBC and BCSA will, as much as possible, operate co-operatively and in a coordinated manner to ensure their mandates are fulfilled.



### **3. Inspections or other workplace visits**

- 3.1 WorkSafeBC and the BCSA each acknowledge that the other has the authority to undertake inspections and other visits of workplaces noted in clauses 2.1, 2.2 and 2.3.
- 3.2 An Officer of one party encountering an Officer of the other party during an inspection or other workplace visit will, as much as possible, cooperate in exchanging information relevant to the purposes of their visits and assist each other to the extent that is consistent with their authority.
- 3.3 The parties will, when reasonably practicable, coordinate inspections and other workplace visit activities where it may be beneficial to safety.
- 3.4 Where an Officer, during an inspection or other workplace visit, observes what he or she believes may be a significant violation of a statute or regulation administered by the other agency he or she will as soon as possible notify the other agency of what he or she observed.
- 3.5 Where a WorkSafeBC Officer identifies a condition of immediate danger or undue hazard at a workplace that is a possible violation of a statute or regulation administered by the BCSA, the WorkSafeBC Officer will contact the BCSA immediately. The WorkSafeBC Officer may also consider taking action to minimize the danger to workers under an appropriate provision of the *WCA*.
- 3.6 Where a BCSA Officer identifies a condition of immediate danger or undue hazard at a workplace that is a possible violation of the *WCA*, the BCSA Officer will contact WorkSafeBC immediately. The BCSA Officer may also consider taking action to minimize the danger under an appropriate provision of a statute or regulation administered by the BCSA.

### **4. Incident investigations**

- 4.1 WorkSafeBC and the BCSA each acknowledge that the other has the authority to access and investigate incidents occurring at workplaces noted in clauses 2.1 and 2.2.
- 4.2 Where either WorkSafeBC or the BCSA become aware of an incident that both parties are considered to have the authority to investigate, they will notify the other party as soon as possible.
- 4.3 Where either WorkSafeBC or the BCSA are the first party to respond to an incident, they will inform the other party and if requested preserve the scene to the degree possible until the other party attends except to attend to persons injured or killed, prevent further injuries and deaths, or protect property that is endangered as a result of the incident.
- 4.4 Where both WorkSafeBC and BCSA investigate an incident they will, as much as possible, cooperate in exchanging information relevant to the purpose of their investigations and assist each other to the extent that is consistent with their authority.



- 4.5 WorkSafeBC and the BCSA acknowledge that their respective agencies maintain a power to seize evidence in the course of an investigation into a workplace incident. The parties agree to consult and cooperate with each other prior to the seizure of any evidence in such a fashion that the mutual legal responsibilities of the two parties are respected and that all reasonable efforts are made to ensure that each party is not disabled in the discharge of its legal responsibilities.
- 4.6 Where either WorkSafeBC or the BCSA seizes scene evidence in the course of an investigation and it intends to submit such evidence to testing or analysis, each party will
- (a) consult the other party and make all reasonable efforts to ensure that the type and extent of testing or analysis respects the mutual legal responsibilities of the two parties and does not adversely effect either party's ability to discharge its legal responsibilities, and
  - (b) notify the other party of the time, place and location of testing or analysis with sufficient advance notice to enable representatives of the other party to attend such testing or analysis should they wish to do so.
- 4.7 Each party will, when making recommendations on matters that may fall under the mandate of the other party, consult with the other party before it finalizes its recommendations resulting from an investigation.

## **5. Prosecution**

- 5.1 Where either WorkSafeBC or the BCSA intends to refer a matter to Crown Counsel for a prosecution pursuant to the Act(s) they administer, the parties agree to consult and cooperate with each other in order to ensure that enforcement activities under consideration by each agency regarding the same matter do not conflict nor do they jeopardize law enforcement actions that may be undertaken by Crown Counsel.

## **6. Exchange and release of information**

- 6.1 WorkSafeBC and BCSA will, as much as possible, provide timely notification and appropriate consultation whenever the activities and responsibilities of one party directly affect the activities and responsibilities of the other.
- 6.2 Both parties will respond to a request for information in a timely manner.
- 6.3 Where WorkSafeBC or BCSA request statistical information and analysis from the other, no reasonable request for information will be refused where, in the opinion of the party receiving the information request, resources allow.
- 6.4 Upon request, WorkSafeBC and the BCSA will exchange copies and/or summaries of records of inspections, investigations, witness statements and



other reports and material produced by their respective officers in relation to a workplace inspection or incident investigation.

- 6.5 WorkSafeBC and the BCSA each acknowledge that they are subject to the *Freedom of Information and Protection of Privacy Act*. Both parties to this MOU acknowledge that where their cooperation involves the exchange of personal information of identifiable persons, such information must be exchanged pursuant to Section 33.1(1)(d) and Section 33.2(i) of the *Freedom of Information and Protection of Privacy Act*.
- 6.6 Where a party is in possession of information or records they received from the other party and receives notice that it may become, or is, subject to a court order, summons or subpoena requiring the disclosure of exchanged information or records, the party will make every reasonable effort to consult with the originating party before disclosing the records or information.
- 6.7 WorkSafeBC and the BCSA may not further disclose information and records, exchanged pursuant to this MOU, without the permission of the originating party, unless the disclosure is for the purpose of, and limited to, complying with the legal standard of disclosure in a judicial or administrative law proceeding or as required by law.
- 6.8 Notwithstanding clause 6.7, if either WorkSafeBC or the BCSA, for the purpose of complying with the legal standard of disclosure in a judicial or administrative law proceeding, is required to disclose information or records obtained from the other, every reasonable effort will be made to notify the originating party prior to any such disclosure.
- 6.9 Information and records exchanged pursuant to this MOU are provided "in confidence", in accordance with the use and application of that term in s.16(1)(b) of the *Freedom of Information and Protection of Privacy Act*.
- 6.10 Where records that have been obtained from "the other party to this MOU" are subject to a third party access request made under the *Freedom of Information and Protection of Privacy Act*, the records shall be returned and the request transferred in accordance with s.11 of the *Freedom of Information and Protection of Privacy Act* where possible.
- 6.11 Any information exchanged pursuant to this MOU will be maintained, retained and disposed of in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act*.

## **7. Policy, regulation development and publications**

- 7.1 WorkSafeBC and BCSA will as much as possible consult with each other in advance where proposed policies, regulations or public communications may affect the other.



- 7.2 WorkSafeBC and the BCSA may, where appropriate, cooperate in the development and implementation of compliance promotion, information and education activities.
- 7.3 WorkSafeBC and the BCSA may individually or jointly issue public communications on hazardous items, circumstances and the general causes of accidents.
- 7.4 Neither party will release information to the media obtained from the other party without the written consent of the other party except as required by law.

## **8. Dispute Resolution**

- 8.1 Disputes arising out of this MOU will be resolved jointly by WorkSafeBC and the BCSA. Depending on the nature of a dispute, an appropriate combination of the following representatives from the two parties will resolve the dispute:
  - (a) Vice President of Worker and Employer Services, WorkSafeBC, or their delegate
  - (b) Vice President of Investigations Division, WorkSafeBC, or their delegate
  - (c) Director of Communications, WorkSafeBC, or their delegate
  - (d) Vice President of Engineering and Risk Control, BCSA, or their delegate
  - (e) Vice President of Client Safety Services, BCSA, or their delegate.
- 8.2 Any disputes arising out of this MOU that cannot be resolved as stated in clause 8.1 will be referred to the President of WorkSafeBC and the President and Chief Executive Officer of the BCSA, or their respective delegates, for resolution.

## **9. Amendments and Termination**

- 9.1 Amendments to the MOU must be made in writing and signed by the President of WorkSafeBC and the President and Chief Executive Officer for the BCSA.
- 9.2 Notwithstanding section 9.1, amendments to Appendix A to the MOU can be made in writing and signed by the Vice President of Worker and Employer Services, WorkSafeBC, the Vice President of Investigations Division, WorkSafeBC and the Vice President of Engineering and Risk Control, BCSA or their respective delegates.
- 9.3 This MOU shall remain in force until the President of WorkSafeBC or the President and Chief Executive Officer for the BCSA gives written notice of its intention to terminate the MOU and 60 days elapse.

- 9.4 The parties will review this MOU within 60 days after every third anniversary of the date on which this MOU has been signed.

## 10. Entire Agreement


- 10.1 The MOU constitutes the entire MOU between the parties and supersedes all previous negotiations, communications and other agreements relating to the subject matter unless these are incorporated by reference in this MOU.
- 10.2 This MOU reflects the good faith and spirit of cooperation of the parties, but is not legally binding on any of the parties and is not to be used in legal proceedings or any other proceeding except those outlined in article 8.

WORKERS' COMPENSATION BOARD  
OF BRITISH COLUMBIA

  
\_\_\_\_\_  
David Anderson  
President & Chief Executive Officer

Date: May 17, 2007

BRITISH COLUMBIA SAFETY AUTHORITY

  
\_\_\_\_\_  
Harry Diemer  
President & Chief Executive Officer

Date: May 17/07



## **APPENDIX A**

### **Provincial Railways under the Jurisdiction of the BCSA**

1. The BCSA has jurisdiction to carry out safety inspections, investigations and enforcement regarding the operation and maintenance of provincial railways covered by the Railway Safety Act including:
  - (a) Industrial railways and port railways, and
  - (b) Commuter railways, including
    - (i) Skytrain (BC Rapid Transit Company),
    - (ii) Canada line (Intransit BC),
    - (iii) Evergreen Line (proposed construction 2007), and
    - (iv) All proposed street car systems.
2. The BCSA has jurisdiction to carry out safety inspections and related enforcement regarding the operation and maintenance of provincial common carrier railways covered by the Railway Safety Act including:
  - (a) Island Corridor Foundation (Southern Railway of Vancouver Island Ltd.),
  - (b) Grand Forks Railway,
  - (c) International Rail Road Systems, and
  - (d) Southern Railway of British Columbia.